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**Warren G. Magnuson and consumer protection**

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**University of Washington, 1994**

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Warren G. Magnuson and Consumer Protection

by

Timothy J. McMannon

A dissertation submitted in partial fulfillment  
of the requirements for the degree of

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Abstract

Warren G. Magnuson and Consumer Protection

by Timothy J. McMannon

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Senator Warren G. Magnuson, a Democrat from Washington, contributed to the passage of virtually every major piece of federal consumer protection legislation enacted in the United States between 1960 and 1975. Before this period Magnuson, who gained the chair of the Senate Commerce Committee in 1955, was generally considered a friend of business. His participation in consumer protection has usually been explained as the product of two forces: his desire to change his image after a particularly close election victory in 1962 and the influence of his staff, which was composed of pro-consumer activists.

This study presents Magnuson's involvement in consumer protection differently, as much less a change than observers have thought. Magnuson's consumerism is depicted rather as something of a continuation of his policy of serving his constituents. His apparent pro-business stance following World War II is portrayed as a desire to develop the state of Washington not so much to enrich business as to provide jobs, income, and a higher standard of living for working people. As real income increased in the United States following the war and the economy became more complex, consumer protection offered another opportunity for him to assist in improving people's standard of living.

As background to Magnuson's work in the field, earlier periods of consumer protection are briefly discussed. The first period, or "wave," occurred early in the twentieth century and reached its climax with the passage of the Food and Drugs Act and the Meat Inspection Act, both enacted in 1906. The second period began in the late 1920s and was marked by the 1938 passage of the Food, Drug, and Cosmetic Act and the Wheeler-Lea Act.

Biographical material is included to provide a better understanding of Magnuson himself. Born in 1905 in South Dakota, he came to Washington State in the 1920s and earned a degree from the University of Washington Law School in 1929. He was elected to the state legislature in 1932 and remained in public office until 1980, by which time he had become one of the most powerful--yet unknown outside of Washington, D.C., and Washington State--political figures in the country.

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## INTRODUCTION

In a 1966 article on automobile insurance, James Ridgeway of the New Republic commented on Senator Warren G. Magnuson's interest in reforming the insurance industry. Ridgeway observed that Magnuson, a long-time senator from Washington, was "busily changing his image from corporation stooge to consumer champion," and that taking a "modest stab" at the problems of the auto insurance business would likely impress voters.<sup>1</sup>

A month later, Seattle Times Washington, D.C., correspondent William W. Prochnau previewed the 1968 senatorial election and noted that Magnuson had an "image problem." Magnuson did not come across very well on television, he was not articulate, and he had strong personal and political ties to the increasingly unpopular president, Lyndon Johnson. "To counterbalance this," Prochnau wrote, "Magnuson is developing a new reputation on Capitol Hill as a protector of the consumer--the little guy with no lobby in Washington."<sup>2</sup>

What Ridgeway, Prochnau, and others described regarding Magnuson in the mid-1960s was certainly real enough: he did markedly increase the

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<sup>1</sup>James Ridgeway, "Underground War on Auto Insurance," New Republic 155 (3 December 1966): 21.

<sup>2</sup>William W. Prochnau, "Magnuson Faces Some Problems," Seattle Times, 23 January 1967, p. 10.

frequency and range of his consumer protection efforts at that time. Few indeed were the senators or representatives who could rival his contributions on behalf of American consumers.

What these writers failed to perceive, however, was that Magnuson's apparent conversion was not really a conversion at all, but merely a reemphasis of his long-held political philosophy that the duty of an elected official was to serve the people.<sup>3</sup> At the risk of advancing a Whiggish argument, one may discern the roots of the philosophy that ultimately led to Magnuson's consumerism as early as the 1930s, when he had first entered political office and fought for unemployment insurance, old-age pensions, and public ownership of power. Issues such as those were certainly not prototypical consumer protection concerns, but they had definite ties to consumption: the idea behind the first two was to provide people with income sufficient to allow them to buy at least a minimal supply of consumer goods, and the point of the last was to try to prevent the uncontrolled price increases that Washington residents feared would result from a private monopoly on an important consumer utility. What they also had in common, of course, was that they

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<sup>3</sup>Even in the last months of his life, long after he had left public office, Magnuson stressed this idea. In an article appropriately entitled "Help People, Old New Dealer Pleads," he suggested diverting funds to social programs from President Reagan's "Star Wars" defense program, the B-1 bomber, and the MX missile. "Magnuson defines government," wrote reporter Joel Connelly, "as a force for human betterment, arguing that spending for public health and education is of much greater benefit to the country than missiles." Seattle Post-Intelligencer, 3 January 1989, p. A1.

represented a policy of taking the side of the people against perceived threats-- in these cases, the threats of poverty and monopoly price manipulation.

Throughout the 1940s and 1950s, as Magnuson pushed for industrial development and federal spending in his home state, he was likewise motivated by a desire to do what he thought would best advance the standard of living of Washingtonians. His success at bringing home the pork led some observers, Ridgeway included, to misconstrue his aims as currying the favor of big corporations. Enriching industry, however, was merely the means to the end of providing jobs, wealth, and a higher living standard for his constituents.

Magnuson's consumer protection emerged from his personal tradition of state development and constituent service. By the 1960s he came to realize that working to provide jobs for people at home was not enough; it did them little good if they were defrauded out of their money by deceptive selling schemes or if they purchased goods that were unnecessarily harmful. Moreover, the political benefits of his previous brand of constituent service seems to have reached the point of diminishing returns by 1962. The master provider was nearly defeated in the election that year. Consumer protection, a minimal but extant part of his agenda in his congressional career until the early 1960s, became an increasingly larger part thereafter.<sup>4</sup>

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<sup>4</sup>Michael Pertschuk says that consumer issues represented about one-third of Magnuson's agenda at the height of his involvement. Author interview with Michael Pertschuk, Seattle, 12 April 1991. (Transcript deposited at Manuscripts Division, University of Washington Libraries, Seattle, Washington.)

It is impossible to understand fully Magnuson's consumer protection work without some understanding of Magnuson himself and the contexts in which his consumerism may be placed. Chapters two and four of this study provide the necessary biographical information: the former outlining the story of his life from birth to 1936, and the latter describing his years in the House of Representatives from the campaign of 1936 to his election to the Senate in 1944. The immediate context, the social and political environment of the 1950s and 1960s, is discussed in chapters five, six, and seven.

There is another context, however, that must be considered: the history of consumer protection in the United States. It does little good, for example, to discuss the controversy surrounding cigarette advertising in the 1960s without first gaining some understanding of the Wheeler-Lea Amendment of 1938 that codified the Federal Trade Commission's role in regulating advertising. To provide the background for the consumer initiatives of the 1960s and early 1970s, therefore, somewhat detailed descriptions of the earlier periods of consumer protection are offered in chapters one and three. Some additional introductory comments here, however, will further set the stage.

Historians of consumer protection activities in the United States typically identify three main periods, often called "waves," during which consumer issues commanded particular legislative and general interest.<sup>5</sup> Just

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<sup>5</sup>See, for example, Robert B. Reich, "Looking Back at Regulation: Business is Asking For Trouble Again," New York Times, 22 November 1981, sec. 3, p. 2; and Robert N. Mayer, The Consumer Movement: Guardians of the Marketplace (Boston: Twayne, 1989), pp. 10-33.

as it is difficult to identify the precise instant when a mass of moving seawater becomes a wave, so too is it difficult to pinpoint the moment when a general interest in consumers becomes a "wave." Yet even if one cannot say exactly when a wave of consumer protectionism begins, it seems reasonable to conclude that one exists when the following conditions are present: first, the people or their designated representatives have become convinced of the necessity of establishing legislative safeguards for consumers and, second, broad pieces of legislation are enacted with the avowed purpose of providing these safeguards. These conditions seem simple enough, but the fact that they have been met only three times in the history of this country gives some hint of the complexities behind the apparent simplicity.

The first time the conditions were met in the United States was in the early twentieth century, as part of the reforming urge of the Progressive era. The primary concerns of consumerists were those products that people "consumed" in the most basic sense of the word: food, drinks, and drugs.<sup>6</sup> The Food and Drugs Act (34 Stat. 768) and the Meat Packing Act (34 Stat. 669), both signed by President Theodore Roosevelt on June 30, 1906, and effective January 1, 1907, and March 4, 1907, respectively, marked the high point of this first era of consumer protection. The coming of the first World War put a definite end to the movement, although the tide had begun to turn almost as soon as the ink of TR's signatures had dried on the two major acts.

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<sup>6</sup>Mark V. Nadel, The Politics of Consumer Protection (Indianapolis: Bobbs-Merrill, 1971), pp. 14-15.

The second wave occurred during the 1920s and 1930s, beginning as an effort both to make product testing data available to consumers and to force advertisers to behave responsibly. The depression of the 1930s created new problems for consumerism, as the desires of individuals and consumer advocacy organizations often clashed with those of the federal government. While consumerists pushed for better information through which to make the most efficient purchases with limited funds, government officials--with a few notable exceptions--emphasized raising prices to bring about economic recovery. Two important consumer measures gained passage in 1938--the Food, Drug, and Cosmetic Act and the Wheeler-Lea Act--but their provisions were not as pro-consumer as consumer advocates had hoped they would be. The Second World War put an end not only to the depression and the New Deal but also to the second wave of consumer protection.

The third wave took place in the 1960s and 1970s. During this era some of the most far-reaching consumer legislation in this country's history gained passage, consumer protection reforms became a major part of a presidential agenda for the first time, Ralph Nader rose to prominence, and Warren Magnuson made his greatest contributions to consumer protection. Unlike the first two, the third wave was not halted by an international crisis, and in fact some observers have contended that the low cost of consumer protection and its consensus nature enhanced its place on political agendas during the Vietnam

War.<sup>7</sup> The third wave of consumer protection petered out due to domestic circumstances, primarily the rise of business-directed political action committees and the ascendancy of conservatism in American politics.<sup>8</sup>

Although the image of waves of consumer protection is somewhat nebulous, it is still useful. Not only does it graphically illustrate the periodic rise and fall of consumerism but also it demonstrates the permanence of some interest in consumer issues. Just as there is always some water between the crests of waves, there is also always some concern for consumers, even during those periods not especially noted for it. And just as a tidal wave can change the face of the land, so too can a wave of consumer protectionism change the face of American politics and American society.

Because some of the terms used in this study may have a variety of connotations depending upon who uses them, a few definitions are in order. In this study "consumer" will be used synonymously with what others have called the "ultimate consumer": that is, the individual who purchases goods and services on the open market for the purpose of private use. Not all purchasers are consumers. Some analysts consider federal, state, and local governments to be consumers because of their participation in the market as buyers, but that view will not be adopted in this study. Governments typically wield far greater

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<sup>7</sup>Nadel, Politics of Consumer Protection, pp. 39-41; and Michael Pertschuk, Revolt Against Regulation: The Rise and Pause of the Consumer Movement (Berkeley: University of California Press, 1982), p. 19.

<sup>8</sup>Pertschuk, Revolt Against Regulation, pp. 47-68.

power in the marketplace than do individual consumers, and in many cases governments issue product standards which aspiring sellers must meet. Individuals, however, enjoy no such power, and it is on behalf of individuals that consumer protection laws are enacted.

"Consumerism" means many things to many people. The term is sometimes used by opponents of consumer protection "to associate consumer activism with other dreaded 'isms' such as communism and fascism."<sup>9</sup> Used in this pejorative sense consumerism might be taken to mean a radical opposition to the free market system. At other times consumerism is misdefined as "an excessive or obsessive interest in goods, akin to materialism."<sup>10</sup> This desire to consume might more logically be called "consumptionism." Consumerism seems most appropriately equated with consumer advocacy or the consumer interest; that is, sympathy for and identification with people in their consuming role. In short, consumerism is thinking of, by, or for consumers. It thus extends not only to product safety and the dissemination of information but also to issues of purchasing power, production priorities, banking policies, and others. Consumerism in this study will be construed broadly as sympathy for or empathy with consumers, but it will not be used as a synonym for consumer protection.

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<sup>9</sup>Mayer, Consumer Movement, p. 3.

<sup>10</sup>Mayer, Consumer Movement, p. 3.

The term "consumer movement" implies a popular, grassroots drive as well as political activism.<sup>11</sup> Consumer protection in the United States did not emerge as such a movement; it was typically initiated by authors, legislators, and public servants, and became a "movement" only to a quite limited degree.

Michael Pertschuk's discussion of the term is instructive:

If we understand a movement to reflect not only widespread popular support but, like the "populist movement" of the late nineteenth century, an organized grassroots effort that, for its members, transcends all other political identity or involvement, it cannot be said that a consumer movement has ever existed. For consumer issues by their nature--unlike wages and job security in the labor movement, for example--rarely assume priority among citizens' competing economic concerns. . . . 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 each consumer has in each of the discrete issues that, taken together, have been viewed as consumer legislation.<sup>12</sup>

"Consumer protection" may be understood to comprise those specific measures taken to provide for consumers' physical safety, to ensure financial fair treatment, to disseminate information, or to allow for redress of grievances. Consumer protection measures may include the passage of laws, the publication of writings that inform consumers, the implementation of product recalls, and so on. Consumer protection is typically rooted in consumerism or consumer advocacy, but the reverse is not always true: one may embrace the

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<sup>11</sup>Mayer, Consumer Movement, p. 3.

<sup>12</sup>Pertschuk, Revolt Against Regulation, pp. 10-11, n. 8.

ideas and ideals of consumerism or consumer advocacy without advancing to the stage of consumer protection.

"Consumption" is the act of purchasing and using goods and services. Adam Smith, in The Wealth of Nations, said of consumption that it "is the sole end and purpose of production; and the interest of the producer ought to be attended to, only so far as it may be necessary for promoting that of the consumer." Production, distribution, and consumption make up the cycle that drives a free market economy. When President Franklin Roosevelt spoke of the consumer as the "forgotten man," he meant the consumer as part of this cycle, as an economic entity, not as an individual whose health, safety, and pocketbook could be endangered by marketplace abuses. Likewise, in his Bronx, New York, campaign speech, candidate John F. Kennedy spoke of consumers mainly as purchasers whose consumption had been retarded by inflation.

While consumer protection usually connotes an interest in consumption as it pertains to the economic well-being of consumers, an emphasis on increasing consumption does not necessarily imply a concern for consumers themselves. It was, in fact, this subtle shift in emphasis--from consumption itself to consumers themselves--that marked the onset of Magnuson's push for consumer protection.

## CHAPTER ONE

### The First Wave of Consumer Protection

"These great corporations doing an interstate business occupy the position of subjects without a sovereign, neither any State government nor the National Government having effective control of them."<sup>1</sup>

"Whether as a matter of morals or from policy, let us have honesty."<sup>2</sup>

#### Introduction: Before the First Wave

During most of the nineteenth century, and prior to the first great wave of consumer protection, Americans generally considered themselves to be producers rather than consumers.<sup>3</sup> They grew much of their own food, provided most of their own entertainment, bought few finished products, and

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<sup>1</sup>Theodore Roosevelt, quoted in John Braeman, "The Square Deal in Action: A Case Study in the Growth of the National Police Power," in Change and Continuity in Twentieth-Century America, eds. John Braeman, Robert H. Bremner, and Everett Walters (Columbus: Ohio State University Press, 1964), p. 36.

<sup>2</sup>W. D. Bigelow, "The Development of Pure Food Legislation, Science n.s. 7 (15 April 1898): 513.

<sup>3</sup>Richard Hofstadter, The Age of Reform: From Bryan to F.D.R. (New York: Vintage, 1955), p. 172; William L. O'Neill, The Progressive Years: America Comes of Age (New York: Dodd, Mead & Co., 1975), pp. 11-13; and David M. Potter's analysis of David Riesman's ideas in Potter's People of Plenty: Economic Abundance and the American Character (Chicago: University of Chicago Press, 1954), p. 70.

relied on traditional cures when they were sick. The guiding principle of the marketplace was caveat emptor (let the buyer beware). As Walter Weyl put it in 1912:

Every man was presumed capable of playing his own game. . . . If he bought sand in his sugar, water in his milk, chicory in his coffee, or chalk in his bread, he had no redress. He could not appeal to a spiritless futile law . . . he could not protest to a community which would have laughed at the fool and his folly.<sup>4</sup>

In short, it was assumed that each individual was competent to judge the quality of the goods he bought and that legislative protection was therefore not necessary.

There were, however, a few laws enacted at the time that gave consumers some protection. For the most part, the protective nature of these laws was merely an incidental outcome of the goal of maintaining a flourishing, efficient economy.<sup>5</sup> In 1872, for example, American consumers were provided a measure of defense against marketplace abuses by a statute that certainly did not have consumer protection as its primary purpose. An act of that year (17 Stat. 302) revised the laws under which the Post Office Department operated, and Section 149 prohibited "schemes devised and intended to deceive and defraud the public for the purpose of obtaining money under false pretences." In addition to outlawing postal lotteries and the like, this anti-mail

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<sup>4</sup>The New Democracy: An Essay on Certain Political and Economic Tendencies in the United States (New York: Macmillan, 1912), p. 48.

<sup>5</sup>Mark V. Nadel, The Politics of Consumer Protection (Indianapolis: Bobbs-Merrill, 1971), pp. 4-5.

fraud law also prohibited the selling by mail of any products that did not or could not fulfill the vendor's promises. Legislation such as this served as a kind of catchall category, much as income tax evasion laws have been used in recent years, to prosecute those whose greatest violations were much more difficult to prove. Even after the passage of the landmark Food and Drugs Act of 1906, postal laws were a useful tool for preventing or punishing fraud. In 1917 C. L. Alsberg, Chief of the Bureau of Chemistry in the Department of Agriculture, reported that "much evidence obtained in connection with the enforcement of the Food and Drugs Act was submitted to the Post Office Department and resulted in the issuance of fraud orders, a more effective way of dealing with many products than prosecution under the Food and Drugs Act."<sup>6</sup>

Another group of regulations was written primarily to control the import trade. By the 1840s the United States had gained an unenviable reputation as the "world's dumping ground" for adulterated and otherwise unsafe drugs. In 1848, when American soldiers suffered from ineffective imported malaria medicine administered during the Mexican War, Congress passed a law (9 Stat. 237) "to prevent the Importation of Adulterated and spurious Drugs and Medicines."<sup>7</sup> Similarly, an act of 1883 (22 Stat. 451)

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<sup>6</sup>U.S., Department of Agriculture, Annual Reports of the Department of Agriculture for the Year Ended June 30, 1917, Report of the Chemist, by C. L. Alsberg (Washington: Government Printing Office, 1918), p. 213.

<sup>7</sup>Wallace F. Janssen, "The Story of the Laws Behind the Labels," FDA Consumer 15 (June 1981): 32.

prohibited the importation of tea "adulterated with spurious leaf or with exhausted leaves, or which contains so great an admixture of chemicals or other deleterious substances as to make it unfit for use." Although such legislation gave American consumers some protection from dangerous or adulterated imported products, it did nothing to shield them from abuses perpetrated upon them by their own countrymen.

Interestingly, the first major laws mandating the inspection of American-made meat products had the same effect--that is, none--for American consumers, because the regulations applied only to exported meats. This legislation, too, originated as government regulation of international trade, specifically as a federal effort to help regain foreign markets for American meat packers. Beginning with Italy in 1879, one European nation after another closed its ports to American meats because lax inspection frequently resulted in the sale of diseased meats. Desperate at the loss of this huge market, packers in the United States pressured the federal government throughout the 1880s to impose more stringent inspection laws. After a hog cholera outbreak in 1889, Congress passed the Inspection Act of 1890 (26 Stat. 414), but since it called only for inspection of dressed meat intended for export and not live animals, European barriers were not lowered. Finally, in March 1891, legislation was enacted requiring the inspection of animals before slaughter (26 Stat. 1089), and American meats were once again accepted in European markets.<sup>8</sup>

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<sup>8</sup>Gabriel Kolko, The Triumph of Conservatism: A Reinterpretation of American History, 1900-1916 (New York: Free Press of Glencoe, 1963), pp. 98-100.

Clearly, the primary beneficiaries of this legislation were the American meat packing companies, who regained a valuable market for their products, and European buyers of American meats, who were provided some measure of protection against tainted or poisonous meats. For American consumers of domestic meats, however, the 1891 act was a mixed blessing. Although it required that meat intended for export or interstate commerce be inspected by agents of the Department of Agriculture, it did not empower the inspectors to destroy the tainted meat--or even to verify that it was destroyed--a shortcoming pointed out by Upton Sinclair in the May 1906 issue of Everybody's Magazine. Meat that failed inspection was supposed to be destroyed by "representatives of 'the State or municipality in which it is found.'"<sup>9</sup> Since federal agents were not present at the packing plants twenty-four hours a day, and since local officials could often be hired and fired at the whim of powerful meat packers, it was not difficult for packers to process and sell meat that had been condemned or to sell the rejected animals to other abattoirs for processing. Sinclair denounced the system, writing: "men wearing the blue uniforms and brass buttons of the United States service are employed for the purpose of certifying to the nations of the civilized world that all the diseased and tainted meat which happens to come into existence in the United States of America is carefully sifted out and consumed by the American people."<sup>10</sup> In effect, as

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<sup>9</sup>"The Condemned-Meat Industry: A Reply to Mr. J. Ogden Armour," Everybody's Magazine 14 (May 1906): 613.

<sup>10</sup>"Condemned-Meat Industry," p. 613.

the title of Sinclair's essay stated, the inspection laws seemed to have given rise to a new industry: that of selling condemned meats to American consumers.

Before effective laws could be enacted to regulate domestic products, however, Americans had to undergo a rather dramatic change in orientation, from perceiving themselves primarily as producers to seeing themselves as consumers.<sup>11</sup> This transformation took place for a great many Americans between the Civil War and 1900. Reasons were varied, and often interrelated, but first and foremost were the increasing urbanization and the rapid industrialization of the United States. As the cities grew and more people went to work in the burgeoning factories, they were simply unable to produce for themselves many of the things they needed. City dwellers did produce for themselves, of course, the wages and salaries with which they could purchase goods and services, but they had neither the land nor the time to grow their own food, and they lacked the resources and skills to produce their own drugs or finished goods. At the same time, American businesses were turning more and more to nationwide distribution and national advertising to sell their wares. This not only led to brand recognition and brand loyalty but it also contributed to the increasing self-perception of Americans as consumers.<sup>12</sup>

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<sup>11</sup>On this change, see Hofstadter, Age of Reform, p. 172; O'Neill, Progressive Years, pp. 11-13; and Potter, People of Plenty, p. 70.

<sup>12</sup>Otis Pease, The Responsibilities of American Advertising: Private Control and Public Influence, 1920-1940 (New Haven: Yale University Press, 1958), pp. 1-7.

By necessity and persuasion, therefore, a greater and greater proportion of Americans became consumers--people who bought, wore, ate, and used items that they had not themselves produced--and began to see things from a consumer's point of view.

One of the things they gradually came to see from that vantage point was that the concept of caveat emptor was no longer tenable. Ironically, the same developments that enabled vast numbers of Americans to live as consumers in cities also made it impossible for them to "play their own game" when it came to judging the quality, freshness, and safety of the goods they purchased. Canning, for example, made it possible for city residents to have vegetables year round, but it also gave unscrupulous canners an opportunity to hide spoiled or low quality goods behind a layer of metal. And no one really knew what effect the newly developed chemical preservatives that lengthened the shelf life of processed foods would have on the people who consumed them. Similarly, advances in transportation and refrigeration enabled urbanites to purchase a variety of goods produced hundreds of miles from the city, but the system had undeniable costs: the purchaser had no direct access to the producer to observe production, to verify product claims, or to demand redress. More and more, it seemed, consumers were at the mercy of anonymous producers.

Because they lacked information regarding just what went into the products they purchased, consumers themselves were not the first to recognize

their predicament; that distinction goes to scientists.<sup>13</sup> In fact, much of what James Harvey Young has called "the long struggle for the 1906 law"<sup>14</sup> consisted of finding out just what went into foods and drugs, determining what effects these substances had on the human body, and convincing members of the buying public that they were being unfairly treated and should demand remedial action. This effort began as early as 1820 with the publication in both the United States and England of A Treatise on Adulterations of Food, and Culinary Poisons, by Frederick Accum, a German chemist and pharmacist who lived in England.<sup>15</sup> Sporadic efforts to galvanize public opinion in the United States recurred throughout the nineteenth century but without much success beyond the local and state levels.<sup>16</sup>

Looking back on the decades before the passage of the Food and Drugs Act of 1906, Dr. Harvey Wiley, head of the Agriculture Department's Bureau of Chemistry from 1883 to 1912 and a leader in the fight for protective legislation, summarized the public's apparent lack of interest and the importance of experts this way:

There seemed to be a distressing apathy in the public mind relative to these glaring evils [food adulteration and quack medicines]. It took

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<sup>13</sup>Robert McD[owell] Allen, "Pure Food Legislation," Popular Science Monthly 69 (July 1906): 53.

<sup>14</sup>"The Long Struggle for the 1906 Law," FDA Consumer 15 (June 1981): 12.

<sup>15</sup>Mitchell Okun, Fair Play in the Marketplace: The First Battle for Pure Food and Drugs (Dekalb: Northern Illinois University Press, 1986), p. 3.

<sup>16</sup>On state and local anti-adulteration efforts see Okun, Fair Play.

many years of education on the part of my Bureau and other agencies interested in protecting the health of the people before the vast and effective weight of public opinion swung in behind the passage and enforcement of a general pure food and drugs law.<sup>17</sup>

No doubt some of what Wiley considered to be apathy on the part of the general public was actually a lack of information, but the essence of his statement is true: the American people had to be both educated and persuaded before conditions could be changed.

### **The First Wave**

The first genuine attempt to enact national legislation that would protect American consumers from adulterated or tainted domestic foods was a bill, H.R. 5916, introduced by Congressman Hendrick B. Wright of Pennsylvania on January 20, 1879.<sup>18</sup> By that time food and drug adulteration had become a subject of increasing concern, especially in the large cities. Congress and the general public were not yet convinced of the urgency of the situation, however, and Wright's bill died in the House Committee on Manufactures.<sup>19</sup>

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<sup>17</sup>Harvey W. Wiley, An Autobiography (Indianapolis: Bobbs-Merrill, 1930), pp. 200-201.

<sup>18</sup>Gustavus A. Weber, The Food, Drug, and Insecticide Administration: Its History, Activities and Organization. Service Monographs of the United States Government, no. 50. (Baltimore: Johns Hopkins Press, 1928), p. 7; and Congressional Record (hereafter abbreviated Cong. Rec.), 45th Cong., 3d sess., 1879, 8, pt. 1: 575.

<sup>19</sup>Okun, Fair Play, p. 116.

The succeeding years witnessed what one historian has called "an increasing shower of bills" to regulate foods.<sup>20</sup> But of the 190 food bills that made up this "shower" between 1879 and 1906, only 8 gained passage, and none of these was sufficiently broad to be very effective.<sup>21</sup> In addition to the tea and meat inspection acts mentioned above, a law was passed in 1886 to regulate the production and distribution of oleomargarine (24 Stat. 209), followed by similar statutes directed toward artificial or "filled" cheese (29 Stat. 253) and mixed flour (30 Stat. 467) in 1896 and 1898, respectively. But these three acts were intended to generate revenue or to improve the position of one industry relative to another, rather than to protect consumers, and they controlled artificial or adulterated foods only to the extent of taxing them. In 1888 Congress passed an anti-adulteration law that applied only to the District of Columbia (25 Stat. 549), and in 1902 the misbranding as to the location of origin of food and dairy products in interstate commerce was prohibited (32 Stat. 632). Each of the above laws dealt only with specific foods or with foods as a class of goods in a carefully circumscribed way, and none of the statutes gave American consumers any meaningful measure of protection.

Not surprisingly, the few laws that gained passage in those years did so primarily because they protected the economic interests of specific, and usually powerful, groups of producers. The statutes regulating the meat industry are

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<sup>20</sup>Weber, Food, Drug, and Insecticide Administration, p. 7.

<sup>21</sup>Thomas A. Bailey, "Congressional Opposition to Pure Food Legislation, 1879-1906," American Journal of Sociology 36 (July 1930): 52.

good examples, as is the Oleo Act. The latter, which imposed inspection requirements as well as a tax on the spread, found its leading advocates among the nation's dairy farmers and butter manufacturers, who feared that the butter industry would be destroyed by its cheaper competitor.<sup>22</sup> Similar reasoning lay behind the statute to prevent the misbranding of food and dairy products. Representative James S. Sherman of New York introduced the bill to protect the producers of "New York full cream cheese" from the competition of cream cheeses of other localities which were falsely labeled as coming from New York.<sup>23</sup> During a brief debate in the House, Sherman reassured his colleagues that the products from their home states--maple syrup from Vermont, pure cane syrup from Georgia, and "Maine sweet corn"--would also enjoy protection.<sup>24</sup> Sherman's appeal to the parochial interests of other congressmen no doubt facilitated the House's passage of the bill, but equally important was his unwillingness to expand it to cover other products or, as he put it, "to make a pure-food bill of it."<sup>25</sup> The morals of the story, left unstated, were nevertheless clear: first, legislation that attempted to do too much in the area of pure food could not pass; and second, protecting consumers

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<sup>22</sup>The opponents of the Oleo Act were no political weaklings, either. They were led by the powerful meat industry, since beef fat was (or was supposed to be) the main ingredient in oleomargarine. On the regulation of oleo, see Okun, Fair Play, chapter 11; and the debates in the Cong. Rec., especially the House debates of 24 May-3 June, 1886, pp. 4865-5213, *passim*.

<sup>23</sup>"Our Chaotic Food Laws," The Nation 77 (30 July 1903): 88.

<sup>24</sup>Cong. Rec., 57th Cong., 1st sess., 1902, 35, pt. 3: 2803-04.

<sup>25</sup>Cong. Rec., 57th Cong., 1st sess., 1902, 35, pt. 3: 2804.

by protecting producers was good politics, but protecting consumers for their own sakes was not. Like the general populace, Congress had to be educated and persuaded that broad consumer protection legislation was necessary--and that it could be politically advantageous.

One group that contributed to the process of education and persuasion consisted of those food and drug producers who thought that comprehensive anti-adulteration legislation would advance their own economic interests. The laws were expected, first of all, to calm the fears of consumers.<sup>26</sup> Mitchell Okun notes that as early as 1879 Americans had been willing to believe virtually any adulteration atrocity story,<sup>27</sup> and the paucity of federal action in the subsequent twenty-five years did little to allay their suspicions. Although even without the protection of a general food and drug law Americans could scarcely boycott all processed and packaged goods, some statutory guarantee that they would not be poisoned by their breakfasts or their headache medications could only increase the demand for foods and drugs. The inspection regulations had certainly done so for meat products.

Producers also hoped that a national law could be enacted to solve some problems associated with interstate commerce. While Congress stalled, unable or unwilling to pass a comprehensive law, many states enacted their own legislation with provisions that contradicted those of other states. The result was a jumble of regulations that made production and interstate distribution

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<sup>26</sup>O'Neill, Progressive Years, p. 38.

<sup>27</sup>Fair Play, p. 89.

far less efficient than they might otherwise have been. The comment of one jam manufacturer summarized what many producers faced at the turn of the century: "As it is now," he complained, "we have to manufacture differently for each state."<sup>28</sup>

Finally, some manufacturers believed that a federal statute would make economic competition more fair and would relieve them of a difficult ethical dilemma. Since much adulteration consisted of substituting a cheap, bulky substance for part or all of the real product--roasted peas for coffee, water for milk, vegetable oil for olive oil, or even ground stone for baking powder--adulterated products could be produced more cheaply than the genuine article but sold for the same price. Or, equally devastating for the honest producer, adulterators could sell their goods for less than the price of the uncompromised product, thus taking away customers who could see no reason to pay more for the "same" item. "Without protection," noted W. D. Bigelow, the retiring president of the Chemical Society of Washington in an 1898 address, "it becomes a question with the manufacturer whether he shall give up his business or his integrity. Never before did the adulteration of food present so strong a temptation to the manufacturer." The solution, Bigelow contended, was to label and sell things for what they really were, and thus to allow consumers to choose the more expensive, pure goods or the cheaper,

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<sup>28</sup>Quoted in Young, "Long Struggle," p. 15.

adulterated ones. He concluded: "Whether as a matter of morals or from policy, let us have honesty."<sup>29</sup>

But if some manufacturers gradually became convinced of the wisdom of backing protective legislation, certainly not all of them did. Among those who opposed it, naturally, were producers who practiced outright adulteration by mixing cheaper materials with the actual foodstuffs or by creating a substitute out of other products. Their chief concern was that pure food laws would put them out of business. Since they could hardly have come out in favor of adulteration, they worked behind the scenes, lobbying Congress to prevent the passage of bills. Historian Thomas Bailey described their opposition as "the most dangerous, for [they] fought most persistently and most insidiously."<sup>30</sup>

More open in their resistance to legislation were those producers who voiced more socially legitimate concerns. Pickle and catsup manufacturers, for example, feared that a law would ban chemical preservatives, and they contended that their products could not be shipped safely without them. Packers of meat and fish took the same position regarding their commodities, adding that any dangers of preservatives were minimal compared to the spoilage and poisoning hazards of meat and fish that were not preserved. And

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<sup>29</sup>Bigelow, "Development of Pure Food Legislation," pp. 512-13.

<sup>30</sup>"Congressional Opposition," p. 64.

canners of peas argued that the copper sulfate they used in processing merely restored the natural green color of the vegetable.<sup>31</sup>

It comes as no surprise that manufacturers who used preservatives in their products argued that they were providing a public service by preventing disease and the waste of food.<sup>32</sup> It is rather surprising, however, that those producers who stretched their goods with fillers employed a similar public-service argument. Adulterating goods, they said, brought prices within reach of the average working class consumer. One manufacturer of preserves, when asked by a member of Congress why his company produced a type of strawberry preserves that was as much apple juice as strawberries, responded, "To make it cheap" in order to sell it to "the laboring classes, the masses of the

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<sup>31</sup>Allen, "Pure Food Legislation," pp. 56-57; and H. H. Langdon, "Adulterated Food," Scientific American 95 (18 August 1906): 115.

<sup>32</sup>Dr. Robert C. Eccles, a physician and editor of the section of the United States Pharmacopoeia that pertained to poisons, testified as much before the House Committee on Interstate and Foreign Commerce in 1906 when that committee was investigating several pure food bills. Eccles appeared on behalf of the National Food Manufacturers' Association, and his testimony surely reflected the association's position, but there seemed to be genuine conviction in his words when he stated:

To preserve a food is to improve that food and not to adulterate it. . . .  
The preservative keeps the germs from multiplying, so that they can not give you the disease; and the object of the preservative is to keep down diseases, and that is the sole reason I am here to discuss these matters.

U.S., Congress, House, Committee on Interstate and Foreign Commerce, Hearings on the Pure-Food Bills H.R. 3044, 4527, 7018, 12071, 13806, 13853, and 13859, 59th Cong., 1st sess., 1906, pp. 128, 135.

people, who can not afford to buy a straight fruit and sugar preserve."<sup>33</sup> Other producers testified that they made adulterated goods to order for retailers who stated how much they were willing to pay for a given quantity, which in turn determined how much inert material would go into the mixture.<sup>34</sup> Opponents of the pure food laws took this idea of public service to its logical conclusion: manufacturers were merely providing what the public wanted--that is, cheap and, by necessity, adulterated goods--therefore, if adulteration was wrong, the public was to blame.<sup>35</sup> Although this argument represented little more than a diversionary tactic, it demonstrated the lengths to which foes of the legislation were willing to go.

Between them, those who worked behind the scenes to prevent the enactment of broad pure food legislation and those who worked more openly to stop it formed a powerful lobby, the like of which reportedly had not descended on Washington in years.<sup>36</sup>

They had influential allies in Congress, particularly in the Senate. Some members of the upper house opposed anti-adulteration legislation because it

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<sup>33</sup>House Committee on Interstate and Foreign Commerce, Hearings on the Pure-Food Bills, p. 14. (Unlike some of his competitors, this producer listed the percentages of ingredients on the label.)

<sup>34</sup>See, for example, U.S., Congress, Senate, Adulteration of Food Products, S. Rept. 516 to Accompany S. Res. 447, 56th Cong., 1st sess., 1900, pp. 66-67, 97.

<sup>35</sup>An idea mentioned but not endorsed by Edgar Richards, "Some Food Substitutes and Adulterants," Science 15 (7 February 1890): 89.

<sup>36</sup>"Against Poison and Fraud," The Outlook 83 (30 June 1906): 496.

posed a threat to their home states' industries or their own personal business interests. Nelson Aldrich of Rhode Island, for instance, had made his fortune as a wholesale grocer, and his opposition was no doubt based on the assumption that grocers would suffer. Henry Cabot Lodge of Massachusetts was probably chiefly concerned with defending his state's fishing industry, which used great amounts of preservatives to cure the hake which was mislabeled as codfish and sold across the country. Other senators argued against the legislation because of the allegedly poor legal construction of the bills or because they thought other issues more pressing. Finally, some senators, primarily Southerners, took their stand against the bills because they seemed to infringe on states' rights.<sup>37</sup> Since these legislators wanted to avoid having to vote against the bills, which would have created the public impression that they favored adulteration of food and drugs, they resorted to parliamentary delaying tactics to prevent votes from being taken. "The biggest struggle," noted Bailey, "was to get the matter before the Senate."<sup>38</sup>

Attempting to do just that were a few members of Congress who repeatedly introduced comprehensive anti-adulteration bills, spoke out in favor of them, and wrote articles explaining their positions. They were, for the most part, newcomers who lacked the seniority and power of the likes of Aldrich and Lodge. Senator A. S. Paddock of Nebraska, who introduced the first general

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<sup>37</sup>Edward Lowry, "The Senate Plot Against Pure Food," World's Work 10 (May 1905): 6215-16; and Bailey, "Congressional Opposition," pp. 63-64.

<sup>38</sup>Bailey, "Congressional Opposition," p. 59.

pure food bill actually to be considered by Congress and who "did yeoman service for the cause of pure food,"<sup>39</sup> served two terms (1875-81 and 1887-93), but since they were not continuous he gained little seniority. William E. Mason of Illinois, who contributed an article supporting anti-adulteration laws to the North American Review,<sup>40</sup> served just one term in the Senate (1897-1903). And although Porter J. McCumber represented the state of North Dakota in the Senate for twenty-four years (1899-1923), and Weldon B. Heyburn the state of Idaho for nine (1903-12), each was in his first term when the food adulteration bills were getting the most attention from Congress.

Without powerful leaders to push bills through Congress, enacting comprehensive national pure food laws hinged on raising public indignation to such a level that legislators would be forced to act--a difficult task since senators were not popularly elected at that time, and the chief opponents of protective laws could be found in the Senate. There was already a groundswell of public concern: Senator Paddock stated that by February 1, 1892, Congress had received ten thousand petitions requesting anti-adulteration legislation,<sup>41</sup> and even a cursory glance at the index to the Congressional Record indicates that the petitions continued to pile up throughout the decade. But the petitioners must have been perceived as cranks or not representative of the

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<sup>39</sup>Bailey, "Congressional Opposition," p. 56.

<sup>40</sup>"Food Adulterations," North American Review 170 (1900): 548-52.

<sup>41</sup>Cong. Rec., 52d Cong., 1st sess., 1892, 23, pt. 1: 713.

population as a whole, because Congress apparently had little trouble ignoring their requests.<sup>42</sup>

The task of elevating public concern into irresistible discontent fell to several groups and individuals. Between them, they completed the dual tasks of educating Americans to common abuses in food and drug production and persuading them that something must be done to make the marketplace more efficient and moral.

The greatest individual contributor to the movement was Dr. Harvey W. Wiley, the head of the Chemistry Bureau of the Department of Agriculture. His early work there was primarily in the study of sugars, particularly glucose, which was being used increasingly in food processing as a substitute for table sugar. Since it was his bureau's job to test and report on the purity of foods and drugs, Wiley became an expert on virtually all methods of adulteration as well as on the physiological effects of various additives. He testified at the major Congressional hearings on food purity, wrote articles and books for both the scientific community and the general public, and made speeches throughout the country.<sup>43</sup> For Wiley, the struggle for pure food laws was truly a crusade, with "every rostrum a pulpit for the gospel of pure food."<sup>44</sup>

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<sup>42</sup>James Harvey Young, Pure Food: Securing the Federal Food and Drugs Act of 1906 (Princeton, N.J.: Princeton University Press, 1989), p. 99.

<sup>43</sup>Young, Pure Food, pp. 102-06.

<sup>44</sup>Young, "Long Struggle," p. 15.

Wiley's counterparts at the state level also played an important role in rousing the nation to action. State food administrators knew perhaps better than anyone else the strengths and weaknesses of the state laws, and they recognized that some problems could be solved only through federal legislation. Many of these state officials became quite well known, foremost among them Edward Fremont Ladd, Food Commissioner of North Dakota ("the State of pure food"<sup>45</sup>), James H. Shepard of South Dakota, J. Q. Emery of Wisconsin, A. C. Bird of Michigan, J. S. Abbot of Texas, William Frear of Pennsylvania, and a few others.<sup>46</sup>

Also instrumental were a number of national organizations: the American Medical Association, which objected to the proliferation of patent medications, no doubt largely because the drugs threatened the doctors' livelihoods and social standing,<sup>47</sup> but also perhaps because of public health concerns; the Patrons of Husbandry; the labor unions; and, especially, the General Federation of Women's Clubs and the National Consumers' League.<sup>48</sup> They waged publicity campaigns among members and nonmembers, calling for

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<sup>45</sup>The quote is from the testimony of Robert C. Eccles, p. 132 (see note #32, above).

<sup>46</sup>Harvey W. Wiley, The History of a Crime Against the Food Law (Washington, D.C.: By the Author, 1929), p. 52.

<sup>47</sup>Louis Filler, The Muckrakers: Crusaders for American Liberalism (Chicago: Regnery, 1968), p. 146.

<sup>48</sup>Wiley, History of a Crime, p. 52.

increased vigilance on the part of consumers and greater legislative protection from Congress.<sup>49</sup>

But it was the group of journalists and authors known as the muckrakers that really brought the issue of food and drug adulteration into the public spotlight.<sup>50</sup> Edward Bok's Ladies' Home Journal led the way, attacking patent medicines as early as 1892, but especially beginning in 1904. On the advice of Samuel McClure, Bok hired Mark Sullivan to research and report on the patent medicine trade, and Sullivan exposed many of the secrets of the nostrum makers. Bok also convinced Norman Hapgood of Collier's to join the battle against medical quackery, and pieces by Samuel Hopkins Adams began to appear in that magazine in October 1905.<sup>51</sup>

The greatest and most influential bit of pure food muckraking, of course, was Upton Sinclair's The Jungle, which was serialized in the socialist journal The Appeal to Reason in 1905, and published in book form in early 1906. The public response to The Jungle was not at all what Sinclair had hoped or anticipated: instead of convincing Americans to embrace socialism as a means of easing the plight of the worker, the book's descriptions of the filthy meat packing plants roused them to demand stronger meat inspection laws and the

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<sup>49</sup>See, for example, M. V. Shaler, "Women's Work For Pure Food," World Today 10 (January 1905): 103-04.

<sup>50</sup>The following brief account is based on Filler's Muckrakers, chapters 12 and 13.

<sup>51</sup>These articles were collected and reprinted as The Great American Fraud (Chicago: American Medical Association Press, 1907).

passage of the food and drugs bill that was stalled in the House. As Sinclair lamented: "I aimed at the public's heart, and by accident I hit it in the stomach."<sup>52</sup>

The most important stomach hit by Sinclair's opus was that of President Theodore Roosevelt, who sent commissioners to Chicago and New York to investigate the packing plants<sup>53</sup>--and a letter to Sinclair chastising him for his "pathetic" socialist beliefs.<sup>54</sup> Roosevelt found Sinclair's description of the packing houses revolting, but he also was looking for ways to exert federal control over the fabulously wealthy corporations, and meat inspection provided an excellent opportunity.<sup>55</sup>

The publication of The Jungle and the president's firm advocacy of reform made some sort of more stringent meat inspection laws virtually a foregone conclusion. On May 25, 1906, Senator Albert J. Beveridge of Indiana

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<sup>52</sup>Upton Sinclair, "What Life Means to Me," Cosmopolitan Magazine 41 (October 1906): 594.

<sup>53</sup>The first commission was composed of officials sent by the Secretary of Agriculture, but when Sinclair convinced Roosevelt that their report could not be trusted because the Department itself stood accused of malfeasance, TR sent Charles P. Neill and James B. Reynolds, two social workers from New York. Filler, Muckrakers, pp. 165-66.

Mark Sullivan contended that it was this apparent laxity of government inspectors rather than any great concern about the safety of the nation's meat supply that aroused TR to take such quick action. Our Times: The United States 1900-1925, vol. 2: America Finding Herself (New York: Scribner's Sons, 1927), pp. 535-36.

<sup>54</sup>Ronald Gottesman, Introduction to The Jungle, by Upton Sinclair (New York: Penguin, 1985), pp. xxiii-xxiv.

<sup>55</sup>Braeman, "Square Deal in Action," pp. 35-80.

introduced an amendment to the appropriations bill for the Agriculture Department to strengthen the inspection requirements. The Senate approved the amendment that day, and it proceeded to the House.<sup>56</sup> On June 4, seeing that the House was hesitating to take action, Roosevelt sent a message to Congress urging passage of the amendment. He included part of the report submitted by Commissioners Charles P. Neill and James B. Reynolds, who had inspected the Chicago packing plants and had found them to be just as Sinclair had described them.<sup>57</sup> By this time the meat packers were also clamoring for closer inspection, having once again seen bad publicity send the demand for their products plummeting, and fearful that the newspapers would publish the entire Neill-Reynolds Report. After much wrangling between the two houses of Congress over who would pay for the heightened oversight of the meat packers--the federal government (i.e., the consumers as taxpayers) or the packers themselves (i.e., the consumers as consumers)--it was decided that the government should pay, and an amended version of the Beveridge Amendment

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<sup>56</sup>Cong. Rec., 59th Cong., 1st sess., 1906, 40, pt. 8: 7420-21.

<sup>57</sup>Cong. Rec., 59th Cong., 1st sess., 1906, 40, pt. 8: 7800-02. As usual, there was more than just a bit of truth behind the hyperbole of Finley Peter Dunne's fictional character Mr. Dooley when he had this to say about the investigations: ". . . th' Prisident . . . selected an expert comity fr'm a neighborin' univarsity settlemint to prepare a thorough, onbiased rayport that day on th' situation an' make sure it was no better thin th' book said." Dissertations by Mr. Dooley (New York: Harper & Brothers, 1906), p. 249.

was approved.<sup>58</sup> President Roosevelt signed the appropriations act which included the amendment on June 30, 1906 (34 Stat. 669).

There was some concern among supporters of the bills that although the meat inspection regulations would become law, the more important food and drug bill might once again be passed over.<sup>59</sup> Quite similar bills had, after all, been allowed to die in previous years, and there seemed to be no reason to be overly sanguine about the chances for success this time. The bill, S. 88, had a surprisingly easy time of it in the Senate, however, passing with amendment by a vote of 63-4 (with 22 not voting) on February 21, 1906, just eleven weeks after Senator Heyburn had introduced it. The retreat of the opponents of the bill seems to have been a calculated maneuver: Senator Beveridge later said that Aldrich and the other members of the "Old Guard" in the Senate had allowed S. 88 to pass in order to save something more important or with the expectation that conservatives in the House would kill it.<sup>60</sup> And for a few months it did seem destined to die in the House. But instead of overshadowing the pure food bill, the furor over meat packing gave it some needed momentum. An infuriated public bombarded its elected representatives with telegrams

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<sup>58</sup>Edward M. Andres, "History of Food and Drug Legislation in the United States," Journal of Home Economics 27 (March 1935): 139.

<sup>59</sup>See, for example, "Against Poison and Fraud," p. 496-97; and Charles Richards Dodge, "The Need of a Pure-Food Law," Scientific American 94 (16 June 1906): 491.

<sup>60</sup>Sullivan, Our Times, 2: 533-34.

insisting that the bill be passed<sup>61</sup> (and, no doubt, reminding the recipients that they, unlike the members of the Senate, were popularly elected and could be held accountable). Finally, on June 23, the House passed an amended version of the bill. Senate and House conferees spent the next week hurriedly hammering out the differences between the two bills, and the two houses each agreed to the conference report on June 29. The next day President Roosevelt signed it into law (34 Stat. 768).

### **The Passing of the Wave**

The Beveridge Amendment--usually called the Meat Inspection Act--and the Food and Drugs Act addressed some of the more glaring evils of the food, drug, and meat businesses. The Meat Inspection Act, for example, provided for the destruction of condemned meats "by the said establishment in the presence of an inspector" and empowered the Secretary of Agriculture to remove inspectors who did not enforce the provision. Thus, the machinery was created to eliminate the problem of the "condemned-meat industry."

Like the Meat Inspection Act, the Food and Drugs Act was placed under the jurisdiction of the Agriculture Department. The act defined what was meant by the adulteration of foods, drugs, and confectioneries; described the procedures for inspection, seizure, and disposal; and outlined the penalties for violations. It also outlawed false or misleading statements on food or drug

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<sup>61</sup>"The Year of Food Laws," The Nation 82 (28 June 1906): 523.

labels. The strongest protective laws to that time, the two acts represent the crest of the first wave of consumer protection in this country.

Before long, however, weaknesses became apparent, especially in the Food and Drugs Act. One shortcoming concerned patent medicines: since they were sold under proprietary names and not "under or by a name recognized in the United States Pharmacopoeia or National Formulary," they were not officially classified as drugs, and they could escape the prohibition against false or misleading claims on labels. The Sherley Amendment to the Food and Drugs Act (37 Stat. 416), enacted on August 23, 1912, closed this loophole.<sup>62</sup> Another weak point in the Act was its provision regarding the net weight or numerical count of the contents of packages. It did not require such information; it merely stipulated that if the information was provided, it must be correct. The Net Weight Amendment (37 Stat. 732), passed on March 3, 1913, strengthened the requirements, but it allowed for variations and exceptions.

Most of the other shortcomings of these acts will be discussed later, because it was during the second and third waves of consumer protection that they gained attention, but one other issue deserves mention here, chiefly because of the people involved in it. This issue was the status of preservatives in food, upon which the Food and Drugs Act took no firm position. Dr. Wiley had become convinced by his famous "Poison Squad" experiments--in which young male volunteers had consumed carefully measured quantities of various

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<sup>62</sup>Andres, "History of Food and Drug Legislation," p. 139.

preservatives to determine their effects on humans--that preservatives were indeed poisonous and that the Food and Drugs Act effectively banned them except when applied externally to foods and accompanied by directions on how to remove them.<sup>63</sup> President Roosevelt and Secretary of Agriculture James Wilson took a more lenient view, however, and, by appointing to important boards and committees men who shared their beliefs, undermined Wiley. In 1909, in a much-publicized study directed by Dr. Ira Remsen, a Referee Board determined that the common preservative benzoate of soda was not harmful to the human body in doses up to four grams per day.<sup>64</sup> This was a direct affront to Wiley, not only because it contradicted his position, but also because the President had appointed a board to study benzoate of soda instead of giving the job to Wiley and his Chemistry Bureau. Despite this vote of no confidence, Wiley stayed on at the Bureau until 1912, when he resigned to work at Good Housekeeping magazine, where he tested products and oversaw advertising. The questions about preservatives in foods remained.

## Conclusion

The Meat Inspection Act and the Food and Drugs Act thus are important both for what they did and for what they failed to do. Perhaps most significant

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<sup>63</sup>H. W. Wiley, "Dr. Wiley on the Pure Food Law," Scientific American 95 (1 September 1906): 154; and Young, Pure Food, pp. 153-57.

<sup>64</sup>"Pure Food and Chemicals," The Outlook 93 (4 September 1909): 3. It is worthy of note that this article supported Remsen against Wiley, and that on page one of that issue a certain Theodore Roosevelt is listed as a contributing editor.

of all, however, is that they constituted a turning point in the federal government's role in the marketplace. The change did not come suddenly, and the 1906 legislation represents both a final step and a new beginning. No longer were inspection laws aimed primarily at imports and exports; the immorality of poisoning and cheating Americans with American products was not to be tolerated either. Nor were piecemeal laws that were promulgated at the request of endangered businesses considered to be enough. The federal government publicly recognized that individuals were in no position to judge the value and safety of products, and it promised to work actively to prevent the abuse of consumers and, where prevention was not successful, to punish wrongdoers.

At the same time, the public perception of the federal government was undergoing an important change. Prior to the early twentieth century, Americans generally relied on the state governments to regulate businesses, protect public health and ensure social order. By the turn of the century, however, some industries and some social problems had grown too large for states to handle. Under Roosevelt's guidance the federal government stepped into the void as the guardian of the people, and the people, in return, came to see this as the government's right and duty.<sup>65</sup>

With the 1906 acts and their amendments, government leaders had taken some important steps toward ensuring the safety and economic well-being of American consumers, but that did not necessarily mean that they

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<sup>65</sup>Braeman, "Square Deal in Action," p. 80.

would continue to do so, and no additional important consumer protection legislation was enacted until the 1930s.<sup>66</sup> The first wave of consumer protection had passed, but not without changing the landscape of American society, and although there was little chance that consumer issues would soon capture as much attention as they had in 1906, there was even less chance that the American economy would revert to a philosophy of virtual caveat emptor.

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<sup>66</sup>Some scholars have pointed to the 1914 Federal Trade Commission Act as a piece of consumer legislation, but the FTC was not intended as a consumer agency when it was created, and it did not function as one at the outset. Speaking in the House on May 1, 1914, J. Harry Covington, who had introduced the bill, explained that it was part of the "trust program outlined by the President in his trust message." Cong. Rec., 63d Cong., 2d sess., 1914, 51, pt. 8: 7598.

Certainly the elimination of trusts, with their capacity to set prices and control the market, could be seen as a pro-consumer action, but the FTC did not actually do much trust-busting. Instead, it generally cooperated with big business. O'Neill, Progressive Years, pp. 130-32; and John Whiteclay Chambers II, The Tyranny of Change: America in the Progressive Era, 1900-1917 (New York: St. Martin's Press, 1980), pp. 242-43.

It was the Wheeler-Lea Act of 1938 (52 Stat. 111) that "direct[ed] the Federal Trade Commission to prevent business practices injurious to consumers as well as those damaging to business competitors." Kenneth Dameron, "The Consumer Movement," Harvard Business Review 17 (Spring 1939): 279.

## CHAPTER TWO

### Warren G. Magnuson: The Formative Years, 1905-1936

"Without any question, the most meteoric climb made in any political career in this vicinity for many years has been that of Warren G. Magnuson."<sup>1</sup>

#### Introduction

In the spring of 1905, two events took place that would significantly influence consumer protection in the United States, but even the closest friends of the movement could not have known it at the time. Upton Sinclair's tale, The Jungle, appeared in serial form in the Socialist paper, Appeal to Reason, and an unknown young woman gave birth to a baby soon to be named Warren Grant Magnuson. No one could have predicted that Sinclair's story would play such a vital part in gaining passage of pure food and drug legislation. Surely even less foreseeable, however, was the contribution to consumer protection that would be made by Magnuson more than a half century later.

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<sup>1</sup>Joseph Dana Roberts, "The Sauntering Seattleite: Meteoric Magnuson," The Guide: Official Weekly Guide to Seattle & Seattle Amusement Guide, no. 662 (14 September 1935). A copy of this issue may be found in the Warren G. Magnuson Papers (hereafter referred to as "WGM Papers"), accession 3181-1, box 15, scrapbook 11, Manuscripts Division, University of Washington Libraries, Seattle, Washington.

In a curiously fitting way, Magnuson's life seems to have paralleled the ebbs and flows of consumer protection: he was born during the first wave of consumerism, gained election to Congress during the second wave, and rose to national prominence during--and at least partly because of--the third. Further, his only election defeat, the 1980 race in which he was outpolled by Republican Slade Gorton, came at a time when consumer protection, like most types of government regulation, was falling back in the face of increasing opposition.

A useful image to illustrate the relationship between Magnuson's life and consumer protection is that of two threads following separate but generally parallel paths, coming in contact from time to time, then going their own ways, only to repeat the process later. Finally the two threads weave together to create a new one, stronger than the sum of its parts but subject to a single destiny.

Magnuson's formative years are therefore significant for this study not merely because they are bracketed so conveniently by two periods of consumerism, but because that was the time when he chose the direction his life "thread" would follow. By the time he first ran for Congress in 1936 he had established the foundations of the liberal political philosophy that would guide him for the rest of his life, and he had had his first encounters with consumer issues. He had also gained a political education and political experience far beyond what might be expected for a young man of thirty-one.

## Childhood

Magnuson was born on or about April 12, 1905, evidently in the Florence Crittenton Home of Fargo, North Dakota.<sup>2</sup> Of his biological parents nothing is known for certain, but since it was (and is) the mission of the Crittenton Homes to care for unwed mothers,<sup>3</sup> it seems likely that his mother and father were not married. Magnuson always maintained that he was "orphaned" at three weeks of age, which may mean that his mother died when he was very young, or it may have been his way of concealing that his was a less socially acceptable and more psychologically painful route to adoption: that is, being voluntarily given up by an unwed mother.<sup>4</sup> In any event, he was adopted at a very early age by William and Emma Magnuson of nearby Moorhead, Minnesota, and given the name that he would bear for the rest of his life.

Although it is certainly possible to overemphasize the confused feelings of rejection and acceptance that any adopted child feels, in Magnuson's case it

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<sup>2</sup>Letter, WGM to Florence Crittenden [sic] Home, Fargo, 29 September 1936, WGM Papers, accession 3181-1, box 7, folder 12.

<sup>3</sup>Bruce Wert, Dedication to Nancy Fifield McConnell and Martha Morrison Dore, Crittenton Services: The First Century (Washington, D.C.: National Florence Crittenton Mission, 1983), p. iii.

<sup>4</sup>His mother may have been Marie Evjen, a native of Norway. According to a letter dated 7 November 1944 from a Thomas Jacobsen of Seattle, this Miss Evjen gave birth to a boy on about April 10, 1905, in Moorhead. The baby was subsequently adopted by a local family named, according to Jacobsen, "Magnusson." Enclosed with the letter was a photograph of Marie Evjen, and Jacobsen asked that Magnuson return it if he did not know her. She did seem to bear some facial resemblance to Warren Magnuson--and he did not return the picture. The photo and the letter, with an English translation, may be found in the WGM Papers, accession 3181-2, box 51, folder 44.

seems clear that his knowledge of the events of his infancy marked him deeply, not only making him particularly sympathetic toward orphans and other less fortunate members of society, but also contributing to his desire to make a success of himself. In the mid-1930s, while serving as Prosecuting Attorney for King County, Washington, he made a hobby of helping couples adopt children, providing his legal services at no charge. "Being adopted myself," he remarked after one successful adoption proceeding, "I can understand the loneliness of orphaned children who are not so fortunate as to find parents like Mr. and Mrs. Chandler."<sup>5</sup> And during his campaign for Congress in 1936 he admitted, at least to himself, what his adoptive parents meant to him. In a speech draft he referred to his 1934 campaign for Prosecuting Attorney, when his opposition had spread the rumor that he did not even know his own name. "It happened to be true," Magnuson wrote, "I am an orphan." The next section of the speech was typed but then crossed out and apparently never used:

The fact that I received the care and attention of loving hearts and kindly hands in my childhood is a source of constant thankfulness within me, and it is in a spirit of reverent appreciation that I say **WHATEVER I NOW AM OR EVER HOPE TO BE, I OWE TO THE DEAR PEOPLE WHO MADE A HOME FOR ME AS THOUGH I WERE THEIR OWN.**<sup>6</sup>

Evidently, Magnuson decided after writing these words that they expressed sentiments that he preferred to keep private, either for personal reasons or out

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<sup>5</sup>"Prosecutor, Adopted Himself, Helps Babe Find New Home," Seattle Times, 8 March 1936, p. 10.

<sup>6</sup>Speech, n.d. [1936], p. 6, WGM Papers, accession 3181-1, box 10, folder 12. Capitalization in original.

of a calculated political need to avoid overstepping the line of decorum. Later events make it clear that he certainly felt love and gratitude toward his adoptive mother; the record is less clear regarding his father.

He maintained for the rest of his life this policy of privacy concerning his early years. Eric Redman, a member of Magnuson's Senate staff for about two years (1968-70), wrote that "Magnuson refuses to regale associates with tales of youthful privation; he has a nostalgic streak, but it stops short of the intensely private world of boyhood pain and boyhood devotion to benefactors."<sup>7</sup> Even Gerald Grinstein, who worked with him for eleven years, first as counsel to the Commerce Committee's Merchant Marine and Transportation Subcommittee, then as chief counsel to the Commerce Committee under Magnuson's chairmanship, and finally as Magnuson's administrative assistant, admits that the Senator shared with him little information about his childhood.<sup>8</sup>

Certainly he had his own reasons for keeping silent about his past, but part of the reason that Magnuson did not tell "tales of youthful privation" is that he probably did not have any such stories in his repertoire; he seems to have been no more impoverished as a youth than most of his contemporaries. The Magnusons' family income came from their own small business, a combination restaurant and tavern called the Nickel Plate Saloon, which

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<sup>7</sup>Eric Redman, The Dance of Legislation (New York: Simon & Schuster, 1973), pp. 189-90.

<sup>8</sup>Author telephone interview (taped) with Gerald Grinstein, 31 October 1991.

William ran with his brothers, Elmer and Charles.<sup>9</sup> The saloon must have been at least marginally profitable, because the Magnusons were able to afford some things that would not be considered necessities--for example, violin lessons for young Warren. He did not find the violin to his liking, but he did enjoy other pastimes, including diving off bridges and swimming in the Red River in the summer, playing football in the autumn, and ice skating in the winter.<sup>10</sup> He worked, too, delivering Western Union telegrams, working at YMCA camps, laboring in the wheat fields at harvest time, and, some sources report, toiling in the mines.<sup>11</sup> But despite the fact that authors have long insisted on presenting his life as a story of "poor boy makes good,"<sup>12</sup> Magnuson himself described his childhood as normal for a boy growing up in a

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<sup>9</sup>Grinstein interview; and Fargo and Moorhead Directory, Pettibone Directory Co., 1902, p. 279; and 1905, p. 303.

The Nickel Plate, like other Moorhead establishments, was ideally situated, being on the border of North Dakota, which had gone dry in 1890. That privileged position lasted until 1915, when the State of Minnesota enacted a county option statute and Moorhead's county, Clay, responded by immediately passing its own prohibition law. Incidentally, in the 1915 city directory William Magnuson's occupation is listed as "travel agent."

<sup>10</sup>Author telephone conversation with Mrs. Jermaine Magnuson, 12 November 1991.

<sup>11</sup>Sam Groff, "Prosecutor's Fight Proves Real Challenge to Magnuson," Seattle Star, 17 August 1934, p. 3; and Clark Squire, "Warren Magnuson, Poor Boy, Is Coming Leader," Seattle Star, 19 October 1936, p. 13.

<sup>12</sup>See, for example, Groff, "Prosecutor's Fight"; Squire, "Poor Boy"; and Redman, Dance of Legislation, p. 189.

small community in those days,<sup>13</sup> and his does not appear to have been a childhood marked by exceptional poverty.

### **Education and First Political Experiences**

If not actually a "poor boy," Magnuson still had every intention of "making good." As an adolescent he was eager to get out of the Fargo and Moorhead area--although he was not really sure why--and to get a college degree. After high school he studied briefly at the University of North Dakota in Grand Forks and at North Dakota State College in Fargo. Apparently, neither school was far enough away from home for him, and in 1924 he and a friend rode the rails west, traveling to Seattle via Moosejaw and Vancouver, Canada. They rode in the "blinds," the areas between railroad cars, and along the way they were persuaded to join the International Workers of the World to avoid being thrown off the trains by the Wobblies. It was in Vancouver that Magnuson first saw a large, oceangoing ship. This marked the beginning, he later recalled, of his love of ships, the sea, and things nautical.<sup>14</sup> Arriving in Seattle, Magnuson had fulfilled one of his ambitions--moving away from the Red River Valley--but to that point the college degree had eluded him. In 1925 he enrolled at Seattle's University of Washington.

