



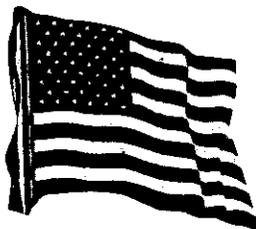
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**U.S. Consumer Product Safety Commission**

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# **1996 AFDO Conference**

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**A F D O**  
**A 100-Year History**  
**of Leadership in**  
**Forging a Government**  
**By The People and For The People**

Please join me in a hearty applause as I congratulate you, AFDO, on 100 years of unmatched service to the public. One hundred years. Much has happened to this country in that time. The creation of AFDO presaged the need for a uniform, national approach to food, drug and product safety.

At the end of the civil war, much of the american populace still traded and bartered for food and household goods. In many cases consumers had a personal acquaintance with the seller of the goods, who may have been a store owner or who may have been the actual maker or producer of the goods. However, this community-based economy was soon to disappear. By the end of the nineteenth century, most of the forces were already in place which would ultimately change us from a nation of many locally produced products to a nation of nation-ally distributed, mass-produced products that fill the homes of today's consumer society.

In 1900, the percentage of the population that classified itself as nearly self-sufficient farmers was close to 42%. Thus, a good portion of the population was growing or raising at least part of their own food and often making other simple household goods for themselves and their neighbors. By 1920, the number of farmers was down to 27% and by 1990, it was under 2%.

As you know, over the last hundred years, farms have become fewer in number and larger in size. Their focus has shifted from their community to a national and, eventually, international market.

As people left the farms and came to the cities, new types of jobs for what would become the "middle class" were being created. People were beginning to have more money to spend. And they had more time to spend it in, partly because the hours worked per week were falling, but also because the average life expectancy was increasing - that's right, the average life. In 1900, the average life expectancy in the U.S. was only 47.3 years of age. Yes! 47.3. In 1993, it was 75.5 years. In the last hundred years we have gained nearly thirty more years in which we can, among other things, buy goods. And of course the population of consumers has grown enormously, more than tripling since the turn of the century.

As the buying power of the american consumer grew, so did the ways in which manufacturers and producers sought to capture that buying power. By the end of the 19th century, mail order catalogues had invaded rural america. That, combined with the creation, in 1896, of nationwide rural free delivery, brought rural america into the stream of interstate commerce.

By 1896, the advertising agency had been born and the psychology of consumer behavior was already being studied and applied to encourage consumers to buy goods they had not known they needed. The first mass marketing campaign was instituted in the 1890's for Uneeda Biscuit [catchy name!]. Traveling salesmen helped spread the word about the new product. The campaign was a great success. In 1900, american advertisers spent \$95 million. By 1919, they were spending half a billion dollars. In 1993, total estimated advertising expenditures were almost 149 billion dollars. Manufacturers and their ad men created consumer demand.

In addition, individual household sized packaging--cans, bottles and boxes--took goods out of the bulk food section of the local store and spread packaged goods with nationally recognized names across the nation.

The country was also undergoing a revolution in transportation - you can't have national marketing and not have ways to move those goods! By the 1890's, four transcontinental rail lines had been built. In 1896 (funny how that year keeps cropping up!) The first ford automobile was assembled. Just four years later, in 1900, there were 8000 automobiles registered in america. America's love of the automobile had been born. There were nearly 78,000 automobiles registered by 1905 and, as we know, that number just kept on growing (in 1990 there were over 143 million cars registered in this country).

So, we could travel greater distances and we were getting farther and farther away from each other and the sources of production of our goods. A buyer beware philosophy worked well when you could go down the road and talk to the maker of the product and he knew you would have a direct impact on his ability to keep customers if he got a reputation in the community for shoddy merchandise. But as people began buying from distant manufacturers, often through several intermediaries, it gradually became clear that the legal doctrine of Caveat Emptor could not in good faith be applied in any expectation of serving a broad public interest. This was especially true as our reliance on imports grew and the consumer was even less likely to have redress against the actual manufacturer.

It is not surprising that the first area in which the public became vocal about needing better remedies for bad merchandise was food products. Nothing is more basic to the american home than food. Conflicting State Regulatory responses to public

concern about unsanitary food handling practices and harmful food additives -- coal tar dye, borax, salicylic acid (no wonder the low life expectancy rate!), purity of drugs -- led to the creation of AFDO and its drive for regulatory uniformity. This increased regulatory activity created a momentum that would result in changes in the way the courts treated injuries from other types of consumer products. That momentum also paved the way for the creation of federal and state agencies whose missions were to protect the consumer from harm, prospectively, not just after the fact.

With food and drug cases leading the way, state courts eventually removed or dramatically reduced the legal impediments which had barred consumer recovery for damages due to defective products:

- The legal concept of privity of contract, which had been used to prevent anyone other than the original buyer of a product from suing for damages due to a defective product was gradually whittled away (remember the McPherson v. Buick case in 1916?) until, in many states, eventually, even innocent bystanders could sue for harm caused by a defective product;

- Contributory negligence on the part of the user of a defective product has largely been removed as a legal barrier to recovery in a strict liability action;

- The notion of how a product can be rendered defective was expanded from consideration only of flaws in the manufacturing process to include defects in design.

The concept of strict liability, articulated in Greenman v. Yuba Power Products by the Supreme Court of California in 1963 laid the foundation for the way we look at product liability today:

"The purpose of [imposing strict liability on manufacturers] is to insure that the cost of injuries resulting from defective products are borne by the manufacturers who put such products on the market rather than by the injured persons who are powerless to protect themselves. ... implicit in the [product's] presence on the market ... is a representation that it will safely do the job for which it is built."

Each state has had to wrestle with the development of product liability law. That there would be differing interpretations from state to state, and sometimes conflicts within a state between the judicial and legislative branch is not surprising, nor, as I speak to you today, have those differences all been resolved. A hundred years have passed, but the courts

still are making law in this area.

The notion that a consumer who suffers harm from a product in one state, could have either an easier or harder time getting redress than a consumer in a neighboring state, has led to attempts to resolve the conflicts through uniform model codes and federal legislation. It has also led to a realization that, despite all of our progress (due in part to AFDO's initial leadership), we are still really all, no matter where we live, one community at risk when it comes to possible exposure to unsafe products or practices. It is ironic that the latest technological revolution, the one in information technology, is in many ways bringing us closer together--through the instant access to ideas on an electronic information highway through time and space rather than through rail or air travel or through the relative creep and crawl on an asphalt/concrete highway.

Particularly in these times when reduced federal budgets are a deliberate ploy in a philosophical war over the role of government. In these times when some elements in society would roll back the progress that has been made over the last hundred years, we have to again work together as the community which we are and pool our resources to provide today's community of consumers the most protection possible.

But this coming together will not automatically happen. As it did 100 years ago, it still requires thoughtful and determined action. Recall that your leaders worked for 27 years to pass important national consumer protection legislation.

William Van Dusen Wishard in his book, *The American Future*, reminds us to