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<sup>13</sup>William Prochnau, interviewer, "A Conversation With a Senator: Warren G. Magnuson," taped October 1971, broadcast on KVOS-TV Bellingham, Washington, December 1971. WGM Papers, accession 3181-9, box 9, videotapes 67 and 68.

<sup>14</sup>Prochnau interview of Magnuson.

Magnuson's years at that institution deserve special consideration.

First, on a personal note, he married for the first time, taking a former "Miss Seattle," Eleanor "Peggins" Maddieux, as his bride on June 19, 1928.<sup>15</sup> The marriage ended in an apparently amicable divorce in 1935.<sup>16</sup>

Of more long-term significance were the decisions he made regarding his education and his participation in politics. He considered studying medicine but decided instead on law, and he earned the requisite Bachelor of Laws in 1929.<sup>17</sup> His college years at Washington also marked Magnuson's first real contact with politics; that was when he discovered that he was, to use his term, a "political animal."<sup>18</sup> In 1928 Magnuson worked for A. Scott Bullitt, a moderate "wet" Democratic candidate for governor and a rising star in party circles who had come out for anti-Prohibition candidate Alfred Smith for

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<sup>15</sup>"Absent Queen as Commoner Weds Lawyer," Seattle Post-Intelligencer, 21 June 1928, p. 18.

<sup>16</sup>"Divorce Decree Granted Wife of Prosecutor," Seattle Times, 14 April 1935, p. 1.

<sup>17</sup>Magnuson noted in a later interview that he chose law because he was neither "technically inclined nor scientifically inclined sufficient to enter any of the other professions" (medicine, engineering, or the ministry). WGM Papers, accession 3181-1, box 10, folder 11.

In the 1920s, legal education was somewhat in flux, with state bar associations and law schools increasingly moving toward requiring the graduate degree, the juris doctor. In Washington it was still quite possible for an attorney to gain admission to the bar with the LL.B.--as did Magnuson. See Robert Stevens, "Two Cheers for 1870: The American Law School," Perspectives in American History 5 (1971): 405-548.

<sup>18</sup>Prochnau interview of Magnuson.

president.<sup>19</sup> Magnuson had a fondness for alcoholic beverages and was, as he put it in a later interview, "mad at Prohibition." The young law student was rewarded for his efforts with credentials as an Al Smith delegate to the state convention.<sup>20</sup>

After his graduation in 1929, Magnuson was admitted to the Washington State bar and endeavored to get his legal career off the ground, meeting with only mixed success. He took a position at the office of former judge and longtime Seattle attorney Samuel Stern, but with the onset of the depression there was not enough legal work to keep the young lawyer busy full time. Magnuson therefore went to work part time for the Seattle Municipal League, becoming league secretary and editor of its newspaper, the Seattle Municipal News.

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<sup>19</sup>Bullitt, who had married into the wealthy (lumber and real estate) Stimson family, had run unsuccessfully for the Senate in 1926. His showing in the 1928 gubernatorial election was "phenomenal--for a Democrat" in the traditionally Republican state: he lost to Roland Hill Hartley by a count of 281,991 to 214,334. In April 1932, still a major figure in state politics, Bullitt died of cancer. Richard C. Berner, Seattle in the 20th Century, vol. 2: Seattle, 1921-1940: From Boom to Bust (Seattle: Charles Press, 1992), pp. 138-46; and Robert Leslie Cole, "The Democratic Party in Washington State 1919-1933: Barometer of Social Change," Ph.D. dissertation, University of Washington, 1972, chapters four and five.

<sup>20</sup>Prochnau interview of Magnuson. Actually, his experiences during the "dry" years bear out the old gag that "Prohibition is a lot better than no alcohol at all." His summer job during his law school days was delivering ice, the staple of the speakeasy, and in a 1935 letter to Sam S. De Moss of the Ice Wagon Drivers and Helpers Union, he lamented, "I sometimes wish when the pressure gets too strong down here, that I were back on the ice wagon where most of our troubles consisted of how much beer we could drink." WGM to De Moss, 21 May 1935, WGM Papers, accession 3181-1, box 6, folder 22.

In 1930, while still working for both Stern and the Municipal League, Magnuson found time to become involved in politics once again. He served on King County's advisory committee on legislative reapportionment,<sup>21</sup> and during that year's campaign made speeches for the Republican candidate for King County Prosecuting Attorney, Robert M. Burgunder.<sup>22</sup>

Magnuson also seems to have voted the straight Republican ticket that year, a defection that he never discussed, even when challenged by a Democratic opponent for Prosecuting Attorney in the 1934 primary election.<sup>23</sup> Possible motives are not hard to find, however. First, it may have been simple opportunism. Magnuson may have anticipated that if Burgunder won the election—a very likely outcome since Republicans controlled the office in those days and Burgunder had served as Deputy Prosecutor from 1925 to 1929—he might be rewarded with a job on the prosecutor's staff. This was, as it turned out, essentially what happened. Burgunder was elected, and although he did not appoint Magnuson to his permanent staff, in 1932 he did choose Magnuson and veteran attorney T. H. Patterson to be special prosecuting attorneys to investigate corruption charges against county officials who had apparently

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<sup>21</sup>Worrall Wilson to WGM, 9 October 1930, WGM Papers, accession 3181-1, box 6, folder 6.

<sup>22</sup>See, for example, his radio speech of 5 September 1930, WGM Papers, accession 3181-1, box 10, folder 5.

<sup>23</sup>Edwin J. Brown, Sr., to WGM, 13 August 1934, WGM Papers, accession 3181-1, box 16, scrapbook 4; and Brown's pamphlet, "Undisputed Facts About Warren G. Magnusson's [sic] Political and Legislative Record," WGM Papers, accession 3181-1, box 12, folder 1.

accepted bribes and kickbacks in the awarding of contracts for public projects.<sup>24</sup> Even if a job had not been a possibility, Magnuson surely recognized that Washington in 1930 was essentially a Republican state. For an ambitious, young "political animal," Republican party affiliation seemed a necessary prerequisite to a career in office.<sup>25</sup>

A second explanation centers on Magnuson's political views. If the liberalism that he displayed in his later years existed in him at all in the very early 1930s, and if he based his party ties at all on political philosophy, he could very logically have settled on the Republican side. In the 1920s it was that party, along with the Farmer-Labor party, that harbored most of the progressives in the state, with the Republicans dominating progressivism in the urban counties of western Washington. The Democratic party was led mostly by conservatives who favored business interests and opposed organized labor.

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<sup>24</sup>Copies of their letter of 1 August 1932, calling for a grand jury investigation and of their detailed report of 11 August 1932, to Prosecuting Attorney Burgunder may be found in the WGM Papers, accession 3181-1, box 1, folder 2. Magnuson would later complain in a letter to Patterson: "I have come to the conclusion that the less said, about our recent investigation, the better for it appears, from reports from Seattle, that it does little or no good to attempt to put some Commissioners out of office" (punctuation sic). WGM to Patterson, 24 January 1933, WGM Papers, accession 3181-1, box 1, folder 13. His unhappiness with Burgunder's handling of the report may have contributed to Magnuson's deciding to run against him in 1934.

<sup>25</sup>A speech draft written by Magnuson in about 1938 is perhaps more autobiographical than he would have liked to admit. "It used to be fashionable in this community," he wrote, "to belong to the Young Men's republican [sic] club. . . . Young men in politics were confined solely to young lawyers making contacts thru the medium of politics but caring very little why they were members of a party beyond that. Today that is changed . . ." WGM Papers, accession 3181-2, box 46, folder 4.

It was not until 1932 that progressives began to move over to the Democratic side.<sup>26</sup> It could be, therefore, that Magnuson was being true to his political philosophy, and his earlier work for the Democrats was actually an aberration caused primarily by his antipathy toward Prohibition.

A third possibility is that Magnuson chose his party affiliation because of his respect and admiration for the party's candidates. Certainly in 1928 he was chiefly interested in overthrowing Prohibition, but he was also no doubt attracted to Bullitt's energetic, charismatic leadership.<sup>27</sup> And in 1930, if one may trust Magnuson's radio speech, he considered Burgunder to be the ideal prosecuting attorney because of his long public service, his ability, and his honesty.<sup>28</sup> Perhaps, therefore, it was the candidates rather than job opportunities or ideology that led Magnuson to back Democrats in 1928 and Republicans two years later.

Ironically, any one of the three explanations would also account for Magnuson's "return" to the Democratic side by late 1931. Just as he may have expected a Republican to win the prosecutor's job in 1930, he also may have seen the Democratic landslide coming in 1932. Both elections offered opportunities for a young, ambitious "political animal," since to the victors go the offices and the appointments.

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<sup>26</sup>Berner, Seattle, 1921-1940, pp. 139, 327.

<sup>27</sup>Cole, "Democratic Party in Washington State 1919-1933," chaps. 4 and 5.

<sup>28</sup>WGM Papers, accession 3181-1, box 10, folder 10.

It could also be, however, that Magnuson was simply being true to his political philosophy. By 1931 it had become clear that the Republicans no longer offered much that was either progressive or liberal, especially when it came to dealing with the economic emergency that was facing Washington and the entire nation. Perhaps Magnuson, like many Washingtonians, was simply "tired of the Grand Old Party" and its lack of aggressive economic reform.<sup>29</sup>

The Democrats might offer some new ideas.

Finally, Magnuson's respect for a few specific Democrats may have played a significant role. He came to admire Franklin Roosevelt almost to the point of reverence, and probably supported the State Central Committee's December 1931 decision to make Washington the first state to announce for Roosevelt--a decision carried out at the state convention in Seattle on February 6.<sup>30</sup> He also held Senatorial candidate Homer Bone and Congressional hopeful Marion Zioncheck in very high esteem. Both Bone and Zioncheck were public power advocates who had recently come over to the Democratic party,<sup>31</sup> and perhaps Magnuson followed their lead. Besides, as Fortune

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<sup>29</sup>Norman Clark, The Dry Years: Prohibition and Social Change in Washington, rev. ed. (Seattle: University of Washington Press, 1988), p. 232; and Berner, Seattle, 1921-1940, p. 146.

<sup>30</sup>Berner, Seattle, 1921-1940, pp. 145-46.

<sup>31</sup>Fayette Florent Krause, "Democratic Party Politics in the State of Washington During the New Deal: 1932-1940," Ph.D. Dissertation, University of Washington, 1971, pp. 48-50.

magazine put it in 1940, "Bolting one's ticket in Pacific Coast politics . . . is no more dastardly than taking three lumps of sugar instead of two."<sup>32</sup>

In any case, by 1931 Magnuson had joined the Democratic fold for good. That September he participated in the founding of the Junior Democratic League of King County and was chosen that organization's first president.<sup>33</sup> One of the perquisites of the office was an invitation to sit on the speaker's platform when presidential candidate FDR spoke at the Seattle Civic Auditorium on September 20, 1932. This was no small privilege because by then Magnuson himself was on the Democratic ticket as a candidate for the state legislature, and Roosevelt's tacit approval was of inestimable political value.<sup>34</sup>

Eric Redman has written that it is unclear if Magnuson decided on the spur of the moment to run, or if he had been seriously considering such a move for some time.<sup>35</sup> He would later claim that friends had persuaded him to pursue the office,<sup>36</sup> but as a budding politician he probably gave some thought to his own political potential as early as 1928 when he canvassed the

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<sup>32</sup>"Politics on the West Coast," Fortune 21 (March 1940): 138.

<sup>33</sup>"Pick Magnuson: Attorney Chosen President of Democratic League," Seattle Star, 10 September 1931, p. 3.

<sup>34</sup>Magnuson saved his admission pass to that event. WGM Papers, accession 3181-1, box 16, scrapbook 1.

<sup>35</sup>Redman, Dance of Legislation, p. 190.

<sup>36</sup>WGM to Gayle Naccarato, 29 November 1966, WGM Papers, accession 3181-4, box 83, folder 16.

state for Bullitt. By 1932 his career in law had been only marginally successful, and elective office likely seemed a more exciting and important opportunity.

Magnuson based his 1932 campaign in the Thirty-Seventh Legislative District (located entirely in Seattle) on a curious mixture of tax reform, party unity, conservation, and Prohibition repeal. Parts of his program seem downright contradictory, a characteristic of Democratic politics nationwide in that turbulent time. For instance, he called for a 40 percent reduction in state expenditures but also advocated providing assistance to the unemployed and expanding the state's role in conserving natural resources, both of which would have been costly.<sup>37</sup> But if his campaign platform was not necessarily consistent, it did say things that the people of Seattle wanted to hear.

Far more important than his campaign promises, however, were four assets that Magnuson enjoyed. One was his name. Seattle boasted a large immigrant population of which a significant minority was of Scandinavian origin.<sup>38</sup> As a Fortune magazine article noted in 1940: "there's an old saying

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<sup>37</sup>Speech draft [1932], WGM Papers, accession 3181-1, box 10, folder 10; and "Magnuson Will Run for Legislature," unidentified and undated newspaper clipping, WGM Papers, accession 3181-1, box 16, scrapbook 1.

<sup>38</sup>The population of Seattle in 1930 was about 368,583 and by 1940 it had grown by only about 2,700. The ethnic makeup of the city in 1940 thus provides a quite accurate guide to Seattle's demographics in 1932. In 1940, about 17 percent (63,470) of the city's population was foreign-born, with over one-fourth of these immigrants having come from Scandinavian countries. Berner, Seattle, 1921-1940, pp. 205-07. There were also large numbers of second- and even third-generation Scandinavians in the Puget Sound region who had settled there as early as the 1880s, often--like Magnuson himself--moving there from the upper Midwest. Carlos A. Schwantes, The Pacific

in Washington politics . . . : a Scandinavian name is worth 300,000 votes."<sup>39</sup> Another was name recognition: his work on the graft investigation had frequently attracted newspaper coverage. Third, he possessed an outstanding speaking voice that was especially well suited to the increasingly important political tool, radio. And finally, he had that most important asset of all in 1932: Democratic party affiliation.

Magnuson and his party swept into the state legislature with a huge majority, and he soon began to make a mark for himself. Going into the session the young solon aligned himself with majority leader Donald McDonald, and when McDonald fell ill Magnuson himself became, for all intents and purposes, majority leader.<sup>40</sup> Because the legislature had eliminated seniority rules, Magnuson was appointed chair of the House Judiciary Committee, and he served on the Constitutional Revision, Liquor Control, Revenue and Taxation, and Unemployment Relief Committees. In a letter of February 13, 1933, Magnuson told his friend, Joseph Hughes, "I wish to hell you were here," then added with characteristic aplomb: "I sure am having a great time, and

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Northwest: An Interpretive History (Lincoln: University of Nebraska Press, 1989), pp. 186-88.

<sup>39</sup>"Politics on the West Coast," 135. Similarly, John Gunther later wrote: "A Scandinavian name--like Wallgren, Magnuson, and so on--is almost as useful a political asset in Washington as in Minnesota." Inside U.S.A. (New York: Harper, 1947), p. 89.

<sup>40</sup>Prochnau interview of Magnuson.

with the two of us together, I think we could have run the entire house. I am having some success at it now, but with you added, it would be a cinch."<sup>41</sup>

His contributions to that session of the legislature included some ideas that were considered quite radical. He introduced, for example, the bill that became the first true state unemployment compensation law. He also advanced an unsuccessful bill to give the vote to eighteen-year-olds, supported legislation to provide old-age pensions, led the fight for a bill to outlaw injunctions against strikers, and, of course, worked for the repeal of Prohibition.<sup>42</sup> As the nation reeled from the shocking story of the Lindbergh baby kidnapping and murder, he introduced and gained passage of a bill making kidnapping a capital offense in the state of Washington--although he later turned against the death penalty.<sup>43</sup> Magnuson also worked for the passage of a bill to provide for public ownership of electrical power generating and distribution systems. This bill, originally introduced by Homer Bone, was a perennial visitor to the legislature, and although the Senate voted it down, Magnuson's efforts in getting it through the House permanently endeared him to Senator Bone.<sup>44</sup>

Magnuson served less than two years in the State House, but in that short time he gained the favorable attention of Democratic party leaders and

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<sup>41</sup>WGM Papers, accession 3181-1, box 1, folder 15.

<sup>42</sup>Redman, Dance of Legislation, p. 191; Jane Sanders, A Legacy of Public Service (pamphlet), (Seattle: University of Washington Libraries, 1987), n.p. [3]; Groff, "Prosecutor's Fight"; and Squire, "Poor Boy."

<sup>43</sup>Redman, Dance of Legislation, p. 191.

<sup>44</sup>Groff, "Prosecutor's Fight."

the voters of Washington. That his political potential was widely recognized is obvious from an undated letter sent to him by his friend and frequent correspondent Ethel Anne Farley. "Do you know," she wrote Magnuson during his term in the legislature,

that in representative groups in the Commercial Club, and the University Club, and in other councils of the mighty, it is being said that you have stolen the entire legislature; and that even Don McDonald doesn't know it; and that you will be either Governor of Washington or United States Senator before you are forty. And that you are the smartest man at Olympia.<sup>45</sup>

Being called the "smartest man at Olympia" may not have been much of a compliment. Mary McCarthy described the legislature as "crammed with machine politicians and irresponsible ignoramuses."<sup>46</sup> Perhaps the generally low quality of his colleagues contributed to Magnuson's decision not to run for reelection in 1934.

In March and April 1933, after the legislature recessed, "the smartest man at Olympia" defended the State Emergency Relief Administration in a test case to determine the constitutionality of the state's \$10 million unemployment relief bond issue. The issue was upheld, and Magnuson gained additional stature. He was now also the defender of the unemployed.<sup>47</sup>

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<sup>45</sup>WGM Papers, accession 3181-1, box 6, folder 19. Magnuson was, in fact, elected to the Senate at age thirty-nine.

<sup>46</sup>"Circus Politics in Washington State," The Nation 143 (17 October 1936): 442.

<sup>47</sup>WGM Papers, accession 3181-1, oversize, scrapbook 2.

After serving briefly as an assistant United States District Attorney in 1934, a position Homer Bone apparently helped him to obtain,<sup>48</sup> Magnuson ran for King County Prosecuting Attorney, which he considered to be a more important office than the U.S. District Attorneyship.<sup>49</sup> Four years earlier he had worked for the election of Republican Robert Burgunder, but in his own campaign Magnuson repeatedly criticized Burgunder's tenure and the Republican party's control of the prosecutor's office. There had developed over time the tradition that a retiring prosecutor picked his successor, who was duly elected. Magnuson denounced this "Crown Prince" system of succession and called for a thorough housecleaning of the prosecutor's office.<sup>50</sup> Fortunately for Magnuson, his own earlier connection to the Republican dominance of the office received little attention. Winning the election by a record margin, he became the first Democrat to hold the office in thirty-four years.<sup>51</sup>

As prosecutor, Magnuson gained valuable legal experience and enjoyed fairly constant publicity. He handled a number of notorious, front-page cases, including approximately forty murders and the case of a crime ring composed of Seattle police officers dubbed by the local press the "Bluecoat Burglars." He

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<sup>48</sup>Lou Small to WGM, 31 January 1934, WGM Papers, accession 3181-1, box 6, folder 13.

<sup>49</sup>WGM to Samuel Stern, 11 February 1935, WGM Papers, accession 3181-1, box 3, folder 11.

<sup>50</sup>WGM Papers, accession 3181-1, box 13, folders 12-14; and box 16, scrapbook 3.

<sup>51</sup>Sanders, Legacy, n.p. [3].

also prosecuted "dole swindlers" who collected more than their fair share of relief money, and worked in harness with local law enforcement agencies in a mostly unsuccessful effort to close down illegal gambling operations throughout the county.<sup>52</sup>

Probably more significant than any specific cases he tried, however, was the continuing development of his political and social philosophy. Basing his idea of justice on fairness and common sense, Magnuson sometimes disregarded the letter of the law. In June 1935, for example, Sheriff William Severyns announced that he would begin enforcing the county's "Sunday closing" laws by arresting people who sold beer on the Sabbath. Magnuson, an old foe of restrictive laws concerning alcohol and not at all interested in being deluged with such cases, quashed the sheriff's plan by announcing that he would not prosecute people arrested on that charge unless all other such "blue laws" were similarly enforced.<sup>53</sup>

At other times Magnuson demonstrated his conception of fairness by energetically prosecuting violations that had been only winked at previously. He announced in July 1935 that violence against strikers would result in jail for the attackers, and in early 1936 he prosecuted a gang of veterans who assaulted a group of Communists after the police had already broken up the

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<sup>52</sup>WGM Papers, accession 3181-1, box 15, scrapbook 11.

<sup>53</sup>"County Beer Parlors Will Be Open Today," Seattle Post-Intelligencer, 30 June 1935, p. 1.

reds' meeting.<sup>54</sup> Needless to say, his willingness to extend the protection of the law to strikers and Communists did not endear him to captains of industry and conservative citizens who saw both groups as serious threats to American society. That willingness did, however, reveal Magnuson to be a young man who would stand up against entrenched powers in defense of principle; and if that meant moving left on the political spectrum, he seemed to be saying, so be it.

### **Brushes with Consumer Issues**

To this point in his life Magnuson had not, however, given much serious thought to the idea that perhaps he should stand up for consumers against powerful producers. Like most of his countrymen, he probably believed that American companies produced only the finest goods, and that any exceptions to this rule would be driven from the market by the effects of supply and demand combined with a small amount of government regulation and a healthy dose of caveat emptor. He also had misgivings about centralizing too much authority in one place, be it Olympia or anywhere else,<sup>55</sup> so legislative responses to most consumer problems probably seemed to him excessive.

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<sup>54</sup>WGM Papers, accession 3181-1, box 15, scrapbook 11; and "4 Vets Cleared in Communist Raid: Red Menace Pictured in Defense Talk," Seattle Post-Intelligencer, 7 April 1936, p. 1.

<sup>55</sup>WGM to State Senator James A. Murphy, 19 February 1935, WGM Papers, accession 3181-1, box 3, folder 11.

But three incidents occurred in the space of eighteen months that might have made him wonder if consumers were being adequately protected or informed. First, in April 1935, he received a vaguely worded postcard from a Seattle auto dealership informing him that the car he had purchased there should be brought in for inspection because it may have been "short certain items from the factory."<sup>56</sup> Magnuson probably considered it to be something of an inconvenience to take the car in, but lacking any evidence to the contrary, one must assume that he did submit the vehicle for inspection and repair. Until the car was inspected, however, he naturally would have wondered what, exactly, might be wrong with his car, what items it might be "short," whether it was safe to drive, if he should operate it any differently and, finally, why the dealership did not provide more information. It would be thirty years before consumers and their advocates would insist on having answers to these questions, but it is not unreasonable to hypothesize that Magnuson's experience with an early recall notice might have predisposed him to join them when they did.

A second occasion when Magnuson may have wondered about the good intentions of some producers was in June 1936 when he received a letter from Ivan L. Hyland, attorney for the Soap Lake Products Corporation of Soap Lake, Washington. The Federal Trade Commission had filed a complaint against the company alleging that its advertisements claiming that its products could

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<sup>56</sup>WGM Papers, accession 3181-1, box 2, folder 15.

relieve or cure "rheumatism, neuritis, arthritis, eczema, athlete's foot, ulcers of the stomach, poison oak or ivy, gangrene infections, or body and scalp sores" were "grossly exaggerated, false, misleading, and untrue." Hyland asked Magnuson to tell him if he had benefited from any of the company's products and what specific ailments he had suffered from.<sup>57</sup> Surprisingly, although he certainly must have realized that not all of the claims could be true, Magnuson responded: "I am somewhat familiar with their products and I have benefited thereby. I shall be glad to make an affidavit in this regard."<sup>58</sup> He did not say what condition he had used the products to relieve or how he had benefited, but one wonders what caused him to respond that way. Did he actually think the products or the water had helped him? Was he merely trying to protect a state company from perceived harassment by a federal agency? Did he consider the advertising claims to be exaggerated but harmless since the water and other products did no actual physical harm to their users? Whatever the case, if he did not realize it then, he later came to understand that misleading claims can harm people physically if they neglect more legitimate treatment, and such claims certainly cheat people financially.

The third incident involved product safety, specifically, the safety of an electric table lamp. On October 19, 1936, Prosecutor Magnuson was making a telephone call in his office when he reached over to move a lamp on his desk.

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<sup>57</sup>WGM Papers, accession 3181-1, box 7, folder 9.

<sup>58</sup>WGM to Hyland, 7 July 1936, WGM Papers, accession 3181-1, box 7, folder 9.

Apparently, the lamp had short-circuited, and the electrical shock knocked him to the floor still clutching both the lamp and the phone. When help failed to arrive in response to his shouts, he kicked the lamp out of his hand. The mishap left his right arm temporarily paralyzed and his pants burned.<sup>59</sup>

Perhaps the lamp had been damaged by misuse or perhaps it had been improperly constructed, but Magnuson must have given some thought to the idea that he should not be injured by a common appliance.

There is no evidence that Magnuson decided to support the consumer protection movement because of any one of these incidents, and speculation about what he thought of them admittedly remains just that--speculation. Like many people at the time, he seems merely to have accepted inconvenience, fraud, and injury as normal parts of the American marketplace. There were others in the country, however, who refused to accept such marketplace evils, and though his first concern in 1936 was building his own political career, Warren Magnuson would ultimately join them.

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<sup>59</sup>"Prosecutor Grabs Real Live Wire," Seattle Times, 20 October 1936, p. 5.

## CHAPTER THREE

### The Second Wave

"We are all Alices in a Wonderland of conflicting claims, bright promises, fancy packages, soaring words, and almost impenetrable ignorance."<sup>1</sup>

#### Introduction

In the late 1920s and early 1930s, while Magnuson was completing his education and getting his start in politics, the nation experienced the rise and growth of the second wave of consumer protection. It began as an effort to make product quality data more readily available to consumers and to force advertisers to tell the truth, but with the onset of the depression, discussion turned also to prices and the role of the consumer in economic recovery. Consumerists pushed for better information on labels, including such things as standardized produce grades for canned goods and the fiber content of clothing, to enable consumers to make informed and efficient purchases with limited funds--a goal summed up in the word "buymanship."<sup>2</sup>

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<sup>1</sup>Stuart Chase and F. J. Schlink, Your Money's Worth: A Study in the Waste of the Consumer's Dollar (New York: Macmillan, 1927), p. 2.

<sup>2</sup>Joseph Gaer, Consumers All: The Problem of Consumer Protection (New York: Harcourt, Brace & Co., 1940), pp. 60-63; and Roland S. Vaile, "Consumption, the End Result of Marketing," Annals of the American Academy of Political and Social Science 209 (May 1940): 20. See also "What About the

Frequently, the desires of individuals and consumer advocacy organizations clashed with those of the federal government and American industry, especially during the Great Depression. New Deal officials recognized that the solution to the economic woes facing the country hinged on striking a balance between production and consumption, and that the consumer was therefore a vital contributor to any potential recovery plan. But despite this realization, the Franklin Roosevelt administration took what can only be described as a schizophrenic position toward consumers, creating official voices for them, but generally ignoring their advice. Rather than working to increase consumption to meet high levels of production, as consumerists advocated, New Deal policies by and large cut production to meet the ability of the nation to consume.<sup>3</sup> The policies that were implemented--most notably AAA subsidies and NRA Codes of Fair Competition--seemed inherently anticonsumer because their effect was generally to raise prices without providing for corresponding increases in product quality or in wages with which to buy.<sup>4</sup>

The bitter irony of the depression years was that people were unable to consume despite the nation's undiminished capability to produce. The imbalance between production and consumption led to official government

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Consumer Movement?" Advertising Age 11 (8 January 1940): 23, in which an illustration portrayed "Mrs. Consumer" as the "queen of buymanship."

<sup>3</sup>Ellis W. Hawley, The New Deal and the Problem of Monopoly: A Study in Economic Ambivalence (Princeton, N.J.: Princeton University Press, 1966), pp. 60-61.

<sup>4</sup>Hawley, Problem of Monopoly, pp. 66-68.

measures as well as privately instigated efforts to restore equilibrium and profitability. The apparent illogic of these schemes--of dumping milk in the roads, dousing oranges with gasoline, or destroying baby pigs without processing them for meat while people went hungry; of plowing cotton under as displaced sharecroppers stood by in tattered rags; of closing down factories as the unemployed lined up on the sidewalks for soup--led some people to call for a complete overhaul of the country's economic system. Such plans as Louisiana Senator Huey Long's "Share Our Wealth," Doctor Francis Townsend's old-age pension scheme, and Upton Sinclair's production-for-use-inspired End Poverty in California (EPIC) presented alternatives. Whatever else these undertakings may have been, they shared one critical characteristic that many people found lacking in official New Deal programs: an emphasis on enabling people to consume.

Not all consumer-oriented initiatives of this period focused on the economic function of consumption. The Food, Drug, and Cosmetic Act of 1938, the Wheeler-Lea Act, and the growth of independent testing agencies such as Consumers' Research and Consumers' Union all offered greater protection and better information for the nation's consumers. Overall, however, consumers made little progress during this period. And although the second wave, like the first, was ultimately submerged by the rising tide of a world war, much of the impetus of consumer protection had been spent long before the United States entered the conflict.

### **The Lull Between the Waves: 1906-1927**

After the passage of the landmark Food and Drugs Act and the Meat Inspection Act in 1906, agitation for consumer protection measures continued, but it lacked the urgency it had previously shown. Dr. Harvey Wiley continued to push for legislation to regulate the use of preservatives in foods, and in 1909 he added his voice to the growing chorus calling for a standardized grading system for produce.<sup>5</sup> But Wiley and a few dedicated consumerists could not sustain the movement by themselves, and the most significant shortcoming exhibited by the consumer protection movement remained its inability to keep the public aroused and interested in consumer issues.

At least one industry remained vitally concerned that the now dormant consumer movement would once again rear its head. In 1911, the advertising trade publication Printers' Ink, aware that laws against false claims on product packages did not apply to advertisements and concerned that the federal government would impose strict regulations if advertisers did not police themselves, promulgated a model truth-in-advertising statute that by 1940 had been enacted in twenty-six states and had been passed in modified form in seventeen others.<sup>6</sup> Implicit in this model statute and the laws that were based upon it was the idea that consumers could not themselves distinguish

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<sup>5</sup>U.S., Department of Agriculture, Annual Reports of the Department of Agriculture for the Year Ended June 30, 1909, Report of the Chemist, by Harvey W. Wiley (Washington, D.C.: Government Printing Office, 1910), p. 425.

<sup>6</sup>Otis Pease, Responsibilities of American Advertising: Private Control and Public Influence, 1920-1940 (New Haven: Yale University Press, 1958), p. 46.

between false advertisements and truthful ones, but as economist Leland Gordon pointed out, these laws were intended less to protect consumers than to protect honest advertisers from dishonest ones.<sup>7</sup> Moreover, it seems that the advertising statutes were not widely enforced.<sup>8</sup>

On the national legislative front, Congress passed several amendments to try to close some of the most obvious loopholes in the Food and Drugs Act. The Sherley Amendment (37 Stat. 416), effective August 23, 1912, extended the act to outlaw "false and fraudulent" claims on medicine packages and labels. Seven months later the Gould or "Net Weight" Amendment (37 Stat. 732) required packages to display plainly the "weight, measure, or numerical count" of the contents, but the measure allowed "reasonable variations." And in 1919 an amendment to the appropriations act for the Department of Agriculture (41 Stat. 271) made it clear that the provisions regarding packages also applied to wrapped meats.

The additional protection afforded consumers by these pieces of legislation was slight. The Sherley Amendment, for example, required officials to prove that claims were both false and fraudulent before any punitive measures could be enforced. It was not enough to demonstrate that a concoction labeled as a cure for heart disease had no beneficial effects for the

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<sup>7</sup>"Protection of the Consumer," Annals of the American Academy of Political and Social Science 206 (November 1939): 77.

<sup>8</sup>Colston Estey Warne, "Present-Day Advertising--The Consumer's Viewpoint," Annals of the American Academy of Political and Social Science 173 (May 1934): 72-73.

user; officials also had to prove that the producer intentionally used false claims to cheat purchasers. In other words, if a defendant could convince the judge that he actually believed the promises on his packages, he could not be prosecuted.<sup>9</sup> Ruth deForest Lamb, in her 1936 classic The American Chamber of Horrors, denounced the two words "and fraudulent" in the amendment as "an innocent-looking joker which has, for nearly a quarter of a century, prevented any sort of adequate control over quack remedies."<sup>10</sup>

The Net Weight Amendment suffered from its own weaknesses as producers and packagers found a variety of ingenious ways to adhere to the letter of the law while violating its spirit. Some packages indicated the weight or volume of the contents in obscure measurements such as drams, cubic centimeters, and grains. Others printed the required information on parts of the wrapper that were hidden when the package was sealed. Sometimes producers listed the correct weight or numerical count but used the technique of "slack fill," in which a larger than necessary package was only partially filled, creating an illusion of greater product volume than was actually enclosed.<sup>11</sup> Not all of these techniques were considered illegal, but American

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<sup>9</sup>Wallace F. Janssen, "The Story of the Laws Behind the Labels," FDA Consumer 15 (June 1981): 37.

<sup>10</sup>Ruth deForest Lamb, American Chamber of Horrors: The Truth About Food and Drugs (New York: Farrar & Rinehart, 1936), p. 12.

<sup>11</sup>Chase and Schlink, Your Money's Worth, pp. 111-16; and Solon R. Barber, "Tricky Labels on Foods," Journal of Home Economics 24 (June 1932): 502-06.

consumers certainly did not receive the quantitative information to which the amendment entitled them.

Consumers received even less qualitative data regarding the goods they purchased. Although some consumerists had long argued for federal grading standards accompanied by strict government inspection, no progress was made in that area in the first quarter of the century. From the point of view of the advocates of a grading system, the steady growth of the packaged goods industry made the establishment of some system all the more pressing. Lacking reliable standards, they argued, consumers could try to judge quality in one of three ways: previous experience with a brand name product, belief in advertising claims, or price comparison (with the assumption that better quality goods would naturally cost more than inferior ones). None of these was a useful gauge. Previous experience counted for nothing, since producers often changed ingredients, recipes, or processes without changing the brand name; advertisements existed to create demand, not to inform; and better goods frequently sold for less than their inferior competitors.<sup>12</sup>

If shady advertising practices, misleading packages, and variable product quality were among the chief problems faced by consumers in the 1910s and 1920s, an underlying cause of all of them was the tremendous success that the American economy had attained in the art of production.

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<sup>12</sup>Chase and Schlink, Your Money's Worth, pp. 165-66; Clair Wilcox, "Brand Names, Quality, and Price," Annals of the American Academy of Political and Social Science 173 (May 1934): 80; Warne, "Present-Day Advertising," pp. 71-72; and F. M. Shook, "Grades on Labels of Canned Foods," Journal of Home Economics 26 (February 1934): 98.

From farm to factory, new technology and new techniques enabled each worker to be more productive.<sup>13</sup> The country's capacity to produce surpassed its ability to consume, and postwar tariffs made finding foreign markets more difficult. Producers were forced to seek new and better ways to attract domestic purchasers to their goods. The growth of national brand name advertising was one manifestation of this money chase, as were packaging tricks and recipe changes that made one product seem to be a better value than its competitors--even if it were not. Although these were by no means new developments, by the late 1920s they had been around long enough and their abuses had grown to sufficient proportions to attract the attention of critics. The two most important of these critics were Stuart Chase and Frederick J. Schlink.

### **The Second Wave Begins**

The commencement of the second major period of consumer protection may be dated precisely: it took place in July 1927. In that month appeared Your Money's Worth, a scathing description of the American marketplace

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<sup>13</sup>The per capita gross national product for the period 1925-1929 in constant (1958) dollars averaged about \$1,600 per year; a generation earlier, 1895-1899, per capita GNP (again in 1958 dollars) averaged about \$925. Total GNP, reflecting both the rise in productivity and the increasing population, rose even more sharply, from an average of about \$67 billion (1958 dollars) per year in 1895-1899 to about \$190 billion in the period 1925-1929. U.S., Department of Commerce, Bureau of the Census, Historical Statistics of the United States, Colonial Times to 1970, part 1, (Washington, D.C.: Government Printing Office, 1975), p. 224.

penned by Chase and Schlink.<sup>14</sup> Written in an engaging style, the book portrayed consumers as so many Alices in Wonderland who were misled and manipulated by advertising, the brand name system, and a variety of other business practices. The purpose of the book, the authors proclaimed in its opening chapter, was "to explore that Wonderland and perhaps to indicate a path which may lead out of it."<sup>15</sup>

Not surprisingly, Chase, an accountant who had worked for the Federal Trade Commission, and Schlink, a "mechanical engineer-physicist" with experience on the staff of the National Bureau of Standards,<sup>16</sup> thought that consumers might escape Wonderland through a calculated, skeptical, and, above all, scientific evaluation of the goods they bought. Their alternative to the blend of "magic" and "mystery" in the marketplace was, in other words, a system similar to that used by the government when it made purchases, a system based on standards, specifications, and laboratory testing.<sup>17</sup>

Anticipating the arguments their critics might make, they assured readers that it was not their intention to strip the acts of shopping, buying, and owning of all enjoyment. Certain things, especially luxury items, "we purchase for the glow they give the personality; for the gloom they give the Joneses."<sup>18</sup>

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<sup>14</sup>See note #1 above for publication information.

<sup>15</sup>Your Money's Worth, p. 2.

<sup>16</sup>Your Money's Worth, foreword, n.p.

<sup>17</sup>Your Money's Worth, pp. 61-64.

<sup>18</sup>Your Money's Worth, p. 7.

Nor, the authors contended, would their plan thwart innovation and improvement: any manufacturer who chose to exceed the minimum standards was free to do so. Moreover, they argued, standards could actually lead to the betterment of products because they would stabilize demand and enable the manufacturer to concentrate his energies on research and more precise production techniques.<sup>19</sup>

What Chase and Schlink most wanted for consumers was power comparable to that wielded by manufacturers and advertisers. Equating that power with knowledge, they emphasized the need for unbiased scientific testing of brand name products and the wide dissemination of the test results. Since such testing was obviously beyond the ability of any individual, they called on government agencies, universities and private laboratories to provide this service.<sup>20</sup>

Chase and Schlink found a wide and receptive audience for their ideas. Your Money's Worth was reprinted six times before the end of 1927, becoming a best seller and a selection of the Book-of-the-Month Club.<sup>21</sup> It sold over 100,000 copies,<sup>22</sup> and no doubt many times that number of people either

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<sup>19</sup>Your Money's Worth, pp. 194-95.

<sup>20</sup>Pease, Responsibilities of American Advertising, p. 100.

<sup>21</sup>Your Money's Worth, 1928 edition, title page; and "August Best Sellers," Publishers' Weekly 112 (24 September 1927): 1091.

<sup>22</sup>Pease, Responsibilities of American Advertising, p. 99, n. 23.

borrowed it from libraries or friends, read reviews, or heard of it by word of mouth.

Soon the authors were being inundated with mail from people requesting advice on purchases, and after attempting for several months to respond to all of these queries, Schlink decided to turn the job over to a consumers' club he had helped to found in White Plains, New York. In December 1929 this club became Consumers' Research, Incorporated. Under Schlink's guidance, Consumers' Research began collecting product data from tests done by other laboratories and conducting some limited testing of its own. Results of the various tests were sent in the form of confidential reports to subscribers who paid two dollars per year for the information. By May 1932 these subscribers numbered 36,800, up from 565 in the club's first year,<sup>23</sup> and Consumers' Research had added a non-confidential bulletin to its service.

With the publication of Your Money's Worth and the creation of Consumers' Research, Chase and Schlink not only started the second wave of the consumer protection movement, they also outlined the agenda for consumerists and took the first steps toward achieving that agenda. Moreover, they defined what consumer protection would mean for their generation. Essentially, Chase and Schlink equated protection with education: if consumers could be given enough true information with which to counter the romantic advertising claims regarding products, and if they could be taught how to make

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<sup>23</sup>Introduction to Consumers' Research and General Bulletin #1 (Bulletin 2.06, May 1932): 2-3.

efficient purchasing choices, they would have little need for any other form of protection.

### **The "Canners' Bill"**

At first glance, the passage of the McNary-Mapes Amendment (46 Stat. 1019) to the Food and Drugs Act might appear to have been one of the earliest achievements of this drive toward efficiency. This amendment, nicknamed the "Canners' Bill" because it was proposed and strongly backed by manufacturers of canned goods, was signed into law on July 8, 1930. It required that a canner plainly indicate on the label if the product inside did not meet a certain minimal standard.

Some supporters did, in fact, portray the bill as an efficiency measure: it would enable consumers to choose to pay more for better quality goods or less for substandard ones. "It is hoped," remarked the Journal of Home Economics after passage, "that the canners' bill will bring it about that the household purchaser may go to her grocer and buy a can of food with greater assurance than heretofore that the price will be commensurate with the quality of the product."<sup>24</sup> But since the labeling requirement applied to only a small portion of the canned goods sold, and since most consumers were unwilling to serve their families products marked "substandard," that remained merely a hope. There was still a broad range of qualities and prices above the minimum

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<sup>24</sup>"The 'Canners' Bill' and the Consumer," Journal of Home Economics 23 (January 1931): 60.

standard, and consumers still faced the same problem: the amendment did nothing to ensure that price was an indicator of quality.

A failure from the point of view of the consumer, the Canners' Bill was a stirring success for its main supporters. Canners benefited, first of all, from the improved public perception of their business which the bill engendered. Most Americans, like Elizabeth Frazer of Good Housekeeping, saw the McNary-Mapes Amendment as an instance of self-regulation on the part of canners "to curb the chisellers" and thus protect consumers as well as honest manufacturers.<sup>25</sup>

A second benefit that accrued to canners was the increased usefulness of the Federal Warehouse Act that the amendment provided. By guaranteeing that the canned goods were above a certain standard, the amendment enabled canners to use the goods as collateral for loans under that act.<sup>26</sup>

Perhaps most important, however, the amendment helped canners to stave off calls for federal quality grading of canned goods according to a scale such as A, B, C, and Substandard. Such a scale threatened to destroy the allure of brand names and, as Canning Trade warned, "remove at one swoop the cumulative benefits of millions of dollars in advertising which have been expended to establish a market for the featured canned foods brands of

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<sup>25</sup>Elizabeth Frazer, "Hold That Can, Please!" Good Housekeeping 99 (September 1934): 141.

<sup>26</sup>Remarks of Representative John C. Ketcham, Cong. Rec., 71st Cong., 2d sess., 1930, 72, pt. 8: 8531-32.

distributors."<sup>27</sup> By establishing a minimum standard, canners could contend that they had, in fact, established quality grading, and that no further standards were necessary.

Not everyone found this argument convincing. Even during the House debate before the bill passed, Representative Franklin Menges of Pennsylvania protested that it actually covered only the 5 percent of canned goods that fell below a certain quality and that it would do nothing to help consumers because it fixed only one standard. "If the proponents of this bill want to help the consumer to buy intelligently," he asked, "why do they not provide for a complete system of standardization?"<sup>28</sup> Likewise, Consumers' Research complained that "the provisions of the McNary-Mapes Amendment are quite valueless. To say that there is quality grading of canned goods because there is a McNary-Mapes Amendment is utter nonsense."<sup>29</sup>

While unbiased quality grading would no doubt have enabled purchasers to hone their "buymanship" skills and would have benefited those canners who produced high quality goods but could not afford to advertise extensively, it would also have slashed sales of some name brand products, perhaps irrevocably. The leaders in the trade were those who advertised their products

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<sup>27</sup>Quoted in Rachel Lynn Palmer, "Good Housekeeping Magazine Helps the Canners Against Consumers," Consumers' Research Confidential Bulletin n.s. 1 (November 1934): 9. Palmer's article was written in response to Frazer's, cited above.

<sup>28</sup>Cong. Rec., 71st Cong., 2nd sess., 1930, 72, pt. 8: 8533.

<sup>29</sup>Palmer, "Good Housekeeping Helps Canners," p. 8.

nationally, and they were usually able to convince other canners to join them in opposing grading proposals. Further, canners called for and received the support of the advertising industry, print media, and even lumbermen, whose livelihoods would supposedly be threatened by restrictions on advertising. With far more at stake than individual consumers had, and possessing far greater political and financial resources than did consumers, the powerful canners were destined to have their way. And although grading remained one of the key consumer issues of the 1930s, canners saw to it that it was not enacted into law.

### **New Areas of Reform**

The most significant struggle in the consumer protection field during the second wave was the drive to shore up the Food and Drugs Act. Serious weaknesses in the 1906 measure had remained, despite such efforts to strengthen it as the Sherley and Net Weight Amendments. Although proponents of new legislation continued to press for quality grading of canned and packaged goods, the primary deficiency of the old law that they hoped to remedy was its lack of any control of three areas: cosmetics, proprietary medicines,<sup>30</sup> and advertising claims.

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<sup>30</sup>Proprietary medicines should be distinguished from patent medicines. The latter were truly patented, that is, their recipes were public to the extent that they were on file in the U.S. Patent Office; the former were secret compounds, whose recipes were jealously guarded by their makers. Very few of the dubious compounds were actually patented. James Harvey Young, Pure Food: Securing the Federal Food and Drugs Act of 1906 (Princeton, N.J.: Princeton University Press, 1989), p. 26.

The cosmetics industry had been small at the turn of the century, and sections of earlier bills that had pertained to cosmetics had been dropped in 1900 in exchange for industry support of a National Pure Food and Drug Congress.<sup>31</sup> After the passage of the Food and Drugs Act, however, the industry had experienced a rapid growth, and the very nature of cosmetics made them potential health risks.

Proprietary medicines were perceived as threats for several reasons. First, individual consumers were not privy to the recipes of the nostrums, and therefore placed themselves at some risk of allergic reaction or outright poisoning. Second, even if a concoction were not itself a direct health threat, it could give people a false sense of security and discourage them from pursuing proven, medically sound treatments. Diabetics, for example, were advised by advertisements to treat their condition with a liquid extracted from horsetail weeds--and this at a time when the therapeutic effects of insulin were understood.<sup>32</sup> Finally, proprietary medicines were invariably economic cheats, priced many times their actual production and distribution costs. Arthur Kallet had this to say about them: "Certainly most proprietary medicines are worthless. While formulae remain secret, while the most

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<sup>31</sup>Charles O. Jackson, Food and Drug Legislation in the New Deal (Princeton, N.J.: Princeton University Press, 1970), p. 4.

<sup>32</sup>Jackson, Food and Drug Legislation, p. 96.

dangerous ingredients can be used legally, and claims go uncensored, probably no proprietary medicine can be safely used by any one."<sup>33</sup>

Advertising came under scrutiny because it had become the repository of all the false claims that had been chased off the labels of packaged goods by earlier laws. One often-quoted example was Lydia E. Pinkham's Vegetable Compound, a thirty-proof elixir containing a mild laxative. Advertised in newspapers as a cure for "inflammation, leucorrhea, female weakness, nerve troubles, pains of the side, rundown condition, and other disorders of the body," the tonic's package said merely that it was "Recommended as a vegetable compound in conditions for which this preparation is adapted."<sup>34</sup> (The compound was chiefly adapted, it seems, to keeping women pleasantly intoxicated and their bowels regulated.) It made little sense, argued advocates of revision, to remove falsehoods from packages but to allow them in advertising: people were more likely to see, read, and be influenced by advertisements than by labels.

### **The "Tugwell Bill"**

Certainly by the early 1930s the venerable Food and Drugs Act seemed ripe for extensive amendment or complete replacement. All that was needed

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<sup>33</sup>"Foods and Drugs for the Consumer," Annals of the American Academy of Political and Social Science 173 (May 1934): 33.

<sup>34</sup>Rexford C. [sic] Tugwell, "The Great American Fraud," American Scholar 3 (Winter 1934): p. 89. Although Tugwell did not mention the tonic's name in this article, others did. See, for example, Lamb, Chamber of Horrors, pp. 298-301.

was someone to start the process. In July 1932 it appeared that the Democratic candidate for the presidency might be just the person. On the day of his nomination Franklin Roosevelt broke with precedent and flew to Chicago to address the delegates. In a speech that became famous for its use of the phrase "new deal," Roosevelt decried the suffering that the business policies of the previous decade had caused the consumer. He noted that the period had been marked by industrial expansion, rising profits, and decreasing costs of production, but, he lamented, "The consumer was forgotten."<sup>35</sup> Perhaps, hopeful consumerists must have thought, the new deal Roosevelt offered would include some new protection for consumers. What the Democratic candidate meant, of course, was not that the Food and Drugs Act needed revision but that consumers as economic beings in the production-distribution-consumption cycle had not been given the same opportunity to advance their interests that the other segments had enjoyed. In other words, his sympathy for the consumer lay more in the direction of increasing purchasing power than in regulating labels or advertising.

It was not the newly elected President Roosevelt, therefore, who instigated the revision of the Food and Drugs Act in late winter 1933, but rather the newly appointed Assistant Secretary of Agriculture, Rexford Guy Tugwell, along with the Chief of the Food and Drug Administration, Walter G. Campbell. Tugwell, whose duties included overseeing the old-line bureaus in

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<sup>35</sup>Samuel I. Rosenman, ed., The Public Papers and Addresses of Franklin D. Roosevelt, vol. 1: The Genesis of the New Deal, 1928-1932 (New York: Random House, 1938), p. 650.

the Agriculture Department, including the FDA,<sup>36</sup> refused to sign a routine letter prepared for him by the FDA on the subject of a tolerance for lead-arsenate insecticide residues on fruits. He sent it back, asking why the poison was not banned. Campbell agreed that the tolerance was too high, but under the law he had no power to prohibit the insecticide. In fact, Campbell told the Assistant Secretary, even the establishment of a tolerance was beyond the powers of the Department of Agriculture, but since it had never been challenged in court the tolerance had stood. What was needed, the two men agreed, was either a strong amendment to the Food and Drugs Act to close certain loopholes, or an entirely new law.<sup>37</sup>

Tugwell's biographer, Bernard Sternsher, described him as "interested in consumer economics at least since his graduate-student days," and in February 1933 Tugwell had written in his diary that one of the first things he would do at the USDA would be to address the problems of the Food and Drug Administration. "I'll do the best I can for the consumer regardless of politics," Tugwell wrote, "I won't compromise on this." He was particularly concerned that the Food and Drugs Act of 1906 be updated to close labeling loopholes, to address modern advertising, and to deal with cosmetics, a category of products

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<sup>36</sup>According to Secretary Henry A. Wallace's plan, Tugwell's jurisdiction was to be the old-line bureaus, and Wallace's was to be the AAA. Neither man could be so easily pigeonholed, however, and there was much crossing of jurisdictional lines. Bernard Sternsher, Rexford Tugwell and the New Deal (New Brunswick, N.J.: Rutgers University Press, 1964), p. 208.

<sup>37</sup>Rexford G. Tugwell, "Recollections of '33 and Later," FDA Papers 2 (June 1968): 4; and Jackson, Food and Drug Legislation, pp. 3-8.

that had mushroomed since 1906.<sup>38</sup> The spray residue incident provided him an opportunity to initiate his plan.

With Campbell's blessing--and with his warning that Tugwell would be making trouble for himself--the Assistant Secretary proceeded to lower the tolerance. This action drew the ire of his superior, Secretary Henry A. Wallace, with whom Tugwell generally enjoyed good relations until about the middle of 1934,<sup>39</sup> as well as that of farm leaders and political figures from agricultural states. Their opposition convinced Tugwell of the righteousness of his actions and that further controls were necessary. As he wrote in 1968, describing himself in the third person: "The Assistant Secretary was now engaged. It had become a cause. He had a good argument and the opposition was clearly in the wrong. . . . It was time for a new Act." Thus began the five-year struggle for new legislation.<sup>40</sup>

Tugwell's first step was to gain the president's approval for a new food and drugs bill. Because his concern for consumers was of an entirely different variety, Roosevelt assented only halfheartedly and only after Tugwell had appealed to FDR's ambition to surpass the achievements of the previous President Roosevelt and had also spoken with the First Lady.<sup>41</sup> At this stage, FDR was undoubtedly more concerned with encouraging consumption

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<sup>38</sup>Sternsher, Rexford Tugwell and the New Deal, pp. 223-25.

<sup>39</sup>Sternsher, Rexford Tugwell and the New Deal, p. 208.

<sup>40</sup>Tugwell, "Recollections," pp. 4-5.

<sup>41</sup>Tugwell, "Recollections," p. 5.

than with protecting individual consumers. From his point of view, it was less important that people purchase wisely than that they purchase vigorously. Morality aside, if Tugwell's proposed bill discouraged spending on consumer items--even useless, mislabeled, or overpriced items--it could slow the economic recovery that was FDR's primary goal. Nevertheless, despite subsequent silence on the bill, Roosevelt approved the introduction of a new food and drug measure.<sup>42</sup>

The actual writing of the bill was done by a group of men drawn from inside and outside the federal government: law professors Milton Handler of Columbia University and David Cavers of Duke; FDA officials Walter Campbell and Charles Crawford; Fred Lee, who had served as an advisor to the Senate on the drafting of legislation; and several members of the Solicitor's Office. To determine what the bill's provisions should be, the FDA sent out questionnaires and held public hearings.<sup>43</sup> The result was a draft of a strong consumer protection measure.

Its enemies commonly called the proposal the "Tugwell bill," despite his having had nothing to do with its actual drafting.<sup>44</sup> Their plan was to associate it with Tugwell, a Columbia University economist and charter member of the Roosevelt Brain Trust, and thus discredit it as the ravings of an

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<sup>42</sup>Sternsher contends that "orders to write the bill came from the White House." Rexford Tugwell and the New Deal, p. 230.

<sup>43</sup>Lamb, Chamber of Horrors, pp. 284-86.

<sup>44</sup>Lamb, Chamber of Horrors, p. 285.

impractical academician. This strategy reflected the American tradition of ridiculing professors who tried to participate in nonacademic, practical matters. Tugwell offered an easy target because his writings on economics provided a large field from which opponents could pull statements out of context, and his idea of "planned capitalism" pleased neither socialists nor advocates of an extreme laissez-faire policy. Moreover, belittling and attacking Tugwell allowed opponents of FDR and the New Deal to vent their disapproval without directly criticizing the popular president.<sup>45</sup>

The Tugwell bill offered a number of benefits for consumers and their government representatives. It proposed to eliminate, first of all, the requirement that officials prove fraudulent intent on the part of the maker of adulterated or mislabeled goods. A misbranding charge could be brought if a label simply "by ambiguity or inference creates a misleading impression." False or misleading advertising would be banned under the new law if it were enacted, as would claims on labels that a drug could cure a disease or condition for which, in the eyes of the medical community, it was merely a palliative. Further, any drug named in the National Formulary or the United States Pharmacopoeia would be required to conform to the standards therein, and the definition of a drug would be extended to include mechanical therapeutic devices, fat reducers, and anything else that was "intended to affect the structure or any function of the body of man or other animals." The bill proposed to regulate cosmetics for the first time, and it would have outlawed

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<sup>45</sup>Sternsher, Rexford Tugwell and the New Deal, pp. 227-37.

such packaging tricks as slack fill and oddly shaped containers which deceived purchasers as to the volume of the contents. The measure also called for quality grading of foods and would have required that the ingredients be listed on the label of foods or drugs "in order of predominance by weight." Regarding enforcement, the bill mandated government inspection of factories and of the vehicles used to transport foods, and it allowed for multiple seizures of dangerous products. If a producer repeatedly introduced into interstate commerce adulterated or misbranded goods he could be forced by injunction to desist. Finally, the legal penalties to be imposed for violations were more severe than under previous laws.<sup>46</sup> Thus, the Tugwell bill not only offered some needed protections for consumers, but, more significantly, it also promised to expand greatly the factual information available to purchasers while limiting exaggerated, misleading, or false claims.

The next step was to line up Congressional support. Tugwell and his allies certainly knew that this would not be easy, since food manufacturers, drug producers, and advertisers had begun mobilizing against the bill even before it was drafted, and members of Congress were particularly attentive when the great trade organizations made their preferences known. But proponents had difficulty even lining up a sponsor to introduce the measure. FDA staff member Ruth deForest Lamb wrote later that "Dr. Tugwell and

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<sup>46</sup>Jackson, Food and Drug Legislation, pp. 28-29; Lamb, Chamber of Horrors, pp. 288-90; and Cong. Rec., 73d Cong., 1st sess., 1933, 77, pt. 6: 5721-23. For the text of the bill, see U.S., Congress, Senate, Committee on Commerce, Subcommittee on S. 1944, Food, Drugs, and Cosmetics, 73d Cong., 2d sess., 1933, pp. 1-10.

Mr. Campbell literally peddled the thing up and down the halls of Congress."<sup>47</sup> Finally, Senator Royal Copeland, a Tammany Democrat from New York, offered to sponsor the bill.

Copeland, a medical doctor by training and a senior member of the Senate Committee on Commerce, would seem to have been the ideal sponsor for the food and drug measure. His Senate colleagues often deferred to him on health issues, and he enjoyed the respect of friend and foe alike. But Copeland brought with him certain liabilities. His foes respected him, some people said, because he was a bit too willing to compromise. Curiously, however, this compromising nature did not extend to his relationship with his party's leader, President Roosevelt, and Copeland firmly opposed many New Deal measures. The antipathy between the two men had consequences for the Tugwell bill: as the months passed and Copeland became more and more estranged from Roosevelt, FDR became even less willing to come out in support of the bill.<sup>48</sup>

Less damaging but more embarrassing than either his conciliatory disposition or his rift with the president were Copeland's business dealings with companies that were to be controlled by the measure. He wrote a medical column for the Hearst newspapers--whose advertising was to be more closely watched under the proposed law--and did radio commercials for Fleischmann's Yeast, Phillips' Milk of Magnesia and other products whose claims of broad

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<sup>47</sup>Quoted in Jackson, Food and Drug Legislation, p. 27.

<sup>48</sup>Jackson, Food and Drug Legislation, pp. 60-65.

medical benefits would be strictly curtailed if the bill were enacted.<sup>49</sup> Arthur Kallet, the firebrand of Consumers' Research, heaped scorn upon Copeland, calling him the "king of medical broadcasters for fake and falsely advertised nostrums."<sup>50</sup>

Senator Copeland introduced the first version of the Tugwell bill on June 12, 1933, apparently without having read it.<sup>51</sup> Given the number S. 1944, the bill was referred to the Committee on Commerce and subsequently assigned to a subcommittee headed by Copeland himself. Since it was not considered emergency legislation, hearings were not held until December, by which time Copeland had studied the bill and found it too far-reaching. When food and drug manufacturers complained at the hearings that there was no public demand for the bill and that it represented no more than an effort by the Department of Agriculture to expand its powers and gain a "virtual dictatorship over the trade,"<sup>52</sup> Copeland was sympathetic. No doubt with a sigh of relief the Senator from New York closed the hearings after two days of testimony and began to work on a revised draft of the bill.

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<sup>49</sup>Frederick J. Schlink, "What Government Does and Might Do for the Consumer," Annals of the American Academy of Political and Social Science 173 (May 1934): 129.

<sup>50</sup>"No 'New Deal' on Food, Drugs, and Cosmetics," Consumers' Research 4 (October 1934): 2.

<sup>51</sup>Cong. Rec., 74th Cong., 1st sess., 1935, 79, pt. 5: 5024.

<sup>52</sup>Quoted in Jackson, Food and Drug Legislation, p. 34.

### **The Copeland Bill**

On January 4, 1934, the new "Copeland bill" was introduced and numbered S. 2000. Within six weeks, however, it had undergone so many changes in the Commerce Committee that Copeland felt the need to reintroduce it so the opponents of the bill would know which version was the "real target" at which to shoot.<sup>53</sup>

The new bill, S. 2800, incorporated four major changes from S. 1944. First, instead of requiring proprietary drug labels to disclose formulas, as the Tugwell bill had proposed, Copeland's draft stipulated only that certain ingredients must be indicated. Second, it relieved of responsibility publishers who ran advertisements that were adjudged false. A third change was the elimination of product quality grades for foods. Finally, in response to those who complained that the earlier bill gave dictatorial powers to the Department of Agriculture, S. 2800 would establish two advisory boards to hear appeals on proposed legislation.<sup>54</sup>

Reassured by the revisions, food manufacturers and publishers generally moderated their protests, but the makers of proprietary medicines remained adamantly opposed. They admitted that they considered the new bill to be better than S. 1944, but they continued to attack it as too broadly written, ambiguous, and a death sentence for drug advertising. Aided by public apathy and presidential indifference, the drug makers and their remaining allies had

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<sup>53</sup>Cong. Rec., 73d Cong., 2d sess., 1934, 78, pt. 3: 2729.

<sup>54</sup>Jackson, Food and Drug Legislation, p. 51.

little trouble stifling the bill, and it died when the 1934 Congressional session ended.<sup>55</sup>

Having invested so much time and effort, Copeland refused to be defeated without a clear vote, and he introduced another version early in the following session, on January 4, 1935. This bill, S. 5, was referred to the Committee on Commerce, amended, and reported favorably on March 22. Coincidentally, that was also the day that President Roosevelt sent a message to Congress expressing his hope that a food and drug measure would be enacted. FDR's attention to the matter seems to have encouraged action in the Senate, and after a few further amendments--whose primary effect was to weaken the enforcement powers of the FDA--the Senate passed S. 5 on May 28 and sent it to the House. There, additional hearings were held, and the bill did not emerge from the House Committee on Foreign and Interstate Commerce until almost a year later. FDR once again called for action, with the result that the House approved an amended version of S. 5 on June 19, 1936. The bill died the next day, however, when the session ended with House and Senate conferees at loggerheads over the issue of advertising, specifically over which agency would oversee advertising: the FDA as the Senate conferees insisted, or the Federal Trade Commission, as the House delegation demanded.

Advocates of revision were not entirely demoralized by this turn of events. The bill had been so utterly changed from the original Tugwell bill of 1933 that many consumerists considered S. 5 worse than no new act at all.

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<sup>55</sup>Jackson, Food and Drug Legislation, pp. 52-55, 75.

Some, including Walter Campbell of the FDA, thought that a stronger bill might be passed in 1937.<sup>56</sup>

By this time, however, many producer interests were ready for a law to be enacted. They were growing tired of the battle, and they had long since ensured that the most obnoxious provisions of the Tugwell bill, including its labeling requirements, quality grading, and allowance of multiple seizures, would not be included in the ultimate legislation. Besides, it was bad public relations to appear to be in favor of impure foods and drugs. Although their support for a new bill was a defensive and sharply circumscribed action, it was crucial to the passage of protective legislation.<sup>57</sup>

When Congress reconvened in January, Copeland was ready with another bill. This one, like its predecessor, was numbered S. 5. Consumerists generally approved of the bill's provision that the FDA would be the enforcing agency, but they were dismayed that the weapon of enforcement would be the slow and often ineffective injunction procedure rather than civil or criminal penalties.<sup>58</sup> Following a brief showdown between President Roosevelt and Copeland, whose Commerce Committee had reported a bill that FDR considered

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<sup>56</sup>Jackson, Food and Drug Legislation, pp. 108-09, 121-22.

<sup>57</sup>Jackson, Food and Drug Legislation, p. 206.

<sup>58</sup>Jackson, Food and Drug Legislation, pp. 135-37.

to be weaker than the Wiley Law, the bill was reinforced with firmer language and passed by the Senate on March 9.<sup>59</sup>

In the House, argument centered on the question of the jurisdiction over advertising: would it be under the FDA, which was generally perceived to be more sympathetic to consumers, or the FTC, which was traditionally more lenient toward industry?<sup>60</sup> The discussion was settled when Chairman Clarence Lea of the House Commerce Committee and Senator Burton Wheeler pushed through their respective chambers a bill giving authority over advertising to the FTC while S. 5 was bottled up in Lea's committee.<sup>61</sup>

Having ensured that the FTC would control advertising, Lea and his anti-FDA allies released the Copeland bill from the House Commerce Committee, and the House approved an amended version on June 1, 1938. Senate and House conferees reached agreement on conflicting sections of their respective bills, and FDR signed the Federal Food, Drug, and Cosmetic Act on June 25, 1938.

The law that emerged after the five-year struggle bore little resemblance to the original Tugwell bill. Gone, for example, were provisions for quality

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<sup>59</sup>Jackson, Food and Drug Legislation, pp. 141-44. See Franklin D. Roosevelt, Complete Presidential Press Conferences of Franklin D. Roosevelt, vol. 9: 1937 (New York: Da Capo Press, 1972), pp. 183-84.

<sup>60</sup>"Who Shall Control Advertising?" Business Week, 3 April 1937, pp. 42-44.

<sup>61</sup>The conference report on the Wheeler-Lea Amendment to the Federal Trade Commission Act gained House approval on 14 February 1938, and Senate approval on 14 March. President Roosevelt signed the Amendment on 21 March.

grading. Further, language providing for multiple seizures of dangerous or fraudulent products restricted the power of the FDA rather than extending it as S. 1944 had proposed. Control of advertising had been passed to the Federal Trade Commission by the Wheeler-Lea Act. Finally, although the Food, Drug, and Cosmetic Act required labels to list ingredients, there was no stipulation that they be ranked by weight or volume.<sup>62</sup>

Some of the staunchest consumer defenders considered these and other changes to be utterly crippling, and dismissed the act as a complete failure or a shameless sellout to the regulated industries orchestrated by Copeland. Rexford Tugwell himself bitterly painted it a failure and placed most of the blame on Copeland, calling his sponsorship "the kiss of death."<sup>63</sup> In fairness to Copeland, however, the shortcomings of the eventual law were not entirely his fault, and his persistence surely contributed to its passage. The bill had been drafted with the idea that compromises would have to be made,<sup>64</sup> and Roosevelt certainly had not been enthusiastic about the measure even before Copeland had become involved with it. Further, historian Charles Jackson avers that Copeland's commercial ties to the Hearst chain, Fleischmann's, and others do not seem to have resulted in improprieties, despite the evident

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<sup>62</sup>Jackson, Food and Drug Legislation, pp. 193-96.

<sup>63</sup>Tugwell, "Recollections," p. 8. See also Rexford G. Tugwell, The Democratic Roosevelt: A Biography of Franklin D. Roosevelt (Garden City, N.Y.: Doubleday & Company, 1957), p. 464.

<sup>64</sup>Jackson, Food and Drug Legislation, p. 27, n. 10.

conflict of interest.<sup>65</sup> It is fitting that what started as the "Tugwell bill" would ultimately be known as the "Copeland bill," not only because Tugwell disowned it in its modified form, but also because it represented so much of Copeland's work.

Despite its shortcomings, the Food, Drug, and Cosmetic Act of 1938 was a major advance in consumer protection. It mandated, first of all, that drug manufacturers prove the safety of new products before offering them for sale to the public. This was a direct response to the Elixir Sulfanilamide tragedy of autumn 1937 when more than one hundred people died as a result of being poisoned by a new formula of a proven drug.<sup>66</sup> The act also eliminated the "fraud joker" of the Sherley Amendment, authorized the setting of tolerances for poisons that could not be completely removed from products (such as the lead-arsenate insecticide that had first drawn Rexford Tugwell into the battle), and regulated cosmetics and therapeutic devices for the first time.<sup>67</sup>

Consumers also benefited from the Federal Trade Commission's increased attention to false advertising. Prior to 1938 the FTC was restricted to acting in only those cases in which false advertisements gave a producer an

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<sup>65</sup>Jackson, Food and Drug Legislation, p. 59.

<sup>66</sup>For a brief account of this incident, see Carol Ballentine, "Taste of Raspberries, Taste of Death: The 1937 Elixir Sulfanilamide Incident," FDA Consumer 15 (June 1981): 18-21.

<sup>67</sup>Janssen, "Story of the Laws," p. 39.

unfair advantage over his competitors.<sup>68</sup> But the passage of the Wheeler-Lea Act authorized the commission also to prevent advertising that misled or cheated consumers. Although the Food and Drug Administration would probably have wielded a heavier regulatory hand on behalf of consumers, and although there is some question whether the Wheeler-Lea Act actually brought about more truthful advertising or merely put into the statutes a trend toward honesty that was occurring anyway, it is nevertheless true that the act gave American consumers better protection against false advertising than they had ever had before.<sup>69</sup>

### **Consumer Representation and the New Deal**

While the Food, Drug, and Cosmetic Act and the Wheeler-Lea Act were making real, if limited, advances in the field of consumer protection, the Roosevelt administration also attempted to give consumers official representation in the federal government. Such New Deal agencies as the Agricultural Adjustment Administration, the National Recovery Administration, the National Emergency Council, and the Bituminous Coal Commission included consumer representatives in their ranks. These consumers' proxies lacked, however, not only a guiding philosophy and clear

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<sup>68</sup>A restriction that had received the Supreme Court's blessing in 1931 in the infamous case of Federal Trade Commission v. Raladam Company (283 U.S. 643).

<sup>69</sup>"Who Shall Control Advertising?" p. 42; Pease, Responsibilities of American Advertising, pp. 131-37; and Jackson, Food and Drug Legislation, p. 193.

goals but also any real political weapons. That they existed at all was not insignificant, but their accomplishments were largely symbolic.

In the AAA, which was established in the Department of Agriculture on May 12, 1933, allowance was made for a Consumers' Counsel to counterbalance the influence of business and producer groups. Whereas the purpose of the original Triple-A was to increase purchasing power in the agricultural sector by raising prices on farm products through production controls and marketing agreements, the purpose of the Consumers' Counsel was to ensure that this was done with as little injury as possible to consumers. In other words, while one part of the AAA was trying to raise the prices paid to producers--admittedly agricultural producers who were also consumers--another part was attempting to keep prices paid by consumers from rising too much.<sup>70</sup>

This dual emphasis seemed to pit consumers against farmers, and within the AAA and the Department of Agriculture there emerged factions that tended to support one group or another. The clash over whom to serve exacerbated the personality conflicts and philosophical disagreements that had

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<sup>70</sup>This goal was sometimes called "reducing the spread": the spread being the difference between the price a farmer received for his goods and the price a consumer paid for the final product. In essence, to reduce the spread was to cut into processing and distribution profits. See Persia Campbell, Consumer Representation in the New Deal (New York: Columbia University Press, 1940), pp. 211-12; and the Democratic Party Platform for 1936, reprinted in Kirk H. Porter and Donald Bruce Johnson, comps., National Party Platforms, 1840-1964 (Urbana: University of Illinois Press, 1966), pp. 360-63; and Arthur M. Schlesinger, Jr., History of U.S. Political Parties, vol. 3: 1910-1945: From Square Deal to New Deal (New York: Chelsea House, 1973), pp. 1990-96.

marked Triple-A from the very beginning.<sup>71</sup> Certainly, this internal strife limited the effectiveness of both the Consumers' Counsel and its parent agency, the AAA.

But the counsel still enjoyed the most influence of any New Deal consumers' advocate. The main duty of the counsel was to represent the buying public at marketing agreement hearings to guarantee that neither consumers nor other groups of farmers suffered when selected segments of the farm population received beneficial agreements. Unlike its counterparts in other agencies, the office of the Consumers' Counsel wielded some real power in the agreement process. The counsel also fought with some success for open books to ensure that antitrust exemptions were not resulting in excessive profits for the protected farmers. And through its popular biweekly publication, the Consumer's Guide, the counsel's office disseminated price information, supply statistics, consumer advice, and opinion.<sup>72</sup>

The second important consumers' advocate in the New Deal, the Consumers' Advisory Board, was established by the National Industrial Recovery Act as part of the NRA's code-making machinery. Instructed at its inception "to see that nothing is done to impair the interest of those whose daily living may be affected by these agreements,"<sup>73</sup> the CAB was given only

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<sup>71</sup>Theodore Saloutos, The American Farmer and the New Deal (Ames: Iowa State University Press, 1982), pp. 114-23.

<sup>72</sup>Campbell, Consumer Representation, pp. 211-15.

<sup>73</sup>Quoted in Campbell, Consumer Representation, p. 29.

advisory powers, and thus had little chance to fulfill its charge. Moreover, American consumers did not provide the grassroots support that might have made the board a force to be reckoned with at code hearings. As Rexford Tugwell aptly put it, without popular backing the board members were "spearheads without shafts."<sup>74</sup> The CAB's task was made even more difficult by the animosity exhibited toward it by NRA officials, particularly the head of the agency, General Hugh B. Johnson, who was never convinced that the public interest and the consumer interest were not one and the same.<sup>75</sup> Finally, the code makers' emphasis on speed meant that the CAB frequently had little time to evaluate proposals and comment on them. As one scholar summarized it, the Consumers' Advisory Board "was either overwhelmed, circumvented, or ignored in the negotiating process."<sup>76</sup>

In May 1935 the Supreme Court invalidated the NRA by its decision in the case of A.L.A. Schechter Poultry Corporation v. United States of America (295 U.S. 495).<sup>77</sup> Among the many implications of the decision was that the CAB would cease to exist unless it could be attached to some other agency or

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<sup>74</sup>Quoted in James MacGregor Burns, The American Experiment, vol. 3: The Crosswinds of Freedom (New York: Knopf, 1989), p. 33.

<sup>75</sup>A discussion of the consumer interest and the public interest follows, pp. 101-103. On Johnson's view, see Campbell, Consumer Representation, p. 109.

<sup>76</sup>Bernard Bellush, The Failure of the NRA (New York: Norton, 1975), p. 46.

<sup>77</sup>The following discussion is based on Campbell, Consumer Representation, pp. 80-98.

department before the NRA officially expired at the end of the year. On July 30 the functions of the board were transferred by Executive Order to a new Consumers' Division, but still within the scaled-down and expiring NRA, so it was an impermanent solution.

This new division also absorbed the third of the New Deal consumer representative agencies, the Consumers' Division of the National Emergency Council, which had been established in the spring of 1934 to act as a liaison between the federal government and the county consumers' councils and as a seed from which a full-fledged Department of the Consumer might eventually grow. Like the CAB, the Consumers' Division of the NEC had been hamstrung by its lack of funds and friends in high places, and the situation did not improve when the two orphans were bundled together in the new division. An Executive Order of December 21, 1935, kept this division alive by assigning it to the Department of Labor, but again there was no money for its support, and in February it "went on relief as a Consumers Project . . . financed by the W.P.A."<sup>78</sup> In June 1938, after several years of disintegration, the division disappeared entirely.

One other federal consumers' representative merits some discussion: the Consumers' Counsel of the National Bituminous Coal Commission. The counsel was independent of the seven-member commission and received a separate appropriation. Because Congress had not defined what it meant by "consumer" for the purposes of the act establishing the commission, the counsel took the

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<sup>78</sup>Campbell, Consumer Representation, p. 86.

broad view that all coal purchasers, including railroads, utilities, and manufacturers, as well as household purchasers, fell under that heading. Consumer protection in the NBCC, therefore, applied to some consumers who might traditionally be classified as producers.

The situation in the NBCC was similar to that of the AAA and the NRA in that the Coal Commission existed primarily to fix prices--in this case, prices for the various grades and sizes of coal. One of the key challenges faced by the counsel was a typical one for consumers: a lack of information from which to determine if the prices were fair. At first the commission itself barred the counsel from gaining access to the pertinent statistics, but after a sharp conflict in late 1937 and early 1938 the commission was reorganized and the new chairman proved to be more forthcoming with the necessary data. At that point, coal producers tried to shut off the information flow, but the Supreme Court upheld the right of the commission to inspect the records.

As part of the information-gathering process, the counsel attempted to get domestic coal consumers to testify at hearings, but without much success. Persia Campbell has speculated that perhaps people were unfamiliar with the counsel, or that they perceived the counsel to be more concerned with large, industrial buyers than with individuals who merely used coal to heat their homes, and so were unwilling to testify. In any case, Campbell concludes, the experience of the Consumers' Counsel indicates the difficulties of trying to represent divergent groups--or even of defining who "the consumer" is.<sup>79</sup>

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<sup>79</sup>Campbell, Consumer Representation, pp. 97-98.

## **The Consumer Interest**

Another explanation for the poor showing by household coal consumers points up a larger problem faced by all consumer advocates, that is, determining what is meant by that elusive phrase, "consumer interest." Since coal expenditures represented only a small part of the average consumer's budget, the time, energy, and financial costs of preparing for the hearings and testifying at them probably seemed to outweigh the benefits, which were likely to be exceedingly small. Individual coal consumers may have decided that their efforts could be better spent in some other way. Their interest as users of coal was not a sufficient stimulus to cause them to set aside their other interests--as workers, as members of families, as residents of communities--even for a short time.

An even more exasperating obstacle faced by consumerists during the New Deal era was clarifying that the consumer interest was not, as General Johnson insisted, the same thing as the public interest. The reasoning behind conflating the consumer and the public interests may be expressed as a logical syllogism:

The public interest is everyone's interest;  
Everyone is a consumer;  
Therefore, the public interest is the consumer's interest.

Such thinking led people like Johnson to conclude that since the president was the elected representative of the entire population, he also represented and spoke for consumers, who neither needed nor deserved any special privileges or representation. There was some logic to that position; indeed everyone was a

consumer to some extent. "But," observed sociologist and consumerist Robert Lynd, "this abstracted 'everybody' is, in the hurly-burly of practical affairs, nobody."<sup>80</sup>

Gardiner Means, writing in 1934, distinguished between the public interest and the consumer interest. Means, like Tugwell, an economist from Columbia University, had been recruited by Wallace and Tugwell to study the interrelationship of the Agricultural Adjustment Administration and policies for industrial recovery. To fulfill that charge Means served on the NRA's Consumers' Advisory Board and became embroiled in the NRA's pricing policy controversy.<sup>81</sup> In his 1934 article Means argued that the consumer interest is limited to the economic sphere, while the public interest takes in all human activity. Further, the consumer interest is only a part of the economic sphere: there are also the interests of sellers, workers, owners, and producers. In short, the consumer interest is a sharply circumscribed one, whereas the public interest is much more broad and encompassing.<sup>82</sup> To confuse the consumer interest and the public interest, therefore, is to confuse the part and the whole.

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<sup>80</sup>Robert S. Lynd, "The Consumer Becomes a 'Problem,'" Annals of the American Academy of Political and Social Science 173 (May 1934): 3.

<sup>81</sup>Frederic S. Lee and Warren J. Samuels, "Introduction: Gardiner C. Means, 1896-1988," in The Heterodox Economics of Gardiner C. Means: A Collection, eds. Frederic S. Lee and Warren J. Samuels (Armonk, N.Y.: M. E. Sharpe, 1992), p. xxiii.

<sup>82</sup>Gardiner C. Means, "The Consumer and the New Deal," Annals of the American Academy of Political and Social Science 173 (May 1934): 14-15.

A specific example--cotton shirts--might help to clarify the difference between the consumer interest and the public interest. In the case of cotton shirts, the consumer interest is most appropriately represented by low price and high quality; as price approaches zero and quality approaches infinity, the consumer interest approaches its maximum. The public interest, on the other hand, dictates that other interests must be taken into consideration. An extremely low selling price is not in the best interest of the salesperson, the person who sews the shirts, the transporter, the textile manufacturer, the cotton grower, or any number of other participants in the cycle, including federal and local governments and their various tax-supported programs; all of these interested parties would receive less income from such a one-sided transaction, especially if the product were of high quality and repeat sales thus infrequent. The most extreme case may not even be actually in the interest of the consumer, who would quite likely face high taxes, shortages of goods, and unemployment if the consumer interest were placed above all else.

There has never been any real chance that the consumer interest in America would be pursued to such a degree that the public interest was damaged: producers and elected officials have made sure of that. And the New Deal era was no exception to that rule. The problem faced by consumer advocates in the 1930s--indeed, throughout American history--was that the public interest was defined without considering the consumer interest as a separate category within it.

## Conclusion

In light of the difficulties faced by consumerists in this period--industry opposition, congressional ties to industry and agriculture, consumer apathy, presidential indifference, and agency resistance--it is not surprising that the original, more stringent Tugwell bill fell by the wayside or that consumer representatives wielded little power in New Deal agencies. Although some of these obstacles might be overcome, any one of them had virtual veto power over a given consumer protection measure. Most consumerists therefore argued the need for a different philosophy to replace what Lynd called "the old, deeply grooved line of thinking" that saw consumers as the effect, rather than the cause, of production.<sup>83</sup> The "new" philosophy they sought was actually as old as commerce itself, and probably received its best definition in Adam Smith's The Wealth of Nations when he wrote: "Consumption is the sole end and purpose of all production; and the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer . . . ." For those accustomed to the other view, however, this old concept seemed almost revolutionary. And if in peacetime there was little chance that the United States would reshape its economic system along the lines argued by Smith, the coming of the Second World War in 1939 guaranteed that no such change would take place for quite some time, if ever.

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<sup>83</sup>"Consumer Becomes a 'Problem,'" p. 3.

## CHAPTER FOUR

### Warren G. Magnuson: The Apprenticeship, 1936-1944

"Too many men have a desire to go to Congress to be statesmen. We will leave that to the distinguished members of the United States Senate. Warren G. Magnuson is concerned only with being a good, sincere worker for the welfare of the people of this District."<sup>1</sup>

#### Introduction

The years from 1936 to 1944 may rightly be called Warren G. Magnuson's apprenticeship because it was then that he entered the ranks of Congress and advanced from the status of novice to that of master practitioner of the legislative craft. He first ran for election to the House of Representatives in 1936, winning in a Democratic landslide, and was reelected three times before moving on to the Senate in 1944. Magnuson learned a great deal in those years, including how to time the introduction of a bill to give it the best chance of passage (a skill he said he picked up from FDR<sup>2</sup>), the value of allowing opponents to have their say in order to prevent hard feelings, and

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<sup>1</sup>Warren G. Magnuson in a 1936 campaign speech, WGM Papers, accession 3181-1, box 10, folder 12, Manuscripts Division, University of Washington Libraries, Seattle.

<sup>2</sup>Transcript, Warren G. Magnuson Oral History Interview, 14 March 1978, by Michael L. Gillette, Lyndon B. Johnson Library, Austin, Texas, p. 12.

above all the importance of gaining concrete results for his constituents--that is, the fine art of "pork-barreling."

These were not, however, years during which he gave much thought to consumer protection. The exigencies of the depression and World War II precluded his attending closely to consumer affairs, and even if he had wanted to take the lead in that area, his position on the House Naval Affairs Committee was hardly the ideal platform. He could not entirely ignore consumer concerns--his papers from that era include dozens of letters from constituents asking for his help on such issues as grade labeling and, during the war, rationing and price controls--but he undoubtedly gave consumer protection minimal attention.

By 1944, Magnuson was still far from a consumer advocate. Nor could it be said that he had established a firm political philosophy, although he seemed to favor enlarging the government's sphere of activity. He had, however, gained valuable experience in Congress, and his hard work for his constituents had favorably impressed the voters of Washington. They elected him to the Senate that year, sending him to replace his mentor, Homer Bone, who had been appointed to a federal judgeship. Magnuson's apprenticeship came to an end when he ascended to the upper house.

### **1936: Election to the House of Representatives**

In 1936, as the bill to strengthen the Food and Drugs Act wended its way through the labyrinth of hearings, amendments, and behind-the-scenes

negotiations that Woodrow Wilson called "the dance of legislation,"<sup>3</sup> Warren G. Magnuson faced a dilemma. His dilemma had nothing to do with consumer protection; it concerned his political future. He had been elected to the post of King County Prosecuting Attorney in 1934, and more than two years remained of his four-year term. But Magnuson was a young man in a hurry, and already the limited prospects of the prosecutor's job seemed to chafe just as once had the rolling plains of the Red River Valley. He again longed for broader horizons, but the vista was now a political one. Too young to be considered seriously for the governorship, and with no Senate seat to be filled in Washington State that year, Magnuson concluded that the House of Representatives offered his best chance for advancement. Therein, however, lay his dilemma. The incumbent congressman from his district was his friend and former classmate at the University of Washington, Marion Zioncheck. Magnuson deeply respected Zioncheck and was reluctant to run against him. Magnuson's choices were clear, and neither appealed to him: he could cast friendship aside and run for Congress against Zioncheck, or he could remain in the prosecutor's office while opportunities for advancement passed him by, perhaps never to return.

As early as December 1935, friends and advisors had encouraged Magnuson to oppose Zioncheck for the good of the Democratic party and for his own political advancement. On December 3, for example, Kitsap County

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<sup>3</sup>Eric Redman used this phrase as the title of his book, The Dance of Legislation; Redman apparently found it in Sidney Baldwin's Poverty and Politics; and Baldwin found it in Wilson's Congressional Government.

Assessor Douglas T. Bubar wrote to Magnuson: "We may have to conscript you for United States Congress as Marion Zioncheck is losing out in this County, and if he does not get his feet back to earth in the next month or two, we will organize definitely to back some other candidate."<sup>4</sup> Three months later a friend of Magnuson's noted that "The time seems propitious for you to beat Zionchek [sic] for a seat in Congress. There seems to be just one political question upon which the whole world is agreed--that Zionchek is through."<sup>5</sup> Until summer, however, Magnuson remained noncommittal.

February may have been a bit early to pronounce Zioncheck "through," but his behavior had already begun to reveal his mental instability that would later be diagnosed as manic-depression. The first outward sign of his deterioration seems to have been his taking over the telephone switchboard at a Washington, D.C., apartment building and ringing all of the rooms on New Year's Eve, 1935.<sup>6</sup> This prank earned him an arrest for disorderly conduct.

In April 1936 Zioncheck was arrested again, this time for driving seventy miles per hour through the capital city's streets. He failed to appear

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<sup>4</sup>Douglas T. Bubar to WGM, 3 December 1935, WGM Papers, accession 3181-1, box 7, folder 3.

<sup>5</sup>Ethel Anne Farley to WGM, 27 February 1936, WGM Papers, accession 3181-1, box 3, folder 6.

<sup>6</sup>The following discussion of Zioncheck's spectacular denouement is based on the following newspaper accounts: "Zioncheck Put on Series of Tall Escapades," San Francisco Chronicle, 8 August 1936, p. 9; "Zioncheck Ends Life in 5-Story Leap," San Francisco Chronicle, 8 August 1936, pp. 1, 9; "Zioncheck Killed in Five Story Leap," New York Times, 8 August 1936, pp. 1, 11; and, especially, the Seattle Post-Intelligencer and the Seattle Times of 8 and 9 August 1936.

for trial, fought police who served a warrant, and when he did finally appear before a judge, behaved so badly that he was locked in a cell and fined.

Soon after that episode he married a young stenographer and went on a tumultuous honeymoon during which he was twice ticketed for speeding, managed to get into a head-on collision while driving in Puerto Rico, "invaded" a German battleship, was tossed out of a hotel in the Virgin Islands, and waded into the fountains at New York City's Rockefeller Center.

Returning to Washington, D.C., Zioncheck continued his antics. He fought with his landlady, and when his new bride walked out on him, he recklessly sped through the capital's streets looking for her. He was arrested again and sent to a hospital for observation, but he escaped and went to his office, where he barricaded himself for eighteen hours.

Finally, he agreed to go home to Seattle for a rest. There he announced that "the show's over"--but it was not. Zioncheck stated that he would not run again for Congress, then proceeded to file for reelection anyway. On August 7 he leapt to his death from his fifth-floor office in Seattle's Arctic Building.

Magnuson, for his part, had perceived early that Zioncheck's troubles could spell opportunity for a young Democrat such as himself. In a letter dated February 15, 1936, he admitted that it was "entirely possible" that he would "take a crack at" the congressional race.<sup>7</sup> By May, the Seattle Star was touting him as "the leading contender" to succeed Zioncheck, and the Yakima

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<sup>7</sup>WGM to John J. Sullivan, WGM Papers, accession 3181-1, box 7, folder 4.

Republic boldly proclaimed: "Magnuson Seeks Zioncheck Post."<sup>8</sup> The candidate-to-be, however, made no clarifying statement until late July, when he finally proved the prognosticators correct by filing for the position.<sup>9</sup>

On the day of his death, Zioncheck happened to meet Magnuson on a downtown Seattle street, and the two spoke briefly about the upcoming election. Magnuson later recalled that Zioncheck had explained his reentering the congressional race as a way to allay the concerns of friends. "By taking the political platform," Magnuson reported, Zioncheck thought "he could show all his friends that he was alright." The two wished each other luck in the primary and went their separate ways. Soon after they parted, Magnuson received a telephone call informing him that Zioncheck was dead.<sup>10</sup>

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<sup>8</sup>Arthur Schoeni, "Political Scramble on for Congressional Seats," Seattle Star, 26 May 1936, p. 11; and "Magnuson Seeks Zioncheck Post," Yakima Republic, 23 May 1936, clipping in WGM Papers, accession 3181-3, box 16, scrapbook 10.

<sup>9</sup>"W. G. Magnuson to Enter Race for Congress," Seattle Post-Intelligencer, 30 July 1936, p. 1; and "Magnuson to Fight Zioncheck," Seattle Star, 30 July 1936, p. 2.

<sup>10</sup>"Magnuson Tells of Last Chat," Seattle Post-Intelligencer, 8 August 1936, p. 2.

This account, published the day after the incident, differs in some significant ways from the story Magnuson told interviewer William Prochnau in October 1971. (William Prochnau, interviewer, "A Conversation With a Senator: Warren G. Magnuson," taped October 1971, broadcast on KVOS-TV, Bellingham, Washington, December 1971. WGM Papers, accession 3181-9, box 9, videotapes 67 and 68.) In describing the event to Prochnau, Magnuson seemed to recall Zioncheck's suicide as having taken place on a Wednesday (it was actually on a Friday) and he confessed that he had been tired and had essentially given Zioncheck the brush-off, promising to meet him "tomorrow or Friday" to talk. Perhaps Magnuson was confusing two different meetings.

Further, the newspaper account states that Magnuson had been notified of Zioncheck's death "several hours later," whereas his narrative of the events

Magnuson went on to win the nomination in the September primary, outpolling his closest opponent by a three-to-one margin in a nine-candidate race. Perhaps he would have gained the party's nod even if Zioncheck had lived to run against him, because the incumbent had convinced more and more people that he was "through," and Magnuson had endeared himself to many party regulars and labor leaders. In any event, Magnuson's nomination was virtually guaranteed by Zioncheck's suicide and the subsequent swinging of the party's left wing into the Magnuson camp.

The more radical Democrats in the area probably exercised greater political power in those days than at any time before or since. They congregated in the Washington Commonwealth Federation (WCF), an alliance of labor union members, government project workers, Grangers, and the remnants of the Unemployed Citizens' League, which had set up a kind of barter system in Seattle during the early 1930s. The WCF advocated old-age

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for Prochnau indicated that he had been called immediately and had rushed to the scene, where Zioncheck's body still lay.

Interestingly, the brush-off account fits better with Zioncheck's brother-in-law's narrative of the Congressman's final hours than does the cheerful meeting described in the newspaper. William Nadeau, who was the last person to see Zioncheck before he jumped, said that his brother-in-law had felt betrayed by his friends: "He didn't care whether he was elected or not; he wasn't worrying about that. It was the thought that his old friends disliked him that hurt." "Nadeau Tells of Final Hour," Seattle Times, 8 August 1936, p. 3. It is quite possible that Zioncheck had felt betrayed by Magnuson's filing for Congress before his own withdrawal announcement and by Magnuson's unwillingness to speak to him that day.

pensions, more aid for the unemployed and underemployed, and a new economic system based on the idea of "production-for-use."<sup>11</sup>

For the members of the federation, production-for-use, rather than any specific candidate or office, was the main ballot issue in 1936. Production-for-use was a nationwide movement that emerged from the depression-era paradox of an insufficient supply of consumer goods while productive capacity remained undiminished. Advocates of the movement argued that the American economy was kept in a state of "artificial scarcity" by the system of production for sale (capitalism).<sup>12</sup>

In Washington, state Initiative 119 called for the implementation of production-for-use to put an end to unemployment by centralizing the production and distribution of goods and services under state agencies.<sup>13</sup> The plan would essentially establish a separate, non-cash economic system, with farms and factories run by the otherwise unemployed, state-operated stores to sell the output, and scrip serving as currency.<sup>14</sup> Production would not be regulated by demand--that is, the sum total of individuals' abilities to purchase--but by the economy's capacity to produce. In addition to putting the

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<sup>11</sup>For a contemporary discussion of the Washington Commonwealth Federation and the political situation in Washington, see Russell B. Porter, "Left Group Tries to Help Roosevelt," New York Times, 3 September 1936, p. 9.

<sup>12</sup>Harold Loeb, Production for Use (New York: Basic Books, 1936), p. 62.

<sup>13</sup>"Production-Use Bill on Ballot," Seattle Times, 2 August 1936, p. 1.

<sup>14</sup>Albert Anthony Acena, "The Washington Commonwealth Federation: Reform Politics and the Popular Front," (Ph.D. dissertation, University of Washington, 1975), pp. 49-50, 115.

unemployed to work, the scheme would aid consumers. Their needs and desires would no longer go unsatisfied because they lacked money; the abundance that would result from running the economy at full capacity would be divided according to the principle of "give to each that which he needs."<sup>15</sup> The plan smacked of socialism, and Howard Costigan, executive director of the WCF, admitted to a New York Times reporter that the success of the initiative would mean the eventual replacement of capitalism with a kind of democratic socialism.<sup>16</sup>

Such a radical plan was doomed to failure, even in a state radical enough for Postmaster General and Democratic Party Chief James Farley to dub it the "soviet of Washington," but the WCF took care to hedge its bet by endorsing individual candidates for election as well.<sup>17</sup> In the event that the initiative went down to defeat--and it did, resoundingly, with only 20 percent of voters approving<sup>18</sup>--at least the federation might have some friends in office.

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<sup>15</sup>"Production Studies: An Interview with Harold Loeb," Plan Age 1 (November 1935): 15. See also Loeb's book Production for Use; as well as Arthur Feiler, "The Evolution of the Consumer," Annals of the American Academy of Political and Social Science 196 (March 1938): 1-8; and Broadus Mitchell, "Brief for the Consumer," Annals of the American Academy of Political and Social Science 196 (March 1938): 9-13.

<sup>16</sup>Porter, "Left Group," p. 9.

<sup>17</sup>Ironically, on the back page of a 1936 election flyer entitled "Washington Commonwealth Federation Offers ISSUES not INDIVIDUALS," the WCF listed the slate of individuals it was backing. WGM Papers, accession 3181-1, box 12, folder 8.

<sup>18</sup>Richard C. Berner speculates that the time for production-for-use had come and gone by 1936 and that it probably would have fared better in 1932. Seattle in the 20th Century, vol. 2: Seattle, 1921-1940: From Boom to Bust

The WCF's candidates did far better than Initiative 119--probably more because they were Democrats than because of the WCF's influence--and in October 1937 the New Republic could report that both of Washington's U.S. Senators and the majority of its House delegation were "friendly" to the federation.<sup>19</sup>

One of the candidates the WCF promoted in the 1936 election was Congressional hopeful Warren G. Magnuson. Marion Zioncheck had been the darling of the WCF, and it was at one of their meetings that he had announced his intention not to seek reelection. The federation's first reaction to this news had been to support its own executive director, Howard Costigan, for the position. After Zioncheck's suicide, however, and after a private meeting during which Magnuson pointed out to the WCF's representatives that he already had the support of the Teamsters--clearly implying that he expected to win and that the federation would do well to fall in line--the WCF decided to back the young prosecutor.<sup>20</sup>

Magnuson sought and welcomed their support, and he was definitely sympathetic to their efforts, but he was hardly beholden to the organization for his success at the polls in the November election. He also enjoyed the backing

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(Seattle: Charles Press, 1992), p. 377.

<sup>19</sup>"Progressives in Seattle," New Republic 92 (20 October 1937): 285.

<sup>20</sup>J. W. Gilbert, "Solon Quits Politics Due to Illness of Mother," Seattle Times, 2 August 1936, p. 1; "Magnuson Gets W.C.F. Backing," Seattle Times, 20 August 1936, p. 11; and Acena, "Washington Commonwealth Federation," p. 127.

of the area's large Scandinavian population, the unions, and, of course, the Democratic Party.<sup>21</sup> Moreover, he campaigned far more as a New Deal Democrat than as a spokesman for production-for-use, so to call him a "production-for-use candidate," as did the New York Times,<sup>22</sup> hardly gives a true picture of his platform or of his broad appeal among his constituency. Magnuson did far better in the election than did the production-for-use initiative, outpolling Republican Fred J. Wettrick 103,709 to 58,665.

### **Legislative Interests: Local, Regional, National**

Upon being sworn in at the beginning of the Seventy-fifth Congress, the young man who inherited Marion Zioncheck's House seat also inherited his place on the House Naval Affairs Committee. Magnuson was assigned to the subcommittee that oversaw all construction projects and repair work at the various navy yards,<sup>23</sup> a fortunate position for him to be in for several reasons. First, he had had a personal interest in ships and the sea since about age nineteen when he sat and watched the large, seagoing vessels at Vancouver.<sup>24</sup> Second, increasing tensions in Asia and Europe, coupled with

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<sup>21</sup>"Magnuson Wins; State's Solons All Democratic," Seattle Times, 4 November 1936, p. 9.

<sup>22</sup>"Some Townsend Votes Effective," 10 September 1936, p. 2.

<sup>23</sup>WGM to Bert Kinsman, 2 February 1937, WGM Papers, accession 3181-2, box 45, folder 32.

<sup>24</sup>Mrs. Jermaine Magnuson, his widow, also recalls that he worked for a while for a shipping company, and traveled to China in their employ. Telephone conversation with author, 24 January 1991. Further, Magnuson had

the United States's disarmament efforts of the previous decade, made a naval buildup a pressing national concern and the House Naval Affairs Committee an exciting place to be. And third, the Puget Sound Navy Yard was situated in his district at Bremerton.<sup>25</sup> Thus, the freshman Congressman could specialize in a field of work he particularly enjoyed while simultaneously aiding in the crusade for national preparedness and ensuring the continued flow of federal money to one of the largest employers in his district.

In 1938, during his first reelection campaign, Magnuson stressed his success in gaining funds for the Navy Yard, writing: "As a member of the House Committee on Naval Affairs, I with the aid of my colleagues, was responsible for obtaining an allocation of over Twenty-seven million dollars for the construction at the Puget Sound Navy Yard in Bremerton."<sup>26</sup> Perhaps, one might say, he exaggerated his own role in gaining the funds. This letter was, after all, part of a reelection campaign, and in those days, when rules of seniority were far more closely followed than they are today, how much power could a freshman Congressman wield? But it seems as if his claims were not

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joined the Naval Reserve during his college days.

<sup>25</sup>Although Senator Homer Bone played a large part in the isolationist drive in Congress, the region's physical remoteness from Europe, where American belligerency seemed most likely in the 1930s, took some of the edge off isolationist sentiment. As a result, Washingtonians felt somewhat more free to advocate a firm American position in world affairs, and by 1940 they were typically more willing to sell war supplies to Britain and France. "Politics on the West Coast," Fortune 21 (March 1940): 141.

<sup>26</sup>WGM to Political Editor of Seattle Post-Intelligencer, 29 August 1938, WGM Papers, accession 3181-2, box 46, folder 42.

far off the mark. He introduced and secured approval of a bill to appropriate money for construction of a graving dock at Puget Sound Navy Yard and offered an amendment to the Naval appropriations bill requiring that all new ships purchased by the Navy be constructed at government-owned yards--such as the one at Bremerton.<sup>27</sup> By 1941 he had been so successful at guiding funds to his district that he could write to the editor of the Bremerton Sun: "Be assured . . . that Bremerton is going to be kept in good shape. Naval Affairs Committee has been meeting in full session almost daily. My only trouble there is that they are starting to call me a bandit."<sup>28</sup> Magnuson probably cared little what they called him in the committee, as long as it did not prevent him from securing funds for the Puget Sound Navy Yard.

During his years in the House, Magnuson also aggressively pursued federal funds for the creation or continuation of other local and regional projects. In 1937, for example, he backed H.R. 6551 to make the Civilian

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<sup>27</sup>See H.R. 7877, Cong. Rec., 75th Cong., 1st sess., 1937, 81, pt. 7: 7200; and amendment to H.R. 9218, Cong. Rec., 75th Cong., 3d sess., 1938, 83, pt. 4: 3687.

Attempts to take private industry out of the shipbuilding business were closely tied to isolationist sentiment during the 1930s. From 1934 to 1936 a Senate committee headed by Gerald P. Nye of North Dakota investigated financiers and armaments manufacturers to determine if they had played a part in drawing the United States into World War I. Private shipbuilders, the committee concluded, should be closely watched or driven out of the business of building for the U.S. Navy. Wayne S. Cole, Roosevelt and the Isolationists, 1932-45 (Lincoln: University of Nebraska Press, 1983), p. 159.

On Magnuson's neutrality and support for the war referendum idea, see below, pp. 125-30.

<sup>28</sup>WGM to Julius Gius, 24 July 1941, WGM Papers, accession 3181-2, box 49, folder 5.

Conservation Corps a permanent institution, giving particular attention to preserving CCC camps near Bremerton and at Sand Point in Seattle.<sup>29</sup> He played a part in securing funding for the Mercer Island Bridge and the Spokane Street Viaduct in Seattle. And by sending telegrams to the Seattle papers informing them of the news, he tacitly took credit in 1941 for the establishment of Whidbey Island Naval Air Station and for the awarding of government contracts to Boeing.<sup>30</sup>

Probably the most ambitious project he took on was the construction of the Alaska Highway. A committee appointed by Congress had reported in 1933 that the road from Washington to Alaska was feasible and necessary, but nothing had been done in the intervening years to bring the project to fruition. Over a five-year span Magnuson introduced and nurtured legislation to negotiate an agreement with Canada concerning the construction of the road, to finance it, and finally to build it.<sup>31</sup> From 1938 to 1944 he also served as the chairman of the joint Canadian-U.S. Alaska International Highway Commission.

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<sup>29</sup>The bill passed, becoming Public Law 75-163. For Magnuson's stance, see Cong. Rec., 75th Cong., 1st sess., 1937, 81, pt. 9: A1183-84; WGM to J. A. Harader, 2 April 1937, WGM Papers, accession 3181-2, box 1, folder 8; and WGM to Bill Connor, 11 February 1937, WGM Papers, accession 3181-2, box 1, folder 8.

<sup>30</sup>WGM to T. D. Lake, 20 October 1938, WGM Papers, accession 3181-2, box 2, folder 15; "Underwood Back; Says More Defense Business Coming Here," Seattle Business, 10 July 1941, p. 1; "Navy Selects Whidby [sic] Island For Air Base," Seattle Post-Intelligencer, 15 July 1941, p. 1; and "U.S. Awards Boeing 3 Million Contract," Seattle Post-Intelligencer, 19 July 1941, p. 4.

<sup>31</sup>See, for example, H.R. 6069 (1937) and H.R. 9271 (1940).

Magnuson's motivation in pushing for the road in the late 1930s was clear: to aid in the development of Washington State by strengthening its historic ties to Alaska. Seattle had served as the embarkation point for aspiring gold miners during the Alaska gold rush at the turn of the century and had hosted the Alaska-Yukon-Pacific Exposition of 1909, further cementing the link between the Puget Sound area and the Land of the Midnight Sun. A modern highway seemed a logical step toward improved communications and trade between the two regions.

Describing the road as a "worth-while project so vital to our section of the country," Magnuson vowed that the people of his community would support the work of the Canadian and U.S. officials, "so that the near future will see Seattle the terminus of a great highway running north into the vast untouched territory of British Columbia, the Yukon and Alaska."<sup>32</sup> He argued that a road to Alaska would assure the economic growth of the Pacific Northwest but carefully added that "all America will be caught in its resulting benefits."<sup>33</sup> Even in 1941, as the country moved toward war and the project came to have obvious national defense implications, Magnuson continued to advocate the road as much for its regional economic benefits as for its military uses.<sup>34</sup> Only after the United States actually entered the war--and especially after the

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<sup>32</sup>Cong. Rec., 75th Cong., 3d sess., 1938, 83, pt. 10: A2082-83.

<sup>33</sup>Cong. Rec., 75th Cong., 1st sess., 1937, 81, pt. 10: 1777.

<sup>34</sup>Cong. Rec., 77th Cong., 1st sess., 1941, 87, pt. 1: 1134; pt. 13: A3750-51; and pt. 14: A4923-25.

Japanese attacked the Aleutian Islands--did he give greater emphasis to the road's utility as a part of the national defense network.<sup>35</sup> Despite this change of rationale, however, his main goal in pushing for the highway remained advancing the economic development of the Northwest.

In addition to the work he did specifically for his district, state, or region, Congressman Magnuson also supported certain national legislation that had special implications for some of his major supporters at home. Most of these measures pertained to economic recovery or redistribution of wealth under President Roosevelt's New Deal. Magnuson firmly believed that his constituents had entrusted him with the task of supporting FDR's economic undertakings, and he pledged "to support the President of the United States in his attempt to improve the lot of those less fortunate."<sup>36</sup>

Magnuson's first speech on the floor of the House demonstrated both his commitment to aiding the country's "less fortunate" and his eagerness to serve his own constituents. The occasion was his introduction of an amendment that

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<sup>35</sup>One ironic twist deserves mention here. After the United States entered the war, the Army took it upon itself to build the road. The Army's route, however, was chosen because it linked several Canadian airfields. The economic usefulness of the road was thus abandoned in favor of its military value and, unfortunately for Magnuson, it lay far to the east of his (and the Commission's) preferred route. Seattle--in fact the whole state of Washington--which was supposed to benefit economically from the road, was entirely left out. See Magnuson's remarks opposing the shift in Cong. Rec., 77th Cong., 2d sess., 1942, 88, pt. 9: A2147-2149.

<sup>36</sup>WGM to Austin Sebring (Secretary-Treasurer of Washington Old Age Pension Union, Bremerton), 30 November 1937, WGM Papers, accession 3181-2, box 10, folder 2.

enabled self-help programs to receive federal assistance.<sup>37</sup> Seattle had a vigorous self-help movement during the depression, most notably in the shape of the old Unemployed Citizens' League and later groups like the WCF that advocated local production-for-use. Although Magnuson perceived his amendment as perhaps the opening wedge for major economic reform,<sup>38</sup> he also recognized its political appeal at home. As he observed in a letter to a political ally: "I managed to get through my Production for Use amendment . . . which ought to satisfy our P.F.U. advocates in Seattle."<sup>39</sup>

The needs of the unemployed and those beyond their working years also received Magnuson's attention. A friend of unemployment compensation and pensions for the aged since his days in the Washington legislature, he worked to ease qualification restrictions under Social Security and to increase the amounts disbursed.<sup>40</sup> That his district included such organizations as the

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<sup>37</sup>Cong. Rec., 75th Cong., 1st sess., 1937, 81, pt. 5: 5036-37.

<sup>38</sup>Magnuson commented in a telegram of 26 May 1937 to the editor of the Seattle Sunday News: "this is the first time that Congress specifically has approved production for use principle[.] Now we are getting somewhere." WGM Papers, accession 3181-2, box 1, folder 23. See also WGM to Cyrus E. Woodward, President, Production for Use Association (Seattle), 29 May 1937, WGM Papers, accession 3181-2, box 45, folder 70.

<sup>39</sup>WGM to Howard MacGowan, WGM Papers, accession 3181-2, box 45, folder 34.

<sup>40</sup>Magnuson considered the Social Security program, which had been instituted in 1935, too restrictive. He favored a pension system similar to that of Sweden which, he wrote, "pays a definite amount to all applicants when they have reached a certain age. No investigation is involved . . ." WGM to Roy F. Everett, 7 December 1937, WGM Papers, accession 3181-2, box 2, folder 4.

He was particularly opposed to any requirement that a recipient of an old-age pension take a pauper's oath, calling such a requirement "one of the

WCF, the remnants of the Unemployed Citizens' League, and a sizable Old Age Pension Union no doubt crossed his mind, but his political philosophy certainly embraced the idea of extending aid to the needy.

Finally, labor also represented an area of emphasis with both national and local implications for Magnuson. As an ice hauler in college he had been a member of the Teamsters' Union; as a congressman from Washington's First District he represented a constituency that included the city (and port) of Seattle--always a hotbed of labor activity; and as a New Deal Democrat he was expected to support government policies and laws that improved the condition of working people. It would seem that labor issues were a natural for him, and so they were. He described himself as "strongly pro-labor,"<sup>41</sup> and admitted on at least one occasion that he voted for a bill not because he understood it thoroughly but because certain unions wanted it to pass.<sup>42</sup> One labor measure to which he did give ample thought was the National Labor Relations Act. He called it "one of the most forward-looking pieces of legislation enacted

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most vicious features of the present Old Age Pension Act." WGM to David Miller, 25 November 1938, WGM Papers, accession 3181-2, box 9, folder 44.

In 1940 he was still pushing for "an adequate Old Age Pension for the people of the United States." He wrote: "Whether it be Townsend, General Welfare Act, or any other--just so long as it is National and uniform I am for it. Our State system has proven a dismal failure and our only solution lies in the passage of a National Old Age Pension." WGM to J. B. Donley, 19 March 1940, WGM Papers, accession 3181-2, box 11, folder 11.

<sup>41</sup>WGM to Louis R. Huber, 2 April, 1937, WGM Papers, accession 3181-2, box 1, folder 9.

<sup>42</sup>WGM to Arthur Brine, 7 July 1937, WGM Papers, accession 3181-2, box 45, folder 10.

by any Congress" and opposed efforts to alter it.<sup>43</sup> Magnuson also backed legislation to establish minimum wages and maximum hours.<sup>44</sup> In his campaign for reelection in 1938, he highlighted his work on labor issues, noting "My record on legislation, affecting particularly labor, is one to which I point with extreme pride."<sup>45</sup> And even as late as 1942, after Magnuson's success in aiding the naval buildup and his work for the Alaska Highway, journalist Richard Neuberger summed up the Washington congressman's interests with the comment that he "stress[es] labor legislation."<sup>46</sup>

Despite his emphasis on local and semi-local issues, Magnuson did find time to attend to problems that were national in scope, and these illustrate perhaps better than anything else the continuing development of his political philosophy. The main characteristic of this emerging philosophy would have come as no surprise to anyone who remembered his activities in the Washington State Legislature: it was a willingness to extend the federal umbrella over greater numbers of American citizens. In 1937, for example, he sponsored the House version of Senator Bone's bill to marshal federal resources

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<sup>43</sup>WGM to John M. Christenson, 10 June 1937, WGM Papers, accession 3181-2, box 8, folder 3; and WGM to A. N. Lorig, 17 May 1938, WGM Papers, accession 3181-2, box 11, folder 21.

<sup>44</sup>WGM to R. J. Allen, 25 May 1938, WGM Papers, accession 3181-2, box 9, folder 44.

<sup>45</sup>Speech[?], 10 October 1938[?], WGM Papers, accession 3181-2, box 52, folder 13.

<sup>46</sup>Richard Neuberger, "Progressives in Congress," Common Sense 11 (March 1942): 85.

against cancer. At that time cancer was thought to be a "dirty" disease, and as one writer later noted, "even mentioning the topic required the same bravado it would have taken a member of Congress to advocate legalizing marijuana in 1965."<sup>47</sup> Upon its passage this bill became known as the Cancer Control Act of 1937, and its main outcome was the establishment of the National Cancer Institute.

Magnuson also proved ready to expand the federal role in civil rights: backing a federal anti-lynching law,<sup>48</sup> repeatedly voicing his support for an Equal Rights Amendment to protect the rights of women,<sup>49</sup> and voting in favor of a bill to outlaw the poll tax, which was long used by the states to control access to the franchise.<sup>50</sup>

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<sup>47</sup>James Fallows, Warren G. Magnuson: Democratic Senator from Washington (pamphlet), The Ralph Nader Congress Project, Citizens Look at Congress, (Washington, D.C.: Grossman, 1972), p. 3.

<sup>48</sup>WGM to Harold C. Bailey, 26 April 1937, WGM Papers, accession 3181-2, box 8, folder 2.

<sup>49</sup>See, for example, WGM to Bremerton Business and Professional Women's Club, 23 October 1936, WGM Papers, accession 3181-1, box 7, folder 16; WGM to Florence K. Latimer, 29 April 1940, WGM Papers, accession 3181-2, box 12, folder 6; and WGM to Louise Clement, 3 March 1944, WGM Papers, accession 3181-2, box 18, folder 31.

On at least one occasion, however, he promised to vote against an ERA bill. See WGM to Mary R. Murphy, 18 March 1938, WGM Papers, accession 3181-2, box 9, folder 45.

<sup>50</sup>See the debate and vote on H.R. 1024, Cong. Rec., 77th Cong., 2d sess., 1942, 88, pt. 6: 8092-93, 8174; Walter White to WGM, 15 October 1942, WGM Papers, accession 3181-2, box 50, folder 18; and the vote on H.R. 7, Cong. Rec., 78th Cong., 1st sess., 1943, 89, pt. 4: 4889.

His work in civil rights, his actions on behalf of labor, his efforts to provide unemployment and old-age pensions, and his overall pro-New Deal stance all attest that Magnuson was not reticent about allowing the federal government into previously unexplored territory when he thought the intrusion was likely to benefit the people. In short, if he thought the cause were a good one, Magnuson was quite willing to see government enlarged to achieve it.

### **Magnuson, FDR, and War**

The major issue under consideration in the United States by the late 1930s was the country's place in world affairs, particularly its role in a possible European war. Many Americans saw the growing signs of trouble long before the actual shooting started in September 1939; by the middle of the 1930s, neutrality and preparedness had become significant topics of conversation both on the floors of Congress and on Main Street, U.S.A.

For Magnuson, the prospect of American belligerency was of particular import not only because of the potential dangers to the country posed by war and his position on the House Naval Affairs Committee, but also for personal political reasons. In his 1936 campaign he had taken a firm anti-war stance. The Nye Commission had concluded its work in the Senate that year, and its reports implicating profit-seeking munitions industries in American involvement in the Great War had pushed isolationist sentiment to new heights.<sup>51</sup> Influenced perhaps by the popularity of isolationism or by his

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<sup>51</sup>See Cole, Roosevelt and the Isolationists, pp. 141-62.

mentor, isolationist Homer Bone, who had served on the Nye Commission, Magnuson had gone on record in 1936 as favoring the platform of the National Council for Prevention of War. He had also written of his belief that "adequate defenses and popular referendums on war" could maintain world peace.<sup>52</sup> Candidate Magnuson had promised to work to prevent American involvement in war; Congressman Magnuson had to do the same or risk being branded a liar--and a one-term liar at that. The last thing he wanted to do as a member of Congress was to play a part in leading the country down the path to war.

During his first term in the House, Magnuson had an opportunity to act on his anti-war beliefs when Congressman Louis Ludlow of Indiana introduced his resolution calling for a constitutional amendment that would require a national referendum prior to a declaration of war. As one might expect based on his campaign statements, Magnuson at first supported Ludlow's resolution, signing the petition to have it released from the Judiciary Committee where it languished without action.<sup>53</sup> On January 10, 1938, however, after Democratic National Committee Chairman James Farley had lobbied against the resolution and Speaker William Bankhead had read to the House a scathing letter from the President opposing the referendum, Magnuson had a

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<sup>52</sup>Gilbert Stinger, Associate Secretary for Public Relations, National Council for Prevention of War, to WGM, 12 October 1936, WGM Papers, accession 3181-1, box 7, folder 14; and WGM to Bremerton Business and Professional Women's Club, 23 October 1936, WGM Papers, accession 3181-1, box 7, folder 16.

<sup>53</sup>WGM to P.O. Bersell, 9 August 1937, WGM Papers, accession 3181-2, box 8, folder 2.

change of heart. Along with forty-three other Democrats who had signed the discharge petition, he bowed to intense White House pressure and voted against bringing the referendum to the floor.<sup>54</sup> Just four days later, Magnuson introduced his own resolution which called for a referendum only if American troops were to be sent into battle beyond U.S. territorial borders.<sup>55</sup> But the Ludlow Resolution fight had sounded the death knell for the war referendum issue, and Magnuson's resolution received little attention. Despite its failure--and despite his own vote against the Ludlow measure--Magnuson remained an advocate of the idea of a citizen referendum on war.<sup>56</sup>

President Roosevelt clearly had put Magnuson in a difficult position on the Ludlow Resolution.<sup>57</sup> Magnuson favored it, but as a freshman Democrat

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<sup>54</sup>Cong. Rec., 75th Cong., 3d sess., 1938, 83, pt. 1: 276-83; Cole, Roosevelt and the Isolationists, pp. 253-62; and William E. Leuchtenburg, Franklin D. Roosevelt and the New Deal, 1932-1940 (New York: Harper, 1963), pp. 229-30.

<sup>55</sup>H.J. Res. 565, 75th Cong., 3d sess.

<sup>56</sup>Magnuson introduced his resolution again in the next session of Congress: H.J. Res. 66, 76th Cong., 1st sess.

<sup>57</sup>His letter of 20 January 1938 to Saul Haas, Collector of Customs and political power broker in Seattle, indicates the depth of Magnuson's concern over the vote, and seems as much an attempt to explain his position to himself as an explanation to Haas. It is worth quoting at length:

The Ludlow Resolution presented quite a problem to us and I must frankly say that it was one of the most difficult votes I have cast since being here in Congress. The more I think about the matter, however, the more I am convinced that Roosevelt was absolutely right in his contention [that the amendment, in FDR's words, "would cripple any President in his conduct of our foreign relations, and it would encourage other nations to believe that they could violate American rights with impunity" (letter, Franklin D. Roosevelt to Speaker of the House William Bankhead, 6 January 1938, Cong. Rec., 75th Cong., 3d sess., 1938, 83,

who owed his election at least partly to the power of FDR's coattails, he could hardly risk alienating Roosevelt by voting counter to his wishes on such a visible issue. Forced to choose between his beliefs and his party leader, Magnuson made the politically astute choice and "lived to fight another day." By introducing his own symbolic resolution, he could insist to his constituents that he had kept the anti-war faith. More important, however, is that by following FDR's lead on the Ludlow Resolution he had remained in the good graces of a popular and powerful president.

During the early stages of the debate on the peacetime draft, too, Magnuson sided with Roosevelt in opposition to it. In the summer of 1940, however, when FDR became convinced that conscription was necessary,<sup>58</sup> Magnuson refused to follow the president to the "pro" side. In fact, Magnuson voted three times in opposition to the draft bill. First, on September 7, he

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pt. 1: 277)] although the resolution did contain some fine features. Listening to the debate for a number of days convinced me that, although the Ludlow Resolution was in many ways impractical, underneath the whole drive there did exist the fear of an evil that the American people wanted to be vaccinated against. Having the whole picture in mind, I have introduced a constitutional amendment which I think does vaccinate us against this evil and yet does not contain the impractical features of the other amendment, nor does it tie the hands of those in delegated power.

WGM Papers, accession 3181-2, box 46, folder 15.

<sup>58</sup>Cole, Roosevelt and the Isolationists, pp. 376-77; and George Q. Flynn, Lewis B. Hershey, Mr. Selective Service (Chapel Hill: University of North Carolina Press, 1985), pp. 67-71.

voted to recommit the bill to the Committee on Military Affairs.<sup>59</sup> When that motion failed and the House voted on passage of the bill, Magnuson cast a "nay" ballot.<sup>60</sup> Although the House approved the conscription bill, Magnuson had one more shot at it, voting "nay" on September 14 on the question of accepting the report describing the agreement worked out between House and Senate conferees. Again, he was on the losing side, and the peacetime conscription bill became law.<sup>61</sup>

That Magnuson remained firm in his opposition to the draft, despite Roosevelt's switch, is consistent with his favorable view of a war referendum. A draft would take away an individual's power to decide whether to participate; a referendum amendment would provide that power, at least within the confines of a "majority rules" procedure. In the case of the draft, unlike that of the Ludlow Resolution, Magnuson apparently thought that it was more important to remain true to his beliefs than to line up behind the president.

Fortunately for Magnuson, most of the other major issues concerning neutrality required no such choice between philosophy and political expediency. In 1940, when Roosevelt exchanged American destroyers for British naval

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<sup>59</sup>Cong. Rec., 76th Cong., 3d sess., 1940, 86, pt. 11: 11754. (Recommitting a bill is a parliamentary maneuver intended to delay or kill it.)

<sup>60</sup>Cong. Rec., 76th Cong., 3d sess., 1940, 86, pt. 11: 11755.

<sup>61</sup>Cong. Rec., 76th Cong., 3d sess., 1940, 86, pt. 11: 12227. (Even at this point Magnuson was not through with his fight against the draft. In July 1941, as if voting either way would have condoned the draft, Magnuson did not vote on an amendment to the draft law providing for deferments and exemptions. Cong. Rec., 77th Cong., 1st sess., 1941, 87, pt. 6: 5983-85.)

bases, Magnuson noted that he and the entire Washington delegation were "behind the President 100% in his historical [sic] action."<sup>62</sup> The following year he backed FDR on the Lend-Lease program as well as on the repeal of sections of the Neutrality Acts.<sup>63</sup> While it was a matter of debate whether these actions were more likely to result in active American belligerency or in the defeat of the Axis powers before U.S. troops were drawn into the war, Magnuson most certainly hoped and anticipated that it would be the latter. Indeed, in January 1940 he had written to a Seattle constituent: "I unhesitatingly give you my pledge that no vote of mine will ever be cast to throw us into war with other nations."<sup>64</sup> And when FDR promised American mothers and fathers that "Your boys are not going to be sent into any foreign wars,"<sup>65</sup> Magnuson must have been reasonably confident that supporting the president on these issues would bolster American neutrality and help him keep his own promise to his constituents.

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<sup>62</sup>WGM to George Birch, 10 September 1940, WGM Papers, accession 3181-2, box 3, folder 1.

<sup>63</sup>On Lend-Lease see Cong. Rec., 77th Cong., 1st sess., 1941, 87, pt. 1: 815; and WGM to Olaf Stavheim, 5 March 1941, WGM Papers, accession 3181-2, box 14, folder 22. Regarding the Neutrality Acts see Cong. Rec., 77th Cong., 1st sess., 1941, 87, pt. 7: 8041-42; and Clair Atwood (WGM's secretary) to B. J. McCarthy, 2 December 1941, WGM Papers, accession 3181-2, box 14, folder 27.

<sup>64</sup>WGM to Rose Scott, 17 January 1940, WGM Papers, accession 3181-2, box 12, folder 1.

<sup>65</sup>Samuel I. Rosenman, ed., The Public Papers and Addresses of Franklin D. Roosevelt, vol. 9: War--And Aid to Democracies, 1940 (New York: Macmillan, 1941), p. 517.

It was not to be, of course. On December 7, 1941, any remaining semblance of American neutrality vanished in the smoke of Pearl Harbor. Ironically, Magnuson did not immediately break his pledge not to vote for war; he was on Washington's Olympic Peninsula when he heard of the Japanese attack, and despite rushing back to Washington, D.C., on a chartered plane, he missed the war vote by about fifteen minutes.<sup>66</sup> In another odd twist, on December 11, when the House voted on a declaration of war against Germany, Magnuson did not vote. Yet moments later, when the House considered the resolution declaring war against Italy, Magnuson voted yea. And after that vote was taken, he commented, "Mr. Speaker, I favor the resolution and declaration against Germany."<sup>67</sup> Magnuson's behavior was peculiar at best. Why did he not vote on the resolution concerning Germany? Was he simply not there on one of the most important votes in American history? That seems unlikely. Was he still trying to keep his promise? Perhaps, but certainly none of his constituents could blame him for going back on his word under the circumstances. In any event, the point was moot; the nation was at war with Germany and Italy as well as with Japan.

Magnuson's anti-war philosophy did not extend to himself personally. A member of the Naval Reserve, he had intended to go on active duty in October

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<sup>66</sup>Cong. Rec., 77th Cong., 1st sess., 1941, 87, pt. 14: A5543-44. (Magnuson stated that his vote "would have been a resounding yea.") See also telegrams, WGM to Seattle Post-Intelligencer, Seattle Times, and Seattle Star, 8 December 1941, WGM Papers, accession 3181-2, box 49, folder 41.

<sup>67</sup>Cong. Rec., 77th Cong., 1st sess., 1941, 87, pt. 9: 9665-67.

1941, but had delayed those plans because his mother had taken ill.<sup>68</sup> After the Pearl Harbor attack, he quickly signed on for service, enlisting with his friend from the Naval Affairs Committee, Congressman Lyndon B. Johnson of Texas. By early January he was, as the saying went, "somewhere in the Pacific." Serving on the U.S.S. Enterprise as Judge Advocate General, Magnuson faced some live fire before being called back to Washington in May 1942.<sup>69</sup>

As members of the House Naval Affairs Committee who had actually served in the Navy, Magnuson and Johnson were in great demand. They were sent to Alaska to adjudicate conflicts between the Army and the Navy (deciding, of course, in favor of the Navy!) and, according to Magnuson, they instigated a program to build new fighter planes for use on aircraft carriers.<sup>70</sup> In early June 1942, Magnuson reported that he was meeting with "everyone from Secretary Knox on down."<sup>71</sup> And Magnuson was not above using his recently gained expertise as support for his ideas, as he did on June 9, 1942, in the opening and closing paragraphs of his statement in support of the Alaska Highway.<sup>72</sup>

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<sup>68</sup>WGM to Joseph Adams, 14 October 1941, WGM Papers, accession 3181-2, box 48, folder 35.

<sup>69</sup>Gillette interview of Magnuson, p. 12.

<sup>70</sup>Gillette interview of Magnuson, pp. 6-7.

<sup>71</sup>WGM to Archie E. Phelps, 5 June 1942, WGM Papers, accession 3181-2, box 6, folder 21.

<sup>72</sup>Cong. Rec., 77th Cong., 2d sess., 1942, 88, pt. 9: A2147-49.

Perhaps his own experience fighting the Japanese also partly explains his hard-line stance in favor of the internment of Japanese and Japanese-Americans on the West Coast.<sup>73</sup> To say that he favored internment is almost an understatement. In late 1943, Magnuson himself noted that he was "violently opposed" to repatriating the Issei and Nisei who had been removed from the coast. To ensure that his correspondent completely understood his position, he added: "[I] am doing everything possible to thwart such a move . . . Be assured I will follow through on this. I feel very strongly about the matter."<sup>74</sup> His constituents also felt strongly about the issue of Japanese internment, and most of them favored it.<sup>75</sup> The adamancy of Magnuson's statements seems to indicate that he was not merely echoing his constituents' prejudices; he shared them. He was, in the truest sense of the word, a representative of the people of his district.

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<sup>73</sup>See, for example, "Keep Japs Away, Magnuson Pleads," unidentified newspaper clipping, 26 May [1943] attached to letter, Adelaide Gordon to WGM, WGM Papers, accession 3181-2, box 45, folder 45.

<sup>74</sup>WGM to W. H. Forsythe, 4 December 1943, WGM Papers, accession 3181-2, box 6, folder 54.

Magnuson's anti-Japanese position led Anna Roosevelt Boettiger, daughter of the president and associate editor (with her husband John) of the Seattle Post-Intelligencer, to write him a letter criticizing him for rousing "racial antagonisms." 5 October 1943, WGM Papers, accession 3181-2, box 50, folder 41.

<sup>75</sup>See six folders marked "Japanese Statement" in WGM Papers, accession 3181-2, box 6.

### **Consumer Protection: A Minor Interest**

Magnuson also shared his constituents' general interest in consumer issues, although for several reasons that interest during these years did not translate into much action. First, his sole committee assignment was Naval Affairs, a committee which rarely if ever concerned itself with consumers' needs. Since most of the substantive work of Congress takes place within committees, Magnuson was in a less-than-ideal position to pursue a consumer agenda.

Second, as a representative of an area that was still developing economically in the 1930s and the 1940s, Magnuson tended to think of increased industrial production as the greatest need for his district, state, and region. He promised the president of a Seattle lumber company, for example, that he would "vigorously support any measures that will create wider markets for Pacific Coast lumber products."<sup>76</sup> To another business constituent he wrote that he favored "any constructive legislation tending to bring more business and better conditions to our Pacific Northwest."<sup>77</sup> Perhaps Magnuson was merely telling businessmen back home what they wanted to hear, or perhaps he believed--with some justification during economic hard times--that what was good for business was good for all of his constituents. In

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<sup>76</sup>WGM to A. J. Krauss, 28 April 1939, WGM Papers, accession 3181-2, box 11, folder 20.

<sup>77</sup>WGM to F. H. Baxter, 28 March 1940, WGM Papers, accession 3181-2, box 11, folder 20.

any case, when it came to his state's businesses and industries, Magnuson was likely to come down on the side of producers rather than consumers.

Third, Magnuson had solid political reasons for favoring producers at this time. If producers went out of business, workers lost their jobs--and workers had provided many of the votes that sent him to Congress. He simply could not afford to alienate his power base at home by taking steps that might result in lost jobs, and so complaints that new regulations might harm business and force people off payrolls resonated with him.<sup>78</sup> To serve his constituents he assisted producers.

He revealed his sympathy for manufacturers in several ways. In 1938, for example, he attempted to water down the Food, Drug, and Cosmetic Act by requesting an exemption for carbonated beverages--an unsuccessful attempt that nevertheless earned for him the thanks of the president of the American Bottlers of Carbonated Beverages, Seattle.<sup>79</sup> Similarly, during the debate on the Wheeler-Lea advertising bill, he introduced--at the request of a Spokane newspaper editor--an amendment to weaken the bill's language to guarantee publishers' immunity if they unknowingly accepted advertisements that turned

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<sup>78</sup>Ironically, it was at this time that unions began to become actively involved in consumer protection, reasoning that low, controlled prices and wages were of little use if the quality of goods was allowed to decrease. See, for example, Nathan E. Cowan (Legislative Representative of the CIO) to WGM, 6 April 1943, WGM Papers, accession 3181-2, box 16, folder 34.

<sup>79</sup>See Paul F. Glaser to WGM, 14 July 1939, WGM Papers, accession 3181-2, box 46, folder 57.

out to have false claims.<sup>80</sup> And in response to insurance agents' letters opposing pending legislation to allow federal regulation of the insurance industry, he promised to work to keep "States Rights as inviolable as possible" and to "do all I can to protect your interests."<sup>81</sup> Clearly, these are not the words of a consumer advocate.

Finally, and perhaps most significantly, his service in the House happened to take place during a period of almost unceasing national emergency. The problems of economic recovery and war overshadowed consumer protection issues for many Americans, Magnuson included. At a time when the very survival of the United States was in question, the issues of grade labeling and exaggerations in advertising seemed puny.

All this is not to say, however, that Magnuson entirely ignored consumers. And, paradoxically, the depression and World War II provided the impetus for consumers and consumer organizations to bring their concerns to the attention of Magnuson and other government officials. American

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<sup>80</sup>Magnuson withdrew the amendment when Lea promised him that the bill would not punish publishers in such cases. See the exchange of telegrams between Einar Larson of the Spokane Press and WGM, 11 and 12 January 1938 (sender's copy of WGM's to Larson is incorrectly dated 12 December 1938), WGM Papers, accession 3181-2, box 9, folder 43. See also Cong. Rec., 75th Cong., 3d sess., 1938, 83, pt. 1: 413-14, 420.

<sup>81</sup>The agents were responding to bills H.R. 3269 and 3270 (1943). A number of Magnuson's letters to them may be found in WGM Papers, accession 3181-2, box 17, folder 5.

Ironically, in the 1960s and 1970s Magnuson would call for insurance reform, emphasizing in particular the idea of "no-fault" auto insurance. No-fault insurance was not well received by the insurance industry or the legal profession, both of which thrived on the existing system.

consumers were asked to play significant parts in fighting both the depression and the war. They were to drive the recovery in the 1930s, for example, by increasing their consumption and patronizing those merchants who displayed the Blue Eagle which signified cooperation with NRA guidelines. Their contribution to the war effort, on the other hand, was to be one of nonconsumption: conserving everything from sugar to gasoline to beef. Magnuson received dozens of letters from constituents and consumer groups asking for his help on such issues as grade labeling and, during the war, rationing and price controls. Unable actually to do anything about most of these requests, he sent the writers innocuous responses and forwarded their letters to the appropriate government agencies.

His sympathy for producers did not preclude his supporting at the same time policies beneficial to consumers. He did not go so far as to introduce consumer legislation at this time, but he did endorse bills and policies introduced by others. He backed wartime price ceilings, for example, noting in a 1943 letter to Hugh DeLacy of the Washington Commonwealth Federation that he considered them to be "the most important subject before the Congress" because they controlled the cost of living.<sup>82</sup> To the issue of grade labeling of canned goods he gave at least lip service, promising one constituent that he

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<sup>82</sup>WGM to Hugh DeLacy, 28 October 1943, WGM Papers, accession 3181-2, box 50, folder 34.

would "support any steps taken to assure proper labeling of foods."<sup>83</sup> His advocacy of the Wool Products Labeling Act of 1939 gave him an opportunity both to support a piece of consumer protection legislation and to help protect wool producers from the competition of cheaper recycled wool or artificial fabric.<sup>84</sup> Magnuson's desire to aid both producers and consumers at the same time would reappear later when he became more active in the consumer field; he often argued that policies that benefited consumers also helped honest manufacturers.

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<sup>83</sup>WGM to William Titus, 19 June 1942, WGM Papers, accession 3181-2, box 31, folder 9.

Grade labeling was a particularly pressing concern for consumers during the second world war because price controls prompted some producers to dilute quality to keep profits up. If Magnuson was not already aware of this practice, his constituents informed him of it. William Titus, to whom Magnuson was responding in the letter cited, pointed out the problem as it applied to foods, as did the CIO. See Titus to Henry M. Jackson (forwarded to WGM because Titus resided in WGM's district), 3 June 1942, WGM Papers, accession 3181-2, box 31, folder 9 (attached to Magnuson's response). For the CIO's position see Nathan E. Cowan to WGM, 6 April 1943, WGM Papers, accession 3181-2, box 16, folder 34. Professor Grace Denny, of the University of Washington School of Home Economics, noted the same practice in the production and sale of fabrics. See her letter to WGM, 8 June 1944, WGM Papers, accession 3181-2, box 38, folder 12.

<sup>84</sup>The dual nature of the Act is apparent even in the title of the bill. Representative John A. Martin of Colorado introduced H.R. 944 on January 3, 1939, calling it a bill "To protect producers, manufacturers, distributors, and consumers from the unrevealed presence of substitutes and mixtures in spun, woven, knitted, felted or otherwise manufactured wool products." Cong. Rec., 76th Cong., 1st sess., 1939, 84, pt. 1: 33.

Michael Pertschuk considers it to have been merely an "ostensible consumer protection bill . . . inspired and shaped by industry." Its purpose, he wrote, was "to enhance the merchantability of virgin wool over the recycled fiber." Revolt Against Regulation: The Rise and Pause of the Consumer Movement (Berkeley: University of California Press, 1982), p. 8. At the time of the bill's passage, however, most observers viewed it as a consumer protection measure.

## Conclusion

During his House period, Warren G. Magnuson tried to make good on his campaign promise of 1936 to be "a good, sincere worker for the welfare of the people of this District." He seems to have understood "welfare" to be virtually synonymous with "economic well-being," and one of the keys to achieving economic well-being clearly was high employment. Thus, he strove to bring jobs to the Puget Sound area via such means as increased naval spending at the Bremerton Navy Yard, the restoration of CCC funds to Washington State, and the awarding of government contracts to Boeing. Other projects he championed--the Alaska Highway and bridges in Seattle, for example--not only provided construction jobs but also improved the region's economic infrastructure for the future.

Jobs were not the only characteristic of the economic well-being that he sought for his constituents. Magnuson's efforts to establish a far more extensive national old-age pension system than Social Security and his backing of such New Deal programs as the Home Owners' Loan Corporation reveal that he also understood "welfare" to include the idea of redistribution of wealth. He was not averse to expanding the role of the federal government in Americans' private lives if necessary.

Yet his political philosophy was not consistently one of enlarging government. Even as he argued for greater federal involvement in employment and pensions, he echoed the old battle cry of states' rights on the regulation of the insurance industry.

Magnuson revealed inconsistencies on other issues as well. He voted against the Ludlow Amendment, for example, despite coming out in favor of it and continuing to offer his own similar resolutions. In the consumer protection arena, he seemed to want to avoid impinging on the freedoms of producers at all costs, yet he voiced support for pro-consumer bills outlawing false advertising and requiring clear, informative labels on foods and fabrics.

Magnuson's inconsistencies can perhaps be explained by returning to the idea of utility. If he had a firm political philosophy it was pragmatism, with his primary concern, as he said in the excerpt from his 1936 campaign speech quoted at the top of this chapter, to advance the welfare of his constituents. He succeeded at this goal by remaining adaptable. If the people of Washington's First Congressional District could best be served in one case by his supporting manufacturers, that was what he did. If, in another instance, their interests would be furthered by his allying himself with consumer advocates, he would take that position. Finally, if allowing the people to decide for themselves on an issue seemed to advance their interest--as in the cases of the war referendum and the draft--he was flexible enough to push in that direction.

An important by-product of his constituent service was popularity at the polls. He was reelected to the House three times, and gave serious thought to running either for governor or for the Senate in 1940 before deciding to seek

reelection to the House.<sup>85</sup> In explaining his decision not to pursue the Senate seat that year, he wrote, "It probably just wasn't my time to run."<sup>86</sup> His time would come in 1944, when Senator Homer Bone was named a federal judge by President Roosevelt.

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<sup>85</sup>WGM to Henry Broderick, 29 February 1940, WGM Papers, accession 3181-2, box 22, folder 22.

<sup>86</sup>WGM to H. J. Quilliam, 12 August 1940, WGM Papers, accession 3181-2, box 47, folder 30.

## CHAPTER FIVE

### Magnuson and the Coming of the Third Wave of Consumer Protection, 1944-1960

"The more or less typical Senator is not really in sympathy with the folklore of 'business,' however he may support the concept that business must be fostered."<sup>1</sup>

#### Introduction

The seventeen years from 1944 through 1960 were among the most eventful in American history. On the international scene they witnessed the Allied triumph in the European and Pacific theaters and thus the end of the second World War. With the conclusion of the war came its offspring--nuclear weapons, the Cold War, the United Nations, and others--that would shape human destiny for generations to come. Shocking incidents followed one after another in this brief era, all of them seemingly interrelated and all of them causes for increasing concern in the United States: the Iron Curtain descended across Europe, China "fell" to the Communists, the USSR tested its atomic bomb, war broke out in Korea, the Soviets fired the opening salvo of the Space Race with the launch of Sputnik. No one could be sure what the results of all

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<sup>1</sup>William S. White, Citadel: The Story of the U.S. Senate (New York: Harper & Brothers, 1956), p. 7.

these developments would be, but everyone knew that American society, indeed the survival of the human race, was at stake.

Domestic matters, never entirely separate from international ones, were similarly unpredictable. The death in office of President Franklin Roosevelt, the task of reconversion to a peacetime economy with its concomitant threats of runaway inflation and labor revolution, the unexpected victory of President Harry Truman and his shocking--but undoubtedly justified--removal of the popular General Douglas MacArthur, Senator Joseph McCarthy's frantic search for communists: all of these left Americans wondering what would come next.

For Warren G. Magnuson, too, this was a momentous period. In 1944 he made a successful bid for the Senate seat of his friend Homer T. Bone, who was moving on to a federal judgeship. From the particularly favorable vantage point of the Senate, Magnuson witnessed world and national events and participated in making decisions that would help determine the future of the United States. At the same time, he amassed that vital yet invisible currency which means so much in the Senate: seniority. By 1955 he had risen to the chairmanship of the Senate Committee on Interstate and Foreign Commerce, a post he would hold until 1977 when he gained the ultimate chairmanship, that of the Appropriations Committee.

Magnuson's political philosophy also evolved during this time in a way that was not quite invisible like the acquisition of seniority, but certainly in a way that would have required a keen observer to discern: he became a consumer protector. While it would be too much to say that he had not

previously taken an interest in consumers' problems, he had certainly appeared to be more sympathetic to the needs of producers. He never really lost that concern for producers, but he gradually supplemented it--some might say replaced it--with an increasing desire to aid consumers. To return to the image presented in Chapter 2, the historical thread of consumer protection came more and more frequently in contact with the thread that was Magnuson's life and career. By 1960, because of personal and political reasons, he had allowed the two threads to become inextricably intertwined. Although he would continue to play other roles--supporter of the merchant marine, promoter of Washington State's interests, backer of labor, campaigner for the Democratic Party, and many more--Magnuson became and remained a key Senate figure in the area of consumer protection.

### **Election to the Senate**

The story of Warren G. Magnuson's ascent to the United States Senate actually begins in 1939 in the Tacoma, Washington, home of Senator Homer T. Bone. Specifically, it begins in Bone's bathroom. On August 22, 1939, Bone slipped on a rug on his freshly waxed bathroom floor, fell, and broke his femur at the hip. The injury healed slowly; five years later he was still undergoing treatment to relieve the pain and to repair tendon and muscle damage.<sup>2</sup>

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<sup>2</sup>Homer T. Bone to Lillian E. Sylten, Secretary, Public Power League of Washington, 27 March 1944 and 21 August 1944, Bone Papers, accession 3456-2, box 1, folder 27, Manuscripts Division, University of Washington Libraries, Seattle.

In the spring of 1944, a reelection year for Bone, he reportedly said, "I'll be damned if I'm going to campaign on crutches," and convinced President Franklin Roosevelt to name him on April 1 to a seat on the bench that was "his for the asking."<sup>3</sup> The Senate waived its usual requirement of a week's notice before a hearing in the Judiciary Committee--indeed, waived the hearing itself--and unanimously confirmed Bone a judge of the Ninth Circuit Court of Appeals within minutes of the announcement of his nomination.<sup>4</sup> Bone's slip in his bathroom thus ultimately led to a vacancy in the Senate.

Before that vacancy would be filled, much political maneuvering took place in Washington, D.C., and in Washington State. Several potential candidates surfaced as the July primary election approached. Early hopefuls included former Governor Clarence D. Martin, Representative John Coffee (Bone's brother-in-law), and Magnuson on the Democratic side, and State Supreme Court Justice Joseph Mallery, State Senator Harry Wall, and Eric

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<sup>3</sup>Eric Redman, The Dance of Legislation (New York: Simon & Schuster, 1973), p. 192; and R. B. Bermann, "Senator Bone Named U.S. Appellate Judge," Seattle Post-Intelligencer, 2 April 1944, p. 1.

It is also quite possible that Bone considered his isolationist record from the 1930s to be a handicap during wartime and chose to pursue a judicial position rather than to face the campaign trail. By 1944 isolationism was associated in many Americans' minds with sympathy for the Nazis, and such leading isolationists as Representative Hamilton Fish of FDR's home district in New York, Senator Bennett Champ Clark of Missouri, and Gerald P. Nye of North Dakota went down to defeat in primaries or the general election. Wayne S. Cole, Roosevelt and the Isolationists, 1932-45 (Lincoln: University of Nebraska Press, 1983), pp. 546-49.

<sup>4</sup>Cong. Rec., 78th Cong., 2d sess., 1944, 90, pt. 3: 3381-82; and "Senator Bone Gets Circuit Court Post," New York Times, 2 April 1944, p. 42.

Johnston, president of the Chamber of Commerce of the United States, on the Republican.<sup>5</sup>

Speculation also swirled over whom Governor Arthur Langlie would name to finish out the remainder of Bone's term. Langlie, a Republican, would certainly choose a member of his own party, and the appointee would not only reduce the Democratic majority in the Senate but would also become the front-runner for nomination and election in his own right. It was also possible, however, that Bone would follow the precedent set by his former Senate colleague Lewis Schwellenbach, who had likewise been named to a judicial position but who did not resign from the Senate until a successor had been voted in.<sup>6</sup>

In any case, the Bone nomination significantly changed the political situation in Washington State. As the Seattle Post-Intelligencer put it, "As soon as the news of Bone's appointment reached Seattle, the political pot, which had scarcely been simmering up until then, went into a furious boil."<sup>7</sup>

Senator Bone, however, threw a bit of cold water into the pot by refusing to step down from the Senate. He was, in fact, not stepping at all, because just before his judicial appointment came down from the president he had entered Bethesda Naval Hospital for a lengthy stay to have traction applied to his ailing leg. This convenient incapacity kept him from having to decide when to

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<sup>5</sup>Bermann, "Senator Bone Named U.S. Appellate Judge," pp. 1, 6.

<sup>6</sup>Bermann, "Senator Bone Named U.S. Appellate Judge," p. 1.

<sup>7</sup>Bermann, "Senator Bone Named U.S. Appellate Judge," p. 1.

take his place on the bench. It also irritated the Senate Republicans, who flirted with the idea of bringing the nomination back up for reconsideration.<sup>8</sup>

Ultimately, Bone had more to say about who his successor would be than did Governor Langlie. Whether or not Bone actually "offered Magnuson . . . the opportunity to run in his stead," as Eric Redman avers,<sup>9</sup> clearly Bone favored his young ally who had proven himself in Bone's 1932 Senate campaign, the public power fight, and the cancer bill.

Things fell into place rapidly for Bone's protégé. As early as April 7, the Post-Intelligencer noted that Magnuson was leading the field for the Democratic nomination.<sup>10</sup> Soon thereafter he received an endorsement letter from Bone, who proclaimed himself "mighty glad" that Magnuson had decided to run for the Senate.<sup>11</sup> Campaigning on his record of support for the New Deal and his desire to help win both the war and the peace, Magnuson swept to victory in the primary election with almost five times as many votes as his nearest Democratic rival. In the November general election he defeated

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<sup>8</sup>"Senate Republicans May Move to Rescind Approval of Bone Appointment to Bench," New York Times, 13 April 1944, p. 12; and Cong. Rec., 78th Cong., 2d sess., 1944, 90, pt. 3: 3625-27.

<sup>9</sup>Dance of Legislation, p. 192.

<sup>10</sup>"Eric Johnston Steps Out of Senate Race," Seattle-Post Intelligencer, 7 April 1944, p. 1.

<sup>11</sup>Bone to WGM, 15 April 1944, WGM Papers, accession 3181-2, box 54, folder 33, Manuscripts Division, University of Washington Libraries, Seattle. This letter, incidentally, made its way into Magnuson's 1944 campaign brochure, no doubt with Bone's blessing.

Republican Harry Cain with 55 percent of the vote, precisely the ratio he had predicted two months earlier in a letter to Eliot Janeway of Life magazine.<sup>12</sup>

Meanwhile, Bone stubbornly held his Senate seat until the election had taken place and Governor Langlie had reluctantly decided to appoint Magnuson to finish out Bone's unexpired term. Bone himself put pressure on Langlie, noting in a letter to "Maggie": "I had some contacts with folks up in the State regarding this matter because I wanted you shoved up as many grades as possible and it would have been a stupid thing for the Governor not to appoint you and aid the State by giving you this added boost in your Senate rank."<sup>13</sup> On November 13 Bone wrote a letter from Pasadena, California, notifying the Senate of his resignation. Exactly one month later Magnuson submitted his letter of resignation from the House, and on December 14 he took the Senate oath.<sup>14</sup> As a result, he gained an important edge in seniority over other members elected in 1944, including such Senate leaders as J. William Fulbright and Wayne Morse, who were sworn in the following January.<sup>15</sup>

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<sup>12</sup>"I have a fight on my hands, but it looks like I will pull [it] out, as the State will probably go Democratic by about 55%." WGM to Janeway, 8 September 1944, WGM Papers, accession 3181-2, box 51, folder 44. This prediction applied nearly as well to the presidential race: Roosevelt carried Washington with about 57% of the votes.

<sup>13</sup>23 December 1944, WGM Papers, accession 3181-2, box 51, folder 32.

<sup>14</sup>Cong. Rec., 78th Cong., 2nd sess., 1944, 90, pt. 6: 8216; and pt. 7: 9366, 9434.

<sup>15</sup>Redman, Dance of Legislation, p. 192.

**Magnuson in the Senate:  
An Overview of Emphases and Philosophy, 1944-1960**

Upon entering the Senate, Magnuson requested and was granted assignment to the Committees on Naval Affairs, Commerce, and Irrigation and Reclamation.<sup>16</sup> After the Reorganization Act of 1946 eliminated several of the minor committees and stipulated that senators could be members of only two major committees, Magnuson found himself added to the Judiciary Committee while keeping his seat in Commerce. In 1953 he forfeited his position on the Judiciary Committee when a vacancy opened up on Appropriations. His committee preferences and assignments reveal not only his personal interests but also his perception of what his constituents' interests were. Moreover, committees served him--as they do all their members--as educational bodies, enabling him to become an expert in specific areas.

For the first eight months of Magnuson's Senate career, the prosecution of World War II necessarily took highest priority for the Senate as a whole, but even during wartime Magnuson's personal primary concern seems to have been to secure federal expenditures for the development of his state. As he explained in a letter to a Spokane constituent in January 1945: "Naturally, the business of my state is of primary importance to me."<sup>17</sup> To Magnuson's way

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<sup>16</sup>WGM to Senator Alben W. Barkley, Majority Leader, 13 December 1944, WGM Papers, accession 3181-3, box 40, folder 30; and WGM to Norma Hansen, 30 January 1945, WGM Papers, accession 3181-3, box 40, folder 37.

<sup>17</sup>WGM to Mary A. Monroe, 23 January 1945, WGM Papers, accession 3181-3, box 41, folder 5.

of thinking, his state's business was development, and development meant jobs and an improved standard of living.<sup>18</sup>

After the war ended, his emphasis on development, if anything, increased. He continued, for example, his advocacy of the Bremerton Navy Yard, telling a Bremerton resident late in 1945: "I have been doing everything possible to keep a heavy work load at Bremerton and I have every reason to believe that we will get our full share--if not a little more."<sup>19</sup> He also pushed hard to gain government contracts for Boeing, which was going through a particularly difficult reconversion.<sup>20</sup> During the postwar decades, Magnuson secured contracts and projects for his state at a stunning rate. "Dams, irrigation works, locks, harbor developments, shipyards, a World's Fair, and entire new cities sprang up all around Washington State," observed Eric Redman. "In Eastern Washington the desert was made to bloom abundantly, and a prosperous 'Inland Empire' soon displaced most of the coyotes and sagebrush."<sup>21</sup> Magnuson's comments about hydroelectric power might be taken as his theme during these years. As he wrote to a member of the

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<sup>18</sup>See, for example, WGM to E. D. Cooke, 6 March 1948, WGM Papers, accession 3181-3, box 43, folder 16.

<sup>19</sup>WGM to Olaf T. Lerwold, 11 December 1945, WGM Papers, accession 3181-3, box 41, folder 3.

<sup>20</sup>See, for example, "Peacetime Work Sought By Air Firm," Seattle Times, 6 September 1945, pp. 1, 4; "Shutdown Affects Thousands; Outlook for Most Not Black," Seattle Times, 6 September 1945, pp. 1, 8; and "Minutes of Washington State Delegation Meeting," 15 October 1945, WGM Papers, accession 3181-3, box 42, folder 31.

<sup>21</sup>Dance of Legislation, p. 193.

Democratic National Platform and Resolutions Committee in 1952: "The question all of us should ask ourselves is, 'How can we achieve the maximum development in the minimum amount of time?'"<sup>22</sup>

It is a mistake, however, and one that is commonly made, to see his emphasis on development--or what Magnuson himself would likely call "progress"--as indicative of an entirely pro-business mentality. His philosophy remained what it had been during the depression years when he served in the Washington State Legislature and in the House of Representatives: to help people, with the word "people" broadly defined. Also reminiscent of his earlier ideas, he continued to think of his constituents' welfare mostly in terms of their economic well-being. If business prospered because of the development he helped the state to effect, that was fine; his main goal, however, was to improve the standard of living of the residents of his state. As he explained in a letter to Harlan Callahan, King County Sheriff, in 1948: "The prime motivating factor in what I have tried to do during my service in the Congress is contained in the question: 'What is good for the State?' If my activities are such as to constitute an affirmative answer to this question, I have felt pretty well satisfied."<sup>23</sup>

Magnuson's stance on labor-management relations in the postwar years reflected his philosophy of advancing the interests of the people. He continued to support labor when its interests clashed with those of management, opposing

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<sup>22</sup>WGM to Vada McMullen, 19 June 1952, WGM Papers, accession 3181-3, box 46, folder 34.

<sup>23</sup>3 March 1948, WGM Papers, accession 3181-3, box 43, folder 16.

before and after passage the Taft-Hartley Act and its restrictions on organized labor, pushing for increased benefits and safer job conditions for union workers, and expressing sympathy for striking steelworkers.<sup>24</sup>

The distance from home state booster or "pork-barreler" to consumer protector, therefore, is not as great as it may appear. In the one case Magnuson helped his constituents by gaining appropriations and jobs for them; in the other he helped a broader constituency by ensuring that the products they bought with the income from those jobs were safe and not misrepresented. Consumer protection, in other words, may be seen as the next step in providing a good standard of living. Magnuson never forgot the importance of the first step--providing jobs--but gradually he increased his attention to the second.

### **Consumer Issues**

During and immediately after World War II, the main problem facing American consumers was gaining access to goods and services. With resources being diverted to the war effort, many items were in short supply or simply unavailable on the open market. To offset inflation caused by excessive demand and limited supply, the federal government established the Office of

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<sup>24</sup>WGM to Ada Leathers, 10 August 1948, WGM Papers, accession 3181-3, box 43, folder 26; WGM to Frank Turco, 20 May 1948, WGM Papers, accession 3181-3, box 43, folder 43; and WGM to A. D. Dunbar, 19 October 1949, WGM Papers, accession 3181-3, box 44, folder 8. See also Magnuson's campaign biography, The Magnuson Story: Warren G. Magnuson's Remarkable Record in the U.S. Congress (1936-56), [1956], (mimeographed pamphlet), pp. 41-42, Washington State Biography Collection, Special Collections Division, University of Washington Libraries, Seattle, Washington.

Price Administration (OPA) to set price ceilings. By war's end, approximately 80 percent of consumer goods were subject to price controls. While some producers complained that the ceilings were driving them out of business, the restrictions did serve their purpose of keeping inflation to manageable levels.<sup>25</sup> Consumer protection during the mid- to late 1940s was thus largely protection from price increases.

Beyond the realm of a respectable concern that prices not increase too rapidly was the somewhat less-respectable realm of consumerism, which may be vaguely defined as anything that seemed to challenge the caveat emptor model of the market. Like many other "isms" of the time, consumerism was considered by some to be a field attractive to communists and fellow travelers. The House Committee on Un-American Activities, for example, noted in a 1944 report that of seventy-seven of the top leaders of the National Federation for Constitutional Liberties--"an out-and-out Communist Party transmission belt"--

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<sup>25</sup>On 24 January 1945 Chester Bowles, Administrator of the OPA, sent members of Congress a form letter with information with which to answer constituents' questions about price controls on textiles. (A copy of this letter, minus accompanying data, may be found in WGM Papers, accession 3181-3, box 52, folder 7.) One brief paragraph from that letter demonstrates both the successes and the failures of the OPA's efforts, and is worth quoting:

Clothing prices have risen over 11 percent since the Hold-the-Line Order was issued in April 1943. The quality of clothing has deteriorated, materials have been diverted to luxury and nonessential uses, the supply of low priced clothing has dwindled.

While "Hold-the-Line" implies no inflation whatsoever, and while Bowles obviously considered the 11 percent increase to be a significant rise, it is only a bit over 6 percent per year, quite reasonable during wartime. The real inflation rate, of course, was somewhat higher due to the decline in quality.

seventeen were also "affiliated with Consumers Union." The report further stated that "The Consumers National Federation was a Communist Party Front which included a large number of party members and fellow travelers as its sponsors."<sup>26</sup> The wise public figure avoided the red tinge of consumerism.

Magnuson was a wise public figure. He not only distanced himself from consumerism during the 1940s and early 1950s, he also vocally supported the free enterprise system as the system of democracy.<sup>27</sup> He backed the OPA during wartime only as the lesser of two evils, and after the war he attacked that body for interfering in the economic process.<sup>28</sup> Basic to both his opposition to the OPA and his confidence in free enterprise was his faith in the

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<sup>26</sup>U.S., Congress, House, Special Committee on Un-American Activities, Investigation of Un-American Propaganda Activities in the United States: Report on the C.I.O. Political Action Committee, 78th Cong., 2d sess., 1944, H. Rept. 1311, pp. 48-49, 155.

<sup>27</sup>See, for example, transcript of "Town Meeting of the Air," vol. 16, no. 6, broadcast on ABC radio, 6 June 1950. A copy is in WGM Papers, accession 3181-3, box 45, folder 2. Magnuson argued that the United States was "fighting communism wisely" by building economic strength.

<sup>28</sup>See, for example, WGM to Honorable Guy B. Knott, Justice of the Peace, Seattle, 27 April 1946, WGM Papers, accession 3181-3, box 42, folder 3; WGM to Drayton E. Marsh, Superintendent of Schools, Overlake Schools, Bellevue, Washington, 24 June 1946, WGM Papers, accession 3181-3, box 42, folder 6; and Stub Nelson, "OPA Hit by Magnuson," Seattle Post-Intelligencer, 27 March 1946, pp. 1, 3.

Magnuson also complained about the amount of time his office had to spend dealing with price control matters "I, too, hate the OPA," he told the Seattle Chamber of Commerce's Board of Trustees. "I will welcome the day when it can be abolished. It will save about 75 arguments a day that develop in my office and give me more time for the many matters confronting me." Quoted in Nelson, "OPA Hit by Magnuson," p. 1.

honesty of most businesspeople<sup>29</sup>--a faith that few true consumerists would likely have shared.

Magnuson's stance on the earliest postwar consumer protection issues demonstrated his trust in producers and sellers. After price controls and inflation, the key consumer concern was product labeling in its many varieties. Labeling, of course, was not a new issue. Grade labeling of foods, especially canned foods, had long been a goal of consumerists and, with wartime price controls, quality became especially important: price ceilings were useless if producers could dilute or devalue their goods. Despite the logic of such a law, however, no systematic food grade labeling measure made it into the statutes.

In the textile market there was one labeling law that offered some protection to producers and consumers: the Wool Products Labeling Act of 1939. Enacted primarily to guard the wool industry from unfair competition, it outlawed the unrevealed presence of cheaper fibers masquerading as wool, and served in the 1940s and 1950s as a precedent for similar labeling legislation for other textiles and wearing apparel.

Early in his first term in the Senate, Magnuson exhibited a noncommittal attitude toward labeling, as his correspondence reveals. Constituents who wrote to him in support of quality grade labeling for foods typically received in reply letters promising only to "keep your suggestions in mind" in the event that a labeling bill was introduced. To one Seattle resident

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<sup>29</sup>Nelson, "OPA Hit by Magnuson," p. 3.

he mentioned the possibility of preparing such legislation himself, but he apparently never acted on the idea.<sup>30</sup>

As a member of the Senate Commerce Committee, however, he found himself repeatedly confronted by bills intended to strengthen labeling requirements. During the Eightieth Congress (1947-48) he was assigned to subcommittees to consider fur labeling bills as well as a bill to require informative labeling on products made of artificial fibers.<sup>31</sup> Magnuson neither took a leading role in pressing for these bills nor found their advocates' arguments entirely convincing. Regarding one fur labeling bill modeled on the Wool Products Labeling Act, he told a constituent: "There is a question in my mind as to whether H.R. 5187 will achieve the objectives its sponsors desire."<sup>32</sup>

Like most of his contemporaries, Magnuson seems to have believed during this period that market forces were usually sufficient to correct any inequities. This belief reflected not only his faith in the honesty of business

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<sup>30</sup>For Magnuson's noncommittal stance, see letters to James Sullivan, 22 January 1945; to Lucille Freeburg, 12 February 1945; and to Dorothy Hamilton, 12 February 1945; all in WGM Papers, accession 3181-3, box 116, folder 24. On introducing a labeling bill, see WGM to June Anderson, 14 May 1945, WGM Papers, accession 3181-3, box 116, folder 24.

<sup>31</sup>On S. 1388, (fur), see Wallace H. White, Jr., to WGM, 7 June 1947, WGM Papers, accession 3181-3, box 156, folder 9; on S. 2383 (synthetic fabrics), see Charles W. Tobey, to WGM, 1 April 1948, WGM Papers, accession 3181-3, box 156, folder 10.

<sup>32</sup>WGM to Alfred Boge, President Spokane Fur Merchants Association, 29 September 1949, WGM Papers, accession 3181-3, box 156, folder 13. No doubt Boge's association's opposition to the bill had some influence on Magnuson's position as outlined in this letter.

but also his overarching belief in the capitalistic system. Producers and sellers would respond to consumer complaints because they wanted to retain customers, he thought. To a Seattle resident who wrote to him complaining about the poor quality of the prunes she had purchased, he suggested contacting the grocery store and perhaps the packer of the fruit. "I should think," he observed, "that they would appreciate your bringing this matter to their attention."<sup>33</sup> Again, the thought of introducing legislation requiring packers to label their produce according to quality grades does not seem to have crossed his mind.

Through the early 1950s, Magnuson perceived the proper role of government vis-à-vis consumers to be a minimal one. His view is summed up in a sentence from the letter quoted above regarding the fur labeling bill, H.R. 5187: "Congress does have the responsibility of protecting the consumer to the maximum extent possible consistent with trade considerations." At first glance this seems a fairly sweeping statement, but the phrase "consistent with trade considerations" puts firm limits on Congress's jurisdiction. Trade comes first; if there is a consumer need beyond the needs of trade, it may be addressed.

One incident that illustrates this position occurred in 1950 when the Senate was debating the appropriation for the Department of Agriculture. Magnuson submitted an amendment to the appropriation bill calling for an additional \$2,500 for the Department's Inspection Division. This additional

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<sup>33</sup>WGM to Alyce Johnson, 23 May 1956, WGM Papers, accession 3181-3, box 48, folder 42.

funding was to be used to hire a veterinarian part time to serve as an inspector at the Seattle Union Stockyard, where inspection had apparently been discontinued for budgetary reasons. While meat inspection could certainly be advocated as a consumer protection issue, Magnuson chose instead to emphasize the loss of work and income that the Seattle slaughtering plants incurred when Canadian ranchers sent their beef in already butchered rather than on the hoof. After inspection had been discontinued in Seattle, Magnuson stated, Canadian ranchers began shipping in dressed beef instead of live cattle, whereas when an inspector had been available, live cattle had been shipped in for processing.<sup>34</sup>

Magnuson's role in another piece of consumer legislation of the period further demonstrates his sympathy for producers' interests. As early as 1947 a bill (S. 353) had been introduced to prohibit the distribution and sale in interstate commerce of fabrics that were dangerously flammable. Again, Magnuson had firsthand experience with the bill, as he was assigned to the subcommittee considering it.<sup>35</sup> This bill died in committee, but six years later, largely as a result of publicity surrounding "torch" sweaters and fast-burning children's costumes, the Flammable Fabrics Act was passed into law

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<sup>34</sup>Cong. Rec., 81st Cong., 2d sess., 1950, 96, pt. 8: 10378-80, 10400-01. On a similar incident concerning inspection at the Spokane, Washington, stockyard, see Magnuson's correspondence with Fred W. Clems of the Spokane Chamber of Commerce, July and August 1947, WGM Papers, accession 3181-3, box 60, folder 24.

<sup>35</sup>Wallace H. White, Chairman of the Senate Committee on Interstate and Foreign Commerce, to WGM, 4 June 1947, WGM Papers, accession 3181-3, box 156, folder 9.

(PL 83-88). Despite his office's later claims that he had written the original bill,<sup>36</sup> Magnuson's main contribution seems to have been clarifying the terms "freight forwarder" and "common carrier" during floor debate.<sup>37</sup> In other words, his participation had nothing to do with the consumer protection aspect of the bill; he was more concerned with how it might affect those employed in transporting fabrics.

After the law was approved, he continued to concern himself with interests other than those of consumers. In early 1954, a few months before the act was to go into effect, he expressed support for a move to delay for one year the effective date of the act so that standards could be clarified. A year later he backed a bill to exempt imported silk and rayon scarves from the act's purview. In both cases he took his position because of appeals from producers and sellers--primarily a Seattle importer--not to promote consumer protection.<sup>38</sup>

Finally, his dealings with the Food and Drug Administration through the early part of this period also make it plain that he was typically more

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<sup>36</sup>News Release of 16 June 1972, WGM Papers, accession 3181-5, box 231, folder 27. The bill that became the original Flammable Fabrics Act was actually a House measure, H.R. 5069, 83d Cong. Previous bills introduced in the Senate had been written by Edwin Johnson of Colorado. See, for example, S. 2918, 82d Cong.

<sup>37</sup>Cong. Rec., 83d Cong., 1st sess., 1953, 99, pt. 5: 6777.

<sup>38</sup>See WGM's correspondence with M. W. McInnis, April 1954, WGM Papers, accession 3181-3, box 156, folder 20; and WGM's comments on the introduction (by request of the Secretary of Commerce) of S. 1455, Cong. Rec., 84th Cong., 1st sess., 1955, 101, pt. 3: 2867.

interested in aiding business--especially Washington State business (and the workers dependent upon it)--than in assisting his constituents in their role as consumers. In 1946 he wrote to the FDA concerning a Seattle seafood company that had had its crab cocktail seized because it was made of too much tomato sauce and not enough crab. Magnuson asked Commissioner Paul B. Dunbar to keep him informed on the case, adding: "I would like to do everything possible to keep these small business [sic] operating in this area."<sup>39</sup> Similarly, in 1947 he wrote to Dunbar requesting quick action on a case involving a Washington fruit packing cooperative so that it would "not be subjected to any unwarranted trade criticism."<sup>40</sup> During this period he also contacted the FDA on behalf of, among others, the state oyster industry, a Seattle importer of Chinese herbs and roots, and an Oregon man who claimed to have developed a hair restorer.<sup>41</sup> None of Magnuson's letters mentioned the need for the FDA to protect consumers; these were inquiries on behalf of producers.

### **A New Emphasis**

But by the mid-1950s a new emphasis had begun to emerge: Magnuson the consumer protector had begun to supplement Magnuson the pork-barrel politician, friend of development, and federal expenditures "bandit." There is

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<sup>39</sup>21 October 1946, WGM Papers, accession 3181-3, box 56, folder 38.

<sup>40</sup>21 October 1947, WGM Papers, accession 3181-3, box 62, folder 8.

<sup>41</sup>See correspondence in WGM Papers, accession 3181-3, box 67, folders 1, 3, and 4.

no sign of a sudden conversion; instead, he seems gradually to have added consumer protection to his portfolio of legislative interests. Nor is there any evidence, at least in the Magnuson Papers, of a strong, grassroots call from his constituents for consumer protection, other than their unending complaints about the cost of living. He seems to have made the decision himself, rather than in response to pressure from home.

Indeed, an interest in consumer protection can hardly be said to be strictly constituent-oriented at all, even if Washington State residents had deluged him with requests calling for it, because the laws and benefits are dispersed nationwide. This characteristic of consumer protection--its national impact--points to one key way in which this represented a new emphasis for Magnuson: he was beginning to tackle issues and problems that were larger than his state. He may not have realized it, but he was starting to ask himself a new question: "What is good for the country?"

This does not, however, explain why he chose to devote more attention to consumer protection during the 1950s. Perhaps his success at gaining projects for his state decreased the need for further such projects and pushed him to expand his horizons. But this would imply that his choosing consumer protection was random; in other words, of a menu of possibilities he happened to opt for that one. This is neither a likely explanation nor a satisfactory one.

Two main factors other than chance seem to have contributed to Magnuson's growing participation in and identification with consumer issues. The first was his evolving perception of his duty as an elected representative.

In addition to his obligation to try to bring as much prosperity to his state as possible, Magnuson saw his role, in fact the role of government at all levels, as one of ensuring fairness. He articulated this view in a 1955 speech before a Lutheran organization:

I . . . feel that the state or the government has a definite, but sometimes not well defined, responsibility to its citizens. I feel there is enough hardship[,] ill fortune, lack of opportunity, enough just plain misery in human life, without the state adding to it with laws that grant small groups special privileged [sic] or with laws permitting one group to prey upon another legally. . . . What is more, I feel that since I have been given the job of representing a lot of people in the most powerful legislative body in the world, I should do something about it.<sup>42</sup>

Admittedly, Magnuson probably idealized his own motives somewhat, considering the nature of the group he was addressing, but to a large degree his actions matched his words: he had built a reputation since his days in the state legislature as a friend of the common people.<sup>43</sup> From public power to old-age pensions to huge federal projects, his emphasis had been the people who were collectively known at that time as the "forgotten man."

By the 1950s it must have occurred to Magnuson that the forgotten man--or, more likely, forgotten woman--in the American economy was the consumer. Virtually every industry had its lobbying organization to look out for its interests and, as a member of the Senate Commerce Committee,

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<sup>42</sup>The speech was reprinted as a press release: "Address, Senator Warren G. Magnuson (D-Wash) Before International Lutheran Laymen's League, Seattle, Wash.[.] Wednesday, June 29, [1955]," WGM Papers, accession 3181-3, box 47, folder 70.

<sup>43</sup>See for example, Clark Squire, "Warren Magnuson, Poor Boy, Is Coming Leader," Seattle Star, 19 October 1936, p. 13.

Magnuson received letters from a good many of them. But consumers had no such powerful lobby. Consumers Union, publisher of Consumer Reports, might have played that role but, tainted by its alleged connection to communism, it was little more than "a voice in the wilderness" in the 1940s and 1950s.<sup>44</sup>

Congressional attempts to gain an organized voice for consumers in the Department of Commerce or in an independent agency that would represent consumers before the federal government also failed.<sup>45</sup> In 1953, Senator Guy Gillette of Iowa introduced a resolution calling for the Senate to create a select Committee on Consumer Interests which would concern itself with consumer concerns, mainly prices. Magnuson and twenty-four other senators cosponsored the resolution, but nothing came of it.<sup>46</sup>

Magnuson's support for this measure reveals a slight but significant change in his view of businesspeople. Previously he had thought that since most of them were honest, government should play a minimal part in the

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<sup>44</sup>Mark V. Nadel, The Politics of Consumer Protection (Indianapolis: Bobbs-Merrill, 1971), p. 32.

<sup>45</sup>Introduced in the 82d Cong. in August 1951, H. R. 5189, "A bill to establish in the Department of Commerce a Consumers' Advisory Bureau . . .," died in the House Committee on Interstate and Foreign Commerce. H. R. 6892, "to provide for an independent Consumers' Counsel to represent the consuming public before Government agencies," was introduced in March 1952 in the same Congress, and referred to the House Judiciary Committee, never to emerge.

<sup>46</sup>Cong. Rec., 83d Cong., 1st sess., 1953, 99, pt. 1: 395-96. Business Week printed a short article on the prospective committee before the resolution was even introduced. The article itself was less condescending than the title might indicate: "Holding the Consumer's Hand," 24 May 1952, pp. 126, 129. Incidentally, one subheading was "Forgotten Man."

marketplace. Now he was coming to realize that since some of them took advantage of consumers by selling shoddy, overpriced, or dangerous merchandise, the government was obligated to intervene. Since the proper functioning of the market depended upon a fair exchange of value for value, sometimes the government needed to step in to ensure equitable dealing between producers and consumers. In short, the free market system did not imply the freedom to harm others.

What enabled dishonest businesspeople to take advantage of consumers after World War II were precisely those developments that had led Dr. Harvey Wiley and others to call for protective laws at the beginning of the century: national distribution of products and the resulting distance between producers and purchasers, untruthful advertising, misleading labeling, the increasing numbers of different products for sale, and so on. But by the 1940s and 1950s the distances were greater (because transportation was more rapid), advertising more pervasive (coming into the home via the media of radio and television as well as the printed page), labeling tricks more sophisticated (to skirt the provisions of the Food, Drug, and Cosmetic Act of 1938), and items more numerous.<sup>47</sup> Like the growth of the cities two generations earlier, the growth of the suburbs in the 1950s forced more and more Americans to rely on distant, faceless, and nameless suppliers for food and other household items.

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<sup>47</sup>Between the end of World War II and 1966, the number of different items facing a shopper on supermarket shelves increased from 1,500 to 8,000. U.S., Congress, Senate, Committee on Commerce, Fair Packaging and Labeling Act, S. Rept. 1186 to Accompany S. 985, 89th Cong., 2d sess., 1966, p. 2.

In the words of the Senate Commerce Committee, the postwar era was marked by a "technological upheaval in food processing, packaging, and distribution."<sup>48</sup>

Although Magnuson himself certainly would not have seen his inchoate consumerism as a response to totalitarianism, it did bear a strong resemblance to the postwar liberal viewpoint that Arthur M. Schlesinger, Jr., described in The Vital Center as having been shaped by contact with Hitler and Stalin. Schlesinger portrayed late-1940s liberalism--he preferred the term "radicalism"--as more cynical, less optimistic than that of the New Deal or earlier because the war had revealed the evil side of humanity. "In the years after the Second War," Schlesinger wrote, "Americans began to rediscover the great tradition of liberalism . . . of a reasonable responsibility about politics and a moderate pessimism about man."<sup>49</sup> Schlesinger's vital center thesis most directly addressed international affairs, but it had implications for domestic policy, too. Alonzo Hamby described the vital center's perception of the business community in love-hate terms: "a potentially constructive, if frequently wrongheaded force in American life."<sup>50</sup> Magnuson had always seen American business as constructive; in the postwar years he came to realize that wrongheadedness was also part of its character.

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<sup>48</sup>Fair Packaging and Labeling, S. Rept. 1186 to Accompany S. 985, p. 2.

<sup>49</sup>Arthur M. Schlesinger, Jr., The Vital Center: The Politics of Freedom (Boston: Houghton Mifflin, 1949), p. 165.

<sup>50</sup>"The Vital Center, the Fair Deal, and the Quest for a Liberal Political Economy," American Historical Review 77 (June 1972): 657-58.

Magnuson's gradually increasing participation in consumer issues can thus be traced to his philosophy--the combination of his abiding belief in free market capitalism and his desire to advance and protect the interests of the common people--along with his growing realization that some producers did cheat and endanger consumers through practices that had no place in the American economic system. All of these ideas, of course, were informed by his views of representative government and his duties as an elected official.

The second factor that led Magnuson to take a greater interest in consumer protection can be subsumed under the heading of old-fashioned partisan politics. From the time he had first entered the House of Representatives as a New Deal Democrat in 1937 through his entire first term in the Senate, Magnuson had enjoyed the luxury of seeing the White House occupied by a member of his own party. Even more significant, his party had controlled the House during all of his eight years there and had been in the majority in the Senate except for the two years of the Eightieth Congress, 1947-48. With the election of President Dwight D. Eisenhower in 1952, however, the Republicans regained control of not only both houses of Congress but also the presidency and the appointive power that went with it. Although the Democrats would be the minority party in the Senate for only two years, the presidency would be held by the Republican Eisenhower for eight. Magnuson quickly learned how to play the role of the opposition, and he seemed to thrive on the freedom it gave him.

The Republicans, for their part, had been kept away from the patronage trough since 1932, and were starving for postmasterships and other plums by 1953 when Eisenhower took the oath of office.<sup>51</sup> The new president had been elected--given his "mandate for change" as the title of the first volume of his White House memoirs proclaims--on a platform proposing "to cut federal spending, to eliminate the budget deficit, and to reduce taxes."<sup>52</sup> The results were predictable: the replacement of Democratic appointees with Republicans and cutbacks in appropriations for agencies and programs that did not conform with Eisenhower's "middle of the road" Republican priorities.

Among the agencies that experienced this process was the Federal Trade Commission, whose duty it was to prevent unfair and deceptive trade practices. The FTC was part referee between businesses and, to a much lesser degree, part consumer protection agency. Under the Eisenhower administration, the FTC would be smaller, cheaper, and less active.

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<sup>51</sup>Senator Everett Dirksen bluntly stated what many members of his party were only thinking:

I am not timid about the patronage matter. The Republicans are in control, and I have been serving in Congress for 20 years and never before this year have I had the opportunity to recommend the appointment of a postmaster. I am now doing my best to get a few offices now and then, and I am going to work harder at it.

Quoted in U.S., Congress, Senate, Committee on Commerce, Appointments to the Regulatory Agencies: The Federal Communications Commission and the Federal Trade Commission (1949-1974), by James M. Graham and Victor H. Kramer, Committee Print, 94th Cong., 2d sess., 1976, p. 47.

<sup>52</sup>Dwight D. Eisenhower, The White House Years: Mandate for Change, 1953-1956 (Garden City, N.Y.: Doubleday, 1963), p. 127.

Before 1953 Magnuson's contacts with the FTC had been primarily of two types: in his role as a member of the body whose duty it was to "advise and consent" to presidential nominations to the commission and as an intermediary between the FTC and Washington State businesses that had somehow run afoul of the agency. With the exception of John Carson in 1949, nominees for the FTC were routinely approved.<sup>53</sup> And Magnuson's office's service as intermediary had generally been one of forwarding mail, translating for constituents the stipulations issued by the FTC, and encouraging the commission to emphasize "compliance rather than prosecution after violations have been committed."<sup>54</sup> Magnuson knew that some people considered the

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<sup>53</sup>Carson, who had once served as an assistant to a Republican senator, considered himself an Independent, had close ties to the Truman presidency, and was nominated for a "Republican" position on the FTC (since no more than three commissioners may be members of the same party and the Democrats already held three positions). Even worse than his nebulous political standing were his "pro-consumer sympathies," which such organizations as the National Association of Manufacturers, the National Retail Dry Goods Association, the National Association of Retail Gasoline Dealers, and other business lobbies found repulsive. Magnuson spoke in favor of Carson's confirmation, noting that he was not a Democrat, which met the letter of the law regarding party balance, and that his pro-consumer stance would be good for the Commission. Carson was confirmed by the Senate, but not overwhelmingly: 45 in favor, 25 opposed, and 26 not voting. See Appointments to the Regulatory Agencies, by Graham and Kramer, pp. 7-9; and Cong. Rec., 81st Cong., 1st sess., 1949, 95, pt. 10: 13001-12.

<sup>54</sup>See, for examples of Magnuson's office as intermediary and translator, correspondence with How J. Ryan, How Ryan & Son Advertising, Seattle, 1946-48, WGM Papers, accession 3181-3, box 67, folder 6; and WGM to Leo Weisfield, Weisfield's Inc. (Jeweler), Seattle, 1 February 1950, WGM Papers, accession 3181-3, box 77, folder 20. The quote regarding compliance rather than prosecution is from WGM to Lowell B. Mason, Chairman, FTC, 7 December 1949, WGM Papers, accession 3181-3, box 77, folder 20.

FTC to be the "consumer's watchdog,"<sup>55</sup> but he perceived it, accurately enough, to be something more akin to a "business referee" which kept an eye out for trade practices that were unfair to other businesses and corrected them before they became a significant problem.

But the actions of the Eisenhower administration in changing the tenor of the FTC also changed Magnuson's relationship with the commission. Eisenhower's first step in turning it from a Democratic stronghold to a body with a Republican philosophy was nominating attorney Edward F. Howrey to the commission, with the tacit understanding that he would be named chairman upon confirmation by the Senate.<sup>56</sup>

Howrey had represented powerful corporate clients when they were called before the FTC, experience which certainly prepared him for his duties as a commissioner, but which also seemed to indicate an anti-FTC bias as well as a personal interest in cases that were still pending. Neither of these implications was lost on Magnuson, who acted as the devil's advocate in the confirmation hearings in the Commerce Committee. Magnuson pointedly asked him if his previous experience would prejudice him against any FTC officials

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<sup>55</sup>See WGM's comments during the debate on the Carson nomination, Cong. Rec., 81st Cong., 1st sess., 1949, 95, pt. 10: 13001.

<sup>56</sup>Appointments to the Regulatory Agencies, by Graham and Kramer, p. 49. At the nomination hearing, in response to one of Magnuson's questions implying that he would be chairman, Howrey stated that he had not been so named. Senator Charles W. Tobey, chairman of the hearing, interjected: "Coming events cast their shadows before them." U.S., Congress, Senate, Committee on Interstate and Foreign Commerce, Nomination of Edward F. Howrey to Federal Trade Commission, 83d Cong., 1st sess., 1953, p. 30.

who had opposed him in cases he had argued for his corporate clients. Howrey replied that it would not, and promised to dissociate himself from any cases involving his former clients. Magnuson, considering the large number of companies that Howrey had represented, retorted: "I am afraid that you might be on a vacation almost permanently down there."<sup>57</sup> Despite such misgivings, the Commerce Committee recommended confirmation of Howrey, the Senate confirmed him, and the president named him chairman.

Howrey quickly put his personal stamp on the FTC: acquiescing in a decreased budget allocation as suggested by the White House Bureau of the Budget<sup>58</sup> and firing or demoting staff members--including a commission attorney who had opposed him on a major antitrust case. Every move Howrey made was cleared with the Republican National Committee. And every move was "making it easier for the businessman who is up on the FTC carpet, harder for the FTC lawyers handling the cases." The process was given a name. The FTC, it was said, had been "Howreyized."<sup>59</sup>

Although staff cutbacks or "reductions in force" were made in virtually all the agencies of the federal government under the Eisenhower

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<sup>57</sup>Nomination of Edward F. Howrey, p. 14.

<sup>58</sup>WGM to Howrey, 9 September 1953, and Howrey to WGM 25 September 1953, WGM Papers, accession 3181-3, box 94, folder 31.

<sup>59</sup>Appointments to the Regulatory Agencies, by Graham and Kramer, pp. 51-52.

administration,<sup>60</sup> Magnuson was especially irked by the changes at the Federal Trade Commission. Howrey had promised Magnuson at the Senate hearing on his nomination that he would not retaliate against former foes. And now he appeared to be doing just that. He also appeared to be singling out the most competent and aggressive staff members. Moreover, he seemed to Magnuson to be usurping the prerogatives of Congress. As Magnuson put it, "The special interests will get what they want without the necessity of coming to Congress for amendments to the law."<sup>61</sup> While Magnuson had not always favored a strict FTC, the "Howreyized" version seemed to him to be going too far.

In September 1953 Magnuson asked Howrey to explain his actions for the benefit of the Commerce Committee.<sup>62</sup> Howrey responded that the commission had sought the highest appropriation it could get and that staff members had not been released for their ability or previous experience on the other side of cases in which he had participated. "Unfortunately," he added insolently, "competency (under the laws passed by Congress) is not a controlling factor" in hiring and firing decisions. Thus began something of a feud between Magnuson and the Republican-dominated FTC.

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<sup>60</sup>See the Herblock cartoon in the Washington Post, 20 September 1953, p. 4B. A smiling "Administration" figure is shown kicking out a figure representing "Govt. Career Employees" while saying facetiously: "Come Back And We'll See What We Can Do For You."

<sup>61</sup>WGM to Howrey, 9 September 1953, WGM Papers, accession 3181-3, box 94, folder 31.

<sup>62</sup>The letter and Howrey's response are cited in note #58 above.

The long-run beneficiaries of this feud would be American consumers, for by attempting to force the FTC to fulfill its antitrust and unfair trade practices duties, Magnuson himself became more and more a consumer protector. As he saw federal agencies shirking their duties, he became more inclined to impose congressional will on them through oversight or legislation. In 1957, for example, responding to a query from Representative Morgan Moulder, chairman of the Special Subcommittee on Legislative Oversight, he wrote:

I am confident you will find the independent commissions, packed with appointees by the Administration, are bent on "bending" the law to meet their own philosophies. In addition, I am convinced that you'll find these commissions more amenable to outside political influence than at any time in recent history.<sup>63</sup>

He also expressed his belief that Moulder's Subcommittee was "on the right track" in investigating the commissions to determine if they were properly administering the laws.

The commission, despite the best efforts of its Eisenhower-era chairmen, contributed to the consumer movement by carrying out antitrust investigations that evolved into investigations of product safety and efficacy. The prescription drug industry was the locus of the main showdown between Magnuson and the FTC in the 1950s, and it is not unreasonable to argue that this clash helped to instigate the third wave of consumer protection.

Before turning to that, however, another effect of the American political system must be noted. In 1955, by virtue of his party's recapturing control of

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<sup>63</sup>WGM to Moulder, 23 July 1957; and Moulder to WGM, 18 July 1957, may be found in WGM Papers, accession 3181-4, box 161, folder 2.

the Senate at the polls the previous November and his own longevity, Magnuson ascended to the chair of the Senate Committee on Interstate and Foreign Commerce. A Senate committee chairman in the mid-1950s has been likened to an emperor: with the power to hold or not to hold committee meetings he could "rid himself of unpleasant things simply by willing them to go away."<sup>64</sup> Magnuson was in a position to make over the Commerce Committee in his own image.

### **Antibiotics and the Third Wave**

At Edward Howrey's confirmation hearing, the issue of quantity price discounts as a type of price discrimination came up for discussion. Howrey had represented Firestone Tire & Rubber, which had been sued by the FTC for price discrimination.<sup>65</sup> Senator Magnuson, in pursuing the issue of conflict of interest, mentioned that such cases were likely to recur in other fields, including automobiles and drugs.<sup>66</sup> Although he did not further comment upon the topic of drug prices at this hearing, clearly he was thinking about it by March 1953.

Staff members at the FTC had been thinking about the prices of drugs as early as 1951. Antibiotics, the new "wonder drugs," were not only expensive,

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<sup>64</sup>White, Citadel, pp. 180, 189-91.

<sup>65</sup>Appointments to the Regulatory Agencies, by Graham and Kramer, pp. 48-49.

<sup>66</sup>Nomination of Edward F. Howrey, p. 38.

they were uniformly expensive: different companies priced their different drugs exactly the same. An abortive investigation by the commission produced denials of price fixing by the pharmaceutical companies, and the case was closed. When Howrey took over as chairman of the FTC, the economists who had first suggested the investigation of the drug industry--and who still thought that the probe should be completed--happened to be among the majority who were either fired, demoted, or forced to resign. Any hope that the study could be reopened seemed to have disappeared.<sup>67</sup>

But Magnuson began to push the issue, and he was uniquely situated to have his way. For by spring 1955 he chaired not only the Senate Commerce Committee but also the Independent Offices Subcommittee of the Appropriations Committee, before which the FTC had to plead its case for increases in funding or for discretion in how the appropriation was spent. When Howrey appeared before Magnuson's subcommittee, the Senator from Washington took the opportunity to lecture him on the relationship of the FTC to the president and to the Senate, reminding him that the commission was "an arm of the Congress . . . not an executive agency," and that "because the Budget Bureau asks you to do [something] does not necessarily mean you should do it."<sup>68</sup> A Congressional request, however, was a different story.

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<sup>67</sup>Richard Harris, The Real Voice (New York: Macmillan, 1964), pp. 3-5.

<sup>68</sup>U.S., Congress, Senate, Committee on Appropriations, Subcommittee on Independent Offices, Independent Offices Appropriations, 1956, 84th Cong., 1st sess., 1955, pp. 466-67.

Eventually the discussion worked around to antibiotics which, as both Magnuson and Howrey pointed out, fell under the jurisdiction of the FTC only insofar as their prices, labeling, or advertising were concerned: drug safety was the bailiwick of the Food and Drug Administration. Magnuson mentioned that the Commerce Committee had looked into the antibiotics industry in a very small way, and noted that a thorough study by the FTC would probably reveal markups of 400 or 500 percent of production costs. Howrey said that an investigation of drugs was on their list of projects for the future, but financial limitations meant that other studies took priority. Magnuson responded that the probe of antibiotics would likely be more in the public interest than other investigations because poor Americans probably paid more in proportion to the cost of production for drugs than for any other product. Howrey agreed that a study was desirable, but made no promises to carry it out.<sup>69</sup>

On June 24, 1955, Howrey resigned from the commission, with more than four years of his seven-year term remaining. Business Week reported that his departure was brought on by pressures from the Democrats in Congress, who opposed his pro-business changes at the FTC.<sup>70</sup> But other reasons apparently entered into his decision: the low pay of the government position in comparison to the salary he had earned in his "lucrative" law practice, patronage pressures from Republicans, and normal pressures from

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<sup>69</sup>Independent Offices Appropriations, 1956, pp. 477-79.

<sup>70</sup>Cited in Appointments to the Regulatory Agencies, by Graham and Kramer, p. 77.

members of Congress who contacted the FTC for their constituents on pending cases. He had also been touted as a candidate for the Supreme Court in October 1954. Graham and Kramer, in their study of the regulatory agencies, mentioned all of these factors, but concluded that "the central reason was that Howrey had accomplished what he had set out to do, and was now ready to move on." They also noted that the White House had probably known when he had been nominated that he would not stay beyond about two years.<sup>71</sup>

In any case, it was Howrey's successor John W. Gwynne who began to feel the pressure Magnuson exerted in order to bring the antibiotics study to fruition. Prior to the appropriation hearing for fiscal year 1957, Magnuson wrote an apparently routine letter to Gwynne asking if the public interest required any changes in the appropriation bill that had come over from the House. Gwynne answered that the bill represented \$100,000 less than the amount estimated by the Bureau of the Budget, and that restoring the full amount would enable the FTC to carry out its duties.<sup>72</sup> Magnuson's reply made it clear that the restoration of the money would very likely hinge on what it would be used for, and the preference of the Chairman of the Independent Offices Appropriations subcommittee was obvious. After promising to give his request for the full appropriation "careful consideration," Magnuson continued:

In considering this request it will be helpful if you provide a detailed description of your plans for conducting the study of the antibiotics

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<sup>71</sup>Appointments to the Regulatory Agencies, by Graham and Kramer, p. 77.

<sup>72</sup>Gwynne to WGM, 12 March 1956, WGM Papers, accession 3181-3, box 111, folder 17.

industry, together with an indication of when the study may be completed. For several years the Committee has had a very real interest in this investigation, and it is somewhat disturbed by the apparant [sic] lack of progress thus far.<sup>73</sup>

At the appropriation hearing Magnuson further stressed the importance of the antibiotics study, noting that the drugs were too expensive for some consumers to afford and implying that the pharmaceutical industry was not competitive--in other words, that price fixing was taking place.<sup>74</sup> By that time the FTC had prepared questionnaires on economic matters to send to antibiotics manufacturers, and the study got under way soon thereafter.

In the summer of 1958 the report generated by the probe was finally published. It was a disappointment to those who hoped to find evidence of price manipulations because it did not include information on production costs. Without these data, fair selling prices could not be determined.<sup>75</sup>

But soon thereafter John Blair, a staff member on Senator Estes Kefauver's Antitrust and Monopoly Subcommittee and formerly head of the Division of Economic Reports of the FTC (until Chairman Howrey's restructuring of the commission), saw the FTC's quarterly report on the income and profits of American manufacturers. Blair had studied under Gardiner

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<sup>73</sup>WGM to Gwynne, 30 March 1956, WGM Papers, accession 3181-3, box 111, folder 17.

<sup>74</sup>U.S., Congress, Senate, Committee on Appropriations, Subcommittee on Independent Offices, Independent Offices Appropriations, 1957, 84th Cong., 2d sess., 1956, pp. 102-03.

<sup>75</sup>Harris, Real Voice, p. 16.

Means at American University in 1937<sup>76</sup> and was familiar with the type of price fixing that Means called "administered prices." According to Means's theory, corporations fixed selling prices which they maintained despite the vagaries of supply and demand.<sup>77</sup> This is what Blair seemed to have found in the case of drug manufacturers' income and profits. The statistics showed that drug makers enjoyed profits of almost 11 percent after taxes, more than twice the average profits of all the other manufacturers. This high profit level had not been noted before because the report had previously lumped the drug companies in with the chemical firms, but now they were listed separately.<sup>78</sup> The data represented the smoking gun that seemed to indicate overcharging and, since antibiotics prices were improbably identical, price fixing.

After Blair had pointed out to him the implications of the statistics, Kefauver decided to investigate the drug industry under the auspices of his subcommittee, and Magnuson, although he remained vitally interested in the issue of drug pricing, dropped out of the lead in that area. Ultimately, Kefauver's investigation led to the introduction of a bill to clean up economic matters in drug manufacturing, but just as in the case of the Federal Food,

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<sup>76</sup>Frederic S. Lee and Warren J. Samuels, "Introduction: Gardiner C. Means, 1896-1988," in The Heterodox Economics of Gardiner C. Means: A Collection, eds. Frederic S. Lee and Warren J. Samuels (Armonk, N.Y.: M. E. Sharpe, 1992), p. xxvi.

<sup>77</sup>U.S., Congress, Senate, Industrial Prices and Their Relative Inflexibility, by Gardiner C. Means, S. Doc. 13, 74th Cong., 1st sess., 1935. For a brief explanation of how this came to be published as a Senate document, see Lee and Samuels, "Introduction: Gardiner C. Means, 1896-1988," pp. xxiii-xxiv.

<sup>78</sup>Harris, Real Voice, pp. 15-17.

Drug, and Cosmetic Act of 1938, this legislation passed Congress only on the heels of tragedy. In the early 1960s the drug thalidomide had been dispensed in Europe as a sedative, and it was soon shown to cause birth defects. A Washington Post report revealed that only one FDA doctor stood between the drug and the American market, indicating dangerous shortcomings in the law. Kefauver's bill was rewritten to require tests establishing the safety and efficacy of drugs before they were released on the market.<sup>79</sup> The Kefauver-Harris Drug Amendments to the Federal Food, Drug, and Cosmetic Act, passed in 1962, represented one of the key early measures of the third wave of consumer protection.

While Magnuson's concern for consumers was almost exclusively economic, there can be little doubt that his persistence on the antibiotics study stirred up interest in Congress as well as in the Federal Trade Commission itself. Legislation addressing drug safety emerged partly as a result of tragedy, to be sure, but it emerged in a climate that enabled members of Congress to view the drug industry from the consumer's perspective. Although Kefauver is rightly recognized as the father of the 1962 drug amendments, to Magnuson must go much of the credit for preparing the climate that made Kefauver's success possible.

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<sup>79</sup>Robert N. Mayer, The Consumer Movement: Guardians of the Marketplace (Boston: Twayne, 1989), p. 27.

## **Hazardous Substances**

Whereas Magnuson's role in the enactment of the drug amendments was essentially that of an inadvertent instigator, his participation in the passage of another piece of consumer legislation, the Federal Hazardous Substances Labeling Act of 1960 (PL 86-613), was far more thoroughgoing. The initial inspiration for the act was not his, but he shepherded the successful bill from start to finish.

Like many consumer measures, the Hazardous Substances Labeling Act did not gain passage the first time it was introduced. In April 1957, during the Eighty-fifth Congress, Republican Senator Prescott Bush of Connecticut offered a measure to require informative labeling of potentially dangerous substances. Bush's bill, S. 1900, would have mandated that labels indicate the hazards presented by the substances as well as any precautions necessary to ensure safe use. In his comments upon introducing the bill Bush noted the "increasing concern on the part of the public, members of the medical profession and responsible manufacturers," and the "distressing cases of death or injury of young children resulting from misuse of such products."<sup>80</sup> S. 1900 was referred to the Commerce Committee but failed to emerge before the Eighty-fifth Congress came to a close. Identical bills introduced in the House by Republican Thomas Curtis of Missouri and Democrat John B. Williams of Mississippi also failed to advance beyond the House Commerce Committee.

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<sup>80</sup>Cong. Rec., 85th Cong., 1st sess., 1957, 103, pt. 5: 5727.

While those bills were pending in their respective committees, the problem came to Magnuson's attention in a second way. The Saturday Evening Post, in its issue of November 16, 1957, ran an article entitled "Help for the Poisoned Child." Author Meyer Berger made the provocative but incorrect statement that "No law compels a drug or insecticide manufacturer to name product ingredients on his labels."<sup>81</sup> A Washington State resident wrote to Magnuson and, citing the article and its statement about labeling, argued for revisions in the apparently lacking laws.<sup>82</sup>

Magnuson's office, in its role as intermediary between constituents and government agencies, forwarded the letter to the Food and Drug Administration. FDA Commissioner George P. Larrick wrote back enclosing a copy of a letter he had written to the Saturday Evening Post as well as a copy of a letter that Justus C. Ward, head of the Pesticide Regulation Section in the Department of Agriculture had sent to the magazine.<sup>83</sup> Their missives pointed out that federal laws did, in fact, require drug and pesticide labels to list ingredients and other pertinent information. But Larrick's letter to Ben Hibbs of the Saturday Evening Post also showed just how limited the labeling

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<sup>81</sup>Meyer Berger, "Help for the Poisoned Child," Saturday Evening Post, 230 (16 November 1957): 77.

<sup>82</sup>John W. Scruggs to WGM, 15 December 1957, WGM Papers, accession 3181-4, box 100, folder 37.

<sup>83</sup>Copies of these three letters--Larrick to WGM, 2 January 1958; Larrick to Ben Hibbs, Editor, Saturday Evening Post, 2 January 1958; and Ward to Hibbs, 20 December 1957--may be found in the WGM Papers, accession 3181-4, box 100, folder 37.

laws were when it came to household chemicals. "The Federal Caustic Poisons Act," he wrote, "requires the labels of 12 specified caustic or corrosive substances in retail packages for household use to bear, in addition to the common name of the substance, the word 'poison' in prominent type, and directions for treatment in case of accidental personal injury." But in the thirty years since 1927, when the Federal Caustic Poisons Act was enacted, many new hazardous substances had been introduced on the market. If they were composed of substances other than the twelve listed compounds, the law did not apply to them. In other words, each newly developed household cleaner, solvent, or other substance created its own loophole in the law.

Whether inspired by the earlier bills, by the evident shortcomings in the law revealed in the correspondence with Commissioner Larrick, or by some other influence, Magnuson decided to join the fight to strengthen the labeling laws. With Senator Bush he introduced a hazardous substances bill, S. 1283, on March 5, 1959, while Representative Kenneth Roberts, an Alabama Democrat, introduced a companion measure in the House. S. 1283 would require manufacturers to label any hazardous household substances with a "signal word" ("danger," "caution," or the like); a notation of the type of danger ("flammable," "vapor harmful," and so on); first aid instructions; directions for storage and handling; and the warning "KEEP OUT OF REACH OF

CHILDREN." It also outlined penalties for failure to abide by the new rules.<sup>84</sup>

Testimony during the hearing before the Senate Commerce Committee revealed that approximately five thousand deaths occurred each year in the United States as a result of poisoning. Annually, roughly 600,000 children under fifteen years of age swallowed a "poisonous or potentially poisonous substance." The purpose of this bill was to decrease those alarming numbers by replacing the Federal Caustic Poisons Act of 1927, which was too limited in its coverage.<sup>85</sup>

The bill generated little if any opposition. Its main goal was to protect children who might unwittingly come in contact with deadly or injurious substances, and no one could argue against safety for children.<sup>86</sup> It enjoyed bipartisan support in Congress, drug and chemical industry backing, the blessing of the American Medical Association, and the imprimatur of the

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<sup>84</sup>Senate Committee on Interstate and Foreign Commerce, press release 59-20, for release on 4 March 1959, WGM Papers, accession 3181-4, box 226, folder 7; and Cong. Rec., 86th Cong., 1st sess., 1959, 105, pt. 3: 3290.

<sup>85</sup>U.S., Congress, Senate, Committee on Interstate and Foreign Commerce, Hazardous Substances for Household Use: S. Rept. 1158 to Accompany S. 1283, 86th Cong., 2d sess., 1960, p. 1. Portions of this report were reprinted in Cong. Rec., 86th Cong., 2d sess., 1960, 106, pt. 5: 6631-32.

<sup>86</sup>The expectation was that adults, who could read the warnings, would keep the substances away from the children, who could not. Recent anti-poisoning efforts have also tried to enable children who cannot read to identify those products that may be harmful. Children are taught to avoid substances to which a brightly colored "Mr. Yuk" sticker has been affixed.

Eisenhower administration.<sup>87</sup> Although there is no such thing as an easy bill to pass, S. 1283 came closer to meeting that description than virtually any other consumer measure. Yet it still had to go through committees, debates, amendments, and the like, and its passage was not a foregone conclusion.

Ironically, while the bill was making its way through Congress, a highly publicized poisoning case occurred in Magnuson's home state. A sixteen-month-old girl from the town of Wishram, Washington, died after swallowing some powdered detergent for automatic dishwashers. "This incident," Magnuson was quoted as saying, "again proves the urgency of this legislation." He predicted and gained quick approval of the bill on the Senate floor.<sup>88</sup> Thus, this protective legislation, like the Food, Drug, and Cosmetic Act of 1938 and Drug Amendments of 1962, received added impetus from a tragic event. But as the bill's cosponsor, Prescott Bush, noted on the floor of the Senate, its passage was mainly a result of the hard work of its chief architect and backer, Senator Magnuson.<sup>89</sup>

The Federal Hazardous Substances Labeling Act (PL 86-613) signaled a new age for American consumers and for Magnuson himself. While there had been consumer bills introduced throughout the decade and a half since the end

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<sup>87</sup>"Support for Tighter Labeling Law," Business Week, 5 March 1960, p. 123; and "The Label Will Say So," Newsweek 56 (25 July 1960): 75.

<sup>88</sup>"Death From Detergent Stirs U.S. Legislators," Oregonian (Portland), 6 March 1960, p. 23. See also Cong. Rec., 86th Cong., 2d sess., 1960, 105, pt. 5: 6630-31 wherein a letter from the attending doctor is reprinted.

<sup>89</sup>Cong. Rec., 86th Cong., 2d sess., 1960, 106, pt. 11: 14723.

of World War II, for the most part they were as much producer protection as consumer. The Fur Products Labeling Act of 1951 (PL 82-110), for example, fits into this category, as does the Textile Fiber Products Identification Act of 1958 (PL 85-897). Both of these were intended not primarily to inform consumers but to protect honest producers from unfair competition.

Magnuson's Hazardous Substances Labeling Act, however, had no such implications for producers: it was strictly for the benefit of the ultimate consumer. Although it may be argued that the Flammable Fabrics Act of 1953 was similarly consumer-oriented, it is also true that producers severely weakened that bill before passage.

For Magnuson personally, this was his first real venture into the field of consumer measures that were not intended also to serve producers. The Hazardous Substances Act further represented a departure for him in that it was not primarily an economic measure. He was coming to see consumers not merely as purchasers who must not be cheated in market transactions, but as people who must not be injured by the things they buy. A first step was adequate labeling information; later he would turn also to making the products themselves more safe.

## **Conclusion**

Whereas Magnuson was never entirely allied with business interests, in his early years in the Senate he typically attended more closely to the needs of manufacturers than of consumers, especially in his home state of Washington.

His apparent support for business, however, was at least as much a stance in favor of workers as of owners. The development of his state's infrastructure that he so effectively pursued was essentially a search for more jobs and greater prosperity throughout his constituent base.

Magnuson can hardly be faulted for seeming to ignore consumers to some degree during the period from the end of the Second World War to about 1960. In these postwar years of reconversion and economic expansion, Americans' primary concern was employment. Once their immediate needs for jobs and financial well-being were taken care of, people could begin to become more concerned with the quality of the marketplace's goods. As it was, no real organized consumer interest existed at that time. And when the consumer was taken into consideration, it was as a generic economic being--part of the cycle of the market--rather than as a person who happened to purchase consumer items. The Flammable Fabrics Act of 1953 and especially the Hazardous Substances Labeling Act of 1960 returned the government to its position as intervenor on behalf of the consumer and guarantor of the consumer's safety--roles that it had assumed under the earlier Food and Drug Acts of 1906 and 1938. By 1960 the consumer was beginning to be taken seriously once again as someone who had more than a mere economic role. Thus began the third wave of consumer protection with a substantial assist from Warren G. Magnuson.

## **CHAPTER SIX**

### **Politics and Consumer Protection in the 1960s**

"If I were to be remembered for any one thing in my career, I would want it to be that in the nation's capitol [sic] I spoke for those who had no voice and that is the basis of my drive on consumer legislation."<sup>1</sup>

#### **Introduction**

With the passage of the Hazardous Substances Labeling Act of 1960, Senator Warren G. Magnuson had staked out a claim for himself in the field of consumer protection. His claim was tenuous, however, as consumer issues seemed at the time to offer meager political returns on his investment of time and energy.

By 1970, however, his reputation as a backer of consumer legislation was firmly established. He was a sponsor or key supporter of virtually every major consumer protection law enacted during the 1960s and early 1970s, and his 1968 campaign for reelection to the Senate was based almost entirely on

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<sup>1</sup>WGM, "Speech before the Young Democrat Convention," 11 February 1967, WGM Papers, accession 3181-4, box 194, folder 67, Manuscripts Division, University of Washington Libraries, Seattle.

the consumer protection theme. Some critics, and even friends, went so far as to accuse him--with reason--of taking over the consumer bills of others.<sup>2</sup>

Why had Magnuson's minimal interest in consumer protection evolved into such a determined pro-consumer stance? Why at that time? And with what results? The answers to these questions are to be found in a complex mix of social changes, political shifts, business trends, and personal desires. But the answers may be summarized quite succinctly: Magnuson, whose attention to antibiotics and household hazards helped to create the third wave of consumer protection, benefited mightily from it.

### **Politics, Entrepreneurship, and Consumer Protection**

The third wave was neither a grassroots social movement nor a presidential initiative. It was the creation of legislators such as Congressman Kenneth Roberts and, later, Senator Abraham Ribicoff, who took up the issue of automobile safety; Senator Philip Hart, who led the fight for packaging regulation; Senator Paul Douglas, the chief sponsor of regulations to clean up consumer credit; Senator Gaylord Nelson, who emphasized auto tire safety; and Magnuson, who guided a number of consumer protection bills through the

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<sup>2</sup>See, for example, Mark V. Nadel, The Politics of Consumer Protection (Indianapolis: Bobbs-Merrill, 1971), p. 114; David E. Price, Who Makes the Laws?: Creativity and Power in Senate Committees (Cambridge, Mass.: Schenkman, 1972), pp. 28-31; and Rochelle Jones and Peter Woll, The Private World of Congress (New York: Free Press, 1979), p. 146.

Senate and into the statutes by way of the Commerce Committee.<sup>3</sup> After these leaders and their respective committee staffs and personal assistants initiated the movement, they were joined and encouraged by the public and presidents. Incidentally, the presidents who contributed to the third wave-- Kennedy and Johnson--had moved over to the executive branch directly from the Senate.

James Q. Wilson, an authority on government and politics, has labeled these legislators "entrepreneurs" because they ventured their own political capital in an effort to develop and profit from their chosen issues. His discussion of entrepreneurship prepares the ground for an understanding of Magnuson's consumer advocacy, and it is worth quoting at length:

. . . a policy may be proposed that will confer general (though perhaps small) benefits at a cost to be borne chiefly by a small segment of society. When this is attempted, we are witnessing entrepreneurial politics. Antipollution and auto-safety bills were proposed to make air cleaner or cars safer for everyone at an expense that was imposed, at least initially, on particular segments of industry. 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 is ever passed. It is . . . 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 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

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<sup>3</sup>David Chalmers, And the Crooked Places Made Straight: The Struggle for Social Change in the 1960s (Baltimore: Johns Hopkins University Press, 1991), p. 181; and Michael Pertschuk, Revolt Against Regulation: The Rise and Pause of the Consumer Movement (Berkeley: University of California Press, 1982), pp. 20-21.

entrepreneur serves as the vicarious representative of groups not directly part of the legislative process.<sup>4</sup>

This description perfectly fits Magnuson's role in consumer protection. There was, first of all, no loud call for consumer measures from his constituents: public sentiment was indeed latent. In a letter of June 1960 Magnuson noted the six issues that his unscientific surveys indicated were most important to the residents of the state of Washington.<sup>5</sup> Only "high cost of living" and, with a bit of stretching, "development of water resources" could in any way be construed as consumer matters. But since these issues pertained to wages and employment as much as to the prices of goods and services (including hydroelectric power), they are, at best, only distantly related to such traditional consumer protection concerns as unsafe, adulterated, or misrepresented goods. Magnuson had built his career on constituent service, and in 1960 consumer protection simply was not a service that the people of Washington felt strongly about.

The reason for this apathy is in the nature of consumer protection itself and is reflected in Wilson's discussion of entrepreneurship. Everyone is a consumer at some time, and everyone therefore has an interest in protective

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<sup>4</sup>"The Politics of Regulation," in The Politics of Regulation, ed. James Q. Wilson (New York: Basic Books, 1980), p. 370.

<sup>5</sup>The issues as enumerated by Magnuson were: "1. Keep the peace; 2. Adequate defense; 3. High cost of living; 4. Bringing us back to a first-rate power in space and rocket technology; 5. Farm income; 6. Development of water resources." WGM to Robert E. Sweeney, 22 June 1960, WGM Papers, accession 3181-4, box 76, folder 30.

measures that ensure that consumer activities and transactions do not result in physical or financial harm. But this interest is much weaker than a person's interest in the source of his or her income, that is, his or her role as a producer in some chosen area.<sup>6</sup> The result for consumer protection, as well as for similar movements intended to advance the public good, is what has been called the "free-rider problem." Because the benefit accruing to an individual is small, and because everyone stands to gain equally whether a participant in the creation of the movement or not, it is difficult to rouse individuals to work for it--even to the small extent, for example, of writing to a member of Congress in support of it. From a cost-benefit point of view, a free-rider seeks to avoid the costs while enjoying the benefits.<sup>7</sup> Or, as Wilson put it, "the incentive to organize is . . . weak for the beneficiaries."

While the strategy of putting "opponents . . . on the defensive" would be used throughout the 1960s, it was difficult at the beginning of the decade for Magnuson and others to portray manufacturers who fought the legislation as villains. Frequently, those producers had valid financial reasons for their opposition, and they often expressed sympathy and concern for the abstract idea of consumer protection; it was the concrete means of doing so that they found unacceptable. Fortunately for the consumerists, from time to time manufacturers and their congressional allies inadvertently gave enough

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<sup>6</sup>Nadel, Politics of Consumer Protection, p. xix.

<sup>7</sup>Robert N. Mayer, The Consumer Movement: Guardians of the Marketplace (Boston: Twayne, 1989), pp. 6-7.

evidence of their mean-spiritedness to allow the supporters of legislation to put them on the defensive.<sup>8</sup>

Magnuson and the other entrepreneurs also were quite willing to appeal to "widely shared values." Every consumer measure of this period promised greater safety, fairer treatment, or increased honesty in marketplace transactions. Michael Pertschuk, counsel to the Senate Commerce Committee under Magnuson and later chairman of the Federal Trade Commission, recalled that being pro-consumer in the 1960s felt at the time like being "on the side of the angels."<sup>9</sup> Even if the beneficiaries of proposed consumer legislation did not deem it important enough for them to organize on its behalf, entrepreneurial legislators knew that it represented the moral high ground.

Magnuson also knew, however, that despite its inherent appeal, consumer protection was no guarantee of political longevity. Senator Guy

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<sup>8</sup>General Motors's investigation of Ralph Nader, which included having him followed and checking into his finances, sex life, political beliefs, and other private affairs, is probably the best known example. Another was the Grocery Manufacturers Association's blatant threats against magazines during the packaging and labeling debate. The magazines accepted the manufacturers' advertisements but printed editorials and articles decrying shady packaging practices. Paul Willis, president of the GMA instructed the publishers in "the facts of life covering advertising-media relationships." See "A Story for Our Times," Consumer Reports 30 (March 1965): 119-20. For an example of how one magazine submitted to the pressure, see Charles G. Mortimer (Chairman, General Foods Corp.), "Let's Keep Politics Out of the Pantry," Look 29 (26 January 1965): 80-85.

For a humorous account of how Magnuson swayed a recalcitrant Senator Ross Bass, who had opposed the Fair Packaging and Labeling bill and had unwisely remarked that "Any woman who feeds her children potato chips isn't worth protecting!" see Pertschuk, Revolt Against Regulation, pp. 34-35.

<sup>9</sup>Revolt Against Regulation, chapter 1.

Gillette, whose resolution to create a select Committee on Consumer Interests had gained Magnuson's support in 1953, was arguably the leading consumer advocate in Congress in the 1950s. But he had gone down to defeat in his reelection bid in 1956. While consumer protection certainly could not bear the entire blame for this reelection loss, it did not seem to contribute to "career maintenance" as the new decade dawned.<sup>10</sup>

For Magnuson and other members of the Commerce Committee, in fact, allying with consumers in apparent opposition to manufacturers seemed a recipe for political suicide. The committee was known at the time as a firm friend of business, and the friendship was reciprocal. Contributions from commercial interests filled the campaign chests of committee members to the satisfaction and benefit of both parties. Pertschuk reported that Earle Clements, himself a former senator, once told him: "Membership on the Commerce Committee assures the comfortable participation by many in one's campaign for reelection."<sup>11</sup> Consumer protection offered no such guarantee.

Finally, consumer advocacy throughout the 1950s had been handicapped by presidential opposition and bureaucratic resistance. The unwillingness of the FTC to investigate apparent price fixing in antibiotics has already been

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<sup>10</sup>Mark V. Nadel discusses consumer protection and career maintenance in Politics of Consumer Protection, p. 41.

<sup>11</sup>Quoted in Revolt Against Regulation, p. 8. Kentuckian Clements must have made some friends in industry: he parlayed his senatorial experience into a lobbying career for the Merchant Marine Institute and the Tobacco Institute. Pertschuk, Revolt Against Regulation, p. 8; and A. Lee Fritschler, Smoking and Politics: Policymaking and the Federal Bureaucracy, 3d ed. (Englewood Cliffs, N.J.: Prentice-Hall, 1983), pp. 24-25.

mentioned, as has the Eisenhower administration's generally pro-business stance which included, in Mark Nadel's words, a "negative attitude toward consumer protection."<sup>12</sup> It was probably difficult for potential entrepreneurs in Congress to muster enthusiasm for consumer legislation when those charged with executing such laws stood in opposition to them.

But already by 1960 there were signs that a legislator who could stir up the people over consumer issues might reap political benefits. The furor over highly flammable clothing that had led to the passage of the Flammable Fabrics Act in 1953 had been marked by a great deal of media coverage. So, too, had the tragic stories of children who had become trapped inside refrigerators and suffocated: the result of these reports was the Refrigerator Safety Act of 1956, which required manufacturers to design the appliances so that the doors could be opened from the inside. In these two cases, legislators had responded to publicity, but there was no reason to believe that they could not themselves generate it. Perhaps increased coverage in the newspapers and on television would offset or replace the lost campaign contributions that consumer protection seemed to entail.

Thus, by 1960 a strong stand in favor of consumer protection offered Magnuson and other congressional leaders both potential costs and potential benefits. No one could really be sure which would predominate. Magnuson had forged a political career out of providing for the basic needs of his constituents, but he had also long believed in the essential honesty and

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<sup>12</sup>Politics of Consumer Protection, p. 34.

forthrightness of American business. By emphasizing consumer protection he would seemingly be turning his back on industry, which had been such a vital part of his drive to develop his home state. But to ignore or oppose consumer measures, especially after his success with the Hazardous Substances Labeling Act and in light of the apparently shady practices in the antibiotics industry, would give the appearance of betraying the common people. Certainly his goal was to achieve some sort of balance between the interests of producers and consumers. But since the scales had so long been in the favor of the producers, any emphasis on consumer protection would seem to be a radical departure from "business as usual." The question of where to establish the new balance between consumers and producers was not an easy one, but it was one that Magnuson, as the chairman of the Senate Commerce Committee, would have to answer. Several developments of the period from 1960 to 1964 helped him to make the decision to shift his political weight toward the side of consumer protection.

### **The Changing Environment: the Presidency**

One important change during this time was the transition from the Eisenhower to the Kennedy administration. President Kennedy assumed a much more pro-consumer position than had his predecessor. Since Eisenhower had been adamantly pro-business, of course, any move toward the consumer side probably seemed more substantial than it actually was. Moreover, although Kennedy gained a reputation for being anti-business, corporate

interests actually "fared better politically under his administration than under his three successors, each of whom was far more popular with business."<sup>13</sup> And his main contribution to specific consumer legislation during his brief administration was his opposition to parts of the Kefauver drug amendments, a stance that he apparently reversed after receiving word of the thalidomide-caused birth defects.<sup>14</sup> Nevertheless, Kennedy did assist the movement toward greater protection of consumers by participating in and nurturing a public dialogue supportive of the idea.

He first outlined his consumer agenda in a speech he made in the Bronx, New York, in the waning days of the 1960 presidential campaign. Speaking to an enthusiastic crowd on November 5, the Democratic candidate promised that if he were successful in his quest for the presidency, he would appoint a Consumer Counsel whose duties would include helping to formulate legislation that would affect consumers, monitoring federal agencies to protect consumers' interests, testifying before congressional committees, and advising the president.<sup>15</sup>

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<sup>13</sup>David Vogel, Fluctuating Fortunes: The Political Power of Business in America (New York: Basic Books, 1989), p. 16. See also Richard Reeves, President Kennedy: Profile of Power (New York: Simon & Schuster, 1993), pp. 316-17.

<sup>14</sup>Nadel, Politics of Consumer Protection, p. 34.

<sup>15</sup>U.S., Congress, Senate, Committee on Commerce, The Speeches, Remarks, Press Conferences, and Statements of Senator John F. Kennedy, August 1 Through November 7, 1960, 87th Cong., 1st sess., 1961, S. Rept. 944, pt. 1, pp. 900-02.

Like many of his contemporaries, Kennedy saw the needs of consumers in purely economic terms, mentioning "the cost of living" several times in his Bronx speech and pointing out that it had reached the highest point in the nation's history. Such comments, of course, make the situation sound worse than it actually is; even with extremely low inflation, at any given time the cost of living is likely to be higher than it was in the past (and lower than it will be in the future). But Eisenhower's second term had in fact been marked by higher levels of inflation and unemployment than had prevailed in his first, and clearly Kennedy wanted to pin the blame on the Republicans.<sup>16</sup> His promise to name a Consumer Counsel thus represented at least as much an

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<sup>16</sup>The consumer price index remained quite stable from 1953 to 1956 but climbed thereafter. In 1958 unemployment in the United States reached its highest point since 1941, when it had stood at 9.9 percent:

	Consumer Price Index All Items (1947-49 = 100)	Civilian Unemployment: Percent (16 years and older)
1950	102.8	5.3
1951	111.0	3.3
1952	113.5	3.0
1953	114.4	2.9
1954	114.8	5.5
1955	114.5	4.4
1956	116.2	4.1
1957	120.2	4.3
1958	123.5	6.8
1959	124.6	5.5
1960	126.5	5.5

Sources: U.S., Department of Commerce, Statistical Abstract of the United States (Washington, D.C.: Government Printing Office, 1961), p. 334; and U.S., Department of Commerce, Bureau of the Census, Historical Statistics of the United States, Colonial Times to 1970, part 1 (Washington, D.C.: Government Printing Office, 1975), p. 135.

attack on the Republican economic record as a consumer protection initiative.<sup>17</sup>

In any case, Kennedy had stumbled onto an attractive issue. According to Michael Pertschuk, the speech elicited an approving response far beyond Kennedy's expectations, indicating "broad, though not necessarily deep public endorsement of these and other consumer protection initiatives."<sup>18</sup> Business Week magazine, apparently feeling somewhat threatened by the president's consumerism, belittled Kennedy's Bronx speech as "a campaign speech before some New York housewives."<sup>19</sup>

What the newly elected president would do about consumers' needs, however, remained unclear for more than a year after his inauguration while he considered his options. A report prepared by the Bureau of the Budget and submitted to the president in April 1962 outlined the major alternatives:

1. Create a Department of Consumers;
2. Provide for consumer representation in certain existing Federal agencies, and assign the Justice Department responsibility for consumer representation before courts and regulatory agencies; and

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<sup>17</sup>Some economic historians point to the economy as the deciding factor in the 1960 election. Gary M. Walton and Ross M. Robertson, for example, wrote: "Although the recession of 1959-1960 was mild and short lived, it was enough to cause Vice President Nixon to lose the presidency . . ." History of the American Economy, 5th ed. (San Diego: Harcourt Brace Jovanovich, 1983), p. 634.

<sup>18</sup>Revolt Against Regulation, p. 19.

<sup>19</sup>"Special Voice for Consumers?" Business Week, 8 April 1961, p. 70.

3. Create a Consumer Counsel in the Executive Office of the President. . . . [either] (1) in the Council of Economic Advisers, or (2) as an independent unit in the Executive Office.<sup>20</sup>

The possibilities had been considered before: in 1959 Senator Estes Kefauver had suggested a department of consumers;<sup>21</sup> in 1961, while Kennedy remained undecided on how to implement his promise, Magnuson expressed the opinion that installing consumer representatives in federal agencies held some promise;<sup>22</sup> and the consumer counsel idea is reminiscent of New Deal era consumer representation in the alphabet agencies.

On March 15, 1962, Kennedy began to clarify his intentions when he sent to Congress the first presidential message that dealt solely with consumer issues. He argued that the federal government had a special obligation to protect the buying public, and that an unregulated marketplace could threaten consumers' health, waste their money, and damage the national interest. He called on government officials to uphold the consumers' bill of rights--the right

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<sup>20</sup>Bureau of the Budget, "Consumer Representation in Government," 11 April 1962, Office Files of James C. Gaither, box 321, folder "Correspondence from President's Committee on Consumer Interest," LBJ Library, pp. 16, 19.

<sup>21</sup>S. 1571, 86th Cong. At the end of his speech introducing the bill, Kefauver described it as "a product of our times." Cong. Rec., 86th Cong., 1st sess., 1959, 105, pt. 4: 5338. Apparently it was an idea ahead of its time: it failed to emerge from the Committee on Government Operations.

<sup>22</sup>In a letter to Senator Philip Hart, Magnuson speculated: "Perhaps what is needed is an aggressive, energetic, intelligent 'Consumers Counsel' in each of the regulatory agencies." WGM to Hart, 15 December 1961, S. 985, 89th Cong., Records of the Committee on Commerce, Records of the United States Senate, Record Group 46, National Archives, Washington, D.C. (hereafter abbreviated Commerce, U.S. Sen., RG 46, NA).

to safety, to be informed, to choose, and to be heard--and asked that existing programs be strengthened while new legislation was enacted. And he kept his Bronx campaign promise by directing the Council of Economic Advisers to create not a counsel but a council, the Consumers' Advisory Council (CAC).<sup>23</sup> Clearly, he was calling the federal government to action, and on a far broader front than the purely economic one to which he had referred during the campaign.

President Kennedy's call to action did not, however, produce any instant successes. Organizational machinery had first to be put in place and then gradually set in motion, and the Consumers' Advisory Council, which was established in June 1962, proved to have neither bark nor bite. It was in an inherently weak position to begin with, being strictly an advisory body under the direction of the Council of Economic Advisers, at least one member of which failed to see a significant difference between the consumer interest and the public interest.<sup>24</sup> The CAC was also hampered by the requirement that it not make public the advice it gave the president. As Consumer Reports noted regarding the work of the CAC, "a consumer contingent in Washington under an interdiction to keep its mouth shut was a big disappointment to consumer

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<sup>23</sup>U.S., President, "Special Message to the Congress on Protecting the Consumer Interest," Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, 1953-), John F. Kennedy, 1962, pp. 235-43.

Michael Pertschuk notes that Esther Peterson, Assistant Secretary of Labor and, later, President Johnson's Special Assistant for Consumer Affairs, wrote this message. Revolt Against Regulation, p. 19.

<sup>24</sup>"Special Voice for Consumers?" p. 70.

groups and to members of Congress interested in consumer affairs."<sup>25</sup>

Finally, the council was further hindered by its own sluggishness, taking more than a year to release its first report, which was transmitted to the president in October 1963. The report's recommendations included a tax cut, passage of Senator Paul Douglas's bill requiring full disclosure of the interest costs of consumer credit ("truth-in-lending"), passage of Senator Philip Hart's bill intended to bring some standardization to product packaging ("truth-in-packaging"), a study of the possibility of U.S. conversion to the metric system, and the establishment of quality standards for consumer goods.<sup>26</sup> Critics derisively remarked, "The president's Consumer Advisory Council finally has some advice to give."<sup>27</sup> They could easily have added that none of it was original.

When the Kennedy administration came to its tragic end in November 1963, very little of substance had actually been accomplished on behalf of consumers. The only significant piece of legislation enacted during his term was the Kefauver-Harris Drug Amendments, and the president's position on that had not been entirely supportive. But he nevertheless helped to create an atmosphere much more friendly to consumers than that which had previously existed. The consumer message of March 1962 set a precedent that would be

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<sup>25</sup>"A New Era in Consumer Affairs," Consumer Reports 29 (1964): 144.

<sup>26</sup>U.S., Executive Office of the President, Consumer Advisory Council, First Report, October 1963, pp. 11, 13-14, 16.

<sup>27</sup>Quoted in "New Era in Consumer Affairs," p. 144.

followed by his successors, Democrat and Republican alike, and the CAC would be revamped and strengthened by President Johnson. Simply getting the consumer interest on the presidential agenda once again was an important contribution.

The real rise of the consumer took place during Lyndon Johnson's tenure in the White House. In many ways, consumer advocacy came more easily and naturally for Johnson than it had for Kennedy. First of all, Johnson had the advantage of not having to create a consumer program entirely from scratch; Kennedy had laid the foundation. Johnson was thus able to survey the work that had already been done, identify the useful parts, and change or discard those that were not successful. For instance, his first moves on the consumer front included naming the author of JFK's consumer message, Assistant Secretary of Labor Esther Peterson, to be his Special Assistant for Consumer Affairs and creating the President's Committee on Consumer Interests (PCCI), on which Peterson would serve as chairperson.<sup>28</sup> The PCCI absorbed the ineffective Consumer Advisory Council, combining it with a group of representatives from government agencies. This new, stronger committee was expected to play a larger role in consumer affairs than that played by the CAC.<sup>29</sup>

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<sup>28</sup>The Kennedy White House had actually offered Peterson the position of Special Assistant to the President on Consumer Affairs in October 1963, but she had not made a decision before the assassination. Transcript, Esther Peterson Oral History Interview, 25 November 1968, by Paige Mulhollan, LBJ Library, pp. 6-8.

<sup>29</sup>"New Era in Consumer Affairs," pp. 143-44.

Second, Johnson had the advantage of succeeding a martyred president. He could and did call on members of Congress to honor the memory of President Kennedy by working to pass legislation and enact programs that he had supported. Johnson naturally emphasized those parts of the Kennedy agenda that he found particularly appealing, especially domestic items, and among them were consumer measures. In remarks delivered to the members of the CAC just three weeks after he ascended to the presidency, LBJ said: "I was heartily in accord with President Kennedy's consumer message in March 1962. . . . And I specifically urge you to proceed with the work begun before the tragedy of November 22."<sup>30</sup> He also echoed JFK's four "rights of consumers" in a brief statement made in January 1964 and again in his Message to Congress on Consumer Interests on February 5, 1964.<sup>31</sup>

Finally, like Magnuson, Johnson was an old New Dealer and an experienced legislator who had risen from humble beginnings and had built his political career on a foundation of helping the "forgotten man." One of Johnson's proudest achievements, for example, was helping to bring electricity to the Texas Hill Country. Consumer protection was to him, as it was to Magnuson, a logical extension of a policy of helping overlooked members of society. The two held similar political and social views, and it is no surprise that they came to support consumer protection at about the same time. Ultimately, Magnuson and Johnson would join in a friendly rivalry to see who

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<sup>30</sup>Public Papers of the Presidents, Johnson, 1963-64, p. 52.

<sup>31</sup>Public Papers of the Presidents, Johnson, 1963-64, pp. 108, 263.

could produce more consumer legislation.<sup>32</sup> With the president favorably disposed to consumer protection, its prospects were indeed bright.

### **The Changing Environment: Congress**

Obviously, however, no matter how supportive Magnuson and Johnson may have been, the two of them alone could not have passed any consumer legislation: the approval of both houses of Congress was needed. As it turned out, the 1964 election brought in one of the most liberal Congresses in history-- and what proved to be perhaps the most consumer-oriented as well. The changing face of Congress must therefore be considered as a factor that contributed to Magnuson's consumer advocacy.

After all the votes had been tallied in the November 1964 election, the Democrats found themselves in an enviable position: they held the presidency, the Senate, and the House. Johnson had won election in his own right by a landslide, defeating Republican Barry Goldwater with 61 percent of the popular vote and carrying the electoral college 486 to 52. In the Senate, the Democrats had enlarged their majority to 68 to 32, and in the House they held 295 seats to the Republicans' 140.

And, as mentioned above, this was a liberal Congress. Consumer protection was, at least until the Nixon administration, associated with northern, liberal Democrats, and the Eighty-ninth Congress had them in

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<sup>32</sup>Author interview with Michael Pertschuk, Seattle, 12 April 1991.

abundance.<sup>33</sup> Moreover, the House Commerce Committee underwent an important change in 1966, when its chairman, conservative Oren Harris of Arkansas, left the House for a federal judgeship and was succeeded in the chair by the more liberal Harley Staggers of West Virginia.<sup>34</sup> While Staggers could certainly not have been labeled an entrepreneur when it came to consumer bills--and, in fact, stalled or weakened some consumer measures--his replacement of Harris was nevertheless a net gain for consumer advocates.<sup>35</sup>

With liberal Democrats in the vanguard, both the Senate and the House were amenable to new types of legislation that would reorder the nation's priorities, including its marketplace priorities. Johnson and entrepreneurial legislators like Magnuson would capitalize on this situation with a timely push for consumer protection laws.

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<sup>33</sup>Fully half of the senators and over 48 percent of the members of the House were so classified. Barbara Sinclair, "Coping with Uncertainty: Building Coalitions in the House and the Senate," in The New Congress, eds. Thomas E. Mann and Norman J. Ornstein (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1981), p. 179.

See also Nadel, Politics of Consumer Protection, p. 109; and Pertschuk, Revolt Against Regulation, p. 15.

<sup>34</sup>The Ralph Nader Congress Project, David E. Price, dir., The Commerce Committees: A Study of the House and Senate Commerce Committees (New York: Grossman, 1975), p. 19.

<sup>35</sup>On Staggers's anti-consumer tendencies, see Ralph Nader Congress Project, Commerce Committees, pp. 95, 130. On his preferability to Harris on consumer measures, see Pertschuk, Revolt Against Regulation, p. 21; and Pertschuk interview.

## **The Changing Environment: Labor**

The interests and emphases of organized labor also helped move Magnuson toward continued, increased participation in consumer affairs. As a former card-carrying member of the Teamsters' Union, Magnuson had always felt particularly close to the unions; he had supported labor's causes throughout his years in elective office, and he had received the unions' support in one campaign after another.

The unions, for their part, had long known that consumption and labor were intimately related: laborers work for wages so that they can consume. Workers and consumers (and workers as consumers) are, in J. David Greenstone's terms, "economic nonauthorities" who naturally share a certain antipathy toward "economic authorities"--managers and business entrepreneurs--who pursue higher profits through greater efficiency in production.<sup>36</sup> Increased efficiency becomes a threat to workers when it results in layoffs of employees who have become superfluous; it may harm consumers when the supply of goods increases without a corresponding decrease in price or when producers use misleading advertising or packaging practices to dispose of surpluses.<sup>37</sup>

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<sup>36</sup>Labor in American Politics (New York: Knopf, 1969), pp. 374-75.

<sup>37</sup>Of course, more efficient and cost-effective production becomes a boon to consumers when the savings are passed along to them. The problem was, it seemed, that prices did not typically drop as rapidly or as far as one might expect when the supply of goods increased due to more efficient production. Gardiner Means explained this noncompetitive phenomenon in his theory of "administered prices" in U.S., Congress, Senate, Industrial Prices and Their Relative Inflexibility, S. Doc. 13, 74th Cong., 1st sess., 1935. The idea was

During the postwar years, as their power and membership numbers ebbed and--mostly--flowed, American labor unions increasingly identified with consumer issues. Reasons for this tendency are many and varied. One is that despite such restrictive measures as the Taft-Hartley Act (1947) and the Landrum-Griffin Act (1959), labor made gains in key program areas: the bargaining power of unions rose; real wages steadily increased; and more workers acquired pension plans, paid vacations, and other benefits.<sup>38</sup> As unions achieved these workplace goals, they turned their attention to other issues, including consumer protection. Regarding this phenomenon, Michael Pertschuk observed: "For many of the labor representatives, the fight for consumer legislation gave vent to an idealism mature unionism otherwise no longer engaged."<sup>39</sup>

Another reason for their growing consumerism would likely be the image problem that the unions faced by the 1960s. Some organizations, notably the Teamsters' Union, had engaged in racketeering, election fraud, and violence. Arthur Link has described the state of affairs in organized labor as "a sordid tale of malfeasance, crime, violence, and other gross irregularities in the

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given great attention in the late 1950s: the antibiotics investigation was based on it, as were investigations of automobiles and tires. See, for example, Richard Harris, The Real Voice (New York: Macmillan, 1964), pp. 12-13.

<sup>38</sup>For a useful, brief summary of labor's gains in the postwar period, see Robert H. Zieger, American Workers, American Unions, 1920-1985 (Baltimore: Johns Hopkins University Press, 1986), pp. 147-58.

<sup>39</sup>Revolt Against Regulation, p. 29.

conduct of certain union officials."<sup>40</sup> Teamsters' president Dave Beck was forced to resign, and the newly united AFL-CIO ousted the organization in 1957. Congress responded to the upheaval in 1959 with the Labor-Management Reporting and Disclosure (or Landrum-Griffin) Act, which promulgated a number of anti-corruption provisions and disallowed communists and convicted felons from serving as union officers for five years after leaving the party or after release from prison. Consumer protection was as clean and moral an issue as could be found in the early 1960s. A new image as the friends of consumers could only help unions in their public relations.

Consumer protection offered labor unions one other benefit: it served as a unifying force. The increasingly specialized workplace, combined with the success of unions in achieving major goals since World War II, meant that there were few traditional labor issues that could bring all union members together as workers. They could, however, be brought together as consumers. Greenstone observed: "Without a consumer orientation there would be embarrassingly few political causes on which the top officials of many state labor federations, as well as the AFL-CIO itself, could speak for a united labor movement."<sup>41</sup>

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<sup>40</sup>Arthur S. Link, American Epoch: A History of the United States Since the 1890's, 3d ed. (New York: Knopf, 1967), p. 624.

<sup>41</sup>Labor in American Politics, p. 391.

Unions have been described as "the most vocal and effective advocates of consumer protection" during the 1960s.<sup>42</sup> They provided political clout in the form of financial support, lobbying, and strategic guidance.<sup>43</sup> Further, some of the leading consumer protectors had previously served as union officers. Esther Peterson, for example, had been a representative of the Amalgamated Clothing Workers of America in the 1940s, and of the AFL-CIO's Industrial Union Department in the late 1950s.<sup>44</sup> And the support of the unions no doubt made consumer protection even more palatable for Senator Warren G. Magnuson, who almost always came down on the side of unionized workers.

### **The Changing Environment: The Media and Public Opinion**

The third period of consumer protection shared an important characteristic with the previous two: the presence of muckraking authors and journalists who were able and willing to stir up public opinion. Seeking good exposés, they not only shared the entrepreneurial spirit that motivated legislators, they also made it easier for lawmakers to act on that spirit. Among the earliest of these writers were Vance Packard, whose The Hidden Persuaders (1957) revealed and condemned the covert psychological techniques used in advertising; David Caplovitz, whose The Poor Pay More (1963) showed that selling practices discriminated against urban minorities and those with

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<sup>42</sup>Vogel, Fluctuating Fortunes, p. 293.

<sup>43</sup>Pertschuk, Revolt Against Regulation, p. 29.

<sup>44</sup>Esther Peterson Oral History Interview, 25 November 1968, p. 1.

low incomes; and Jessica Mitford, who uncovered abuses in the funeral industry and described them in her The American Way of Death (1963). The best known of these modern-day muckrakers was undoubtedly Ralph Nader, whose Unsafe at Any Speed (1965) helped automobile safety legislation gain passage. Other contributors included columnists Morton Mintz, Drew Pearson, and Jack Anderson; editorial cartoonist Herblock; and reporters who wrote for the wire services and thus reached the entire country.<sup>45</sup>

No matter how explosive their accounts, however, muckrakers can have little effect unless the public is receptive. At the same time, members of the public often do not realize the extent of a problem until it is described in the media. An individual consumer, for example, may think that he simply had a stroke of bad luck when a product malfunctions, while in fact any number of other consumers are experiencing the same "bad luck" because the product is faulty. By exposing defective products or shady practices, muckrakers--like the entrepreneurial legislators with whom they were frequently allied<sup>46</sup>--helped to arouse the "latent public sentiment" mentioned by Wilson.

### **The Making of a Public Issue**

The question then becomes: why is public sentiment capable of being stirred up on a specific issue at certain times and not at others? Or, to put it

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<sup>45</sup>Mayer, Consumer Movement, p. 26; and Pertschuk, Revolt Against Regulation, pp. 34-36.

<sup>46</sup>Nadel, Politics of Consumer Protection, p. 41.

another way, why did consumer protection take off as a public issue in the 1960s and not in the 1950s, when Senators Gillette and Kefauver tried to bring it to the forefront?

Part of the answer lies in the nature of reform. For a reform movement to arise, people must not only perceive the problem but also believe that it is capable of being solved. Muckraking writers and entrepreneurial legislators and presidents helped the public to see the anti-consumer characteristics of the marketplace. By introducing and passing legislation--gradually at first, then with increasing frequency--members of Congress helped to convince the public that consumer problems could be solved.

One anti-consumer characteristic of the American economy revealed by muckrakers as well as public officials was certainly the complexity of the world of consumer goods. President Kennedy emphasized that point in his consumer message of 1962, implicating "the march of technology." He noted that the staggering number of new, complex products left the consumer insufficiently informed to choose wisely, and as a result the health and financial well-being of consumers were endangered.<sup>47</sup> Economist David Hamilton echoed that idea in his 1962 book, The Consumer in Our Economy, writing: "These new developments in technology not only add to the complications of the consumer

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<sup>47</sup>"Special Message to the Congress on Protecting the Consumer Interest," Public Papers of the Presidents, Kennedy, 1962, p. 235.

by adding to the items about which he must make decisions, but they also at the same time open up new opportunities for fraud and deception."<sup>48</sup>

Others have pointed to the increase in deaths and injuries linked to the use of consumer products. By 1965, fatalities from automobile accidents had reached 55,000 per year, and in 1969 it was estimated that more than twenty million people required medical treatment for injuries sustained at home.<sup>49</sup> Likewise, by 1964 when the noted report of the Surgeon General's Advisory Committee was released, the first scientific study correlating smoking and lung cancer was already twenty-five years old, and further evidence suggesting a causal relationship had been piling up since the early 1950s.<sup>50</sup>

Although American consumers were becoming increasingly sophisticated in buying and using modern products, they were also becoming aware that their sophistication was not enough to protect them from dangerous products or misleading selling practices. In other words, they were coming to recognize that the more they knew about consumer items, the more they needed to learn.

With the problem identified, the next step was to establish belief that it could be solved. Confidence in the capability of federal laws to alleviate consumer problems went hand-in-hand with the general feeling of the time that government was a positive influence on society. Surely the confidence and

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<sup>48</sup>The Consumer in Our Economy (Boston: Houghton-Mifflin, 1962), p. 332.

<sup>49</sup>W. Curtiss Priest, Risks, Concerns, and Social Legislation: Forces that Led to Laws on Health, Safety, and the Environment (Boulder, Colo.: Westview Press, 1988), p. 58.

<sup>50</sup>Fritschler, Smoking and Politics, pp. 19-20, 149-50.

energy of the Kennedy administration contributed to that belief, as did the promise of Johnson's Great Society before the Vietnam War overshadowed all else. Mark Nadel, whose The Politics of Consumer Protection (1971) remains a most useful work on its subject, concluded that "the most fundamental reason for the emergence of consumer protection was most likely the 'temper of the times.'"<sup>51</sup>

A further explanation for the faith that consumer problems could be effectively solved was the strong and growing economy itself. The Gross National Product rose 4.5 percent per year between 1960 and 1969, while per capita GNP in constant (1958) dollars grew over 32 percent. The average American's disposable personal income, again in constant dollars, rose from just under \$1,900 in 1960 to more than \$2,500 in 1969.<sup>52</sup> The country was becoming increasingly wealthy--and taking that wealth for granted.<sup>53</sup> As a White House National Goals Research Staff report put it in 1970, "Only an affluent society, where most people's basic material needs are already met, would raise the issues of reliability, quality, fullness of information, uses of credit, purity, and trust, as they are now discussed in the consumerism

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<sup>51</sup>Nadel, Politics of Consumer Protection, p. 43.

<sup>52</sup>Bureau of the Census, Historical Statistics of the United States, Colonial Times to 1970, pt. 1, p. 225.

<sup>53</sup>Vogel, Fluctuating Fortunes, p. 140.

movement."<sup>54</sup> In other words, as they consumed more, Americans began to have higher expectations for the products they purchased.

Ironically, technology, which received part of the blame for the increasing complexity of the consumer's world, also held out hope for a solution. Industrial technology had achieved such stunning successes in recent decades that Americans had come to believe that industry was capable of reaching virtually any goal, including making safer products without drastically increasing prices. Speaking in 1967, Magnuson said that consumers' letters to him showed this faith in technology; the only thing that was needed, the public believed, was the corporate leaders' will.<sup>55</sup>

But confidence in government, the economy, and technology were not sufficient in themselves to explain the emergence of consumer protection as an issue. Simply stated, consumer protection did not become a public issue on the national agenda until enough elected officials--Senator Gillette alone was not enough--and entrepreneurial muckrakers such as Ralph Nader decided to put it there. Moreover, after consumer protection had emerged as a part of the public agenda, those who investigated problems and moved from issue to issue were not typically members of the general public; they were much more likely to be legislators or legislators' staff members. Consumers' needs were thus

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<sup>54</sup>The report is reprinted as "Consumerism," in Consumer Protection, ed. Lester A. Sobel (New York: Facts on File, 1976). The quote is from p. 140.

<sup>55</sup>"Tightening the Nation's Safety Belt," speech delivered at the Briefing Conference on Federal Regulation of Product and Industrial Safety, 16 February 1967, Washington, D.C. A copy of the speech is in WGM Papers, accession 3181-4, box 194, folder 56.

dependent upon the political needs of elected officials who aroused consumer protection sentiment to generate publicity and--one is tempted to add "incidentally"--to pass laws.

This seems cynical, but as Thomas Allison, formerly of the Commerce Committee staff, noted, Magnuson's consumer advocacy allowed him to "do well by doing good."<sup>56</sup> Nadel similarly reported that consumer activists pointed to "good politics" more than any other factor as the cause of the rise of the third wave of consumer protection.<sup>57</sup> That is, after all, what elected officials are elected to do: to pass laws beneficial to the people. And if they do, they are reelected.

The question now becomes: what made entrepreneurial legislators choose to emphasize consumer protection rather than any number of other issues? Here one is on slightly more solid ground. First, consumer protection is, by nature, a consensus issue.<sup>58</sup> Everyone wants safe food, reliable drugs, sufficient label information, and clothing that will not burst into flames when it is accidentally brushed with a lighted match or a child's sparkler on the Fourth of July. And everyone favors the things the titles of the laws promised: fairness, truth, safety. Opponents of the measures were immediately placed on the defensive by the mere names of the bills. Second, consumer protection is cheap from the government's point of view, especially in comparison with other

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<sup>56</sup>Author conversation with Thomas Allison, Seattle, 17 July 1991.

<sup>57</sup>Politics of Consumer Protection, pp. 36-37.

<sup>58</sup>Nadel, Politics of Consumer Protection, p. 41.

programs of Johnson's Great Society, with the costs typically being passed on to producers or consumers rather than included in the federal budget.<sup>59</sup> Third, it was perceived as necessary by those charged with setting public policy and by the public.<sup>60</sup> Fourth, it felt good. Legislators, too, felt as if they were "on the side of the angels" when they pushed through laws to protect the public: Magnuson acknowledged the "great satisfaction" he felt from helping to enact safety legislation.<sup>61</sup> And the sense of power that came from imposing responsibilities or limitations on previously unfettered industries was not without enjoyment.<sup>62</sup>

Because of all these reasons and others, consumer protection was attractive and possible. If, as Bismarck said, politics is the art of the possible, consumer protection could succeed on the political scene only when the

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<sup>59</sup>Nadel, Politics of Consumer Protection, p. 40; "The Consumer Wave," The Nation 202 (16 May 1966): 574; and "The Few and the Many," New Republic 154 (26 February 1966): 8. President Johnson recognized this important characteristic of consumer protection. At the signing ceremony for one consumer bill he said: "Those are the things that don't cost a lot of money--those consumer things." He further remarked that the consumer program "gives you more for the money than nearly anything I know of." "Remarks Upon Signing Bill Amending the Flammable Fabrics Act," 14 December 1967, Public Papers of the Presidents, Johnson, 1967, pp. 1137-38.

<sup>60</sup>Nadel, Politics of Consumer Protection, p. 37.

<sup>61</sup>"Closing the Safety Gap," speech delivered at the Pacific Northwest Safety Congress, 7 September 1967, Seattle, Washington. A copy is in WGM Papers, accession 3181-4, box 194, folder 39.

<sup>62</sup>An unidentified member of Magnuson's committee staff stated that the fight for automobile safety legislation demonstrated to Magnuson that "he could defy some of these [industry] interests and they couldn't do a thing to him; he seemed rather to enjoy it." Quoted in Price, Who Makes the Laws? p. 52.

conditions were right. The conditions were indeed right by the mid-1960s: a liberal Congress, a sympathetic president, interested media, and, yes, a reform spirit characterized by a perception of the problems and a belief in the existence of solutions. The public, once exposed to legislative remedies for consumer problems, joined the movement enthusiastically.

### **Magnuson and Consumer Protection**

For Magnuson personally, several other factors contributed to his greater emphasis on consumer protection in the 1960s. His chairmanship of the Senate Commerce Committee has already been mentioned, as has his reputation for helping the "forgotten man."<sup>63</sup> And unlike most of his colleagues, he had sponsored and seen enacted a clearly consumer-oriented bill: the Hazardous Substances Labeling Act. Most observers, however, have attributed his increasing consumer advocacy to two developments: a narrow

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<sup>63</sup>It should also be noted that Magnuson's chairmanship influenced what types of consumer measures he would pursue. Since the Commerce Committee had oversight of the Federal Trade Commission and the Federal Communications Commission--oversight that included the confirmation of commissioners--the consumer issues he addressed were generally those that fell under the jurisdiction of those agencies: false or misleading advertising (for example, cigarette advertising), product labeling (the Fair Packaging and Labeling Act), the interstate distribution of unsafe goods (automobiles, fabrics, and household hazardous substances). Because his committee, unlike the House Commerce Committee, did not have oversight of the Food and Drug Administration, it had little contact with legislation concerning unsafe foods or drugs. See Ralph Nader Congress Project, Commerce Committees, p. 4; and Price, Who Makes the Laws? pp. 31, 34.

In addition, Magnuson seemed to have had less personal interest in topics that fell under mandate of the Food and Drug Administration.

election victory in 1962 and a marked change in his office and committee staffs soon thereafter.<sup>64</sup>

The 1962 election was uncomfortably close for Magnuson. He received just over 491,000 votes, and his opponent, a minister and political novice named Richard Christensen, collected about 446,000.<sup>65</sup> Magnuson actually lost more counties than he won, with his margin of victory coming from the state's two most populous and industrialized counties--King and Pierce--which

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<sup>64</sup>Nadel, The Politics of Consumer Protection, pp. 111, 142; Pertschuk, Revolt Against Regulation, p. 24; Mayer, The Consumer Movement, p. 32; and Eric Redman, The Dance of Legislation (New York: Simon & Schuster, 1973), pp. 194-95. Except where other sources are indicated, these accounts also provide the basic story line for the following discussion.

<sup>65</sup>Possible explanations for this near-disaster are many. Warren Featherstone Reid, a Magnuson staff member at the time, attributed it to advertising that seemed egotistical (billboards proclaimed: "Magnuson Makes Washington Great"); the arrangement of the ballot which listed Christensen's name first; the arrest for public drunkenness of Congressional candidate Donald Magnuson and the resulting media publicity that did not distinguish very well between the two men (and, Reid might have added, Warren Magnuson's reputation for carousing which made the arrest story plausible even if applied to the wrong person); Christensen's supporters' better use of campaign funds; and the young Republican's popularity with women. See Warren Featherstone Reid: Assistant to Warren G. Magnuson, transcript of Oral History Interviews of Reid by Donald A. Ritchie for the Senate Historical Office, 1-23 July 1981, pp. 55-60.

This was also an off-year election which, as expected, drew fewer voters than a presidential year election and, again typical of a non-presidential year, many voters were motivated by opposition to the party in power--in this case, the Democrats (although they actually gained three seats in the Senate that year). Magnuson himself noted the similarity of this election to that of 1950, the other off-year election in which he had been involved. William W. Prochnau, "Magnuson Wins Fourth Senate Term Despite Strong Challenge: Christensen's Showing Surprises," Seattle Times, 7 November 1962, p. 4.

Finally, Congress did not adjourn until October 13, and Magnuson attended until at least September 25, which severely cut into his campaign time at home.

he carried by about 37,000 votes and 12,000 votes respectively.<sup>66</sup> This close call, the story goes, led him to reconsider his policy emphases, and the result was a "new" Magnuson who stressed consumer issues.

Part of this supposed conversion was a change in his staff, from one composed of complacent old friends to one made up of young, active entrepreneurs. Heading the remade staff was Chief Counsel Gerald Grinstein, who had earned Magnuson's respect as counsel for the Merchant Marine and Fisheries Subcommittee of the Commerce Committee. Michael Pertschuk, of Senator Maurine Neuberger's staff, was recruited in the fall of 1964 to serve as consumer counsel to the Commerce Committee and to help build Magnuson's consumer record.<sup>67</sup> When Grinstein left the Committee staff after the 1968 election to pursue a career in law and the transportation industry,<sup>68</sup> Pertschuk moved up to take his place as chief counsel.

Grinstein, Pertschuk, and the other members of the Commerce Committee staff were, by all accounts, highly capable and energetic. They perceived their role to be not merely responding to requests put to them by senators, but rather generating ideas and potential legislation for committee

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<sup>66</sup>Richard M. Scammon, comp. and ed., America Votes: A Handbook of Contemporary American Election Statistics, no. 5 (1962), Government Affairs Institute (Pittsburgh: University of Pittsburgh Press, 1964), p. 429.

<sup>67</sup>Pertschuk, Revolt Against Regulation, pp. 24-25.

<sup>68</sup>He was chief executive officer of Western Airlines from 1986 until it was sold to Delta in 1987, then moved on to Burlington Northern Inc., serving as President and CEO in 1989, and then Chairman from 1990 to this writing (1994).

members to introduce. Grinstein put it this way in 1966: "we certainly don't think of our staff like you would some reference book, to be taken down off the shelf and used occasionally. We see it as part of our job to present alternatives to the senator, to lay out things before him that he might want to do."<sup>69</sup>

According to the Ralph Nader Congress Project, this entrepreneurial role of the staff was especially notable in consumer affairs and environmental issues.<sup>70</sup>

Many observers have misinterpreted the activism of the staff as control of the senators on the Commerce Committee, including Chairman Magnuson. Rochelle Jones and Peter Woll, for example, claimed that "Magnuson willingly went where his staff led him," and continued: "Without Pertschuk and several other key staffers who were interested in consumer issues and who wanted to activate the committee, Magnuson would not have achieved his present preeminence in the consumer protection area."<sup>71</sup> And in The Power Game, Hedrick Smith stated: "An aggressive staff aide with close links to Ralph Nader and his consumer network, Pertschuk steered the committee chairman, Senator Warren Magnuson of Washington, into consumer activism."<sup>72</sup>

But such interpretations agree with neither chronology nor the explanations given by the two chief participants, Grinstein and Pertschuk.

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<sup>69</sup>Price, Who Makes the Laws? p. 101.

<sup>70</sup>Commerce Committees, p. 31.

<sup>71</sup>The Private World of Congress, p. 147.

<sup>72</sup>Hedrick Smith, The Power Game: How Washington Works (New York: Random House, 1988), p. 279.

Chronologically, it is impossible to reconcile Smith's statement with the fact that Grinstein specifically recruited Pertschuk to develop Magnuson's consumer record.<sup>73</sup> Pertschuk simply could not have "steered" Magnuson into a path that Magnuson had already chosen. Further, Gerald Grinstein avers that consumer protection was a policy area that Magnuson himself chose to emphasize:

That's a direction that really he was comfortable going. . . . He never would have picked me to take on the role that I took unless he was comfortable doing it. And he never would have allowed himself to be pushed into the limelight or take a leadership role if that wasn't his preference. And, after all, this is not an insignificant man; this is a guy who's had quite a career and a lot of respect and a lot of achievements and was not going to be pushed around by a lot of kids. It was something that he wanted to do.<sup>74</sup>

Michael Pertschuk agrees, adding that Magnuson used to his own advantage the image of himself as the victim of an uncontrollable staff. Pertschuk's drily humorous account of one incident illuminates the relationship of Magnuson to his staff and thus warrants quoting at length:

The lack of formal structure and poor visibility of the relationship between staff and legislators lends itself to demonology, such as the persistent myth that Magnuson's consumer efforts were the product of an unrestrained rogue staff. So persistent was this myth that, one day in late 1967, a former administrative assistant to Senator Magnuson, then a lobbyist for a major trade association, paid a visit to Magnuson at his home on behalf of old Magnuson hands in 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

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<sup>73</sup>Pertschuk, Revolt Against Regulation, pp. 24-25.

<sup>74</sup>Author telephone interview (taped) with Gerald Grinstein, 31 October 1991. (Transcript deposited at Manuscripts Division, University of Washington Libraries, Seattle, Washington.)

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 staff's activities than his friends had imagined. And it was quite clear that he held his staff in harmonious harness. Indeed, it had served his purpose to let his staff be cast as rogue zealots, with Magnuson their captive. That image conveyed the message to lobbyists that direct appeals to Magnuson for legislative clemency would be of little avail, so he spared himself the pain of denying the entreaties of old friends.<sup>75</sup>

Both Grinstein and Pertschuk would likely concur with the judgment of the authors of the Ralph Nader Congress Project's study of the Commerce Committees, who called the relationship of Magnuson and other members to the committee staff "permissive" rather than "directive."<sup>76</sup>

Since staff initiative does not provide a complete explanation, one must look to Magnuson himself to see what led him increasingly to embrace consumer protection. Certainly he knew that the social and political environment was conducive to such a policy, especially after the 1964 election, and it was likely to appeal to a broad range of his constituents. But perhaps he also knew instinctively what political scientists Aage R. Clausen and Carl E. Van Horn concluded regarding changes in policy or emphasis. A member of Congress, they stated, is more likely to take a revised stand on a national policy issue than a local one because the mass media thoroughly cover national concerns but generally ignore local or statewide ones. Thus, constituents are

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<sup>75</sup>Revolt Against Regulation, pp. 26-27.

<sup>76</sup>Commerce Committees, p. 31.

actually more likely to be exposed to news about their senator's national initiatives than his strictly constituent-oriented pork-barrel efforts.<sup>77</sup> Having seen in the 1962 election that merely pouring money for state and local projects out of the federal treasury and into Washington State was not enough to guarantee his constituents' loyalty, Magnuson might very well have seen consumer protection as a more effective means to reach them.

Above all, however, one must realize that this was not really a new direction for Magnuson. Pertschuk stated that both he and Grinstein saw it as a return for Magnuson "to some of the earlier feelings that he had."<sup>78</sup> Similarly, James Fallows of the Ralph Nader Congress Project described Magnuson's pro-consumer attitude as a reemphasis of his long-held philosophy of helping forgotten citizens, another view echoed by Grinstein.<sup>79</sup> And Magnuson himself seemed to see continuity from the labeling laws of the 1950s through the Hazardous Substances Labeling Act of 1960 to the consumer measures of the mid-1960s. In a hearing on cigarette labeling in 1965, for example, he noted the similarity of the proposed warning to earlier labeling bills that informed consumers of just what they were purchasing.<sup>80</sup> Likewise,

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<sup>77</sup>Aage R. Clausen and Carl E. Van Horn, "The Congressional Response to a Decade of Change: 1963-1972," Journal of Politics 39 (August 1977): 664.

<sup>78</sup>Pertschuk interview.

<sup>79</sup>James Fallows, Warren G. Magnuson: Democratic Senator from Washington (pamphlet), The Ralph Nader Congress Project, Citizens Look at Congress (Washington, D.C.: Grossman, 1972), p. 6; and Grinstein interview.

<sup>80</sup>U.S., Congress, Senate, Committee on Commerce, Cigarette Labeling and Advertising: Hearings on S. 559 and S. 547, pt. 1, 89th Cong., 1st sess., 22

in his opening statement at hearings on the proposed Fair Packaging and Labeling Act, he remarked:

Once again this committee is engaged in its historic role as the arbiter of fair commercial practice, a role that has led in the past to the enactment of major legislative pillars of consumer protection: The Wool Products Labeling Act, the Fur Products Labeling Act, the Flammable Fabrics Act, Textile Fiber Products Identification Act, and the Hazardous Substances Act.<sup>81</sup>

Consumer protection by the mid-1960s offered Magnuson a means to recreate his image in a way that coincided with his political philosophy and, to some extent, with his experience. Moreover, with a liberal Congress, an excellent staff, a supportive president, muckraking media, and an awakening public, it seemed more and more likely that consumer bills would meet with success. This, too, was important to Magnuson—as it is to any legislator—because he did not want to waste his time tilting at windmills.<sup>82</sup> As he confessed in a letter to a constituent in 1961, "I have made it a firm rule never to introduce a bill which has discouraging prospects of becoming law."<sup>83</sup> The prospects for consumer protection in the mid-1960s were too encouraging for Magnuson to ignore.

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March-2 April 1965, p. 13.

<sup>81</sup>U.S., Congress, Senate, Committee on Commerce, Fair Packaging and Labeling: Hearings before the Committee on Commerce on S. 985, 89th Cong., 1st sess., 1965, p. 1.

<sup>82</sup>Redman, Dance of Legislation, p. 200.

<sup>83</sup>WGM to Tom Somas, 31 May 1961, WGM Papers, accession 3181-4, box 78, folder 6.

## CHAPTER SEVEN

### The Magnuson Consumer Agenda

"I favor the federal government's staying out of business enterprises, except where it is apparent that the public interest will best be served through government operation."<sup>1</sup>

#### Introduction

In November 1961 Time magazine printed a short piece on Senator Warren Magnuson on the twenty-fifth anniversary of his first election to Congress. The article recounted a speech President Kennedy had made in Magnuson's honor in Seattle. Describing the senator's unique style, Kennedy had observed that Magnuson would wander into the Senate chamber late in the afternoon when everyone else had gone, gain the floor, and say "What's my business? Oh, it's nothing important. Just the Grand Coulee Dam."<sup>2</sup> The president was a bit off chronologically--the U.S. Bureau of Reclamation began

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<sup>1</sup>WGM to Mr. and Mrs. Thomas Haight, 28 March 1961, WGM Papers, accession 3181-4, box 77, folder 15, Manuscripts Division, University of Washington Libraries, Seattle.

<sup>2</sup>"In the Kitchen with Maggie," Time 78 (24 November 1961): 12.

building the dam in 1933, while Magnuson was still a state legislator<sup>3</sup>--but the point was well taken: Magnuson managed to get his way more often than not.

Contemporary observers provided many explanations for his success. Sometimes it was simply a matter of a quid pro quo. He would support another senator's bill in exchange for his colleague's backing on something else. At other times he achieved his goals through compromise and reasonable give-and-take on a bill's provisions. If President Johnson pursued policies based on consensus, Magnuson ran his Commerce Committee the same way. Bills typically emerged from the committee with unanimous or near-unanimous approval. He also benefited from his own good nature and friendliness. Senator Mike Mansfield, Democratic Majority Leader, said of him that he "doesn't have an enemy on either side of the aisle." And he was practical when it came to legislation. One Senate colleague said that "if Maggie usually gets what he wants, it's because he usually wants what he can get."<sup>4</sup> He was an

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<sup>3</sup>Ironically, however, when Magnuson was in the Washington Legislature, he introduced a bill to begin work on the Grand Coulee project with a state appropriation of \$20 million. He offered the bill at the request of members of the House from eastern Washington and "certain groups" who wanted to bring the subject of the dam up for discussion in the Legislature and in public. The Seattle Times called it a "Magnuson bill," but it was no such thing. As he explained: "I, myself, know little or nothing about the Grand Coulee suggestion . . . That it should happen to have been called the Magnuson bill by a certain newspaper means nothing. . . . I, personally, at this time, believe that the project is too great for us to undertake." WGM to Jack D. Stevens, 24 January 1933, WGM Papers, accession 3181-1, box 1, folder 13. The Seattle Times article, "Vast Coulee Plan Means Work for 12,000 in State," appeared in the issue of 20 January 1933, p. 17.

<sup>4</sup>Quoted in Dan Cordtz, "The Senate's 'Maggie': In a Casual Way, Washington's Magnuson Gets Much Done," Wall Street Journal, 2 April 1965, p. 8.

expert at working behind the scenes and having legislative arrangements made well before issuing any floor statements or participating in debates. As he was fond of saying: "If you've got the votes, you don't need the speech, and if you need the speech, you don't have the votes."<sup>5</sup> Longevity, political skill, informality, friendliness: each contributed to Magnuson's remarkable ability to push legislation through.

One other characteristic, however, is perhaps more important than all the others: his ability, willingness, or even psychological need to work hard. Magnuson himself noted this characteristic early in his career in Congress, writing in 1940 to one frequent correspondent: "Keeping my nose to the grindstone seems to agree with me. The more I have to do and the more pressed I am for time, the more keyed up and better I feel. Why it is, I don't know, but I seem to thrive on work and added responsibilities."<sup>6</sup>

Through his years in the Senate his work ethic remained the same, but the imagery changed. By 1961, rather than referring to the grindstone, he described his efforts as "kitchen work." What he meant by that term was the unpublicized committee and subcommittee work that made up so much of what the Congress actually did each day. He expressed admiration for other kitchen

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<sup>5</sup>"In the Kitchen with Maggie," p. 12.

<sup>6</sup>WGM to Julius V. Madison, 6 February 1940, WGM Papers, accession 3181-2, box 47, folder 59.

workers and disdain for those who were "out on the front porch talking while the rest of us are in the back doing the kitchen work."<sup>7</sup>

In the 1960s Magnuson's kitchen work for American consumers would take him literally into the kitchen--as well as into every other room in the house--into the family car, and even under the house when he sponsored legislation to make natural gas pipelines safer.<sup>8</sup> He had already stepped into the kitchen with the Hazardous Substances Labeling Act of 1960, but he made himself even more at home there by working to pass packaging and labeling legislation. He went into every room frequented by smokers to warn them of the dangers of their habit, and then visited the bedroom with the Flammable Fabrics Act Amendments, the first use of which was to make children's sleepwear more fire resistant. He passed through the workshop to ensure that hazardous products were made as safe as possible and went out to the garage to do the same for the family car and its tires. Before he left he made sure that warranties for household items actually meant what they said. The powerful yet friendly kitchen worker left his mark on virtually every American home.

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<sup>7</sup>"In the Kitchen with Maggie," p. 12. Members of his staff invariably came to share his views on different types of senators. See Eric Redman, The Dance of Legislation (New York: Simon & Schuster, 1973), pp. 200-01.

<sup>8</sup>The Natural Gas Pipeline Safety Act of 1968 (PL 90-481).

## Cigarette Labeling

Although there were other consumer measures under consideration in the early 1960s, the first issue to attract Magnuson's attention after the Hazardous Substances Act was the controversy over cigarettes. Compared to some of his Senate colleagues, Magnuson was a latecomer to the debate and, to some extent, a convert to the side that saw cigarettes as a danger.

In 1957, after studies implicating cigarettes as a cause of serious diseases had proliferated throughout the decade, Senator Wallace Bennett, a Republican from Utah, introduced a bill requiring all cigarette packages to state: "Warning: Prolonged use of this product may result in cancer, in lung, heart and circulatory ailments, and in other diseases." After Bennett had made his introductory remarks, Magnuson pointed out that there was pending in the Commerce Committee a bill that would require ingredients to be listed on cigarette packages. Magnuson added: "After we discover what is in every cigarette, perhaps the Senator's suggestion of a warning may be justifiable." Bennett noted that chemical names would not be very helpful to most people who "need warnings stated in simple language." Magnuson's response could not have encouraged Bennett: "We certainly hope to have some hearings on the subject as soon as we have disposed of some other very important business under discussion in the Senate," Magnuson said. "I assure the Senator that we will give his bill adequate consideration."<sup>9</sup> The bill, S. 2554, was referred to

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<sup>9</sup>Cong. Rec., 85th Cong., 1st sess., 1957, 103, pt. 9: 11788-94.

Magnuson's Commerce Committee, and to no one's surprise it did not emerge.<sup>10</sup>

Senator Richard Neuberger of Oregon also introduced cigarette labeling bills as well as bills to provide financial backing for programs to educate people to the dangers of smoking. He was particularly incensed by the contradictory policy of the federal government: tobacco was supported and promoted as a "basic crop" at the same time that health agencies were trying to warn Americans of the hazards of its use. His bill to remove tobacco from the list of basic crops was, like his other cigarette bills--indeed, like all other efforts to restrict the industry in the 1950s--killed in committee.<sup>11</sup>

The House of Representatives went slightly beyond the Senate, holding hearings in 1957 on the Federal Trade Commission's responsibility concerning the truth of claims made in advertisements for filter tip cigarettes. John A. Blatnik of Minnesota chaired the hearings in a subcommittee of the House Government Affairs Committee. The subcommittee's report concluded that "cigarette manufacturers [had] deceived the American public through their

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<sup>10</sup>In 1965 Commerce Committee hearings chaired by Magnuson, Senator Bennett spoke in favor of cigarette labeling bills introduced by Senator Maurine Neuberger and by Magnuson. Bennett observed that his earlier bill had "just dropped into a deep hole and disappeared." U.S., Congress, Senate, Committee on Commerce, Cigarette Labeling and Advertising: Hearings on S. 559 and S. 547, pt. 1, 89th Cong., 1st sess., 1965, p. 10. One assumes that the irony of the situation was not lost on either Magnuson or Bennett.

<sup>11</sup>Maurine B. Neuberger, Smoke Screen: Tobacco and the Public Welfare (Englewood Cliffs, N.J.: Prentice-Hall, 1963), p. 54.

advertising of cigarettes" and that filters did not make smoking safer.<sup>12</sup>

Blatnik's reward for his subcommittee work was the dissolution of his subcommittee and the loss of his chairmanship. When the subcommittee was later reestablished, Blatnik was no longer a member. The tobacco lobby has been given credit for his elimination.<sup>13</sup>

As the new decade unfolded, the chief Senate proponent of cigarette legislation was Oregon's Senator Neuberger. Now, however, it was not Richard Neuberger who carried the banner, but his wife Maurine. Richard, a nonsmoker, succumbed to cancer in 1960, and Maurine, a former member of the Oregon House of Representatives, was elected to succeed him.

Neuberger first tried to bring cigarettes under the jurisdiction of existing agencies and legislation. In April 1962 she wrote to Chairman Paul Rand Dixon of the FTC asserting that any cigarette advertisement that did not warn of the dangers of smoking was deceptive. She asked pointedly if it were not the duty of the Commission to stop deceptive advertising. Three months later, the reply came. Dixon noted that if there were conclusive evidence of the causal relationship between smoking and disease, the FTC could certainly take action. But the scientific evidence had not removed the "last doubt" of such a relationship, and if the FTC tried to bring a false advertising case against a tobacco company the result was likely to be a "long, involved, and protracted

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<sup>12</sup>Quoted in A. Lee Fritschler, Smoking and Politics: Policymaking and the Federal Bureaucracy, 3d ed. (Englewood Cliffs, N.J.: Prentice-Hall, 1983), p. 27.

<sup>13</sup>Fritschler, Smoking and Politics, p. 27.

trial." In other words, the Commission was not about to challenge the tobacco industry.<sup>14</sup>

Neuberger next prodded the Food and Drug Administration to regulate tobacco under the provisions of the Hazardous Substances Labeling Act. Tobacco, she reasoned, qualified because one definition of a "hazardous substance," according to the Act, was anything that was toxic, and Section 2(g), stated that "the term 'toxic' shall apply to any substance . . . which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface." The Commissioner of the FDA held that the Act did not apply to tobacco, and Neuberger concluded that additional legislation was therefore necessary.<sup>15</sup>

The turning point for cigarette legislation--and, indirectly, for Magnuson's involvement--came on January 11, 1964, with the release of Smoking and Health, the report of the Surgeon General's Advisory Committee on Smoking and Health. Members of the Advisory Committee had been chosen from nominees submitted by health agencies and the tobacco interests, and their discussions were carried out behind closed doors. This meant that their report not only represented the broad spectrum of sentiment toward cigarettes, it also generated a great deal of anticipation. The report was deliberately released on a Saturday because of concerns that it might adversely affect

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<sup>14</sup>Neuberger, Smoke Screen, pp. 57-59.

<sup>15</sup>Neuberger, Smoke Screen, pp. 49-50; and Senate Committee on Commerce, Cigarette Labeling and Advertising: Hearings on S. 559 and S. 547, p. 52.

tobacco stock prices. Its conclusions, although not entirely new, did seem to strike at the heart of the tobacco industry: "Cigarette smoking is causally related to lung cancer in men; the magnitude of the effect of cigarette smoking far outweighs all other factors. The data for women, though less extensive, point in the same direction."<sup>16</sup> The Advisory Committee's report also linked smoking to heart disease, bronchitis, and emphysema. And it called for the government to implement measures to warn the public of the health danger posed by smoking. "Cigarette smoking," it stated, "is a health hazard of sufficient importance in the United States to warrant appropriate remedial action."<sup>17</sup>

The first body in the federal government to respond to this call to action was not Congress but the Federal Trade Commission. Just one week after the release of Smoking and Health, the FTC announced its intention to issue a rule regarding cigarette labeling and advertising. (Apparently, the report had removed the "last doubt" to which Chairman Dixon had referred in his response to Neuberger.) The rule would have the effect of law, and beginning March 16, 1964, the Commission held three days of hearings. As issued on June 22, the rule stated that

in connection with the sale, offering for sale, or distribution in commerce . . . of cigarettes it is an unfair or deceptive act or practice . . . to fail to disclose, clearly and prominently, in all advertising and on every pack, box, carton or other container in which cigarettes are sold to the

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<sup>16</sup>Quoted in Fritschler, Smoking and Politics, p. 46.

<sup>17</sup>Quoted in Fritschler, Smoking and Politics, p. 47.

consuming public that cigarette smoking is dangerous to health and may cause death from cancer and other diseases.<sup>18</sup>

The package labeling requirement was set to go into effect on January 1, 1965, to be followed by the provision regarding advertising on July 1.

Realizing that Congress would likely want to have a say in the matter, the FTC also wrote into the rule the provision that an "interested party" could apply to have the effective date postponed. After the tobacco industry itself, the most interested party was no doubt Congress, and on August 19, Chairman Oren Harris of the House Commerce Committee asked Dixon to postpone the implementation of the rule, which Dixon promptly did.<sup>19</sup>

One increasingly interested member of the Senate was Warren G. Magnuson, who seems to have been drawn to the cigarette controversy for three main reasons. First, his Commerce Committee oversaw the Federal Trade Commission, and as the FTC heightened its involvement in cigarette regulation the Committee was obliged to do so as well. Magnuson and the Commission had not always been on the best of terms, especially during the Eisenhower administration when the senator perceived the FTC to be lax in its enforcement of labeling laws and other consumer measures. In this case, however, he seemed to side with the FTC, thinking that it should have the

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<sup>18</sup>The rule (29 FR 8325) is reprinted as Appendix II in Fritschler, Smoking and Politics, pp. 163-65.

<sup>19</sup>Fritschler, Smoking and Politics, pp. 165, 152.

power to regulate cigarette labeling and advertising if it did not have that power already.<sup>20</sup>

Second, Magnuson was one of Congress's greatest cancer foes. In the 1930s he had championed the House version of Senator Homer Bone's bill to create the National Cancer Institute, and throughout his career in both houses of Congress he had backed measures to promote health. To stand by as others considered what to do about a product that caused cancer would have been very much out of character for Magnuson.

Third, for several reasons, cigarette legislation fit into his plan to emphasize consumer protection. Cigarette labeling was, as Maurine Neuberger had argued, similar to the Magnuson-sponsored Hazardous Substances Act: both were intended to warn consumers of potential dangers in common products. Certainly the addition of Michael Pertschuk to the Commerce Committee staff also influenced the decision; he had been Neuberger's legislative assistant, and in Smoke Screen, she had commended him for his contributions to the book.<sup>21</sup> Pertschuk's expertise on tobacco policy probably both encouraged and enabled Magnuson to take a leading role.<sup>22</sup> Finally, cigarette labeling was a good way for Magnuson to ease into greater participation in consumer affairs because it was not threatening to his

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<sup>20</sup>"Cigaret Labeling Donnybrook Looms," Drug News Weekly, 14 December 1964, pp. 1, 19.

<sup>21</sup>Neuberger, Smoke Screen, p. viii.

<sup>22</sup>David E. Price, Who Makes the Laws?: Creativity and Power in Senate Committees (Cambridge, Mass.: Schenkman, 1972), p. 41.

constituents or to his own political future. Had he been from a tobacco-producing state such as North Carolina or Kentucky, perhaps he would have taken a different stance, but as a representative of a northwestern state, he was free to pursue the issue without fear of significant opposition at home.<sup>23</sup>

On January 15, 1965, Magnuson introduced S. 559, a bill to require both a warning label and data concerning tar and nicotine statistics on cigarette packages. In his folksy way, he noted how the proposed law would further the rights of consumers to choose and to be informed. "Mr. President," he began his remarks on the Senate floor, "I believe that an adult has the right to choose his own poison." (Here, it might be observed, he seemed to echo the sentiments of the young, anti-prohibition, political novice that he had once been.) "But I also believe that he has the right to know just what kind of risk he is taking." He noted that many Americans would not be convinced that cigarettes were harmful until the government proved itself willing to take action. He mentioned his own efforts to assist in the fight against cancer and said that his bill would "arm the Public Health Service in its battle against smoking-caused cancer and other diseases."<sup>24</sup> Magnuson's original bill did not address the issue of cigarette advertising, but as it came out in the hearings, the bill was

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<sup>23</sup>I have found no evidence that Magnuson himself ever stated as much, but Senator Maurine Neuberger of neighboring Oregon admitted that the lack of a tobacco industry in her state gave her a measure of freedom when it came to cigarette legislation. Smoke Screen, pp. 67-68.

<sup>24</sup>Magnuson's comments may be found in Cong. Rec., 89th Cong., 1st sess., 1965, 111, pt. 1: 730-32. They are also reprinted in Senate Committee on Commerce, Cigarette Labeling and Advertising: Hearings on S. 559 and S. 547, pp. 4-5. S. 559 is also reprinted in the latter, pp. 3-4.

not perceived by the FTC to preclude its enforcing the trade regulation rule regarding advertising.<sup>25</sup> And as Chairman Paul Rand Dixon explained in a letter to Magnuson regarding the wording of the package warning, "use of the identical language in cigarette advertisements would be deemed by the Commission to comply with the requirements of the Trade Regulation Rule."<sup>26</sup>

On the same day that Magnuson introduced his cigarette bill, Senator Neuberger offered one of her own. S. 547 also required a health warning label on cigarette packages, but it went a bit farther than Magnuson's bill in requiring not only data on tar and nicotine, but also disclosure of any "incriminated agent" that the FTC determined "contribute[d] to the medical hazards of smoking." Neuberger's proposed legislation also aimed directly at advertising, calling for the health warning to be included in all cigarette advertisements and providing for "the elimination of all advertising matter which tends to make cigarette smoking attractive to children." Violations of these provisions would be punishable as false advertising under the FTC's authority as granted by its enabling act and, especially, by the Wheeler-Lea Act of 1938.<sup>27</sup>

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<sup>25</sup>U.S., Congress, Senate, Committee on Commerce, Cigarette Labeling, S. Rept. 195 to Accompany S. 559, 89th Cong., 1st sess., 1965, p. 16.

<sup>26</sup>Dixon to WGM, 31 March 1965, S. 559, 89th Cong., Commerce, U.S. Sen., RG 46, NA.

<sup>27</sup>S. 547 is also reprinted in Senate Committee on Commerce, Cigarette Labeling and Advertising: Hearings on S. 559 and S. 547, pp. 2-3.

The Senate Commerce Committee held hearings concurrently on the two bills from March 22 to April 2, 1965. Of the two, S. 547 was the more strict, and thus less likely to be acceptable to the tobacco industry or its friends in Congress. Magnuson's bill therefore became the one which proceeded through the legislative system. Along the way it lost the tar and nicotine listing provisions and picked up the issue of advertising, which quickly became a bone of contention. As it emerged from the Senate Commerce Committee, S. 559 would prevent any state or federal authority from requiring a health warning on cigarette advertising for three years after the enactment of the bill.<sup>28</sup> This represented a compromise between those who opposed any delay in requiring a warning in advertising and those who wanted the FTC permanently barred from imposing such a requirement.<sup>29</sup> The Committee version did not, however, prevent the FTC from taking action against advertising that "tend[ed] to negate the warning which must be placed on the package in accordance with the bill."<sup>30</sup> In other words, health claims such as those used in cigarette advertising in the past--"not a cough in a carload," "no

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<sup>28</sup>Senate Committee on Commerce, Cigarette Labeling, S. Rept. 195 to Accompany S. 559, p. 1.

<sup>29</sup>According to columnist Jack Anderson, in the committee deliberations Magnuson bargained the preemption period down from a permanent ban to five years to three--despite not having the majority of votes. "Cigarette Cancer Warning Fought," Washington Post, 17 May 1965, p. B13. See also Price, Who Makes the Laws? p. 45.

<sup>30</sup>Senate Committee on Commerce, Cigarette Labeling, S. Rept. 195 to Accompany S. 559, p. 6.

adverse effect upon the nose, throat or accessory organs," and the like--would be treated as false advertising and were thus prohibited.

The House was, as Fritschler observed, "considerably more pro-cigarette than the Senate,"<sup>31</sup> and the version of the bill passed by that body was amended to be far weaker than the Senate's. The House bill would have permanently prohibited federal, state, or local authorities from requiring a health warning in cigarette advertising. It also provided that the bill would take effect 180 days after enactment, whereas the Senate's version called for just a 120-day delay. And the House bill would impose only a \$10,000 fine for violations; the Senate's, \$100,000.<sup>32</sup>

The House and Senate Conference Committee produced a bill that would, if approved, become effective on January 1, 1966, prevent the FTC from prescribing a warning in advertisements until July 1, 1969, subject violators to a fine of \$10,000, and require that cigarette packages state: "Caution: Cigarette Smoking May Be Hazardous to Your Health."<sup>33</sup> The Senate approved the report on July 6, 1965, and the House followed suit on July 13.

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<sup>31</sup>Smoking and Politics, p. 115.

<sup>32</sup>Memo, Mike Pertschuk to WGM, 29 June 1965, and "Summary of Differences between the Senate and House Cigarette Labeling Bills," n.d., S. 559, 89th Cong., Commerce, U.S. Sen., RG 46, NA.

<sup>33</sup>The Conference Report (H. Rept. 586) is reprinted in Cong. Rec., 89th Cong., 1st sess., 1965, 111, pt. 12: 16540-41.

Attention then turned to President Johnson, who had remained silent throughout the whole debate.<sup>34</sup> Some, including Senators Paul Douglas, Joseph Clark, Gaylord Nelson, and Robert Kennedy, and Representatives John Blatnik, Richard Bolling, John Moss, and Morris Udall, urged him to veto the bill, insisting that it was worse than no bill at all because it delayed the implementation of really meaningful laws or regulations while fifty thousand people died of cancer each year in the United States. "This legislation," they argued, "instead of protecting the health of the American people, protects only the cigarette industry."<sup>35</sup> The New York Times called it "a shocking piece of special interest legislation . . . a bill to protect the economic health of the tobacco industry by freeing it of proper regulation."<sup>36</sup> If the real goal, said others opposed to the bill, was to prevent young people from taking up the

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<sup>34</sup>"Uncharacteristically silent," observed Fritschler in Smoking and Politics, p. 116. At some point Johnson, who had quit smoking after his 1955 heart attack, told his staff, "Don't get me involved" in the cigarette issue. Memo, LEL [Lawrence E. Levinson] to Joe [Califano], 31 December 1966, filed with a Commerce Committee press release regarding tar and nicotine levels, 13 January 1967, Ex LE/HE 1, White House Central Files (WHCF), box 58, LBJ Library. Price attributes this to Johnson's desire to avoid offending congressmen and to save his credits to apply to more significant Great Society measures. Who Makes the Laws? p. 42.

<sup>35</sup>Letter, Paul H. Douglas et al., to the President, 15 July 1965, Gen LE/HE 1, WHCF, box 61, LBJ Library.

<sup>36</sup>Quoted in Michael Pertschuk, Giant Killers (New York: Norton, 1986), p. 33.

smoking habit, it would be more useful to attack cigarette advertising than to secure an equivocal warning label on packages.<sup>37</sup>

Others thought that despite its shortcomings, the bill should be signed into law because it indicated the willingness of the government to take a stand against a serious health hazard. Michael Pertschuk argued as much in a memo to Mike Manatos, President Johnson's liaison to the Senate.<sup>38</sup>

Magnuson, too, echoed these sentiments in his remarks on the floor of the Senate after Johnson had signed the bill into law (the Cigarette Labeling and Advertising Act, PL 89-92).<sup>39</sup>

The president probably had no choice in the matter. As Counsel Lee White observed in a memo to Johnson, the bill represented "a bargained compromise between the industry, the regulatory agencies and the Congress," and if he were to veto it, "the industry and the Congressional people with tobacco interests would scream their heads off."<sup>40</sup> Johnson had close friends in the Senate, including Magnuson, as well as in the tobacco lobby, among

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<sup>37</sup>Memo, Lee White to the President, 26 July 1965, Ex LE/HE 1, WHCF, box 58, LBJ Library.

<sup>38</sup>Memo, Mike Pertschuk to Mike Manatos, 20 July 1965, Gen LE/HE 1, WHCF, box 61, LBJ Library. A copy of the same memo may be found in S. 559, 89th Cong., Commerce, U.S. Sen., RG 46, NA.

Whether or not Pertschuk believed his own arguments at that time, he later determined that the legislation was "a sorry piece of tobacco knavery." Giant Killers, p. 33.

<sup>39</sup>Cong. Rec., 89th Cong., 1st sess., 1965, 111, pt. 15: 20680.

<sup>40</sup>Memo, Lee White to the President, 26 July 1965, Ex LE/HE 1, WHCF, box 58, LBJ Library.

them Earle Clements of the Tobacco Institute and attorney Abe Fortas, longtime Johnson associate and soon to be elevated to the Supreme Court,<sup>41</sup> and he had no desire to alienate them. Moreover, the bill had at least the appearance of a consumer protection measure, and despite its weaknesses it would have been difficult to support a veto without seeming to be anti-consumer.<sup>42</sup> Johnson signed the bill on July 27, 1965, a few hours before it would have passed into law without his signature. There was no ceremony, no crowd of invited guests, no distribution of souvenir pens to key Congressional figures.<sup>43</sup>

Magnuson had played a leading role in the passage of the bill: he had introduced it, fought to keep it from being entirely gutted in his own committee, and struggled to retain the Senate's stronger version as a member of the conference committee. He was hardly satisfied with the outcome, however, calling it "far from perfect legislation" and a "compromise" whose three and one-half year ban on a warning in advertising was "not what we who sought strong legislation wanted."<sup>44</sup> The tar and nicotine provision of his original bill had been intended to persuade tobacco companies to develop

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<sup>41</sup>Fritschler, Smoking and Politics, p. 25.

<sup>42</sup>Memo, Horace Busby to Bill Moyers, 26 July 1965, filed with memo, Lee White to the President, 26 July 1965, Ex LE/HE 1, WHCF, box 58, LBJ Library.

<sup>43</sup>Fritschler, Smoking and Politics, pp. 127-28.

<sup>44</sup>Cong. Rec., 89th Cong., 1st sess., 1965, 111, pt. 15: 20679.

"safer" cigarettes,<sup>45</sup> but that section had been eliminated from the bill as it progressed through Congress. And despite claims that the FTC still had a great deal of control over cigarette advertisements, smoking continued to be glorified in the media to which millions of youngsters were daily exposed. Magnuson still had work to do in the field of cigarette regulation.

One development that particularly irritated him was the revelation that the Department of Agriculture had spent over \$100,000 to produce a film entitled "World of Pleasure" to promote smoking throughout the world.<sup>46</sup> The purpose of the film was, of course, to generate markets for American tobacco, but to Magnuson and many others it seemed the height of hypocrisy to use Food for Peace funds to stimulate tobacco sales abroad when cigarettes were coming under increasing attack at home. On January 5, 1966, he wrote to Secretary of Agriculture Orville L. Freeman inquiring about the project and a few days later issued a news release condemning it.<sup>47</sup> He soon received a letter from Freeman pointing out that the Department of Agriculture was simply doing its job to aid American exports and could not "discriminate

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<sup>45</sup>Cong. Rec., 89th Cong., 1st sess., 1965, 111, pt. 1: 730; and WGM to Dr. Ernest Wynder, 11 April 1966, S. 559, 89th Cong., Cigarette Labeling Correspondence, Commerce, U.S. Sen., RG 46, NA.

<sup>46</sup>See WGM's news release of 8 January 1966, S. 559, 89th Cong., Commerce, U.S. Sen., RG 46, NA; Fritschler, Smoking and Politics, p. 30; and "Squabble Over Cigarettes," New Republic 154 (7 May 1966): 7.

<sup>47</sup>Letter, WGM to Freeman, 5 January 1966 and news release of 8 January 1966 may be found in S. 559, 89th Cong., Commerce, U.S. Sen., RG 46, NA.

between products when promotion programs are being considered."<sup>48</sup>

Responding to Magnuson's news release, Congressmen from Kentucky and Georgia openly threatened reprisals against Washington State exports.<sup>49</sup> But beyond the animosity he had generated, Magnuson accomplished nothing of consequence with his fulminations against "World of Pleasure."

He enjoyed only slightly more success in his efforts to publicize the tar and nicotine ratings of cigarettes. In early 1966 he had received reports that the rates were higher than they had been before the passage of the Cigarette Labeling and Advertising Act.<sup>50</sup> On July 27, therefore, he introduced with Senators Neuberger and Robert Kennedy a bill (S. 3654) requiring tar and nicotine ratings to be listed on cigarette packages and in advertisements. The bill was submitted late in the Eighty-ninth Congress and failed to pass.

In the meantime, however, Dr. George Moore of the Roswell Park Memorial Institute in Buffalo, New York, reported that some filtered cigarettes had higher levels of tar and nicotine than non-filtered versions of the same brand. This seemed counter to what people might have assumed, and was especially worrisome because filter cigarettes had grown from only 1 or 2 percent of the cigarettes sold in America in the early 1950s to almost

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<sup>48</sup>Freeman to WGM, 17 January 1966, S. 559, 89th Cong., Commerce, U.S. Sen., RG 46, NA.

<sup>49</sup>John C. Watts (Ky.) to WGM, 11 January 1966; Maston O'Neal (Ga.) to WGM, 12 January 1966, S. 559, 89th Cong., Cigarette Labeling Correspondence, Commerce, U.S. Sen., RG 46, NA.

<sup>50</sup>WGM to Dr. Ernest Wynder, 11 April 1966, S. 559, 89th Cong., Cigarette Labeling Correspondence, Commerce, U.S. Sen., RG 46, NA.

70 percent by 1967. As Magnuson noted, "consciously or unconsciously the average smoker is turning to the filter cigarette in the hope that filtration will provide some measure of protection against the hazards of smoking."<sup>51</sup> In reporting the results of Dr. Moore's study, Magnuson announced: "Unless cigarette manufacturers begin to disclose on their packages and in their advertisements the tar and nicotine content of their cigarettes, they are depriving the American people of the basic facts they need to make an informed choice."<sup>52</sup>

To rectify that situation, on May 17, 1967, he introduced with Senators Robert Kennedy and Frank Moss another bill (S. 1803) requiring tar and nicotine ratings to be listed on packages and in advertisements.<sup>53</sup> This measure died in the Commerce Committee without even advancing to the hearings stage.

Despite his failure to gain passage of a tar and nicotine disclosure bill, Magnuson did publicize the FTC's statistics for about sixty brands of cigarettes sold in the United States. In fact, it had been at his request that the FTC had established its new laboratory in Washington, D.C., to test cigarettes for tar and nicotine levels.<sup>54</sup> Through the Consumer Subcommittee of the Commerce

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<sup>51</sup>Cong. Rec., 90th Cong., 1st sess., 1967, 113, pt. 10: 12948.

<sup>52</sup>News release, 29 August 1966, S. 3654, 89th Cong., Commerce, U.S. Sen., RG 46, NA.

<sup>53</sup>Cong. Rec., 90th Cong., 1st sess., 1967, 113, pt. 10: 12948-55.

<sup>54</sup>Fritschler, Smoking and Politics, p. 132.

Committee, he released the data to the media in November 1967,<sup>55</sup> and the table was reprinted as an appendix to The Dark Side of the Marketplace, the 1968 book he coauthored with Jean Carper.<sup>56</sup> Although the statistics were not as immediately available as they would have been if they had been printed on packages and in advertisements, Magnuson did help to disseminate information that had previously been impossible for the average person to acquire.

As the three-and-one-half-year preemption on the FTC's requiring a warning in advertising neared its expiration, cigarette manufacturers found themselves in a more and more difficult position. In 1967, in response to a request from attorney and anti-cigarette gadfly John C. Banzhaf, the Federal Communications Commission had ruled that the fairness doctrine applied to televised cigarette advertisements. According to the fairness doctrine, advocates of both sides of a controversial issue must be given the opportunity to air their viewpoints. In this instance, anti-smoking messages had to be broadcast to counter the cigarette advertisements of the tobacco manufacturers. Magnuson backed the FCC's decision as an advance for health. Strangely, some groups such as the American Cancer Society remained silent on the ruling out of fears that to support it might antagonize the television and radio

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<sup>55</sup>Harold M. Schmeck, Jr., "U.S. Report Ranks Cigarettes by Tar," New York Times, 28 November 1967, pp. 1, 43; and "Tar Content of Cigarettes," New York Times, 28 November 1967, p. 43.

<sup>56</sup>Warren G. Magnuson and Jean Carper, The Dark Side of the Marketplace: The Plight of the American Consumer (Englewood Cliffs, N.J.: Prentice-Hall, 1968), pp. 211-23.

networks. The health societies thought that if the courts overturned the ruling, they would be left without any friends in the media. In November 1968, however, the U.S. Court of Appeals upheld the FCC's application of the fairness doctrine,<sup>57</sup> and the Communications Commission settled on a three to one ratio: for every three cigarette advertisements broadcast, one anti-smoking message had to be aired.

The immediate result of the anti-smoking commercials was a decline in cigarette sales steeper than the short-lived decrease that followed the release of the Surgeon General's Advisory Committee's report. Sales of cigarettes in 1969 dropped by more than 12 billion from the 1968 level. Although this represented only a 2.3 percent drop in total cigarette consumption, per capita consumption declined by 4.6 percent.<sup>58</sup> For an industry accustomed to growth, however, any setback was significant.

As if that were not enough, the Federal Communications Commission and the Federal Trade Commission could hardly wait for the July 1 expiration of the limitation on advertisement regulation. The FCC announced in February 1969 its intention to issue a rule barring cigarette advertisements from the

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<sup>57</sup>Fritschler, Smoking and Politics, pp. 135-36.

<sup>58</sup>U.S. domestic consumption of cigarettes in 1968 was 523 billion, in 1969, 511 billion; per capita (18 years and over) consumption of cigarettes in 1968 was 4,186, in 1969, 3,993. U.S., Department of Agriculture, Consumer and Marketing Service, Annual Report on Tobacco Statistics, 1970, Statistical Bulletin no. 467, April 1971, pp. 7, 33.

radio and television airwaves. And the FTC opened hearings on reinstating its original trade regulation rule requiring warnings in advertisements.<sup>59</sup>

In response, the tobacco industry first tried to maneuver a favorable bill to passage by way of the friendly House Commerce Committee, and indeed the bill passed by the House was ideal as far as the cigarette interests were concerned. H.R. 6543 would have permanently prohibited the states from taking action on cigarette advertising, prevented any federal agencies from doing so until July 1, 1975, and allowed for a slightly stronger package warning. The Senate, led by Magnuson and Frank Moss, found this bill entirely unacceptable, amended it thoroughly to ban cigarette advertisements from the airwaves, and secured Senate passage of the Public Health Cigarette Smoking Act of 1969.<sup>60</sup>

By then the tobacco manufacturers had seen the writing on the wall and had retreated from their insistence that advertising be permitted on television and radio.<sup>61</sup> Besides, they desperately wanted to get away from the anti-smoking advertisements required by the FCC. Thus a new strategy emerged: when the broadcast ban appeared destined for passage, the tobacco companies convinced themselves that it was in their own best interest.<sup>62</sup> And actually it was. According to statistics compiled by the U.S. Department of Agriculture, in

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<sup>59</sup>Fritschler, Smoking and Politics, pp. 138-40.

<sup>60</sup>Fritschler, Smoking and Politics, pp. 140-41.

<sup>61</sup>Fritschler, Smoking and Politics, pp. 140-41.

<sup>62</sup>Pertschuk, Giant Killers, pp. 38-39.

the first year of the ban, cigarette manufacturers' advertising budgets fell by about 30 percent, and sales increased 3 percent.<sup>63</sup>

Once again Magnuson had contributed to the passage of a bill intended to give consumers some degree of protection vis-à-vis cigarette manufacturers and their wares, and once again the manufacturers seemed to have gained most of the benefits. Were Magnuson's efforts fruitless? The answer to that question would depend on what was expected to be gained.

If the goal were to decrease cigarette consumption in the United States, one would be forced to conclude that he had failed. Cigarette consumption during the years of Magnuson's involvement increased steadily except for a brief setback following the imposition of the fairness doctrine.

If Magnuson had primarily been interested in informing consumers--of giving them sufficient information to "choose their own poison," as he said when he introduced the labeling bill S. 559 in January 1965--then he would quite likely be judged a success. If smokers had not known before 1965 that their habit could be deadly, Magnuson's struggles to put a meaningful health warning on packages and to disseminate tar and nicotine information certainly should have alerted them to the danger. Although the warning was not as forceful as he had wanted it to be, and the tar and nicotine listings not as widely publicized, they still represented significant steps toward responsible government action on a major health threat in the face of powerful opposition.

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<sup>63</sup>Cited in Fritschler, Smoking and Politics, p. 141.

Finally, if the true motivation behind his participation in the cigarette legislation derby were publicity and the advancement of his reputation as a consumer advocate, then Magnuson was most certainly successful. He appeared in the media as the champion of health, science, and fair dealing. If people wanted to smoke, that was their decision. He smoked cigars himself. But if they wanted to choose a lower tar and nicotine cigarette, they should have that option. As Majority Leader Mike Mansfield summarized Magnuson's contribution after the passage of H.R. 6543, "Senator Magnuson has long been an advocate of consumer interests. Surely there is no interest more vital to the consumer than knowing about potential health hazards from cigarette smoking."<sup>64</sup> Cigarette legislation was certainly not the whole of Magnuson's consumer work, but it played an early and important part in the creation of his reputation as a consumer protector during the era of the third wave.

### **Automobile and Tire Safety**

Automobile safety was, like cigarette regulation, an issue to which Magnuson came after others had already taken the first steps. Again as in the case of the cigarette labeling and advertising bills, once he did become involved he worked diligently to strengthen the auto safety bills as they progressed through his Commerce Committee and the Senate. His support for automobile safety legislation was not only vital to its passage, it also enhanced his growing reputation as a consumer protector.

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<sup>64</sup>Cong. Rec., 91st Cong., 1st sess., 1969, 115, pt. 29: 38753.

Magnuson made his first real contribution to automobile safety not so much because he was interested in the subject, but because it was a means to gain an ally on a bill that was much closer to his heart--a bill extending medical coverage to commercial fishermen. In the summer of 1964, in exchange for Congressman Kenneth Roberts's support in the House for the fishermen's bill, Magnuson backed Roberts's bill to allow the General Services Administration to insist on certain safety standards in automobiles purchased by the federal government. The goal of Roberts's legislation, which went into effect as Public Law 88-515, was to push the automotive industry to improve the safety of all vehicles, not just those sold to the government.<sup>65</sup> Although the GSA was not overwhelmingly successful in influencing the industry, the precedent set by the bill was nevertheless significant for government involvement in auto safety, if not for Magnuson's role in it.

Magnuson joined the auto safety movement for its own sake in October 1965, when he introduced S. 2669, a bill "to establish safety standards for motor vehicle tires sold or shipped in interstate commerce." As he admitted in his remarks at the time of introduction, this bill was based on Senator Gaylord Nelson's tire bill, S. 1643, which had been the subject of hearings in the Commerce Committee.<sup>66</sup>

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<sup>65</sup>Ralph Nader, Unsafe at Any Speed: The Designed-in Dangers of the American Automobile (New York: Grossman, 1965), pp. 300-01.

<sup>66</sup>Magnuson's introductory remarks and the text of the bill as originally introduced may be found in Cong. Rec., 89th Cong., 1st sess., 1965, 111, pt. 20: 27307-09. The hearings are U.S., Congress, Senate, Committee on Commerce, Tire Safety: Hearings on S. 1643, 89th Cong., 1st sess., 1965.

The picture that had emerged at these hearings was one noteworthy for its "startling lack of information and agreement by the experts," Magnuson observed.<sup>67</sup> Automobile tires lacked any meaningful grading scale by which consumers could judge durability, performance, load capacity, safety, heat resistance, or even size.<sup>68</sup> In short, other than a dealer's sales pitch, there was no way for a purchaser to judge the quality of one tire against another.

Magnuson's bill called for the Secretary of Commerce to carry out research in order to set minimum safety standards for new and retreaded tires and to establish a tire grading system. Until this research could be completed, the standards adopted by the Vehicle Equipment Safety Commission (VESC) would be in force. Tires not complying with the law would be seized, and injunctions issued as necessary against the manufacturer, distributor, or seller.

From the point of view of Magnuson and his top staff members, tire safety was not only an important consumer safety issue in itself, it was also a means to gain a foothold in the larger area of automobile safety, which was clearly of great importance as a potential field for consumer protection legislation. As such, it provided a way for Magnuson to lay claim to a policy area that seemed rightly to belong to the Commerce Committee but was in

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<sup>67</sup>Cong. Rec., 89th Cong., 1st sess., 1965, 111, pt. 20: 27308.

<sup>68</sup>Even government witnesses contributed their own personal tire horror stories. Chairman Paul Rand Dixon of the FTC testified that while preparing to remove his snow tires for the summer he had observed that of the two tires he had planned to install, one was noticeably larger than the other—although they were supposed to be the same size. "It scared me," he admitted. Senate Committee on Commerce, Tire Safety: Hearings on S. 1643, p. 25.

danger of being usurped by other committees. Especially threatening were the highly publicized hearings held by Senator Abraham Ribicoff in his Government Operations Subcommittee on Executive Reorganization. Ribicoff's hearings seemed to lead to the conclusion that the federal government in general and the Commerce Committee in particular had been negligent in not pursuing automobile safety more attentively.<sup>69</sup>

S. 2669 had a relatively easy time making it through the Senate. It had bipartisan support, and the hearings for S. 1643 evidently sufficed for the Commerce Committee, so no further hearings were held. Unlike the cigarette labeling bills, S. 2669 also enjoyed White House backing, being favorably mentioned in President Johnson's Transportation Message of March 2, 1966.<sup>70</sup> Three weeks later the Commerce Committee reported out a version of the bill amended to include a provision for the Department of Commerce and the Federal Trade Commission to join in cooperation with the tire industry "to eliminate deceptive and confusing tire nomenclature and marketing practices."<sup>71</sup> The Senate approved S. 2669 unanimously on March 29.<sup>72</sup>

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<sup>69</sup>Price, Who Makes the Laws? pp. 50-52.

<sup>70</sup>U.S., President, "Special Message to the Congress on Transportation," Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, 1953-), Lyndon B. Johnson, 1966, pp. 258-59.

<sup>71</sup>U.S., Congress, Senate, Committee on Commerce, Tire Safety Act of 1966, S. Rept. 1089 to Accompany S. 2669, 89th Cong., 2d sess., 1966, p. 3. See also memo, Mike Pertschuk to WGM, 29 March 1966, S. 2669, 89th Cong., Commerce, U.S. Sen., RG 46, NA.

<sup>72</sup>Cong Rec., 89th Cong., 2d sess., 1966, 112, pt. 6: 6925.

In the House, the provisions of Magnuson's tire bill were added to the more encompassing Traffic Safety bill that was also performing the dance of legislation at the time. The combining of the two bills was an outcome that Magnuson had hoped to avoid; on June 9, 1966, he wrote to Chairman Harley Staggers of the House Commerce Committee presenting the arguments for passing a separate tire bill. He stated that the preparation of standards was more advanced for tires than for other automobile parts and that the tire bill was much more thorough in its details than the comparable parts of the larger safety bill.<sup>73</sup> He was unable to influence his House counterparts, but because the Traffic Safety bill passed, tire regulation went into the statutes. Magnuson resigned himself to the fait accompli, observing unconvincingly that the provisions of the larger bill "carried out the substance and intention of the tire safety bill, S. 2669."<sup>74</sup>

It was toward something akin to the Traffic Safety bill that Magnuson and his staff had looked when he first associated himself with the tire measure, and his contribution to the passage of the broader bill was crucial. At every step--introduction, amendment, committee consideration, floor debate, conference with the House--Magnuson led the way. If Ralph Nader may be credited with turning the nation against unsafe automobiles, Magnuson must

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<sup>73</sup>WGM to Harley Staggers, 9 June 1966, S. 2669, 89th Cong., Commerce, U.S. Sen., RG 46, NA.

<sup>74</sup>Cong. Rec., 89th Cong., 2d sess., 1966, 112, pt. 16: 21487.

be given the lion's share of the credit for turning that feeling into actual legislation.

On March 2, 1966, the same day the president issued his Special Message on Transportation, Magnuson introduced S. 3005, the administration's auto safety bill. President Johnson had promised in his State of the Union Address of January 12 that he would offer legislation to decrease deaths and injuries on the nation's highways. S. 3005, which Michael Pertschuk has described as "exceedingly modest,"<sup>75</sup> called for federal grants to be awarded to states for their highway safety programs, the imposition of mandatory safety standards for vehicles after two years if voluntary standards proved inadequate, and the expansion of federal research on highway safety.<sup>76</sup>

Even before it was released, the administration bill was being criticized for being too permissive.<sup>77</sup> It was innocuous enough, for example, to gain the approval of representatives of the Ford Company, who correctly feared that senators might try to amend it to strengthen the provisions regarding automobile safety devices.<sup>78</sup> On the first day of the Commerce Committee

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<sup>75</sup>Revolt Against Regulation: The Rise and Pause of the Consumer Movement (Berkeley: University of California Press, 1982), p. 21.

<sup>76</sup>Memo, Joe Califano to the President, 16 February 1966, Ex LE/SA 2, WHCF, box 152, LBJ Library; and "Special Message to the Congress on Transportation," Public Papers of the Presidents, Johnson, 1966, pp. 257-58.

<sup>77</sup>Walter Rugaber, "Johnson to Seek Car Safety Code," New York Times, 14 February 1966, p. 18.

<sup>78</sup>Memo, Joe Califano to the President, 18 February 1966, Ex LE/SA 2, WHCF, box 152, LBJ Library.

hearings he chaired, Magnuson was moved to remark to Ribicoff: "we both have the same idea, that this bill is inadequate."<sup>79</sup>

The administration bill was also somewhat behind the times. Prior to its appearance, a number of auto safety bills had been introduced in both houses of Congress, and the Senate Commerce Committee alone had at least four bills pending.<sup>80</sup>

Just three days after the introduction of the bill, news came out that General Motors had had Ralph Nader followed and harassed since January.<sup>81</sup> Nader's Unsafe at Any Speed had vehemently criticized the Chevrolet Corvair, and he had attacked the automobile industry in testimony delivered at Ribicoff's hearings. In a press release of March 9, GM denied any part in alleged harassment but admitted to hiring a law firm to check into "Nader's qualifications, background, expertise and association with . . . attorneys" involved in Corvair cases. The company contended that it was common practice "to investigate claims and persons making claims in the product liability field." The release went on to describe a tour that Nader had been provided at the GM Technical Center, and complained that "he nevertheless continued the same line of attack on the design of the Corvair." "This

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<sup>79</sup>U.S., Congress, Senate, Committee on Commerce, Traffic Safety: Hearings on S. 3005, 89th Cong., 2d sess., 1966, p. 35.

<sup>80</sup>Price, Who Makes the Laws? p. 49; and Press release #66-21, 9 March 1966, S. 3005, 89th Cong., Commerce, U.S. Sen., RG 46, NA.

<sup>81</sup>See, for example, Walter Rugaber, "Car Industry Critic Says He's Trailed, Investigated and Harassed," New York Times, 6 March 1966, p. 94.

behavior," the release concluded, "lends support to General Motors' belief that there is a connection between Mr. Nader and plaintiffs' counsel in pending Corvair design litigation."<sup>82</sup>

General Motors was wrong about the Corvair litigation, and the publicity surrounding the company's treatment of Nader made it even more likely that stiff federal standards would be enacted. "It was that Nader thing," one senator told writer Elizabeth Drew. "Everybody was so outraged that a great corporation was out to clobber a guy because he wrote critically about them. At that point, everybody said the hell with them."<sup>83</sup>

This attitude took the form of amendments intended to strengthen S. 3005, which had upon its introduction become the banner carrier for the automobile safety movement. Magnuson offered a key amendment in his introductory statements at the opening of the hearings on S. 3005 on March 16. Instead of the original bill's provision permitting the Secretary of Commerce to establish minimum safety standards two years after the enactment of the bill (to take effect up to two years later), Magnuson proposed that the Secretary be required to promulgate interim standards based on those enforced by the GSA for government auto purchases.<sup>84</sup> These interim criteria would be adopted by

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<sup>82</sup>A copy of the press release is in Files of Michael Pertschuk, 89th Cong., "Air Pollution to Auto Safety," Commerce, U.S. Sen., RG 46, NA.

<sup>83</sup>Elizabeth Brenner Drew, "The Politics of Auto Safety," Atlantic Monthly 218 (October 1966): 99.

<sup>84</sup>Senate Committee on Commerce, Traffic Safety: Hearings on S. 3005, pp. 1-2.

January 31, 1967, and according to a later memo written by Pertschuk, would apply to 1968 model year cars.<sup>85</sup> Magnuson's amendment became part of the revised bill and thus part of the law (PL 89-563) upon its enactment.

Another important addition from the consumer's point of view was Senator Walter Mondale's amendment requiring manufacturers to notify owners in the event of safety-related recalls. Prior to that time, the recall procedure varied with the manufacturer, and it was at best haphazard. Sometimes the defect would be corrected in the next model year without warning owners of the earlier models, sometimes dealers were expected to contact owners and repair the problem, and sometimes the manufacturers actually notified the owners but merely invited them in for an "improvement" or "modification."<sup>86</sup> Magnuson himself had once been notified merely that his vehicle was "short certain items from the factory."<sup>87</sup> This "fair warning" amendment was cosponsored by Magnuson and fifteen other senators and it, too, was integrated into the Traffic Safety Act.

There were many other amendments, among them some offered by such leaders in auto safety as Ribicoff and Senator Vance Hartke of Indiana. The effect of all these amendments was not only a noticeably stronger bill but also the creation of an adversarial relationship between the Senate and the

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<sup>85</sup>Pertschuk to WGM, 7 June 1966, S. 3005, 89th Cong., Commerce, U.S. Sen., RG 46, NA.

<sup>86</sup>Cong. Rec., 89th Cong., 2d sess., 1966, 112, pt. 6: 8215-17.

<sup>87</sup>See above, p. 61.

president. Both branches, the legislative and the executive, wanted to claim credit for the measure, and both had some right to do so, but in general it was the Senate Commerce Committee that led the way in modifying S. 3005 and in mobilizing support for it.<sup>88</sup>

One humorous but unpublicized battle in the war for recognition took place on June 24, 1966, when the Senate voted on the Committee-revised version of the bill. The White House staff, led by Joseph Califano and Larry Levinson, prepared material for Magnuson to insert into the Congressional Record during the debate. Included was a two-page statement offering a "word of praise for President Johnson," a copy of the safety statement the president had delivered to state governors, and a chronology that, as Califano told the president, "show[s] conclusively that you sent up a Bill and that the changes made to the Bill originally sent up were done here in the White House with the Committee Counsel."<sup>89</sup> After a lengthy introduction during which he mentioned the Committee twenty-nine times and the president once, Magnuson duly delivered the "word of praise" and submitted a copy of Johnson's statement to the governors for inclusion in the Congressional Record.<sup>90</sup> The chronology, however, with its overwhelming and overstated White House slant,

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<sup>88</sup>Price, Who Makes the Laws? p. 61.

<sup>89</sup>The memo from Califano to the President, a transmittal memo from Levinson to Grinstein, the statement for Magnuson to read into the Record, and the chronology are in Ex LE/SA 2, WHCF, box 153, LBJ Library. The statement to the governors is not attached to these items, but may be found in the Cong. Rec., 89th Cong., 2d sess., 1966, 112, pt. 11: 14253.

<sup>90</sup>Cong. Rec., 89th Cong., 2d sess., 1966, 112, pt. 11: 14220-30, 14253.

was apparently too much for him to countenance; he somehow neglected to include it in his presentation in recognition of the president.

Magnuson had provided powerful leadership in the Commerce Committee,<sup>91</sup> and his leadership carried over into the Senate floor debate on S. 3005. He guided the bill to unanimous approval in that house on June 24.

As was the case with cigarettes, the House of Representatives and the House Commerce Committee were considerably more favorable to the automobile industry than were their Senate counterparts. Many observers expected the committee to report out a much less stringent version of the auto safety bill, and insinuated that the product would be a "sell out." As Price described the situation, "The prestige of the [Commerce] Committee, both within and outside the House, seemed to be at stake."<sup>92</sup> Challenged by such speculation and further inspired by the president's intense desire to gain passage of an auto bill, new chairman Harley Staggers's committee passed a bill much like S. 3005. To it were added floor amendments that further increased its similarity to the Senate version. In some ways--for instance, regarding the terms of the "fair warning" requirement that manufacturers notify owners in the event of recalls--the House bill was more pro-consumer than the Senate's.<sup>93</sup>

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<sup>91</sup>See, for example, the comments of Senators Ribicoff and Long, Cong. Rec., 89th Cong., 2d sess., 1966, 112, pt. 11: 14230, 14232.

<sup>92</sup>Who Makes the Laws? p. 60.

<sup>93</sup>Price, Who Makes the Laws? p. 60.

On August 17, the House passed its version of the auto safety bill which was different enough from the Senate measure to require a conference committee.<sup>94</sup> In conference Magnuson made one last contribution to the passage of the bill, serving as chairman of the proceedings. Here again he performed admirably, prompting Republican Senator and conferee Norris Cotton to admit later: "I can honestly say I have never seen work expedited and a conference handled more skillfully--I was also about to say more adroitly, but I will just say more skillfully--than it was handled by the exceedingly able and distinguished chairman of the committee."<sup>95</sup> Within two weeks the Senate and House conferees had worked out an agreement that was acceptable to both houses of Congress.<sup>96</sup>

In addition to the tire safety, recall notification, and mandatory standards provisions mentioned above, the bill called for periodic revision of standards as well as annual reports from the Secretary of Commerce (or, if a Department of Transportation were created, the Secretary of Transportation)

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<sup>94</sup>The House actually voted on its amended version of H.R. 13228, the administration bill that had been introduced by Commerce Committee Chairman Harley Staggers on the same day that Magnuson had introduced S. 3005. Under H. Res. 965 the House then discharged the Committee on Interstate and Foreign Commerce from further consideration of S. 3005 and amended that bill by replacing it with H.R. 13228. Cong. Rec., 89th Cong., 2d sess., 1966, 112, pt. 15: 19669-73.

<sup>95</sup>Cong. Rec., 89th Cong., 2d sess., 1966, 112, pt. 16: 21490.

<sup>96</sup>The House approved it unanimously and the Senate passed it on a voice vote. Cong. Rec., 89th Cong., 2d sess., 1966, 112, pt. 16: 21352, 21492.

on compliance, needs for future legislation, and the like.<sup>97</sup> It also would establish in the Department of Commerce a National Traffic Safety Agency to be headed by a presidentially appointed Administrator to lead the nation's auto safety endeavors.<sup>98</sup> Automobile safety was not to be ignored after the bill gained passage.

One provision that it did not include was one calling for criminal penalties for automakers who produced dangerous vehicles. Both Nader and Magnuson backed such a provision, but they were unable to rally enough supporters in either house of Congress to carry amendments establishing it.<sup>99</sup> The maximum civil penalty to be imposed under the new law was \$1,000 per violation, with each vehicle or piece of equipment considered a separate violation, to a maximum of \$400,000 "for any related series of violations."<sup>100</sup>

The bill moved on to an eager President Johnson, who signed it into law with the National Highway Safety Act on September 9, 1966. The Rose Garden signing ceremony was attended by several hundred people, and in his remarks Johnson singled out Magnuson and Stagers for their leadership. Still hoping to claim precedence for automobile safety, he reminded his listeners that ten years earlier he had stated in the Senate that "the deadly toll of highway

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<sup>97</sup>Drew, "Politics of Auto Safety," pp. 101-02; and PL 89-563, Sec. 120(a) and (b).

<sup>98</sup>PL 89-563, Sec. 115.

<sup>99</sup>Pertschuk, Revolt Against Regulation, pp. 124-25.

<sup>100</sup>PL 89-563, Sec. 109(a).

accidents demands our prompt action." He also expressed his pride in Congress which, he said, "took my proposals and brought forth these bills which will very shortly become law."<sup>101</sup> With the combined strokes of several souvenir pens, S. 3005 became the National Traffic and Motor Vehicle Safety Act.<sup>102</sup>

As is the case with most laws, the auto safety legislation was not indisputably successful. Sam Peltzman, a professor of business economics at the University of Chicago, argued that the safety regulations merely happened to be enacted just before a natural decline in automobile accident deaths. The real causes of the lower mortality rates, he argued, were not the new laws, but other changes, most especially the decline in the number of drivers under the age of twenty-five in the late 1960s.<sup>103</sup> The clear implication, Peltzman argued, was that drivers "took more risks because of the added protection afforded by safety devices," which in turn led to a greater number of accidents and an "insignificant" effect on the death rate.<sup>104</sup>

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<sup>101</sup>"Remarks at the Signing of the National Traffic and Motor Vehicle Safety Act and the Highway Safety Act," Public Papers of the Presidents, Johnson, 1966, pp. 1002-04.

<sup>102</sup>Magnuson was out of the country when the signing took place, but he received two pens in recognition of his contribution to the bill's passage. Letter, W. Marvin Watson to WGM, 10 September 1966, filed with WGM to Watson, 6 October 1966, Ex PR 13-1/M\*, WHCF, box 285, LBJ Library.

<sup>103</sup>Regulation of Automobile Safety (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1975), p. 17.

<sup>104</sup>Regulation of Automobile Safety, pp. 17, 19.

Peltzman's work inspired other analysts to investigate the problem either to refute his claims or to improve upon them.<sup>105</sup> One analysis produced under the auspices of the Brookings Institution contends that if a premature death equates to a loss of \$300,000, the safety measures save about \$5 billion per year.<sup>106</sup> Although cost equivalents of deaths and injuries are certainly debatable, the consensus of these studies seems to be that the benefits of the auto safety legislation do actually outweigh the costs.<sup>107</sup>

The costs and benefits for Senator Warren Magnuson are equally difficult to calculate, but one is tempted to conclude that his sponsorship of auto safety legislation provided one of the primary results he desired: public acclaim as a friend of the consumer. This acclaim was not his alone; many others had participated in the drafting, amending, and enacting of the law. But whereas President Johnson shamelessly tried to take sole credit, and uninformed observers attributed the National Traffic and Motor Vehicle Safety Act solely to the influence of Ralph Nader,<sup>108</sup> Magnuson bided his time and ensured that a very select group knew of his vital contribution. In the 1968

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<sup>105</sup>Robert N. Mayer lists several of the most notable in The Consumer Movement: Guardians of the Marketplace (Boston: Twayne, 1989), p. 111.

<sup>106</sup>The study by Robert W. Crandall et al., Regulating the Automobile (Washington, D.C.: Brookings Institution, 1986) is cited in Mayer, Consumer Movement, p. 112.

<sup>107</sup>Mayer, Consumer Movement, pp. 111-12.

<sup>108</sup>Edwin Epstein, for example, claimed: "With the passage of the National Traffic and Motor Vehicle Safety Act, a lone author (Ralph Nader) prevailed over the Big Three of the automobile industry." The Corporation in American Politics (Englewood Cliffs, N.J.: Prentice-Hall, 1969), p. 126.

election campaign, advertisements in Washington State proclaimed: "There's a law that forced Detroit to make cars safer--Senator Magnuson's law. . . . Keep the big boys honest; let's keep Maggie in the Senate."<sup>109</sup> His overwhelming victory in that election seems to indicate that the people of Washington received the message he wanted them to receive, and automobile safety was an important element of that message.<sup>110</sup>

### **Packaging and Labeling**

The fight for a new packaging and labeling law was one of the longest and most bitter of the battles waged during the third wave of consumer protection. It began in June 1961 with Senator Philip Hart's hearings in the Judiciary Committee's Subcommittee on Antitrust and Monopoly, and it ended at long last with the signing of the peace treaty, the Fair Packaging and Labeling Act, on November 3, 1966. Along the way, the bill was, in Hart's words, "pushed, pulled and hammered fiercely,"<sup>111</sup> until it achieved a form

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<sup>109</sup>Cited in Pertschuk, Revolt Against Regulation, p. 25.

<sup>110</sup>In 1968 Magnuson defeated Republican Jack Metcalf by a count of 796,000 to 436,000 (64.4% to 35.3%). (Totals for the 1962 election had been 491,000 [52.1%] for Magnuson and 446,000 [47.3%] for Christensen.) Magnuson ran far ahead of 1968 Democratic presidential candidate Hubert Humphrey, who received 47.3% of the Washington State vote to Richard Nixon's 45.2%. Eric Redman implies that Humphrey rode Magnuson's coattails to victory in Washington. Dance of Legislation, p. 202.

<sup>111</sup>Quoted in William T. Kelley and Etienne Gorse, "The Fair Packaging and Labeling Act of 1966: Does It Protect the Consumer?" in New Consumerism: Selected Readings, ed. William T. Kelley (Columbus, Ohio: Grid, 1973), p. 437.

acceptable to the packaging and food products industries. Of all the consumer measures passed into law during this period, Fair Packaging and Labeling was probably the one most changed to accommodate the wishes of manufacturers.<sup>112</sup>

During the five-year conflict, Senator Warren G. Magnuson progressed from a mildly interested bystander to an active participant in the fray. It was, in fact, his substitute version of Hart's packaging and labeling bill that passed the Senate--only to be essentially discarded by the House. Until his introduction of this bill, however, Magnuson's contribution to the fight was minimal. There is a perfectly logical explanation for his inactivity: packaging bills introduced in the Eighty-seventh and Eighty-eighth Congresses were presented as modifications of the Clayton Act--which itself had strengthened the Sherman Antitrust Act--and thus were referred to the Senate Judiciary Committee instead of Magnuson's Commerce Committee. But even when Hart had moved into the Commerce Committee, bringing his bill with him, Magnuson was at first somewhat cool to it.<sup>113</sup>

Ironically, he had voiced firm approval of those earlier bills that were beyond his reach until they reached the Senate floor. One might logically argue that his inability to participate in their shaping actually made it easier for him to take an approving stand. Like an observer at a battle, he could

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<sup>112</sup>David Vogel, Fluctuating Fortunes: The Political Power of Business in America (New York: Basic Books, 1989), p. 53.

<sup>113</sup>Price, Who Makes the Laws? pp. 25-26.

cheer for one side without placing his own reputation or political credits on the line. Whether or not this was the case, Magnuson expressed his support for the philosophy behind the Hart hearings at a surprisingly early date. In a letter of December 15, 1961, he congratulated Hart on his work on behalf of consumers and told him that "the Committee on Commerce is solidly behind you and stands ready to move swiftly in its consideration of packaging and labeling legislation if your inquiry discloses that correction of these malpractices by voluntary action on the part of the industry is not feasible or is impossible of achievement."<sup>114</sup> It would be more than three years before the Commerce Committee moved swiftly on the labeling and packaging front.

As for Hart's earlier bills, S. 3745 died in the Judiciary Committee during the Eighty-seventh Congress, and S. 387 suffered the same fate in the Eighty-eighth. No one expected S. 3745 to be acted upon; it had been introduced very late in the second session for the express purpose of initiating discussion on the issue.<sup>115</sup> Its successor, S. 387, on the other hand, carried no such disability. It was introduced in the first weeks of the Eighty-eighth Congress, and its sponsors fully hoped to see it enacted.<sup>116</sup> It was the

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<sup>114</sup>WGM to Hart, 15 December 1961, S. 985, 89th Cong., Commerce, U.S. Sen., RG 46, NA.

<sup>115</sup>On the purpose of S. 3745 see Hart's comments upon introducing S. 387, Cong. Rec., 88th Cong., 1st sess., 1963, 109, pt. 1: 641.

<sup>116</sup>In addition to Hart, sponsors of S. 387 included Estes Kefauver, Thomas J. Dodd, Edward V. Long, Maurine Neuberger, Pat McNamara, Edmund Muskie, E. L. Bartlett, and Clair Engle. Later, Paul Douglas, Abraham Ribicoff, and Thomas J. McIntyre were added. Conspicuous by his absence was Senator Magnuson.

subject of fairly extensive hearings--hearings that seemed to indicate a need for remedial legislation--but it failed to emerge from the Judiciary Committee.

As described in Hart's statement introducing it, S. 387 was intended to empower the Food and Drug Administration to regulate packages of foods, drugs, and cosmetics, with the Federal Trade Commission doing the same for all other consumer commodities. Key provisions included: the requirement that the front panel of a package clearly state the quantity of the contents; the prohibition of qualifying words or phrases ("giant quart," for example, would become "quart"); the elimination of preprinted "cents off" markings on packages (since manufacturers had no control over sellers' pricing and this practice seemed to be frequently abused); and the prevention of the use of misleading illustrations on packages. Additionally, the FDA and the FTC were to be given discretionary powers to standardize the weights or sizes of consumer products to allow consumers to make price-per-unit comparisons (meaning, for example, that all the different producers of beans might be required to sell their products in 16-ounce cans rather than in slightly varying weights); to prevent misleading packaging practices (one often mentioned was "slack fill" in which a much larger package was used than was necessary for the protection of the product); to establish standard meanings for terms such as "small," "medium," and "large"; and to determine what the word "serving" would mean for various products.<sup>117</sup> In short, S. 387 was intended "to promote fair competition, to

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<sup>117</sup>These and other provisions of S. 387 may be found in Cong. Rec., 88th Cong., 1st sess., 1963, 109, pt. 1: 641-44; and in U.S., Senate, Committee on the Judiciary, Subcommittee on Antitrust and Monopoly, Truth in Packaging,

maintain the integrity of markets, to enhance the competence of consumers, and to promote efficiency in industry" by bringing the Clayton Act "up to date insofar as the nonprice form of competition represented by packaging and labeling is concerned."<sup>118</sup> The ultimate goal of the bill was to enable shoppers to make meaningful price and quality comparisons.<sup>119</sup>

In the subcommittee's report on the bill, Senator Everett McKinley Dirksen expressed his "individual views" against it, and in so doing outlined the line of argument that would be used against S. 985, the Eighty-ninth Congress's incarnation of the packaging and labeling bill. After an unconvincing opening paragraph in which he contended that the bill was un-American because it presumed one to be guilty until proven innocent, Dirksen stated:

S. 387 is proposed legislation which is contrary to the true nature of antitrust; which will lead to less competition rather than greater competition; which will stifle innovation by new or smaller manufacturers as well as the larger ones; which will lead to regimentation and standardization by weights and measures; which will discourage business by its antibusiness attitudes; which will hurt the consumer through higher prices resulting from higher costs and less choice of products; which will hurt labor through less jobs; which will result in less taxes to government through greater deductions caused by increased manufacturing costs, and through the general harm to our economy.<sup>120</sup>

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Report on S. 387, Committee Print, 88th Cong., 2d sess., 1964, pp. 4-7.

<sup>118</sup>Truth in Packaging, Committee Print, p. 3.

<sup>119</sup>Mark V. Nadel, Politics of Consumer Protection (Indianapolis: Bobbs-Merrill, 1971), p. 229.

<sup>120</sup>Truth in Packaging, Committee Print, p. 36.

It should be noted that what Dirksen railed against primarily in his statement were the packaging provisions of the bill, and specifically those that would in any way limit the freedom of manufacturers to decide how to enclose their products.<sup>121</sup> Indeed, the packaging standardization provisions would be the most violently attacked in the debate over S. 985.<sup>122</sup> The need for some correction of labeling abuses, on the other hand, was admitted even by industry lobbyists and Congressional opponents of the packaging bill.

Despite their failure to pass a bill during the Eighty-eighth Congress, Hart and the other supporters of packaging and labeling legislation learned some valuable lessons. First, they learned that although there was ample evidence of the need for some sort of action in the field, the bill faced intense opposition. As a result, they needed to gain some powerful allies if they hoped to succeed. Second, they came to understand that the Senate Judiciary Committee was a most unfriendly atmosphere and that similar bills would very likely undergo a fate similar to that suffered by S. 387 if referred to Judiciary. Third, and closely linked to their problem with the Judiciary Committee, backers of the measure learned that Senate Minority Leader Dirksen was utterly and unalterably opposed to packaging and labeling legislation. With all

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<sup>121</sup>Dirksen admitted as much the next year during the debate on which committee should have jurisdiction over S. 985. He said of S. 387: "I saw it as an unwarranted imposition upon industry and business. I could see that it would be an attack on innovation in the whole packaging field. As a consequence, it occurred to me that it should not be passed at all." Cong. Rec., 89th Cong., 1st sess., 1965, 111, pt. 3: 3235.

<sup>122</sup>Nadel, Politics of Consumer Protection, p. 229.

these lessons in mind, Hart and a dozen cosponsors submitted a slightly rewritten bill, S. 985, on February 3, 1965.

In the struggle to get any bill enacted, the president can play a major role. The president and his staff set the national policy agenda, often drafting proposed legislation and mobilizing public opinion through addresses or other pronouncements. A strong president gives a degree of coherence to national policy and determines to a large extent just what issues come before Congress.<sup>123</sup> Thus the president, despite his official separation from the legislative branch, definitely has a hand in its work and contributes to its success or failure. All this makes the Chief Executive a very powerful ally.

Senator Hart knew this, of course, and had pursued President Johnson's support on the packaging and labeling bill since Johnson's first month in the White House. In a memo dated December 20, 1963, Hart had encouraged Johnson to lend his aid to S. 387, pointing out how President Kennedy's consumer message had included a call for packaging and labeling legislation.<sup>124</sup> Despite this appeal, and despite the enthusiasm of Special

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<sup>123</sup>See David McKay, Domestic Policy and Ideology: Presidents and the American State, 1964-1987 (Cambridge: Cambridge University Press, 1989), pp. vii-viii.

<sup>124</sup>Memo, Philip Hart to the President, 20 December 1963, filed with letter, Lawrence F. O'Brien to Hart, 7 January 1964, Ge BE 2-1, WHCF, box 4, LBJ Library.

Assistant for Consumer Affairs Esther Peterson, Johnson remained generally uninterested in S. 985 through 1965 and into 1966.<sup>125</sup>

Another important potential ally for the packaging and labeling bill was Senator Magnuson. He represented the key, in fact, to all three of the lessons Hart had learned from his experience with S. 387. By 1965, as he entered his third decade in the Senate, Magnuson was a major power. As chairman of the Commerce Committee and a ranking member of Appropriations, he had the kind of influence that most senators only dream of having. It was through his Commerce Committee that the key public accommodations provisions of the Civil Rights Act of 1964 had been reported to the floor, and Hart hoped that Magnuson could pull off the same maneuver with the controversial packaging bill. And Commerce was likely to be much more friendly to the bill than was the Judiciary Committee, if for no other reason than that Dirksen was not a member of the former. Moreover, Magnuson had shown signs of his growing consumerism. Hart probably recognized that the best possible case for packaging and labeling would be if Magnuson cosponsored the bill. An acceptable alternative, however, would be his support in fighting to have the bill referred to Commerce instead of Judiciary.

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<sup>125</sup>Price, Who Makes the Laws? pp. 26, 28. Toward the end of his 1965 Economic Report (28 January 1965) and again in a message to the Consumer Advisory Council (15 October 1965) Johnson did mention "Truth-in-packaging," but did not mention the Hart bill specifically or even urge Congress to enact a packaging bill. "Annual Message to the Congress: The Economic Report of the President," 28 January 1965, and "The President's Greetings to the Consumer Advisory Council," 15 October 1965, Public Papers of the Presidents, Johnson, 1965, pp. 115 and 1065, respectively.

Magnuson was not sufficiently impressed by the bill to put his name on the line as a cosponsor. David Price says that it "initially raised for him images of petty bureaucratic control."<sup>126</sup> But just as he would do in the case of automobile safety the following October, Magnuson determined to defend what he considered to be his committee's jurisdiction. Hart had rewritten the bill in an attempt to emphasize its prohibition of deception in interstate commerce and had eliminated references to the Clayton Act. Magnuson was convinced that the revised bill belonged in the Commerce Committee.

Dirksen was not. In an unusually long discussion on the question of which committee should have jurisdiction, Dirksen pointed out that the earlier version of the bill had gone to Judiciary, that the committee had held hearings and gained expertise on the subject, that referring S. 985 to Commerce would set the dangerous precedent of allowing senators to shop bills around to find the most favorable committee, and that the bill's House counterpart had been assigned to the Judiciary Committee.<sup>127</sup>

Magnuson countered by saying that he had protested the referral of the earlier bill to the Judiciary Committee because it was a packaging and labeling measure and Commerce had always had jurisdiction over such bills.<sup>128</sup> "The bill is now 'home,' in the Commerce Committee, where it belonged in the first

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<sup>126</sup>Who Makes the Laws? p. 26.

<sup>127</sup>Cong. Rec., 89th Cong., 1st sess., 1965, 111, pt. 3: 3235-37.

<sup>128</sup>The Congressional Record reveals no evidence of such a protest on either S. 3745 (87th Cong.) or S. 387 (88th Cong.), but Magnuson may well have lodged it off the floor, either by letter or personal conversation.

place," he observed. Perhaps there was never really any doubt that a leader of the majority party would have his way over the minority leader, but in the end S. 985 was referred to the Commerce Committee.<sup>129</sup>

Having played an important part in preventing the certain death of S. 985 in the Judiciary Committee, Magnuson opened the hearings with a brief, noncommittal statement,<sup>130</sup> and thereafter allowed Hart and Neuberger to control the proceedings.<sup>131</sup> For several months he virtually ignored the bill except, perhaps, to note the opposition it had aroused in the food products, packaging, canning, and bottling industries.

The complaints voiced by manufacturers largely echoed those Dirksen had made in his attack on S. 387: regulations already in place were sufficient, government was threatening the freedom of business to determine how best to present its products to consumers, purchasers would have fewer choices if weight and size standards were enforced, jobs would be lost in the packaging and food products industries, consumers (typically "housewives") were smart enough not to need Uncle Sam's help in the grocery store.<sup>132</sup> Still, the bulk

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<sup>129</sup>Cong. Rec., 89th Cong., 1st sess., 1965, 111, pt. 3: 3235-36, 3245.

<sup>130</sup>Senate Committee on Commerce, Fair Packaging and Labeling: Hearings on S. 985, pp. 1-2, 6.

<sup>131</sup>Price, Who Makes the Laws? p. 26.

<sup>132</sup>See, for example, "Con" arguments in "Should the Congress Approve the Proposed 'Fair Packaging and Labeling Act?'" Congressional Digest 45 (June-July 1966): 173-91; Charles G. Mortimer, "Let's Keep Politics Out of the Pantry," Look 29 (26 January 1965): 80-85; and Roscoe Drummond, "Buyer Beware: Deceptive Packaging Bill," Washington Post, 3 August 1966, p. A18. For a humorous, if biased, look at the testimony of Roy King, editor of Food

of the opposition pointed to the packaging regulations rather than labeling provisions as unacceptable.

Overall, few people took the bill seriously, and it seemed headed for an early grave. Between autumn 1965 and spring 1966, however, several developments took place that improved the chances for a packaging and labeling bill to gain passage. First, Magnuson swung his weight behind the "truth-in-packaging" movement. But he concluded that the bill would be impossible to pass as it existed at the time, so he directed the Commerce Committee staff to write a "workable bill."<sup>133</sup>

Second, Michael Pertschuk and Gordon Christenson, an Assistant General Counsel with the Commerce Department, determined in a September breakfast meeting that since the protests against the bill centered on the packaging provisions, perhaps making them partially voluntary would dislodge enough opponents to allow the bill to move. The outcome of this discussion was a version of the bill that allowed mandatory packaging standards only if extensive cooperation between the Commerce Department and the affected industry failed to produce solutions.<sup>134</sup> By de-emphasizing the packaging regulations and retaining the labeling provisions, Pertschuk produced the "workable bill" that Magnuson sought.

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Topics and Food Field Reporter, see A. Q. Mowbray, The Thumb on the Scale: Or the Supermarket Shell Game (Philadelphia: Lippincott, 1967), pp. 125-41.

<sup>133</sup>Price, Who Makes the Laws? pp. 28-29.

<sup>134</sup>Price, Who Makes the Laws? pp. 29-30.

Finally, President Johnson began to speak more convincingly about the need for the legislation. In his 1966 Economic Report, rather than some platitudes about the desirability of fair packaging, he stated: "We should wait no longer to eliminate misleading and deceptive packaging and labeling practices which cause consumer confusion. The fair packaging and labeling bill should be enacted."<sup>135</sup> And in his consumer message of March 21 he argued more forcefully than ever before about the need for legislation to ensure that shoppers were fully informed as to a package's contents, to eliminate deceptive packaging, and to establish weight standards to allow for comparison shopping.<sup>136</sup> Yet the remark of an anonymous member of the House Commerce Committee seems to ring true. He said, "All Johnson wanted was a bill he could call a 'Truth-in-Packaging' Act. He didn't care what was in it."<sup>137</sup>

Republican members of the Senate Commerce Committee, seeing that packaging and labeling legislation was immensely popular, and encouraged by the more moderate bill that Magnuson offered, determined to contribute to the process by offering their own version of the bill. In some ways they

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<sup>135</sup>"Annual Message to the Congress: The Economic Report of the President," 27 January 1966, Public Papers of the Presidents, Johnson, 1966, p. 108.

<sup>136</sup>"Special Message to the Congress on Consumer Interests," 21 March 1966, Public Papers of the Presidents, Johnson, 1966, pp. 338-39.

<sup>137</sup>Quoted in Mowbray, Thumb on the Scale, p. 177.

strengthened the provisions of Magnuson's measure,<sup>138</sup> but they proposed to eliminate completely the compromise provision that Pertschuk had forged on size and weight standards.<sup>139</sup>

After further staff revisions intended to reconcile the differing views of the Johnson administration, the Commerce Committee Republicans, the affected industries, and Hart and the other champions of the measure<sup>140</sup>-- but retaining the mandatory standards if voluntary ones were not sufficient-- the committee finally approved the bill on May 13, 1966. The decision was not an easy or bloodless one; Magnuson described the committee's deliberations as

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<sup>138</sup>In the section of the committee report entitled "Minority Views of Messrs. Cotton, Morton, Scott, Prouty, Pearson, and Dominick," the Republicans listed their "proposals to strengthen section 4 of the bill which were approved by the committee and incorporated in the reported bill":

(1) labels bear the name and place of business of the manufacturer, packer, or distributor; (2) the net content be separately stated and appear in a uniform location on the package; (3) the net content of packages of less than 4 pounds or 1 gallon be expressed in ounces, rather than in mixed units of pounds and ounces, or pints and ounces; (4) the net content statement be generally parallel to the bottom of the package; and (5) the statement of net content be unadorned by any qualifying words or phrases.

U.S., Congress, Senate, Committee on Commerce, Fair Packaging and Labeling Act, S. Rept. 1186 to Accompany S. 985, 89th Cong., 2d sess., 1966, p. 39.

As one would expect, these strengthening amendments pertained strictly to labeling rather than to packaging provisions.

<sup>139</sup>Price, Who Makes the Laws? pp. 32-33.

<sup>140</sup>Memo, Mike Pertschuk to WGM, 20 April 1966, S. 985, 89th Cong., Commerce, U.S. Sen., RG 46, NA.

"long and painful."<sup>141</sup> Senator Vance Hartke proposed an amendment to eliminate the provision for establishing mandatory weight and size standards, but it was voted down, and the much-compromised bill finally headed for the floor of the Senate.<sup>142</sup>

During the lengthy and, for a Commerce Committee bill, atypically contentious floor proceedings,<sup>143</sup> Norris Cotton of New Hampshire tried one more time to remove the bill's "most controversial feature--the packaging control provisions."<sup>144</sup> Cotton's amendment was defeated 53-32,<sup>145</sup> after which the Senate went on to consider a number of minor changes. Ultimately, the bill's old nemesis, Senator Dirksen, introduced a motion to refer the bill to the Judiciary Committee. This motion, too, failed, and opponents of the measure had run out of ammunition. On June 9, the Senate passed S. 985 by a vote of 72-9.<sup>146</sup>

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<sup>141</sup>WGM to Harley O. Staggers, 16 May 1966, S. 985, 89th Cong., Commerce, U.S. Sen., RG 46, NA.

<sup>142</sup>By February 9, 1966, even before the Commerce Committee had amended and re-amended the bill, Esther Peterson counted over forty amendments, "almost all," she said, "to placate industry." Memo, Esther Peterson to Joseph Califano, 9 February 1966, filed with Memo, Donald F. Turner to the Attorney General, 14 February 1966, Ex LE/BE 2-1, WHCF, box 29, LBJ Library.

<sup>143</sup>Price, Who Makes the Laws? p. 33.

<sup>144</sup>Cong. Rec., 89th Cong., 2d sess., 1966, 112, pt. 9: 11566.

<sup>145</sup>The vote is recorded in Cong. Rec., 89th Cong., 2d sess., 1966, 112, pt. 10: 12681.

<sup>146</sup>Cong. Rec., 89th Cong., 2d sess., 1966, 112, pt. 10: 12804-13, 12819.

After the vote, Majority Leader Mike Mansfield complimented Magnuson and Hart on their successful effort. Of Magnuson's contribution Mansfield rhapsodized: "the success on truth in packaging clearly marks another triumph for Warren Magnuson. Like so many others it was achieved by capacities unmatched and by courage undaunted. There is no question," Mansfield concluded, "that he has won the well deserved allegiance of the American housewife; indeed of all Americans, for whom he has worked so hard."<sup>147</sup> The editor of the Cooperative League's Consumers Lobby thanked Magnuson for his "splendid and effective support" of S. 985 and the National Consumers League praised him for his "outstanding leadership."<sup>148</sup> A statement released by the White House likewise commended Hart and Magnuson, noting that the measure would "benefit every housewife and every consumer in this Nation." Characteristically, despite Johnson's general inactivity, the statement referred to it as the "Administration's Truth in Packaging Bill."<sup>149</sup> The compliments and gratitude were premature, however, for the bill was not yet law.

S. 985 was only halfway to the president's desk, and although the packaging and labeling bill had hardly enjoyed a smooth ride through the

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<sup>147</sup>Cong. Rec., 89th Cong., 2d sess., 1966, 112, pt. 10: 12819.

<sup>148</sup>David W. Angevine, editor, Consumers Lobby, to WGM, 16 June 1966, S. 985, 89th Cong., Commerce, U.S. Sen., RG 46, NA; and Sarah H. Newman, General Secretary, National Consumers League, to WGM, 20 June 1966, S. 985, 89th Cong., Commerce, U.S. Sen., RG 46, NA.

<sup>149</sup>Memo, Joe Califano to the President, 9 June 1966, Ex LE/BE 2-1, WHCF, box 29, LBJ Library.

Senate, its trip through the House was even more rugged. The House Commerce Committee, true to form, was quite sympathetic toward packagers who presented the well-worn arguments against standard weights and sizes.<sup>150</sup> By late August the Secretary of Commerce was informing President Johnson that they could not count on enough votes in the committee to prevent the addition of "key crippling amendments." The "principal issue," he continued, "is the provision for authority to set weights and quantities for consumer products to assist the consumer in making rational price comparisons between competing products."<sup>151</sup> Larry Levinson of the White House staff emphasized the same provision in a memo to Joe Califano, adding: "It is critical to our credibility that we have Section 5(d) in the bill. Otherwise we will be accused of selling out the consumer and gutting the bill."<sup>152</sup>

The outcome could not be avoided. Chairman Staggers was either unwilling or unable to keep the standardization provisions from being lopped off by the House Commerce Committee, and the bill was reported out minus that vital section. On October 3 the House approved what remained of S. 985 by a vote of 300-8.<sup>153</sup>

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<sup>150</sup>Memo, Larry Levinson to Joe Califano, 30 August 1966, Ex LE/BE 2-1, WHCF, box 29, LBJ Library.

<sup>151</sup>Memo, John T. Connor, Secretary of Commerce, to the President, 29 August 1966, Ex FG 155, WHCF, box 219, LBJ Library.

<sup>152</sup>Memo, Larry Levinson to Joe Califano, 30 August 1966, Ex LE/BE 2-1, WHCF, box 29, LBJ Library (emphasis in original).

<sup>153</sup>Cong. Rec., 89th Cong., 2d sess., 1966, 112, pt. 18: 24849-50.

By October 5, Magnuson and Grinstein had decided to allow the bill to die. From their point of view, the House changes had made it "too weak to accept and impossible to correct in conference." Senator Hart, however, encouraged them to reconsider. He argued that the House bill was better than nothing and pushed for enactment of the bill. Once it became law, he thought, its good points could be emphasized.<sup>154</sup>

Magnuson, not entirely convinced, led the Senate conferees in their attempt to hammer out an acceptable compromise. But the House conferees were in no mood to concede any ground. The senators reluctantly decided to accept the House version instead of no bill at all. In a press release announcing the agreement, Magnuson's bitter disappointment was obvious:

I wish to emphasize that the final bill is not a packaging bill; it is not a truth-in-packaging bill. Rather it is essentially a labeling bill. The labeling features of the bill will provide useful information to consumers; it will give them added protection. Uniformity in labeling will facilitate value comparisons. This legislation is, therefore, a step forward but it does not go far enough.

The House bill fails to recognize the need for and the importance of the Senate provision on product standards. . . .

The interests of the American consumer have too long been subordinated to the interests of special groups. . . .<sup>155</sup>

The conference report easily passed both houses, and the Fair Packaging and Labeling Act (PL 89-755) was signed into law on November 3, 1966.

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<sup>154</sup>Memo (reporting details of a telephone call from Senator Hart), Lora to Mr. [Joseph] Califano, 5 October 1966, filed with memo, LEL [Levinson] to Joe [Califano], 8 October 1966, Ex LE/BE 2-1, WHCF, box 29, LBJ Library.

<sup>155</sup>A copy of the release, dated 14 October [1966], is in S. 985, 89th Cong., Commerce, U.S. Sen., RG 46, NA.

In his remarks at the signing, President Johnson let it be known that he saw the law as, at best, a beginning. He promised to administer it effectively and admitted that if the White House had drafted the law it would have been different. He did, however, acknowledge that he was proud of his association with it.<sup>156</sup>

Magnuson, however, must have wondered how he had allowed himself to get involved with the packaging and labeling battle. He had joined the action relatively late, but had fought tenaciously, only to see his side win a Pyrrhic victory. Perhaps against his better judgment, he had decided not to allow the bill to die in conference. The law that was finally enacted bore only a superficial resemblance to the "workable" bill he had produced in the hopes of turning Hart's idea into legislation.

All was not lost, of course. The Fair Packaging and Labeling Act was, like the earliest cigarette warning, an opening wedge. The issue had been broached, and in the years to follow the Commerce Committee would remain active in the field through its oversight responsibilities.<sup>157</sup>

Similarly, for Magnuson personally the outcome was not entirely negative. Those in the know--organized labor, for example--realized that he

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<sup>156</sup>"Remarks at the Signing of the Truth-in-Packaging and Child Protection Bills," 3 November 1966, Public Papers of the Presidents, Johnson, 1966, p. 1316.

<sup>157</sup>See, for example, The Ralph Nader Congress Project, David E. Price, dir., The Commerce Committees: A Study of the House and Senate Commerce Committees (New York: Grossman, 1975), p. 93, for a few of the oversight hearings held by the Senate Commerce Committee from 1969 to 1973.

had fought the good fight, standing up for the consumers' best interests, but had simply been politically overpowered. And ironically, despite his dissatisfaction with the act, in the 1968 campaign he was quite willing to have his name associated with it. Among his many consumer-oriented advertisements was: "There's a law that makes food labels tell the truth-- Senator Magnuson's law."<sup>158</sup>

### **Child Protection**

The signing ceremony for the Fair Packaging and Labeling Act happened to be also for another consumer protection measure, the Child Protection Act of 1966 (PL 89-756). Although this act provided some valuable safeguards for children as well as for adults, it was perhaps less significant for its provisions than for its offspring. The Child Protection Act led directly to the Flammable Fabrics Act Amendments of 1967 and the National Commission on Product Safety (NCPS), out of which, in turn, grew the Consumer Product Safety Commission (CPSC).

The Child Protection Act of 1966 originated in President Johnson's consumer message of March 21, 1966. In that important statement, the president decried the loss of young lives and the injuries children needlessly suffered due to "gaps in the laws dealing with hazardous substances and materials." Unpackaged toys, he noted, were subject to no inspection at all. Dangerous drugs, including flavored children's aspirin which is poisonous in

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<sup>158</sup>Quoted in Pertschuk, Revolt Against Regulation, p. 25.

large quantities, were sold in bottles without safety caps to keep youngsters out. And adults as well as children were endangered by some products so hazardous that even the required warnings were insufficient protection. As part of his proposed consumer program, therefore, he urged Congress to pass measures to close these legislative gaps.<sup>159</sup>

Six weeks later, Senator Warren G. Magnuson introduced S. 3298, the administration's bill "to amend the Federal Hazardous Substances Labeling Act to ban hazardous toys and articles intended for children, and other articles so hazardous as to be dangerous in the household regardless of labeling." Targets of the proposed legislation included such products as unpackaged, imported toy ducks made from real duckling skins and treated with insecticide, jequirity beans that were used as decorative beads but which were poisonous if eaten, a waterproofing solution for household use that was more explosive than gasoline, and small fireworks resembling candy but designed to explode on impact--or when bitten by an unaware child.<sup>160</sup> Each of these products was able to slip through the legislative gaps mentioned by the president.

The newly created Consumer Subcommittee of the Senate Commerce Committee held hearings on S. 3298 in August 1966. In addition to the products already mentioned, discussion turned to such things as power lawn

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<sup>159</sup>"Special Message to the Congress on Consumer Interests," 21 March 1966, Public Papers of the Presidents of the United States, Johnson, 1966, pp. 339-40.

<sup>160</sup>See Magnuson's comments upon the introduction of the bill in Cong. Rec., 89th Cong., 2d sess., 1966, 112, pt. 8: 9524-25.

mowers and flammable fabrics that were inadequately covered by previous legislation.<sup>161</sup>

Recognizing that the hearings revealed a lack of national planning for product safety legislation, Magnuson and Norris Cotton, the ranking minority member of the Commerce Committee, amended the bill by adding a second title calling for the creation of a National Commission on Hazardous Household Products.<sup>162</sup> The seven-member commission would be appointed by the president and would be charged with conducting a study of household hazards to determine which products should be more carefully regulated. Any protection offered by industry self-regulation would also be studied, as would legal coverage already in place at the local, state, or federal level. The Commission would be required to submit its final report to the president by March 1, 1968, and ninety days later it would go out of existence. The amended bill passed the Senate on a voice vote on September 1, 1966, and proceeded to the House.<sup>163</sup>

The House Committee on Interstate and Foreign Commerce promptly amended S. 3298 to eliminate Title II, the commission provision. Members of the committee apparently concluded that such an investigation could be conducted by an existing governmental body. Further, they hoped that

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<sup>161</sup>U.S., Congress, Senate, Committee on Commerce, Consumer Subcommittee, The Child Protection Act of 1966: Hearings on S. 3298, 89th Cong., 2d sess., 1966, pp. 14-23.

<sup>162</sup>This title had previously been introduced as S.J. Res. 190.

<sup>163</sup>Cong. Rec., 89th Cong., 2d sess., 1966, 112, pt. 16: 21550-53.

industry self-regulation would work, although opponents noted that that had always been an option and had not yet met with success. But as committee member Ancher Nelsen of Minnesota vaguely explained, they wanted to provide "a little more time . . . during which the industry itself could establish some rules of merchandising that might be in the best interests of the questions that we seek to correct by virtue of this bill."<sup>164</sup> With the Johnson administration showing only minimal interest in the National Commission on Hazardous Household Products,<sup>165</sup> the House voted to pass the bill without Title II on October 3.

Eleven days later, deciding that half a loaf was better than none and realizing that the Congress was rapidly approaching adjournment, Magnuson reluctantly encouraged the Senate to concur in the House's amendment. He also promised, however, that he and Cotton would introduce legislation to establish a household hazards commission early in the Ninetieth Congress. Further, he vowed to give the bill top priority in the committee. The Senate voted to accept the House version of the Child Protection Act, and President Johnson signed it into law on November 3, 1966.<sup>166</sup>

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<sup>164</sup>Cong. Rec., 89th Cong., 2d sess., 1966, 112, pt. 18: 24901-03.

<sup>165</sup>Esther Peterson suggested that the executive branch should coordinate the study and concluded weakly that her office had "no objections to the enactment of Title II." Esther Peterson to Harley Staggers, 19 September 1966, Commerce, Files of Michael Pertschuk, S. 3298, 89th Cong., U.S. Sen., RG 46, NA.

<sup>166</sup>For Magnuson's remarks and the Senate's concurrence in the House version, see Cong. Rec., 89th Cong., 2d sess., 1966, 112, pt. 20: 26885.

## **Flammable Fabrics**

At this point, before considering the events that ensued from Magnuson's promise to pursue the idea of creating a commission to study household hazards, it is useful to look at the other outgrowth of the Child Protection Act of 1966: the Flammable Fabrics Act Amendments. This measure, too, aimed primarily at protecting children from an unnecessary danger, specifically the hazard posed by flammable clothing. Probably no one could have predicted that a flammable fabrics law would emerge from the administration bill Magnuson introduced as the Child Protection Act on May 3, 1966--no one, that is, except perhaps Dr. Abraham Bergman.

Dr. Bergman was a young Seattle pediatrician and professor of pediatrics who had been a high school friend of Commerce Committee staff member Stan Sender. In 1965 Bergman had written a paper on injuries caused by power lawn mowers and had mentioned it to his friend. Sender reproved him for talking to other doctors "instead of to people who can do something about problems," and took a copy of the paper to Magnuson. Soon Magnuson was warning lawn mower manufacturers that they had to improve the safety of their products. "It seemed," observed Bergman later, tongue firmly in cheek, "that the power mower industry paid more attention to the chairman of the Senate Commerce Committee than to an obscure baby doctor in Seattle."<sup>167</sup>

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<sup>167</sup>The quoted material is from Abraham Bergman, The "Discovery" of Sudden Infant Death Syndrome: Lessons in the Practice of Political Medicine (New York: Praeger, 1986), p. 42. Dr. Bergman's lawn mower study was published as "Power Lawn Mowers Are Dangerous Weapons," Northwest Medicine 64 (April 1965): 261-63.

It also seemed, however, that Magnuson paid attention to the obscure baby doctor. In May 1966, as the Commerce Committee prepared for hearings and further work on the Child Protection Act, Magnuson--or, more likely, a staff member such as Michael Pertschuk--wrote to Bergman asking if he had any comments about dangerous toys or other products that he thought should be considered during the Committee's investigation. Bergman responded that he and his colleagues actually had very little experience with injuries or illnesses caused by toys, but that flammable children's clothing posed "a much more serious problem." He suggested that Magnuson give some thought to introducing "a provision banning sale in interstate commerce of highly flammable children's clothing."<sup>168</sup>

Magnuson had probably already given that idea some thought. Around November 1965 he had written to the Secretary of Commerce asking if any progress had been made on the minimum standard that had been set over a decade earlier by the Flammable Fabrics Act. None had, and it turned out that the standing committee that was ostensibly in charge of overseeing and modifying the standard had not met since 1955.<sup>169</sup> Bergman's correspondence and the obvious lack of federal progress on flammable fabrics standards inspired Magnuson to turn what had been merely a thought into action.

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<sup>168</sup>WGM to Bergman, 9 May 1966, and Bergman to WGM, 28 May 1966, are reprinted in Senate Committee on Commerce, The Child Protection Act of 1966: Hearings on S. 3298, pp. 73-74.

<sup>169</sup>U.S., Congress, Senate, Committee on Commerce, Consumer Subcommittee, Flammable Fabrics Act Amendments of 1967: Hearings on S. 1003, 90th Cong., 1st sess., 1967, pp. 92-95.

On June 21, 1966, he wrote to Chairman Paul Rand Dixon of the FTC, the agency charged with enforcing the Flammable Fabrics Act, asking for his comments on Bergman's letter. Dixon's response was a paragon of judicious evasion. He removed the FTC from possible action by at least two layers of contingencies: "It is our intention," he wrote, "to initiate a study of the problem of the flammability of clothing, particularly those sold for use by children." He also seemed to contradict himself by praising the 1953 act in one sentence and then declaring it all but useless in the next, explaining to Magnuson:

The Flammable Fabrics Act, in the passage of which you took a most important part, has been quite efficacious in removing highly flammable items of wearing apparel from the market place. However, in its present form, there is no requirement that clothing be flameproofed or that flame spread rate must be minimal.<sup>170</sup>

Obviously, little had been done since the 1950s to improve the protection afforded consumers from flammable fabrics, and remedial legislation seemed a distinctly reasonable response.

In reaction to Bergman's letter, Magnuson had also instructed members of the Senate Commerce Committee staff to look into the Flammable Fabrics Act. Michael Pertschuk, in recalling that assignment, would write that the law was "hopelessly inadequate to control those cotton flannels and other textiles

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<sup>170</sup>Paul Rand Dixon to WGM, 8 July 1966, reprinted in Senate Committee on Commerce, The Child Protection Act of 1966: Hearings on S. 3298, pp. 74-75.

whose explosive flammability had led to the stream of victims" that had prompted Dr. Bergman's comments.<sup>171</sup>

By August 16, Magnuson was cosponsoring with Senators Neuberger and Morton a bill (S. 3731) to strengthen the Flammable Fabrics Act. As with Senator Hart's earliest packaging bill, Magnuson's purpose in offering S. 3731 seems to have been to spark discussion of flammable fabrics to prepare the way for a bill to be introduced early in the next session. S. 3731 died a few months after its introduction with the adjournment of the Eighty-ninth Congress.

In January 1967, Magnuson announced his intention to introduce a bill to revise the Flammable Fabrics Act as part of his program for the Consumer Subcommittee for 1967. He commented that there was "disturbing evidence of the widespread distribution of dangerously flammable fabrics which are beyond the reach of the law," although most Americans thought that the Flammable Fabrics Act protected them from dangerous fabrics.<sup>172</sup>

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<sup>171</sup>Pertschuk, Revolt Against Regulation, p. 6.

<sup>172</sup>This statement, found in Cong. Rec., 90th Cong., 1st sess., 1967, 113, pt. 1: 563-67, was no doubt partly intended to steal a march on the president, who would deliver his consumer message for 1967 exactly one month later. See Public Papers of the Presidents, Johnson, 1967, pp. 196-206. Both Magnuson and Johnson mentioned strengthening the Flammable Fabrics Act, establishing a product safety commission, and enacting the proposed "truth-in-lending" measure. The similarity of the messages led Califano to write to Pertschuk:

The President, incidentally, . . . asked whether the January 16 speech of the Senator resulted from leaks by us to you, or, conversely, whether we here on the staff were so unimaginative that we had to crib from Maggie's programs to put together the President's Consumer Message.

Letter, Joseph A. Califano to Michael Pertschuk, 27 March 1967, Ex FG 717, WHCF, box 396, LBJ Library.

On February 16, the same day, incidentally, that Johnson issued his message to Congress on the consumer interest, Magnuson introduced S. 1003 to amend the Flammable Fabrics Act. The bill would empower the Secretary of Commerce to issue flammability standards and would direct the Secretary of Health, Education and Welfare to conduct studies and investigations necessary for the promulgation of those standards. It would also bring other household fabrics--draperies, bedding, rugs--under the umbrella of the Flammable Fabrics Act.<sup>173</sup>

House Commerce Committee staff members and textile industry lobbyists reacted with derision and threats. The House Committee was dominated by conservative representatives of cotton-growing and textile-manufacturing states, and staffers told Pertschuk, "Our members aren't going to buy any of that shit."<sup>174</sup> Lobbyists for the cotton industry, no less graphic, promised that "blood would run in the halls of Congress" before S. 1003 passed.<sup>175</sup>

They had not taken into consideration, however, the power of Senator Magnuson, for this quickly became more to him than just a piece of legislation; it became almost a personal crusade, and he was not about to be stopped. He

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<sup>173</sup>Cong Rec., 90th Cong., 1st sess., 1967, 113, pt. 3: 3646-47.

<sup>174</sup>Author interview with Michael Pertschuk, Seattle, 12 April 1991.

<sup>175</sup>Pertschuk, Revolt Against Regulation, p. 6.

and Mrs. Magnuson visited burn victims and their families at Children's Orthopedic Hospital in Seattle, and the experience moved him deeply.<sup>176</sup>

His emotional involvement became apparent during the hearings on S. 1003. Normally a gracious host at the hearings he chaired, he nearly lost his temper in a dialogue with William M. Segall, representative of the National Cotton Council and chairman of the Committee on Clothing Flammability of the American Association of Textile Chemists and Colorists. Segall tried to explain why the standards put in place by the 1953 Flammable Fabrics Act had taken seven years, from 1946 to 1953, to refine, and why there was so little recent progress despite constant research in the industry. Discussion turned to the small metal frame used to hold a fabric sample at a 45 degree angle while flame was applied at the base of the fabric. It had taken researchers years to perfect the simple apparatus, and Magnuson was not impressed:

The CHAIRMAN. . . . But it is hard to understand that it would take that long to be able to find something that would burn a fabric to determine whether or not it was flammable.

Mr. SEGALL. The problem is---

The CHAIRMAN. We had some tests here the other day that took us about 5 minutes and we could find out whether they were flammable.

Mr. SEGALL. The problem is, Mr. Chairman, not in determining---

The CHAIRMAN. Isn't it a problem of everybody dragging their heels in this whole field?

Mr. SEGALL. No sir. No, sir, it was not.

The CHAIRMAN. Well, I think it is.<sup>177</sup>

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<sup>176</sup>Author interview with Dr. Abraham Bergman, Seattle, 14 August 1991. (Transcript deposited at Manuscripts Division, University of Washington Libraries, Seattle, Washington.)

<sup>177</sup>Senate Committee on Commerce, Flammable Fabrics Act Amendments of 1967: Hearings on S. 1003, p. 95.

With Magnuson pushing hard, the bill moved quickly to enactment. On July 25 the Senate Commerce Committee unanimously reported out S. 1003 with the recommendation that it "do pass."<sup>178</sup> Just two days later the Senate passed the bill on a voice vote.<sup>179</sup> In the House, the bill went through the usual delay experienced by one of the Senate's consumer bills, but it was eventually reported out of the Commerce Committee and passed unanimously on November 27.<sup>180</sup> On December 14, after House and Senate conferees agreed on a bill that was much like Magnuson's original, President Johnson signed the Flammable Fabrics Act Amendments (PL 90-189), thanking Congress for passing another of his twelve consumer measures.<sup>181</sup>

Magnuson's bill had become a law, but enforcement was another story. As he told Dr. Bergman as the two drove together to the signing ceremony, getting the law passed was the easy part; getting it implemented was much more difficult.<sup>182</sup> And for the Flammable Fabrics Act Amendments that was indeed the case. With the textile industry fighting all the way, the Secretary of Commerce issued flammability standards for carpets and finally, in 1971, a standard for children's sleepwear up to size 6X--roughly the size a five- or six-

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<sup>178</sup>U.S., Congress, Senate, Flammable Fabrics Act Amendments of 1967, S. Rept. 407 to Accompany S. 1003, 90th Cong., 1st sess., 1967, p. 1.

<sup>179</sup>Cong. Rec., 90th Cong., 1st sess., 1967, 113, pt. 15: 20322-28.

<sup>180</sup>Cong. Rec., 90th Cong., 1st sess., 1967, 113, pt. 25: 33765-71.

<sup>181</sup>Pertschuk, Revolt Against Regulation, pp. 6-7; Public Papers of the Presidents, Johnson, 1967, pp. 1135-38.

<sup>182</sup>Bergman interview.

year-old would wear. The sleepwear standard, however, was to go into effect in July 1973, allowing manufacturers to stockpile non-treated products until then.<sup>183</sup>

In the spring of 1972, dissatisfaction with the Commerce Department's delayed and limited standards came to a head. Magnuson said "I, for one, have had enough," and threatened to promulgate an effective standard if the Department of Commerce did not do so.<sup>184</sup> A thirty-minute news special, "The Burned Child," produced by Seattle reporter Don McGaffin and broadcast in that city on April 27, provided powerful ammunition for Magnuson. The program documented the experience--including dressing changes--of one young girl whose nightgown caught fire and left her burned from the neck down. Not only did the documentary prompt some 30,000 Seattle residents to write to the Secretary of Commerce, Peter Peterson, but Magnuson also made sure that the secretary personally viewed it. Soon thereafter, the Department of Commerce put effective standards in place.<sup>185</sup>

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<sup>183</sup>See the editorial, "Children's Flammable Sleepwear," from the February, 1967 issue of Consumer Reports and the "Statement by Betty Furness on Behalf of Consumers Union," both reprinted in Cong. Rec., 92d Cong., 2d sess., 1972, 118, pt. 2: 1494-95.

<sup>184</sup>Cong. Rec., 92d Cong., 2d sess., 1972, 118, pt. 11: 13847.

<sup>185</sup>Bergman interview; Pertschuk interview; C. J. Skreen, "Burn Victim Profiled in Hard-Hitting News Show," Seattle Times, 27 April 1972, p. E5; Frank Chesley, "Channel 5 Rubs Heads," Seattle Post-Intelligencer, 1 May 1972, p. A12; C. J. Skreen, "'Burned-Child' Telecast Draws Heavy Response," Seattle Times, 5 May 1972, p. F7; and John Hinterberger, "Business as Usual While Children Burn," Seattle Times, 6 May 1972, p. A1.

As Dr. Bergman noted, the result, though long delayed, was gratifying: "We don't see flammable fabric burns anymore to speak of. There's been a tremendous diminution."<sup>186</sup> To Magnuson, who pushed the Flammable Fabrics Act Amendments through Congress and then, seeing that the law was not being properly implemented, headed the campaign to get standards issued, must go much of the credit. And, again, his success in a consumer protection measure would provide grist for his reelection campaign mill. His 1968 advertisements and campaign literature prominently featured his flammable fabrics work.<sup>187</sup>

### **Consumer Product Safety**

When the House passed the Child Protection Act in October 1966 without the title calling for the creation of a commission to study hazardous household products, Magnuson had announced that he would try again in the next session. As with the flammable fabrics bill, he repeated that intention in his statement on the Consumer Subcommittee in January 1967. He commented that Congress had taken steps to ensure the safety of motor vehicles but still needed to deal with "the equally pressing need for promoting the safe design of manufactured goods and appliances for personal and

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<sup>186</sup>Bergman interview.

<sup>187</sup>Bergman interview.

household use." He promised early introduction of a bill to set up the commission.<sup>188</sup>

True to his word, on February 8 Magnuson offered on behalf of himself, Cotton, and Senator Daniel Brewster a resolution calling for the creation of a National Commission on Product Safety (NCPS). Except for a new deadline for the commission's final report, a few minor technical amendments, and the new name of the commission, which was changed from National Commission on Hazardous Household Products at the request of the Association of Home Appliance Manufacturers,<sup>189</sup> Senate Joint Resolution 33 was a carbon copy of Title II of the Child Protection bill from the Eighty-ninth Congress. Having passed the Senate once before, the measure had little difficulty gaining approval again. After the addition of a few clarifying amendments offered by Roman Hruska of Nebraska, S. J. Res. 33 passed the Senate on June 6.<sup>190</sup>

In the House there was again more opposition. During a brief debate on November 6, some members argued that the commission represented a needless expenditure of \$2 million at a time when Congress was being asked to cut back on spending--no doubt as a result of the costs of the Vietnam War. Others complained that there were already enough employees on the government payroll to uncover and deal with whatever problems the commission was expected to handle and that the commission would not stop people from

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<sup>188</sup>Cong. Rec., 90th Cong., 1st sess., 1967, 113, pt. 1: 564.

<sup>189</sup>Pertschuk, Revolt Against Regulation, p. 42.

<sup>190</sup>Cong. Rec., 90th Cong., 1st sess. 1967, 113, pt. 11: 14764-72.

injuring themselves anyway. The resolution passed, however, on a motion to suspend the rules--a type of vote usually reserved for noncontroversial measures.<sup>191</sup>

The National Commission on Product Safety officially came into being with President Johnson's signing of the resolution (PL 90-146) on November 20, 1967. But the NCPS's "launching ceremonies," to borrow the term used by the commission's chairman, Arnold B. Elkind, did not take place until mid-May 1968, and funding was not made available until October.<sup>192</sup> Because of these delays, the life of the commission was extended, and it did not release its final report until June 30, 1970.

The commission's conclusions could not have been a surprise to Magnuson, especially since one member of the NCPS was Michael Pertschuk and since Morton Mintz of the Washington Post had followed the commission around the country and reported on its hearings.<sup>193</sup> The NCPS's final report documented unreasonable hazards to consumers from color television sets, lawn mowers, toys, power tools, baby furniture, ladders, and ten other categories of products. Because self-regulation by manufacturers was, as the commission

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<sup>191</sup>Cong. Rec., 90th Cong, 1st sess., 1967, 113, pt. 23: 31282-87.

<sup>192</sup>Letter, Arnold B. Elkind, Chairman of the NCPS, to Joseph A. Califano, 28 May 1968, and memo, James M. Frey, Acting Assistant Director for Legislative Reference, Bureau of the Budget, to [Larry] Levinson, 1 October 1968, both in Ex FG 790, WHCF, box 417, LBJ Library.

<sup>193</sup>David Bollier and Joan Claybrook, Freedom From Harm: The Civilizing Influence of Health, Safety and Environmental Regulation ([Washington, D.C.:] Public Citizen and [New York:] Democracy Project, 1986), p. 165; and Pertschuk, Revolt Against Regulation, pp. 42-43.

described it, "patently inadequate," the report recommended the creation of a strong, permanent, and independent government agency empowered to establish minimum safety standards and to order recalls of dangerous products.<sup>194</sup>

Even before the final report was issued, a bill was introduced in the House to establish such an agency. In the Senate, Magnuson and Senator Frank Moss of Utah offered S. 4054 on July 1 to carry out the recommendations of the commission. By this time, however, with an election approaching and the session of Congress rapidly nearing an end, it was too late for either house to accomplish anything of significance on the consumer product safety bills. Neither S. 4054 nor any of several similar House bills even made it out of committee.<sup>195</sup>

Early in the next session, Magnuson and Moss introduced S. 983, another bill based on the NCPS's final report, to create an independent Consumer Product Safety Commission. Magnuson pointed out that the proposal represented a new way for his committee to deal with issues of product safety: rather than studying "arbitrarily defined product categories," the Commerce Committee would "consider consumer product safety as it

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<sup>194</sup>A news release, letter of transmittal, and summary of the NCPS's report are reprinted in "Consumer Product Safety," extension of remarks by Representative Edward R. Roybal, Cong. Rec., 91st Cong., 2d sess., 1970, 116, pt. 17: pp. 22585-90. A very useful summary of the NCPS's work and recommendations may also be found in Bureau of National Affairs, Inc., The Consumer Product Safety Act: Text, Analysis, Legislative History (Washington, D.C.: Bureau of National Affairs, Inc., 1973), pp. 19-26.

<sup>195</sup>Bureau of National Affairs, Consumer Product Safety Act, p. 27.

pertains to all consumer products."<sup>196</sup> He might have added that if the proposed commission were created and if it were successful in carrying out its mandate, it would all but put the Commerce Committee out of the product safety legislation business.

The Nixon administration countered with a proposal (S. 1797) to place the authority to police product safety not in an independent agency but under the Department of Health, Education and Welfare, which housed the Food and Drug Administration.<sup>197</sup> Further, the alternative measure would have given industry a major role in setting safety standards, whereas the Magnuson-Moss bill aimed to give the government agency authority to develop standards independent of industry participation.<sup>198</sup>

Opponents of the administration measure criticized it sharply. At hearings before the Commerce Committee in July 1971, Arnold Elkind of the NCPS portrayed it as a "paper tiger" and testified that "the first step in creating a paralytic consumer protection function is to place it deep in the recesses of the already overburdened and unsuccessful Department of Health, Education and Welfare." If the Health, Education and Welfare Department

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<sup>196</sup>Cong. Rec., 92d Cong., 1st sess., 1971, 117, pt. 3: 3911-12

<sup>197</sup>Ironically, Magnuson, with Senator Cotton, introduced this bill (S. 1797) on behalf of the administration. Cong. Rec., 92d Cong., 1st sess., 1971, 117, pt. 11: 13825-31.

<sup>198</sup>Ralph Nader Congress Project, Commerce Committees, pp. 107-08. The following brief discussion of the passage of the Consumer Product Safety Act is based on the account found in this book.

were given control of the agency, he continued, "Congress will have again created a facade of a consumer protection program but not a reality."<sup>199</sup>

Elkind's remarks must have stung Magnuson somewhat, since by this time the "facade of a consumer protection program" was to a considerable extent a structure erected by Magnuson himself. He agreed, however, with Elkind's evaluation of HEW and its sub-unit, the Food and Drug Administration. In remarks inserted into the Congressional Record at the time of final passage of the Consumer Product Safety Act, he said that "the American people [had] lost faith in the Food and Drug Administration's ability."<sup>200</sup>

Another key point emphasized by supporters of the bill was the obvious ineffectuality of the Commerce Department and HEW in handling the Flammable Fabrics Act Amendments. The law had been passed in 1967, but standards had not been enacted in the intervening four years. Magnuson and others thought that perhaps a new, independent, and powerful agency would be more productive in that area, also.<sup>201</sup>

Through early 1972 the staff of the Commerce Committee labored to prepare a new bill, S. 3419, which brought together parts of the administration measure and the Magnuson-Moss bill but retained the essence of the latter. It

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<sup>199</sup>Quoted in Ralph Nader Congress Project, Commerce Committees, pp. 107-08.

<sup>200</sup>92d Cong., 2d sess., 1972, 118, pt. 27: 36199.

<sup>201</sup>Cong. Rec., 92d Cong., 2d sess., 1972, 118, pt. 11: 13846-47.

included, for example, the provisions for government standard setting and for keeping the proposed agency independent of HEW and the FDA.<sup>202</sup> Under the provisions of S. 3419, responsibility for consumer safety laws, including those assigned to the FDA and the FTC--hazardous substances, flammable fabrics, refrigerator safety, and the like--would be transferred to the new agency. Introduced on March 24, the new bill became the focus of the debate. After contentious committee discussions, references to two other Senate committees because of overlapping jurisdictions, numerous amendment fights, and a spirited floor debate, the Senate approved S. 3419 on June 21.<sup>203</sup>

The House, too, had been considering conflicting versions of the bill, one (H.R. 8157) offered by John Moss of California and one (H.R. 8110) put forward by the administration. As in the Senate, the House Commerce Committee reported out a new bill (H.R. 15003) combining parts of the two. While the House bill also insisted on the agency's independence from existing departments, there were important differences between the House and Senate measures. H.R. 15003, for example, would give industry a somewhat larger role in the development of safety standards, retain FDA control of foods and drugs, and accommodate industry by providing that information on consumer products need not be disclosed if it in any way related to a trade secret. It also would impose apparently stricter penalties for violations--but offset them with lenient warning and second-chance provisions. H.R. 15003 received House

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<sup>202</sup>Ralph Nader Congress Project, Commerce Committees, pp. 113-14.

<sup>203</sup>Ralph Nader Congress Project, Commerce Committees, pp. 117-21.

Commerce Committee approval on June 20 but did not make it to the floor until September.<sup>204</sup>

The reason for the delay was the temporarily successful lobbying of the House Rules Committee by industry, particularly drug manufacturers. According to a column by Jack Anderson, the drugmakers also secured the support of an assistant to Chief Justice Warren Burger--and perhaps Burger himself--in opposing the measure. Rowland Kirks, administrative officer for the federal court system, had accompanied Thomas Corcoran, erstwhile FDR administration insider and by 1972 agent for a number of drug companies, to see House Speaker Carl Albert in the hopes of convincing him that the proposal would significantly increase the number of court cases and should thus be reconsidered. That the bill had remained bottled up in the Rules Committee for such a long time lent credence to Anderson's story, although Burger denied any knowledge of or connection to Kirks's and Corcoran's mission. Finally, facing mounting criticism for keeping H.R. 15003 off the floor for so long, the Rules Committee released it. On September 20 the House passed the bill and substituted it for S. 3419.<sup>205</sup>

After a conference during which Senate interlocutors unsuccessfully attempted to pry jurisdiction over foods, drugs, cosmetics, and medical devices from the discredited Food and Drug Administration, both houses of Congress approved the conference report. In a written statement inserted in the

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<sup>204</sup>Ralph Nader Congress Project, Commerce Committees, pp. 121-29.

<sup>205</sup>Ralph Nader Congress Project, Commerce Committees, pp. 128-30.

Congressional Record on October 14, the day the Senate agreed to the report, Magnuson called the bill "an adequate start towards protecting the American consumer from unsafe products." He also said that he regretted that the FDA retained its power over foods and drugs, but promised to work to change that in the next Congress. He concluded his statement by linking the new Consumer Product Safety Commission to President Kennedy's consumer message and the "right to safety" that consumers possessed.<sup>206</sup>

With the creation of the CPSC, Magnuson had helped to pass one of the most significant consumer measures in the nation's history. It should be noted, however, the difference between the Consumer Product Safety Act and earlier laws was largely one of degree rather than of kind. Prior consumer measures--labeling laws, auto safety legislation, even the Food and Drug Act and the Wheeler-Lea Act--had been Congress's means of delegating specific authority to government agencies, primarily the Food and Drug Administration and the Federal Trade Commission. The Consumer Product Safety Act, it could be argued, merely substituted a new agency for the old ones.

But the Consumer Product Safety Act was, in fact, a new kind of consumer protection legislation as well. It delegated to the CPSC broad authority to investigate and regulate consumer goods, obviating to a great extent Congress's need to address each consumer emergency with a separate piece of legislation. The act and the commission were intended to prevent rather than respond to the sale of hazardous products. It was active rather

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<sup>206</sup>Cong. Rec., 92d Cong., 2d sess., 1972, 118, pt. 27: 36199.

than reactive legislation--to an even greater extent than the Hazardous Substances Labeling Act had been.

The Consumer Product Safety Act also represented something of a watershed event for Senator Magnuson. Although he remained involved in the consumer protection field after the creation of the CPSC, his participation gradually diminished from that point on. His decreased attention to consumer issues was partly due, no doubt, to his feeling that the broad range of powers wielded by the CPSC made it much less necessary for him to attend to each consumer issue.

Another disincentive for his continuing emphasis on consumer legislation was likely his growing role in the Appropriations Committee. He would assume the chair of that powerful committee in January 1978, relinquishing in the process his long-held chairmanship of the Commerce Committee.

Finally, the increased power and efficacy of business lobbies during the 1970s also played a part in reducing Magnuson's consumer impulse. Following the 1974 Congressional elections in which the Democrats made large strides in both houses, businesses and business organizations stepped up their opposition to government regulation. Because of war-induced inflation and the shadow cast on government by both Vietnam and Watergate, opponents of big government found a receptive national audience. The Business Roundtable, composed of chief executives of 180 of the nation's largest corporations, came to wield considerable power in Washington, as did the National Federation of Independent Business with its 600,000 members and the Small Business

Legislative Council, which represented national and local trade groups that counted four million companies among their membership.<sup>207</sup> The climate that had been so conducive to consumer protection legislation chilled noticeably in the late 1970s, resulting eventually in the "Reagan Revolution" of 1980.<sup>208</sup>

But despite these forces, Magnuson did not completely turn his back on the consumer; he merely changed his strategy. With the key exception of the Magnuson-Moss Warranty bill, instead of introducing or championing specific consumer measures, he simply ensured that any bill that came through the Commerce Committee was considered with the consumer in mind. This applied not only to those bills that were routed through the Consumer Subcommittee, the chair of which he gave up in 1969, but to any Commerce Committee measure, regardless of its purpose.<sup>209</sup>

### **Warranties**

After the Consumer Product Safety Act, only one more major piece of consumer legislation bore Magnuson's mark: the Magnuson-Moss Warranty--Federal Trade Commission Improvement Act of 1975. Like so many of the consumer measures of the era, it was a long time in the making and had much more difficulty gaining the approval of the House than of the Senate.

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<sup>207</sup>Vogel, Fluctuating Fortunes, 198-99.

<sup>208</sup>Pertschuk, Revolt Against Regulation, chapters 2 and 3.

<sup>209</sup>Author conversation with Thomas Allison, Seattle, 17 July 1991.

As indicated by the name of the act, its purpose was twofold: to strengthen the FTC and to address problems centering on manufacturers' warranties on consumer products. The primary enforcement tool of the FTC from the time of the Wheeler-Lea Act of 1938 until the 1970s was the cease-and-desist order, an inadequate tool for the job according to many critics. Consumers had no way to recover damages, the FTC had to rely on the Justice Department to handle legal cases rather than litigating them itself, and civil or criminal charges could not be brought against a manufacturer unless he violated a cease-and-desist order--no matter how harmful the practice that led to the order.<sup>210</sup> Congress began considering ways to enlarge the FTC's powers as early as 1961, and by the end of the decade bills appeared proposing to give the commission the authority to issue injunctions, to order redress of consumer damages, and to pursue civil damages for violations of its orders.<sup>211</sup>

As to warranties, too often they were written in unclear legal jargon, implied coverage that was not actually offered, neglected to inform consumers how to invoke them, or included limitations that made them virtually

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<sup>210</sup>American Enterprise Institute for Public Policy Research, Proposals to Regulate Consumer Warranties and Expand the Powers of the FTC (pamphlet), Legislative Analysis no. 9, 93d Cong. (Washington D.C.: American Enterprise Institute, 1973), pp. 13-15.

<sup>211</sup>American Enterprise Institute, Proposals to Regulate Consumer Warranties, p. 5.

worthless.<sup>212</sup> Warranties, too, had been given some consideration by Congress, first during investigations of automobiles and tires in the mid-1960s. Later, other consumer products and their warranties came under study.<sup>213</sup>

In December 1967 Magnuson had responded to complaints about guarantees and warranties by introducing three bills: S. 2726, to require "full disclosure of the terms and conditions of guarantees" and to establish an Advisory Council on Guarantees, Warranties, and Servicing to study the issues; S. 2727, to allow the Secretary of Commerce to set warranty standards for new motor vehicles; and S. 2728, to require warranties on household appliances to meet standards of protection and non-deception.<sup>214</sup> This legislative action led the FTC and industry to move quickly to address warranty problems. Congress decided to allow them some time to produce solutions, and Magnuson's bills fell by the wayside.<sup>215</sup>

In 1968 the FTC issued a staff report on automobile warranties, and in 1969 the President's Task Force on Appliance Warranties and Services came out with its report. In October 1969, seeing that neither industry self-regulation nor an administration warranty recommendation was forthcoming,

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<sup>212</sup>See WGM's comments upon introducing S. 986, Cong. Rec., 92d Cong., 1st sess., 1971, 117, pt. 3: 3923-24.

<sup>213</sup>American Enterprise Institute, Proposals to Regulate Consumer Warranties, p. 4.

<sup>214</sup>Cong. Rec., 90th Cong., 1st sess., 1967, 113, pt. 28: 35276-77.

<sup>215</sup>U.S., Congress, Senate, Committee on Commerce, Consumer Subcommittee, Consumer Products Guaranty Act: Hearings on S. 3074, 91st Cong., 2d sess., 1970, p. 1.

Magnuson and Senator Frank Moss introduced S. 3074, the Consumer Products Guaranty bill. The bill would require clear, understandable wording on guarantees and repair or replacement of the defective item at no cost to the consumer. It also proposed mechanisms for rapid and free redress in cases where manufacturers failed to live up to their warranties. No manufacturer would be required to offer a guarantee, but those who did so would be compelled to produce documents that the consumer could understand and rely upon.<sup>216</sup> S. 3074 passed the Senate but died in the House.

On February 25, 1971, early in the next Congress, Magnuson, Moss, and six other senators introduced a dual-purpose bill, S. 986, to set warranty standards and to enlarge the FTC's consumer protection powers. According to Magnuson, Title I of the bill aimed to address "four basic needs" in the field of consumer product warranties: first, to clarify terms of the warranties and instructions for invoking them; second, to ensure that consumers retained certain rights that could not be taken away by manufacturers' disclaimers; third, to enable consumers to pursue legal redress for warranty violations by allowing successful litigants to claim attorney's fees and court costs from fines imposed on violators; and fourth, to encourage manufacturers to make more reliable products. Title II would enable the FTC to seek preliminary injunctions against unfair practices, to levy financial penalties up to \$10,000 per violation (with each day a separate violation in the case of refusal to obey a

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<sup>216</sup>Senate Committee on Commerce, Consumer Products Guaranty Act: Hearings on S. 3074, pp. 2-3.

final order issued by the commission), and to provide relief to consumers harmed by warranty violations. It also "would expressly confirm the existing authority of the Federal Trade Commission to promulgate trade regulation rules."<sup>217</sup> S. 986, the direct ancestor of the later Magnuson-Moss Act, also passed the Senate but failed to make it out of the House Interstate and Foreign Commerce Committee.

Finally, in the Ninety-third Congress, both the Senate and the House passed S. 356, a slightly revised version of the earlier measure. In the closing days of the session both houses also approved the conference committee's version of the bill, and on January 4, 1975, President Gerald Ford signed it into law. The Magnuson-Moss Warranty--Federal Trade Commission Improvement Act, embodying the provisions of S. 986 from the Ninety-second Congress, became Public Law 93-637.

Evaluations of the act's success have produced mixed but generally favorable conclusions. Robert Mayer reports that post-act warranties are more readable, broader in their coverage, and of longer duration than those in place prior to the Magnuson-Moss Act.<sup>218</sup> Joshua Lyle Wiener, however, points out that improvements in warranties may actually reflect changes in product design and repair techniques. He also notes that although warranties have become more comprehensible, only 35 percent of the respondents in an FTC mail survey agreed with the statement that "warranties are usually written in

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<sup>217</sup>Cong. Rec., 92d Cong., 1st sess., 1971, 117, pt. 3: 3924-27.

<sup>218</sup>The Consumer Movement, pp. 117-18.

plain English." Nevertheless, Wiener concludes that warranties do seem to have improved since the law went into effect.<sup>219</sup>

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<sup>219</sup>Joshua Lyle Wiener, "An Evaluation of the Magnuson-Moss Warranty and Federal Trade Commission Improvement Act of 1975," Journal of Public Policy and Marketing 7 (1988): 68-70.

## CONCLUSION

The twentieth century has seen three major waves of consumer protection in the United States: the first occurred during the Progressive era, reaching its height in 1906 with the passage of the Food and Drugs Act and the Meat Inspection Act; the second emerged during the late 1920s and came to fruition with the Food, Drug, and Cosmetic Act and the Wheeler-Lea Act of 1938; and the third took place in the 1960s and early 1970s with a number of significant laws gaining passage.<sup>1</sup>

Warren G. Magnuson, a member of the House of Representatives from 1937 to 1944 and a Senator from 1944 to 1980, was born during the first wave and served in public office during the other two. Like most of his contemporaries, he seems to have given consumer protection little attention until the late 1950s. His first real involvement with an overt consumer protection measure came in 1959 when he introduced the bill that would become the Hazardous Substances Labeling Act of 1960.

A tentative consumer protector in 1960, he increased both the breadth and depth of his consumer advocacy during the next fifteen years. Encouraged

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<sup>1</sup>At the time of this writing, the jury still seems to be out on the question of whether the "green" consumerism--marked by a preference for recycled materials, low-waste packaging, and environment-friendly products--is the fourth wave.

by his staff's inclinations, presidential support, media interest, and a receptive public, and perhaps motivated by fear after the election of 1962 that his political style needed an overhaul to prevent defeat six years later, he led his Commerce Committee into previously uncharted waters of consumer protection. Despite a balky House Committee on Interstate and Foreign Commerce and occasionally virulent industry opposition, he helped to push through laws pertaining to auto safety, flammable fabrics, packaging and labeling, warranties, and many other topics. Magnuson introduced, sponsored, or supported at key moments virtually every major consumer bill of the third wave.

Not all of the pieces of consumer legislation were enacted in the precise form Magnuson would have preferred, and their results were not always as anticipated. The first cigarette labeling bill, for example, was passed without the provision for tar and nicotine labeling that he advocated, and national consumption of cigarettes did not actually decrease as a result of the measure. Similarly, the Fair Packaging and Labeling Act did not include provisions for standardizing sizes and weights, and shoppers were left unable to make easy price comparisons that the original Hart bills and later Magnuson versions had intended to allow. Even worse, some well-intentioned measures had unanticipated bad results. Tris, a chemical used to flameproof over 40 percent of children's sleepwear from 1972 to 1977 was discovered to be a carcinogen.<sup>2</sup>

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<sup>2</sup>David Vogel, Fluctuating Fortunes: The Political Power of Business in America (New York: Basic Books), p. 234.

Explanations for Magnuson's apparent conversion from a friend of business to a consumer advocate have typically centered on the influence of his staff, especially counsels Gerald Grinstein and Michael Pertschuk, and his desire to recreate his political image after the frighteningly close election of 1962. Although these explanations have a measure of truth to them, they ignore entirely his admittedly minimal previous efforts to ensure fairness and safety for consumers: fur and textile labeling laws, and the Hazardous Substances Labeling Act of 1960. Such analyses distort Magnuson's record, making his consumerism appear to be much more of a change than it actually was.

Moreover, explanations that emphasize the role of his staff and the 1962 election also overlook his frequently stated and frequently proven desire to help his constituents. It seems trite or self-serving for an elected official to proclaim his actions to be motivated by a genuine desire to help people, but for Magnuson that appears to have been largely the case. From the time of his first term in the Washington State Legislature in the 1930s, he showed empathy for people in need. His business- and state-development emphasis of the 1930s through 1950s seems to have been directed more toward providing jobs and income for the workers than profits for business owners. It could well be argued that as national and per capita wealth increased through the 1950s and 1960s, helping people simply took on a new complexion for Magnuson, a complexion marked by an increasing stress on consumer protection.

This explanation, however, can go too far also. Magnuson was in the business of being reelected, and he learned from the 1962 election that traditional constituent service was not always enough. That consumer protection offered a hefty dose of one of the other keys to being reelected--publicity--certainly was not something that he left unnoticed. Reporters for the major newspapers were typically sympathetic to consumer measures and some, particularly Morton Mintz of the Washington Post, pushed their employers to allow more space for consumer articles.

Consumer protection had other attractions as well. It was a consensus issue that appealed to unassailable human values: truth, fairness, safety. It was also a fairly open field. Entrepreneurial legislators could strike out in any number of directions and gain a reputation for standing up for the people. Even some conservative members of Congress got involved.

Thus, there was a practical, political side to his consumerism, one that Magnuson himself recognized. A passage that appeared in more than one of his speeches compared legislators to political miners:

Although it appears to some critics that the politicians have dug up the consumer as a political "mother lode," I want you to know that those of us who are concerned with, and responsible for, legislation affecting the consumer are not prepared to bury business in the empty hole.<sup>3</sup>

Magnuson was careful not to deny that the "mother lode" analogy was accurate,

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<sup>3</sup>See, for example, "The Senate Commerce Committee: A Meeting Ground, Not a Battlefield," WGM Papers, accession 3181-4, box 194, folder 52, Manuscripts Division, University of Washington Libraries, Seattle.

and it seems to fit in his case: he won reelection by a huge margin in 1968.<sup>4</sup> But although his campaign had been based almost entirely on his consumer record, to portray his reelection as causally related to his consumerism is certainly too simple. Any number of other factors--the political strength of his opponent, Magnuson's increasing dissatisfaction with the war in Vietnam, even his continued success at securing federal funds for Washington--may have contributed to his victory at the polls. One can at least say, however, that his increasing drive to enact consumer protection laws coincided with his political rejuvenation.

Perhaps, then, the key to understanding Magnuson's consumer advocacy is balance. Just as many of the protective laws attempted to restore some balance between producers and consumers in the marketplace, we must seek a more balanced explanation for his motivation in advancing consumer measures. He was not forced into a new field against his will by an uncontrollable staff; he chose to move in that direction because it was one which he had previously found agreeable, and the excellent support of his staff enabled him to do so. He did not seize upon consumer protection merely for its obvious political benefits as a consensus issue with high publicity value; although he certainly recognized its political possibilities, he also had a genuine desire to use his power in the Senate to help people who were unable to help themselves. He

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<sup>4</sup>One writer contended that when Magnuson stepped down from the chair of the Consumer Subcommittee after the 1968 election he remarked, "I guess we pretty well squeezed the juice out of that one." Gerald R. Rosen, "What Maggie Wants, Maggie Gets," Dun's Review 99 (April 1972): 41.

did not use consumer protection to mount an anti-business campaign, as industry lobbyists and other opponents of consumer laws maintained; instead he saw product safety and information disclosure laws as a means to improve both manufactured goods and marketplace competition. He especially enjoyed pointing to instances of safety innovation going hand-in-hand with profit.<sup>5</sup>

The fates of consumer protection and Magnuson's life and career intertwined during the 1960s and 1970s to a far greater degree than observers might have predicted. Together they flourished during the Great Society era of social and economic reform, and together they declined in the late 1970s as business interests reasserted themselves and the United States moved toward deregulation. Although consumer measures had always been inexpensive for the federal government, they nevertheless came to be associated with big, costly, invasive government. Magnuson, of course, had always been known for his ability to bring home the pork, but by the late 1970s that talent associated him with inflation and high taxes. The election of 1980 ushered in a new era of deregulation and ushered out an old regulator named Warren G. Magnuson.

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<sup>5</sup>See, for example, his speech, "Closing the Safety Gap," delivered to the Pacific Northwest Safety Congress Convention, 7 September 1967, WGM Papers, accession 3181-4, box 194, folder 39.

## ESSAY ON SOURCES

### **Magnuson's Life and Career**

There is as yet no book-length biography, scholarly or otherwise, of Warren G. Magnuson. Brief biographical sketches may be found in various Who's Who publications, Biographical Directory of the American Congress, Eric Redman's Dance of Legislation (1973), James Fallows's pamphlet on Magnuson for the Ralph Nader Congress Project, a 1956 campaign biography (a copy of which is available in Special Collections at the University of Washington Libraries), and issues of the Seattle Times and Seattle Post-Intelligencer immediately after Magnuson's death on May 20, 1989. Since all of these are based on the same few sources, however, they share the same inaccuracies and omissions.

Magnuson himself never revealed much desire to clarify his life story, preferring instead to keep his private life as separate as possible from his public one, and perpetuating the "poor boy makes good" legend adopted by the Seattle newspapers when he first appeared on the public scene in the 1930s. It is, of course, his private life that remains something of a mystery. Some information may be gleaned from the Magnuson Papers at the University of Washington, but for the most part he kept his private affairs out of his public records.

Nor do relatives or acquaintances shed much light on Magnuson's past. Jermaine Magnuson, his widow, admits that she does not actually know much about his childhood, and longtime staff members Michael Pertschuk and Gerald Grinstein say essentially the same thing.

Magnuson remained enigmatic throughout his public career. Eric Redman, whose perceptive description of Magnuson is perhaps the best in print to date (Dance of Legislation, pp. 189-209), nevertheless admitted to his "own inability to 'sum up' Magnuson," and added, "A standard biography of Magnuson could be quite a book, in fact, but the danger would be in illuminating the unusual career without shedding any light whatsoever on the complex and fascinating man himself" (pp. 197-98).

Whatever difficulties Magnuson presents to the researcher, the indispensable starting point for any study of Magnuson's public life is the collection of his papers housed in the Manuscripts Division of the University of Washington Libraries. The Magnuson Papers include documents from his law school days, his early work for the Seattle Municipal League, his term in the Washington State Legislature, his service as assistant United States attorney and as King County Prosecuting Attorney, and his years in the U.S. House of Representatives and the Senate. Among the Senate papers are incoming and outgoing mail, election materials, legislative documents, scrapbooks, photographs, videotapes, and much more.

Some caveats must be noted, however, when working with this collection. First, Magnuson himself surely never dictated, wrote, signed, or

even saw a large portion of these documents. His Senate office, for example, received hundreds of letters each day, and he admitted on a number of occasions his inability to respond personally to each of them. Thus, most of what bears his name was composed by his secretaries and assistants. That admitted, one must still consider the papers to represent his viewpoint; no assistant would last long if he or she put out letters that contradicted the position taken by "the Boss" (their term for Magnuson). This dissertation has assumed that Magnuson's stands on issues are faithfully recorded in his papers and that the letters sent over his signature may be taken as his words.<sup>1</sup>

Second, Magnuson, like his friend and contemporary Lyndon Johnson, preferred to do much of his most urgent business by telephone or in person. Records of such conversations, of course, simply do not exist. Frequently, one comes across brief letters in the Magnuson Papers referring to "the business we discussed" or "the matter you mentioned," but there is no way to know what he meant. The Oral History Interviews of Warren Featherstone Reid (copies of which have been deposited in the Library of Congress, the Senate Library, and the Political Science Library at the University of Washington) indicate that Magnuson's preference for face-to-face communication extended to his relations with staff members, so few records of internal office dealings exist (p. 91). Reid's interviews provide a useful look at Magnuson, his office and committee staffs, and the operation of Congress in general, and thus complement the

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<sup>1</sup>See author interview with Michael Pertschuk, 12 April 1991, Seattle; and Eric Redman, The Dance of Legislation (New York: Simon & Schuster, 1973), p. 201.

Magnuson Papers by filling in some of the details that escaped documentation in the collection.

Third is the question of balance. What documents were not kept? Would they change our understanding of Magnuson or his stances on issues? And what about his correspondents: were their concerns representative of those of their fellow citizens who did not go to the trouble of writing to Magnuson? Certainly there were some organizations and issues that generated disproportionate amounts of correspondence. (Sometimes members of interest groups copied verbatim a model letter supplied to them by the organization, mailed it dutifully to Magnuson, and received in return a form letter from his office! There was certainly not much exchanging of ideas in those cases.) Historians can only assume that Magnuson's office did not toss out important documents, and no doubt the best defense against giving undue weight to less significant events and issues is to be aware of the history of the country at the time of the correspondence.

Fourth, one must always keep in mind that the Magnuson Papers were created not for researchers but as a working file for a public servant's office. The overall structure of the collection is chronological, but items may be filed by topic, by correspondent's name, by correspondent's organization, by locality (Seattle, Spokane, etc.), or by any number of other methods or combinations of methods. Apparently, Magnuson's office relied largely on human memory or trial and error to find documents in the file.

Finally, and perhaps most significantly, much of the Magnuson collection remains off-limits to researchers at the time of this writing. It is impossible to say how much light these unavailable "Personal-Political" documents might throw on the subject of his life and public career. Suffice it to say that the listings of folder titles in the closed sections are most provocative.

The University of Washington also houses a small collection of papers pertaining to the life and career of Senator Homer T. Bone. These papers were originally parts of either the Magnuson collection or the papers of the Washington Public Utility District Association, so they are quite limited in scope, but some information regarding Bone's policy interests and personal life may be culled from the collection. The bulk of Bone's papers, which were not consulted for this study, is held at the University of Puget Sound in Tacoma, Washington.

Records of Magnuson's public career may also be found at the National Archives and the Lyndon B. Johnson Library. The Senate Commerce Committee Papers at the National Archives, in fact, are a much more important source of information on consumer protection measures than are his private papers. Since most of the consumer bills progressed through the committee or bore the marks of committee staff members such as Michael Pertschuk or Gerald Grinstein, the records pertaining to the measures became part of the committee's files and thus part of the collection at the Archives.

Documents at the Johnson Library are most revealing for the interplay between the executive and legislative branches. Consumer protection was an

issue of importance to both, and both tried to impose their ideas on the laws while also securing credit for them. Personal correspondence between Johnson and Magnuson in this collection goes back to their days in the House of Representatives and the navy. The library also maintains a collection of oral history interviews of a large number of people associated with the Johnson presidency or the life of Lyndon Johnson.

### **The Political Scene**

The Congressional Record has been used extensively in this study for several reasons. First, it provides a basic chronology of legislative activity as well as accounts of debates, discussions, and votes on important bills and amendments. Second, because members of Congress have the right to extend and revise their remarks in the Record, it presents their ideal positions: what they really want people to perceive to be their stances on issues. They are not permitted to change the meaning of what they say, or to alter their remarks uttered during debate to present an opponent in an unfavorable light, but clarifications of syntax and grammar enable the reader to understand better what was meant. And in the case of consumer protection, it is vital to understand what legislators wanted constituents and others to consider them to mean. Third, it is a constantly updated encyclopedia. Senators and representatives are extended the privilege to insert entire bills, committee reports, letters, articles, tables--in short, almost anything that can be reproduced on the printed page. Vast amounts of useful material--with an

understandable bias, depending upon who inserted it--are thus collected in one place.

The Record is not without its shortcomings, of course. It reveals nothing about the all-important behind-the-scenes activity that makes up such a large part of what the Senate and House do. And it is not always possible to discern what the speaker was really thinking when he profusely complimented the "distinguished gentleman from" whatever state. Moreover, the privilege of revising and extending remarks may give the impression that a member was actually more involved in an issue--or even present for the debate--when in fact he was not. As a rule, however, the benefits of the Record seem to outweigh its defects.<sup>2</sup>

Some of the activity not reported by the Congressional Record appears in the committee hearings published by Congress and now available on microfiche. Not all bills require hearings or advance to the hearings stage; those of some importance, however, are generally subject to hearings. Much of what is found in hearings are prepared statements either read verbatim or summarized by the witnesses and then reprinted in their entirety. Probably the most interesting and revealing parts of the hearings are the impromptu discussions between the witnesses and the committee members. Although hearings are usually portrayed as an important means of gathering

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<sup>2</sup>For the Ralph Nader Congress Project's more critical view of the Congressional Record, see Mark J. Green, James M. Fallows, and David R. Zwick, Who Runs Congress? (New York: Bantam, 1972), pp. 183-85.

information, often they represent merely a kind of "going through the motions," with committee members already having made up their minds.

Congressional committee reports are tremendously useful for their summarizing capacity. Typically they include texts of bills, letters from federal departments, a statement of "purpose and need" for the proposed measure, the testimony of witnesses, and a section-by-section précis of the bill.

### **Consumer Protection in General**

The literature pertaining to consumer protection is vast and cuts across any number of disciplinary lines. Perhaps the most telling way to demonstrate this point is to note that books and other publications used in this study came from nine different libraries in the University of Washington system: the general collections at Suzzallo/Allen and Odegaard Libraries, as well as the topical collections in the Health Sciences, Natural Sciences, Social Work, Engineering, Business Administration, Philosophy, and Political Science libraries.

A good starting place for consumer protection in general is Robert N. Mayer's The Consumer Movement: Guardians of the Marketplace (1989). As the title implies, Mayer argues that consumer protection has indeed been a social movement, a conclusion that the present study finds unsupportable. That does not, however, diminish the usefulness of this work. The Consumer Movement summarizes the history of consumerism in the United States but devotes most of its attention to the third period and after. It extends the

discussion of consumer protection far beyond the parameters of this study--to include, for example, international implications of consumerism--and provides a very useful bibliography.

Lucy Black Creighton, in Pretenders to the Throne (1976) criticizes consumer advocates for accepting too willingly the classical definition of a consumer in strictly economic terms and seeing consumer protection as a monetary rather than a quality of life issue. This line of argument seems to apply best to the "buymanship" emphasis of the second wave; it does not fit the first and third waves nearly as well nor, for that matter, does it account for the almost utopian nature of consumer cooperative efforts of the second wave.

A good collection of documents and essays on consumer protection may be found in Consumerism: Viewpoints from Business, Government, and the Public Interest (1972), edited by Ralph M. Gaedeke and Warren W. Etcheson. This compilation includes historical pieces and contemporary essays from participants in consumer protection. Warren G. Magnuson contributed a brief, innocuous essay.

Among periodicals, from the consumer side Consumer Reports has been the constant watchdog, typically fulfilling all four rights of consumers as outlined by President Kennedy. FDA Consumer offers articles on the current work of the FDA as well as historical accounts. The Nation and the New Republic have been particularly attuned to consumer issues, especially during the third wave.

In such publications as Business Week, the Wall Street Journal, and Advertising Age, consumer protection has typically been presented as a "problem" to be solved by the manufacturing and advertising industries.

### **First Wave**

With Fair Play in the Marketplace (1986) Mitchell Okun provides a careful study of the background to the Food and Drugs Act of 1906. James Harvey Young's Pure Food: Securing the Federal Food and Drug Act of 1906 (1989) is also particularly well done. Whatever one thinks Gabriel Kolko's interpretation of the Progressive Era, Triumph of Conservatism (1963), his account of the passage of meat inspection laws seems to fit the evidence. For self-justificatory accounts of Dr. Harvey Wiley's work, see his Autobiography (1930); for a more balanced, but still generally approving, view, see Oscar E. Anderson's The Health of a Nation: Harvey W. Wiley and the Fight for Pure Food (1958). John Braeman's essay on Theodore Roosevelt, "The Square Deal in Action: A Case Study in the Growth of the 'National Police Power,'" (1964) places TR's support for pure food and meat inspection legislation in its political context.

During the first wave, consumer protection was perceived to be largely a scientific problem. The movement was led by scientists such as Dr. Wiley, and it was followed closely in the scientific journals such as Scientific American, and Science. The Progressive Era's faith in the corrective power of science found concrete expression in the first wave.

Another part of the Progressive faith, a belief in the cleansing power of the exposure of wrong, also contributed to the drive for consumer measures. And exposure of wrong was the bailiwick of muckrakers such as Upton Sinclair, Samuel Hopkins Adams, and others. Sinclair's The Jungle (1906) uncovered the filthy conditions to be found in the nation's meat-packing plants, and Adams's articles in Collier's magazine (beginning in 1905, and reprinted in 1907 as The Great American Fraud) shocked readers with its descriptions of medical quackery.

For an essay discussing a number of works pertaining to this period--some used in the present study, some not--see James Harvey Young, Pure Food, pp. 273-91.

### **Second Wave**

The second wave began with a piece of muckraking, Your Money's Worth (1927), by Stuart Chase and F. J. Schlink. It called for truth in advertising and testing agencies to evaluate products. It was followed by such emotion-stirring works as Arthur Kallet's and F. J. Schlink's 100,000,000 Guinea Pigs (1933) and Ruth deForest Lamb's, American Chamber of Horrors (1936).

Good secondary sources on the second wave include Charles O. Jackson's Food and Drug Legislation in the New Deal (1970), which follows the twists and turns of the "Tugwell" and "Copeland" bills, and Persia Campbell's Consumer Representation in the New Deal (1940), which describes the wandering of the "consumer interest" from agency to agency. On advertising in

this period, see Otis Pease, The Responsibilities of American Advertising: Private Control and Public Influence, 1920-1940 (1958), and Roland Marchand, Advertising the American Dream: Making Way for Modernity, 1920-1940 (1985).

During the second wave the business journals took over from the scientific periodicals as the major locus of articles on consumerism. Kenneth Dameron's "The Consumer Movement" (Harvard Business Review, Spring 1939) and "Business Week Reports to Executives on "The Consumer Movement" (22 April 1939), for example, were intended to explain the goals and strategies of the movement so as to inform businessmen on how to "solve" the "problem" of consumerism.

Social scientists also studied consumers closely during this period. The Annals of the American Academy of Political and Social Science was perhaps the leading social science journal to address consumerism, producing a number of articles during the 1930s.

### **Third Wave**

Some authors see the third wave as beginning with Vance Packard's The Hidden Persuaders (1957), which exposed advertising methods that were supposedly used to trick consumers. That date seems a bit early, and in fact this period of consumer protection does not seem to have been instigated by muckraking writing. It did, however, have its share of such works: Jessica Mitford's The American Way of Death (1963) described the shady practices of

the funeral industry; Ralph Nader's Unsafe At Any Speed (1965) contributed to the passage of automobile safety legislation and helped stir up public interest in the whole category of consumer protection; and even Warren G. Magnuson, with professional writer Jean Carper, added a book to the collection of muckraking pieces: The Dark Side of the Marketplace (1968). Magnuson and Carper described unethical practices in advertising, door-to-door selling, and credit purchases, and called for a safer cigarette with less tar and nicotine. At one time or another Magnuson pushed for legislation that would clean up each of the problems described in his book.

Some consumer issues of this period were of great enough significance to inspire authors to write entire books about them. Automobiles, for example, provided Nader's subject matter, as well as that of Jeffrey O'Connell and Arthur Myers, who wrote Safety Last: An Indictment of the Auto Industry (New York: Random House, 1966). Maurine Neuberger's Smoke Screen (1963) is a muckraking attack on cigarettes. For A. Lee Fritschler, author of Smoking and Politics Policymaking and the Federal Bureaucracy (orig. pub. 1969) cigarettes provided a medium through which to study federal agencies and their relationship with Congress, business, and the public.

For consumer protection policy in general, the best starting place is Mark V. Nadel's The Politics of Consumer Protection (1971). Michael Pertschuk's indispensable Revolt Against Regulation (1982) reveals insights of a key participant who is willing to be self-critical when necessary. On the legislative process and the operating style of Magnuson's office, Eric Redman's

The Dance of Legislation (1973) is quite useful, although its topic is not consumer protection. On the Senate Commerce Committee and its milieu in the 1960s and 1970s, the Ralph Nader Congress Project's The Commerce Committees (1975) and Project member David E. Price's Who Makes the Laws? (1972) provide valuable insights. The later Congress Project writings became somewhat incestuous, relying largely on previous ones for data, but the collection as a whole is important for its contemporary inside information from interviews and other research that went into the project. For an analysis of the ebb and flow of the political power of business in the United States from 1960 to 1988, see David Vogel's excellent Fluctuating Fortunes (1989).

Consumer protection was widely reported in the periodical press during the third wave: business magazines once again studied the movement as a problem, news magazines presented it as an unusual new movement, and consumer journals found much to criticize in it despite its apparent good intentions.

## BIBLIOGRAPHY

### Books

- Aaker, David A. and George S. Day, eds. Consumerism: Search for the Consumer Interest. 2d ed. New York: Free Press, 1974.
- Adams, Samuel Hopkins. The Great American Fraud. Chicago: American Medical Association Press, 1907.
- Babson, Roger W. and C. N. Stone. Consumer Protection: How It Can Be Secured. New York: Harper & Brothers, 1938.
- Bellush, Bernard. The Failure of the NRA. New York: Norton, 1975.
- Bergman, Abraham. The "Discovery" of Sudden Infant Death Syndrome: Lessons in the Practice of Political Medicine. New York: Praeger, 1986.
- Berner, Richard C. Seattle in the 20th Century. Vol. 2: Seattle 1921-1940: From Boom to Bust. Seattle: Charles Press, 1992.
- Bollier, David and Joan Claybrook. Freedom From Harm: The Civilizing Influence of Health, Safety and Environmental Regulation. [Washington, D.C.:] Public Citizen and [New York:] Democracy Project, 1986.
- Braeman, John. "The Square Deal in Action: A Case Study in the Growth of the 'National Police Power.'" In Change and Continuity in Twentieth-Century America, edited by John Braeman, Robert H. Bremner, and Everett Walters. Columbus: Ohio State University Press, 1964.
- Bureau of National Affairs, Inc. The Consumer Product Safety Act: Text, Analysis, Legislative History. Washington, D.C.: Bureau of National Affairs, Inc., 1973.
- Burns, James MacGregor. The American Experiment. 3 vols. Vol. 2: The Workshop of Democracy. New York: Vintage, 1986; Vol. 3: The Crosswinds of Freedom. New York: Knopf, 1989.
- Campbell, Persia. The Consumer Interest: A Study in Consumer Economics. New York: Harper & Brothers, 1949.
- \_\_\_\_\_. Consumer Representation in the New Deal. New York: Columbia University Press, 1940.
- Carson, Rachel. Silent Spring. Boston: Houghton Mifflin, 1962.

- Chafe, William H. The American Woman: Her Changing Social, Economic, and Political Roles, 1920-1970. London: Oxford University Press, 1972.
- Chalmers, David. And the Crooked Places Made Straight: The Struggle for Social Change in the 1960s. Baltimore: Johns Hopkins University Press, 1991.
- Chambers, Clarke. Seedtime of Reform: American Social Service and Social Action, 1918-1933. Minneapolis: University of Minnesota Press, 1963.
- Chambers, John Whiteclay II. The Tyranny of Change: America in the Progressive Era, 1900-1917. New York: St. Martin's Press, 1980.
- Chase, Stuart and F. J. Schlink. Your Money's Worth: A Study in the Waste of the Consumer's Dollar. New York: Macmillan, 1927.
- Clark, Norman. The Dry Years: Prohibition and Social Change in Washington, rev. ed. Seattle: University of Washington Press, 1988.
- Cole, Wayne S. Roosevelt and the Isolationists, 1932-45. Lincoln: University of Nebraska Press, 1983.
- Creighton, Lucy Black. Pretenders to the Throne: The Consumer Movement in the United States. Lexington, Mass.: Heath, 1976.
- Dunne, Finley Peter. Dissertations by Mr. Dooley. New York: Harper & Brothers, 1906.
- Eisenhower, Dwight D. The White House Years: Mandate for Change, 1953-1956. Garden City, N.Y.: Doubleday, 1963.
- Epstein, Edwin M. The Corporation in American Politics. Englewood Cliffs, N.J.: Prentice-Hall, 1969.
- Epstein, Samuel S. and Richard D. Grundy, eds. The Legislation of Product Safety. 2 vols. Cambridge, Mass.: MIT Press, 1974.
- Fargo and Moorhead Directory. n.p.: Pettibone Directory Co., 1902, 1905.
- Filler, Louis. The Muckrakers: Crusaders for American Liberalism. Chicago: Regnery, 1968.
- Flynn, George Q. Lewis B. Hershey, Mr. Selective Service. Chapel Hill: University of North Carolina Press, 1985.
- Friedan, Betty. The Feminine Mystique. New York: Norton, 1963.

- Fritschler, A. Lee. Smoking and Politics: Policymaking and the Federal Bureaucracy, 3d ed. Englewood Cliffs, N.J.: Prentice-Hall, 1983.
- Gaedeke, Ralph M. and Warren W. Etcheson. Consumerism: Viewpoints from Business, Government, and the Public Interest. San Francisco: Canfield Press, 1972.
- Gaer, Joseph. Consumers All: The Problem of Consumer Protection. New York: Harcourt, Brace & Co., 1940.
- Goldman, Eric F. The Crucial Decade--And After: America, 1945-1960. New York: Vintage, 1960.
- Gottesman, Ronald. Introduction to The Jungle, by Upton Sinclair. New York: Penguin, 1985.
- Green, Mark J., James M. Fallows, and David R. Zwick. Who Runs Congress? The Ralph Nader Congress Project. New York: Bantam, 1972.
- Greenstone, J. David. Labor in American Politics. New York: Knopf, 1969.
- Gunther, John. Inside U.S.A. New York: Harper, 1947.
- Hamby, Alonzo L. The Imperial Years: The United States Since 1939. New York: Longman, 1978.
- Hamilton, David. The Consumer in Our Economy. Boston: Houghton Mifflin, 1962.
- Harris, Richard. The Real Voice. New York: Macmillan, 1964.
- Hawley, Ellis W. The New Deal and the Problem of Monopoly: A Study in Economic Ambivalence. Princeton, N.J.: Princeton University Press, 1966.
- Hofstadter, Richard. The Age of Reform: From Bryan to F.D.R. New York: Vintage, 1955.
- Jackson, Charles O. Food and Drug Legislation in the New Deal. Princeton, N.J.: Princeton University Press, 1970.
- Johnson, Lyndon Baines. The Vantage Point: Perspectives on the Presidency, 1963-1969. New York: Holt, Rinehart & Winston, 1971.
- Jones, Rochelle and Peter Woll. The Private World of Congress. New York: Free Press, 1979.

- Kelley, William T. and Etienne Gorse. "The Fair Packaging and Labeling Act of 1966: Does It Protect the Consumer?" In New Consumerism: Selected Readings, edited by William T. Kelley. Columbus, Ohio: Grid, Inc., 1973.
- Kolko, Gabriel. The Triumph of Conservatism: A Reinterpretation of American History, 1900-1916. New York: Free Press of Glencoe, 1963.
- Lamb, Ruth deForest. American Chamber of Horrors: The Truth About Food and Drugs. New York: Farrar & Rinehart, 1936.
- Lee, Frederic S. and Warren J. Samuels. "Introduction: Gardiner S. Means, 1896-1988." In The Heterodox Economics of Gardiner C. Means: A Collection, edited by Frederic S. Lee and William J. Samuels. Armonk, N.Y.: M. E. Sharpe, 1992.
- Leuchtenburg, William E. Franklin D. Roosevelt and the New Deal, 1932-1940. New York: Harper, 1963.
- \_\_\_\_\_. A Troubled Feast: American Society Since 1945. Boston: Little, Brown & Co., 1973.
- Link, Arthur S. American Epoch: A History of the United States Since the 1890's, 3d ed. New York: Knopf, 1967.
- Loeb, Harold. Production for Use. New York: Basic Books, 1936.
- McCann, Michael W. Taking Reform Seriously: Perspectives on Public Interest Liberalism. Ithaca, N.Y.: Cornell University Press, 1986.
- McKay, David. Domestic Policy and Ideology: Presidents and the American State, 1964-1987. Cambridge: Cambridge University Press, 1989.
- McPherson, Harry. A Political Education. Boston: Little, Brown & Co., 1972.
- Magnuson, Warren G. and Jean Carper. The Dark Side of the Marketplace: The Plight of the American Consumer. Englewood Cliffs, N.J.: Prentice-Hall, 1968.
- Mann, Thomas E. and Norman J. Ornstein, eds. The New Congress. Washington, D.C.: American Enterprise Institute for Public Policy Research, 1981.
- Marchand, Roland. Advertising the American Dream: Making Way for Modernity, 1920-1940. Berkeley: University of California Press, 1985.

- Matusow, Allen J. The Unraveling of America: A History of Liberalism in the 1960s. New York: Harper & Row, 1984.
- Mayer, Robert N. The Consumer Movement: Guardians of the Marketplace. Boston: Twayne, 1989.
- Mowbray, A. Q. The Thumb on the Scale: Or the Supermarket Shell Game. Philadelphia: Lippincott, 1967.
- Nadel, Mark V. The Politics of Consumer Protection. Indianapolis: Bobbs-Merrill, 1971.
- Nader, Ralph. Unsafe at Any Speed: The Designed-in Dangers of the American Automobile. New York: Grossman, 1965.
- Neuberger, Maurine B. Smoke Screen: Tobacco and the Public Welfare. Englewood Cliffs, N.J.: Prentice-Hall, 1963.
- Okun, Mitchell. Fair Play in the Marketplace: The First Battle for Pure Food and Drugs. Dekalb: Northern Illinois University Press, 1986.
- O'Neill, William L. The Progressive Years: America Comes of Age. New York: Dodd, Mead & Co., 1975.
- Pease, Otis. The Responsibilities of American Advertising: Private Control and Public Influence, 1920-1940. New Haven: Yale University Press, 1958.
- Peltzman, Sam. Regulation of Automobile Safety. Washington, D.C.: American Enterprise Institute for Public Policy Research, 1975.
- Pertschuk, Michael. Giant Killers. New York: Norton, 1986.
- \_\_\_\_\_. Revolt Against Regulation: The Rise and Pause of the Consumer Movement. Berkeley: University of California Press, 1982.
- Porter, Kirk H. and Donald Bruce Johnson, comps. National Party Platforms, 1840-1964. Urbana: University of Illinois Press, 1966.
- Potter, David M. People of Plenty: Economic Abundance and the American Character. Chicago: University of Chicago Press, 1954.
- Price, David E. Who Makes the Laws?: Creativity and Power in Senate Committees. Cambridge, Mass.: Schenkman, 1972.

- Priest, W. Curtiss. Risks, Concerns, and Social Legislation: Forces that Led to Laws on Health, Safety, and the Environment. Boulder, Colo.: Westview Press, 1988.
- The Ralph Nader Project, David E. Price, dir. The Commerce Committees: A Study of the House and Senate Commerce Committees. New York: Grossman, 1975.
- Redman, Eric. The Dance of Legislation. New York: Simon & Schuster, 1973.
- Reeves, Richard. President Kennedy: Profile of Power. New York: Simon & Schuster, 1993.
- Roosevelt, Franklin D. Complete Presidential Press Conferences of Franklin D. Roosevelt. 25 vols. Vol. 9: 1937. New York: Da Capo Press, 1972.
- Rosenman, Samuel I., ed. The Public Papers and Addresses of Franklin D. Roosevelt. 13 vols. Vol. 1: The Genesis of the New Deal, 1928-1932. New York: Random House, 1938; Vol. 9: War--And Aid to Democracies, 1940. New York: Macmillan, 1941.
- Saloutos, Theodore. The American Farmer and the New Deal. Ames: Iowa State University Press, 1982.
- Scammon, Richard M., comp. and ed. America Votes: A Handbook of Contemporary American Election Statistics, no. 5 (1962). Government Affairs Institute. Pittsburgh: University of Pittsburgh Press, 1964.
- Schlesinger, Arthur M., Jr. History of U.S. Political Parties. 4 vols. Vol. 3: 1910-1945: From Square Deal to New Deal. New York: Chelsea House, 1973.
- \_\_\_\_\_. The Vital Center: The Politics of Freedom. Boston: Houghton Mifflin, 1949.
- Schwantes, Carlos A. The Pacific Northwest: An Interpretive History. Lincoln: University of Nebraska Press, 1989.
- Siff, Ted and Alan Weil, dirs. Ruling Congress: How the House and Senate Rules Govern the Legislative Process. New York: Penguin, 1977.
- Sinclair, Barbara, "Coping with Uncertainty: Building Coalitions in the House and the Senate." In The New Congress, edited by Thomas E. Mann and Norman J. Ornstein. Washington, D.C.: American Enterprise Institute for Public Policy Research, 1981.

- Smith, Adam. An Inquiry into the Nature and Causes of the Wealth of Nations. 1776.
- Smith, Hedrick. The Power Game: How Washington Works. New York: Random House, 1988.
- Sobel, Lester A., ed. Consumer Protection. New York: Facts on File, 1976.
- Sorenson, Helen. The Consumer Movement: What It Is and What It Means. New York: Harper, 1941.
- Sternsher, Bernard. Rexford Tugwell and the New Deal. New Brunswick, N.J.: Rutgers University Press, 1964.
- Sullivan, Mark. Our Times: The United States 1900-1925. Vol. 2: America Finding Herself. New York: Scribner's Sons, 1927.
- Tugwell, Rexford G. The Democratic Roosevelt: A Biography of Franklin D. Roosevelt. Garden City, N.Y.: Doubleday & Company, 1957.
- Vogel, David. Fluctuating Fortunes: The Political Power of Business in America. New York: Basic Books, 1989.
- Walton, Gary M. and Ross M. Robertson. History of the American Economy, 5th ed. San Diego: Harcourt Brace Jovanovich, 1983.
- Weber, Gustavus A. The Food, Drug, and Insecticide Administration: Its History, Activities and Organization. Service Monographs of the United States Government, no. 50. Baltimore: Johns Hopkins Press, 1928.
- Wert, Bruce. Dedication to Nancy Fifield McConnell and Martha Morrison Dore. Crittenton Services: The First Century. Washington, D.C.: National Florence Crittenton Mission, 1983.
- Weyl, Walter E. The New Democracy: An Essay on Certain Political and Economic Tendencies in the United States. New York: Macmillan, 1912.
- White, William S. Citadel: The Story of the U.S. Senate. New York: Harper & Brothers, 1956.
- Whiteside, Thomas. The Investigation of Ralph Nader: General Motors vs. One Determined Man. New York: Arbor House, 1972.
- Wilcox, Clair. Public Policies Toward Business, rev. ed. Homewood, Ill.: Richard D. Irwin, 1960.

- Wiley, Harvey W. An Autobiography. Indianapolis: Bobbs-Merrill, 1930.
- \_\_\_\_\_. The History of a Crime Against the Food Law. Washington, D.C.:  
By the Author, 1929.
- Wilson, James Q. "The Politics of Regulation." In The Politics of Regulation,  
edited by James Q. Wilson. New York: Basic Books, 1980.
- Young, James Harvey. Pure Food: Securing the Federal Food and Drugs Act of  
1906. Princeton, N.J.: Princeton University Press, 1989.
- Zieger, Robert H. American Workers, American Unions, 1920-1985. Baltimore:  
Johns Hopkins University Press, 1986.

#### Articles

- "Absent Queen as Commoner Weds Lawyer." Seattle Post-Intelligencer,  
21 June 1928, p. 18.
- "Against Poison and Fraud." The Outlook 83 (30 June 1906): 496-97.
- Allen, Robert McD[owell]. "Pure Food Legislation." Popular Science Monthly  
69 (July 1906): 52-64.
- Anderson, Jack. "Cigarette Cancer Warning Fought." Washington Post,  
17 May 1965, p. B13.
- Andres, Edward M. "History of Food and Drug Legislation in the United  
States." Journal of Home Economics 27 (March 1935): 137-42.
- "August Best Sellers." Publishers' Weekly 112 (24 September 1927): 1091.
- Bailey, Thomas A. "Congressional Opposition to Pure Food Legislation, 1879-  
1906." American Journal of Sociology 36 (July 1930): 52-64.
- Ballentine, Carol. "Taste of Raspberries, Taste of Death: The 1937 Elixir  
Sulfanilamide Incident." FDA Consumer 15 (June 1981): 18-21.
- Barber, Solon R. "Tricky Labels on Foods." Journal of Home Economics 24  
(June 1932): 502-06.
- Berger, Meyer. "Help for the Poisoned Child." Saturday Evening Post 230  
(16 November 1957): 24-25+.

- Bergman, Abraham. "Power Lawn Mowers Are Dangerous Weapons." Northwest Medicine 64 (April 1965): 261-63.
- Bermann, R. B. "Senator Bone Named U.S. Appellate Judge." Seattle Post-Intelligencer, 2 April 1944, pp. 1, 6.
- Bigelow, W. D. "The Development of Pure Food Legislation." Science n.s. 7 (15 April 1898): 505-13.
- "The 'Canners' Bill' and the Consumer." Journal of Home Economics 23 (January 1931): 59-61.
- Chesley, Frank. "Channel 5 Rubs Heads." Seattle Post-Intelligencer, 1 May 1972, p. A12.
- "Cigaret Labeling Donnybrook Looms." Drug News Weekly, 14 December 1964, pp. 1, 19.
- Clausen, Aage R. and Carl E. Van Horn. "The Congressional Response to a Decade of Change, 1963-1972." Journal of Politics 39 (August 1977): 624-66.
- Connelly, Joel. "Help People, Old New Dealer Pleads." Seattle Post-Intelligencer, 3 January 1989, p. A1.
- "The Consumer Movement." Business Week, 22 April 1939, pp. 39-52.
- "The Consumer Wave." The Nation 202 (16 May 1966): 574.
- Cordtz, Dan. "The Senate's 'Maggie': In a Casual Way, Washington's Magnuson Gets Much Done." Wall Street Journal, 2 April 1965, p. 8.
- "County Beer Parlors Will Be Open Today." Seattle Post-Intelligencer, 30 June 1935, p. 1.
- Dameron, Kenneth. "The Consumer Movement." Harvard Business Review 17 (Spring 1939): 271-89.
- "Death From Detergent Stirs U.S. Legislators." Oregonian (Portland), 6 March 1960, p. 23.
- "Divorce Decree Granted Wife of Prosecutor." Seattle Times, 14 April 1935, p. 1.
- Dodge, Charles Richards. "The Need of a Pure-Food Law." Scientific American 94 (16 June 1906): 491.

- Drew, Elizabeth Brenner. "The Politics of Auto Safety." Atlantic Monthly 218 (October 1966): 95-102.
- Drummond, Roscoe. "Buyer Beware: Deceptive Packaging Bill." Washington Post, 3 August 1966, p. A18.
- "Eric Johnston Steps Out of Senate Race." Seattle Post-Intelligencer, 7 April 1944, p. 1.
- Feiler, Arthur. "The Evolution of the Consumer." Annals of the American Academy of Political and Social Science 196 (March 1938): 1-8.
- "The Few and the Many." New Republic 154 (26 February 1966): 7-8.
- "4 Vets Cleared in Communist Raid: Red Menace Pictured in Defense Talk." Seattle Post-Intelligencer, 7 April 1936, p. 1.
- Frazer, Elizabeth. "Hold That Can, Please!" Good Housekeeping 99 (September 1934): 30-31+.
- Gilbert, J. W. "Solon Quits Politics Due to Illness of Mother." Seattle Times, 2 August 1936, p. 1.
- Gordon, Leland. "Protection of the Consumer." Annals of the American Academy of Political and Social Science 206 (November 1939): 75-80.
- Groff, Sam. "Prosecutor's Fight Proves Real Challenge to Magnuson." Seattle Star, 17 August 1934, p. 3.
- Hamby, Alonzo L. "The Vital Center, the Fair Deal, and the Quest for a Liberal Political Economy." American Historical Review 77 (June 1972): 653-78.
- Hinterberger, John. "Business as Usual While Children Burn." Seattle Times, 6 May 1972, p. A1.
- "Holding the Consumer's Hand." Business Week, 24 May 1952, pp. 126, 129.
- Hopkinson, Tom M. "New Battleground: Consumer Interest." Harvard Business Review 42 (September-October 1964): 97-104.
- "In the Kitchen With Maggie." Time 78 (24 November 1961): 12.
- Janssen, Wallace F. "The Story of the Laws Behind the Labels." FDA Consumer 15 (June 1981): 32-45.

- Kallet, Arthur. "Foods and Drugs for the Consumer." Annals of the American Academy of Political and Social Science 173 (May 1934): 26-34.
- \_\_\_\_\_. "No 'New Deal' on Food, Drugs, and Cosmetics." Consumers' Research General Bulletin 4 (October 1934): 1-3.
- "The Label Will Say So." Newsweek 56 (25 July 1960): 75.
- Langdon, H. H. "Adulterated Food." Scientific American 95 (18 August 1906): 115.
- Lowry, Edward. "The Senate Plot Against Pure Food." World's Work 10 (May 1905): 6215-17.
- Lynd, Robert S. "The Consumer Becomes a 'Problem.'" Annals of the American Academy of Political and Social Science 173 (May 1934): 1-6.
- McCarthy, Mary. "Circus Politics in Washington State." The Nation 143 (17 October 1936): 442-44.
- "Magnuson to Fight Zioncheck." Seattle Star, 30 July 1936, p. 2.
- "Magnuson Gets W.C.F. Backing." Seattle Times, 20 August 1936, p. 11.
- "Magnuson Tells of Last Chat." Seattle Post-Intelligencer, 8 August 1936, p. 2.
- "Magnuson Wins; State's Solons All Democratic." Seattle Times, 4 November 1936, p. 9.
- Mason, William E. "Food Adulterations." North American Review 170 (1900): 548-52.
- Means, Gardiner C. "The Consumer and the New Deal." Annals of the American Academy of Political and Social Science 173 (May 1934): 7-17.
- Mitchell, Broadus. "Brief for the Consumer." Annals of the American Academy of Political and Social Science 196 (March 1938): 9-13.
- Mortimer, Charles G. "Let's Keep Politics Out of the Pantry." Look 29 (26 January 1965): 80-85.
- "Nadeau Tells of Final Hour." Seattle Times, 8 August 1936, p. 3.
- "Navy Selects Whidby [sic] Island For Air Base." Seattle Post-Intelligencer, 15 July 1941, p. 1.

- Nelson, Stub. "OPA Hit by Magnuson." Seattle Post-Intelligencer, 27 March 1946, pp. 1, 3.
- Neuberger, Richard. "Progressives in Congress." Common Sense 11 (March 1942): 83-86.
- "A New Era in Consumer Affairs." Consumer Reports 29 (March 1964): 143-44.
- "Our Chaotic Food Laws." The Nation 77 (30 July 1903): 88.
- Palmer, Rachel Lynn. "Good Housekeeping Magazine Helps the Cannery against Consumers." Consumers' Research Confidential Bulletin n.s. 1 (November 1934): 7-9.
- "Peacetime Work Sought By Air Firm." Seattle Times, 6 September 1945, pp. 1, 4.
- "Pick Magnuson: Attorney Chosen President of Democratic League." Seattle Star, 10 September 1931, p. 3.
- "Politics on the West Coast." Fortune 21 (March 1940): 41-53, 134-41.
- Porter, Russell B. "Left Group Tries to Help Roosevelt." New York Times, 3 September 1936, p. 9.
- Prochnau, William W. "Magnuson Faces Some Problems." Seattle Times, 23 January 1967, p. 10.
- \_\_\_\_\_. "Magnuson Wins Fourth Senate Term Despite Strong Challenge: Christensen's Showing Surprises." Seattle Times, 7 November 1962, p. 4.
- "Production Studies: An Interview with Harold Loeb." Plan Age 1 (November 1935): 12-15.
- "Production-Use Bill on Ballot." Seattle Times, 2 August 1936, p. 1.
- "Progressives in Seattle." New Republic 92 (20 October 1937): 285.
- "Prosecutor, Adopted Himself, Helps Babe Find New Home." Seattle Times, 8 March 1936, p. 10.
- "Prosecutor Grabs Real Live Wire." Seattle Times, 20 October 1936, p. 5.
- "Pure Food and Chemicals." The Outlook 93 (4 September 1909): 3-4.

- Reich, Robert B. "Looking Back at Regulation: Business is Asking For Trouble Again." New York Times, 22 November 1981, sec. 3 (Business), p. 2.
- Richards, Edgar. "Some Food Substitutes and Adulterants." Science 15 (7 February 1890): 86-90.
- Ridgeway, James. "Underground War on Auto Insurance." New Republic 155 (3 December 1966): 19-21.
- Roberts, Joseph Dana. "The Sauntering Seattleite: Meteoric Magnuson." The Guide: Official Weekly Guide to Seattle & Seattle Amusement Guide, 14 September 1935.
- Rosen, Gerald R. "What Maggie Wants, Maggie Gets." Dun's Review 99 (April 1972): 38-41, 118.
- Rugaber, Walter. "Car Industry Critic Says He's Trailed, Investigated and Harassed." New York Times, 6 March 1966, p. 94.
- \_\_\_\_\_. "Johnson to Seek Car Safety Code." New York Times, 14 February 1966, p. 18.
- Schlink, Frederick J. "What Government Does and Might Do for the Consumer." Annals of the American Academy of Political and Social Science 173 (May 1934): 125-43.
- Schmeck, Harold M., Jr. "U.S. Report Ranks Cigarettes by Tar." New York Times, 28 November 1967, pp. 1, 43.
- Schoeni, Arthur. "Political Scramble on for Congressional Seats." Seattle Star, 26 May 1936, p. 11.
- "Senate Republicans May Move to Rescind Approval of Bone Appointment to Bench." New York Times, 13 April 1944, p. 12.
- "Senator Bone Gets Circuit Court Post." New York Times, 2 April 1944, p. 42.
- Shaler, M. V. "Women's Work For Pure Food." World To-day 10 (January 1905): 103-04.
- Shook, F. M. "Grades on Labels of Canned Foods." Journal of Home Economics 26 (February 1934): 98-99.
- "Should the Congress Approve the Proposed 'Fair Packaging and Labeling Act?'" Congressional Digest 45 (June-July 1966): 173-91.

"Shutdown Affects Thousands; Outlook for Most Not Black." Seattle Times, 6 September 1945, pp. 1, 8.

Sinclair, Upton. "The Condemned-Meat Industry: A Reply to Mr. J. Ogden Armour." Everybody's Magazine 14 (May 1906): 608-16.

\_\_\_\_\_. "What Life Means to Me." Cosmopolitan Magazine 41 (October 1906): 591-95.

Skreen, C. J. "'Burned-Child' Telecast Draws Heavy Response." Seattle Times, 5 May 1972, p. F7.

\_\_\_\_\_. "Burn Victim Profiled in Hard-Hitting News Show." Seattle Times, 27 April 1972, p. E5.

"Some Townsend Votes Effective." New York Times, 10 September 1936, p. 2.

"Special Voice For Consumers?" Business Week, 8 April 1961, p. 70.

"Squabble Over Cigarettes." New Republic, 154 (7 May 1966): 6-7.

Squire, Clark. "Warren Magnuson, Poor Boy, Is Coming Leader." Seattle Star, 19 October 1936, p. 13.

Stevens, Robert. "Two Cheers for 1870: The American Law School." Perspectives in American History 5 (1971): 405-548.

"A Story for Our Times." Consumer Reports 30 (March 1965): 118-120.

"Support for Tighter Labeling Law." Business Week, 5 March 1960, p. 123.

"Tar Content of Cigarettes." New York Times, 28 November 1967, p. 43.

Tugwell, Rexford C. [sic]. "The Great American Fraud." American Scholar 3 (Winter 1934): 85-95.

Tugwell, Rexford G. "Recollections of '33 and Later." FDA Papers 2 (June 1968): 4-9.

"Underwood Back; Says More Defense Business Coming Here." Seattle Business, 10 July 1941, p. 1.

"U.S. Awards Boeing 3 Million Contract." Seattle Post-Intelligencer, 19 July 1941, p. 4.

- Vaile, Roland S. "Consumption, the End Result of Marketing." Annals of the American Academy of Political and Social Science 209 (May 1940): 14-21.
- "Vast Coulee Plan Means Work for 12,000 in State." Seattle Times, 20 January 1933, p. 17.
- "W. G. Magnuson to Enter Race for Congress." Seattle Post-Intelligencer, 30 July 1936, p. 1.
- Warne, Colston Estey. "Present-Day Advertising--The Consumer's Viewpoint." Annals of the American Academy of Political and Social Science 173 (May 1934): 70-79.
- Wiener, Joshua Lyle. "An Evaluation of the Magnuson-Moss Warranty and Federal Trade Commission Improvement Act of 1975." Journal of Public Policy and Marketing 7 (1988): 65-81.
- "What About the Consumer Movement?" Advertising Age 11 (8 January 1940): 23-28.
- "Who Shall Control Advertising?" Business Week, 3 April 1937, pp. 42-44.
- Wilcox, Clair. "Brand Names, Quality, and Price." Annals of the American Academy of Political and Social Science 173 (May 1934): 80-85.
- Wiley, H. W. "Dr. Wiley on the Pure Food Law." Scientific American 95 (1 September 1906): 154.
- "The Year of Food Laws." The Nation 82 (28 June 1906): 522-23.
- Young, James Harvey. "The Long Struggle for the 1906 Law." FDA Consumer 15 (June 1981): 12-16.
- "Zioncheck Ends Life in 5-Story Leap." San Francisco Chronicle, 8 August 1936, pp. 1, 9.
- "Zioncheck Killed in Five Story Leap." New York Times, 8 August 1936, pp. 1, 11.
- "Zioncheck Put on Series of Tall Escapades." San Francisco Chronicle, 8 August 1936, p. 9.

Public Documents

Congressional Record. 1879-1972. Washington, D.C.

U.S. Congress. House. Committee on Interstate and Foreign Commerce. Hearings on the Pure-Food Bills H.R. 3044, 4527, 7018, 12071, 13806, 13853, and 13859, 59th Cong., 1st sess., 1906.

\_\_\_\_\_. Special Committee on Un-American Activities. Investigation of Un-American Propaganda Activities in the United States: Report on the C.I.O. Political Action Committee, H. Rept. 1311, 78th Cong., 2d sess., 1944.

U.S. Congress. Senate. Adulteration of Food Products, S. Rept. 516 to Accompany S. Res. 447, 56th Cong. 1st sess., 1900.

\_\_\_\_\_. Committee on Appropriations. Subcommittee on Independent Offices. Independent Offices Appropriations, 1956, 84th Cong., 1st sess., 1955.

\_\_\_\_\_. Committee on Appropriations. Subcommittee on Independent Offices. Independent Offices Appropriations, 1957, 84th Cong., 2d sess., 1956.

\_\_\_\_\_. Committee on Commerce. Appointments to the Regulatory Agencies: The Federal Communications Commission and the Federal Trade Commission (1949-1974), by James M. Graham and Victor H. Kramer, Committee Print, 94th Cong., 2d sess., 1976.

\_\_\_\_\_. Committee on Commerce. Consumer Subcommittee. The Child Protection Act of 1966: Hearings on S. 3298, 89th Cong., 2d sess., 1966.

\_\_\_\_\_. Committee on Commerce. Cigarette Labeling, S. Rept. 195 to Accompany S. 559, 89th Cong., 1st sess., 1965.

\_\_\_\_\_. Committee on Commerce. Cigarette Labeling and Advertising: Hearings on Commerce on S. 559 and S. 547, pt. 1, 89th Cong., 1st sess., 1965.

\_\_\_\_\_. Committee on Commerce. Consumer Subcommittee. Consumer Products Guaranty Act: Hearings on S. 3074, 91st Cong., 2d sess., 1970.

\_\_\_\_\_. Committee on Commerce. Fair Packaging and Labeling: Hearings on S. 985, 89th Cong., 1st sess., 1965.

- U.S. Congress. Senate. Committee on Commerce. Fair Packaging and Labeling Act, S. Rept. 1186 to Accompany S. 985, 89th Cong., 2d sess., 1966.
- \_\_\_\_\_. Committee on Commerce. Consumer Subcommittee. Flammable Fabrics Act Amendments of 1967: Hearings on S. 1003, 90th Cong., 1st sess., 1967.
- \_\_\_\_\_. Committee on Commerce. Flammable Fabrics Act Amendments of 1967, S. Rept. 407 to Accompany S. 1003, 90th Cong., 1st sess., 1967.
- \_\_\_\_\_. Committee on Commerce. Subcommittee on S. 1944. Food, Drugs, and Cosmetics: Hearings on S. 1944, 73d Cong., 2d sess., 1933.
- \_\_\_\_\_. Committee on Commerce. The Speeches, Remarks, Press Conferences, and Statements of Senator John F. Kennedy, August 1 Through November 7, 1960, S. Rept. 944, 87th Cong., 1st sess., 1961. pt. 1.
- \_\_\_\_\_. Committee on Commerce. Tire Safety: Hearings on S. 1643, 89th Cong., 1st sess., 1965.
- \_\_\_\_\_. Committee on Commerce. Tire Safety Act of 1966, S. Rept. 1089 to Accompany S. 2669, 89th Cong., 2d sess., 1966.
- \_\_\_\_\_. Committee on Commerce. Traffic Safety: Hearings on S. 3005, 89th Cong., 2d sess., 1966.
- \_\_\_\_\_. Committee on Interstate and Foreign Commerce. Nomination of Edward F. Howrey to Federal Trade Commission, 83d Cong., 1st sess., 1953.
- \_\_\_\_\_. Committee on Interstate and Foreign Commerce. Hazardous Substances for Household Use, S. Rept. 1158 to Accompany S. 1283, 86th Cong., 2d sess., 1960.
- \_\_\_\_\_. Committee on the Judiciary. Subcommittee on Antitrust and Monopoly. Truth in Packaging, Committee Print, 88th Cong., 2d sess., 1964.
- \_\_\_\_\_. Industrial Prices and Their Relative Inflexibility, by Gardiner C. Means, S. Doc. 13, 74th Cong., 1st sess., 1935.
- U.S. Department of Agriculture. Annual Reports of the Department of Agriculture for the Year Ended June 30, 1909, Report of the Chemist, by Harvey W. Wiley. Washington, D.C.: Government Printing Office, 1910.

U.S. Department of Agriculture. Annual Reports of the Department of Agriculture for the Year Ended June 30, 1917, Report of the Chemist, by C. L. Alsberg. Washington, D.C.: Government Printing Office, 1918.

\_\_\_\_\_. Consumer and Marketing Service. Annual Report on Tobacco Statistics, 1970. Statistical Bulletin no. 467 (April 1971).

U.S. Department of Commerce. Bureau of the Census. Historical Statistics of the United States, Colonial Times to 1970, part 2. Washington, D.C.: Government Printing Office, 1975.

\_\_\_\_\_. Statistical Abstract of the United States Washington, D.C.: Government Printing Office, 1961.

U.S. Executive Office of the President. Consumer Advisory Council. First Report. October 1963.

U.S. President. Public Papers of the Presidents of the United States. Washington, D.C.: Office of the Federal Register, National Archives and Records Service, 1953- . John F. Kennedy, 1962.

\_\_\_\_\_. Public Papers of the Presidents of the United States. Washington, D.C.: Office of the Federal Register, National Archives and Records Service, 1953- . Lyndon B. Johnson, 1963-64, 1965, 1966, 1967.

#### Manuscript Collections

Bone, Homer T. Papers. Manuscripts Division, University of Washington Libraries, Seattle, Washington.

Johnson, Lyndon B. Presidential Papers. Lyndon Baines Johnson Library, Austin, Texas.

Magnuson, Warren G. Papers. Manuscripts Division, University of Washington Libraries, Seattle, Washington.

National Archives. Records of the U.S. Senate. Record Group 46. Committee on Commerce, 89th Congress, 1965-66.

Interviews

- Allison, Thomas. Conversation with author. Seattle, Washington, 17 July 1991.
- Bergman, Abraham. Personal interview with author. Seattle, Washington, 14 August 1991. (Transcript deposited at Manuscripts Division, University of Washington Libraries, Seattle, Washington.)
- Grinstein, Gerald. Telephone interview with author. 31 October 1991. (Transcript deposited at Manuscripts Division, University of Washington Libraries, Seattle, Washington.)
- Magnuson, Jermaine. Telephone conversation with author. Seattle, Washington, 24 January 1991.
- \_\_\_\_\_. Telephone interview with author. Seattle, Washington, 12 November 1991.
- Magnuson, Warren G. "A Conversation With a Senator: Warren G. Magnuson." Videotaped interview by William Prochnau, October 1971. Warren G. Magnuson Papers, accession 3181-9, box 9, videotapes 67, 68. University of Washington Libraries, Seattle, Washington.
- \_\_\_\_\_. Interview by Michael L. Gillette, 14 March 1978. Oral History Collection, Lyndon B. Johnson Library, Austin, Texas.
- Pertschuk, Michael. Personal interview with author. Seattle, Washington, 12 April 1991. (Transcript deposited at Manuscripts Division, University of Washington Libraries, Seattle, Washington.)
- Peterson, Esther. Interview by Paige Mulhollan, 25 November 1968. Oral History Collection, Lyndon B. Johnson Library, Austin, Texas.
- Reid, Warren Featherstone. Interviews by Donald A. Ritchie, 1-23 July 1981. Oral History Interviews for the Senate Historical Office. (Transcripts also deposited at University of Washington Libraries and Library of Congress.)

Dissertations

- Acena, Albert Anthony. "The Washington Commonwealth Federation: Reform Politics and the Popular Front." Ph.D. dissertation, University of Washington, 1975.
- Cole, Robert Leslie. "The Democratic Party in Washington State 1919-1933: Barometer of Social Change." Ph.D. dissertation, University of Washington, 1972.
- Krause, Fayette Florent. "Democratic Party Politics in the State of Washington During the New Deal: 1932-1940." Ph.D. dissertation, University of Washington, 1971.

Pamphlets, Bulletins, etc.

- American Enterprise Institute for Public Policy Research. Proposals to Regulate Consumer Warranties and Expand the Powers of the FTC. Legislative Analysis no. 9, 93d Cong. Washington, D.C.: American Enterprise Institute, 1973.
- Consumers' Research. Introduction to Consumers' Research and General Bulletin #1. Bulletin 2.06, May 1932.
- Fallows, James. Warren G. Magnuson: Democratic Senator from Washington. The Ralph Nader Congress Project. Citizens Look at Congress. Washington, D.C.: Grossman, 1972.
- The Magnuson Story: Warren G. Magnuson's Remarkable Record in the U.S. Congress (1936-56). Mimeographed. [1956]. Washington State Biography Collection, Special Collections Division, University of Washington Libraries, Seattle, Washington.
- Sanders, Jane. A Legacy of Public Service. Seattle: University of Washington Libraries, 1987.

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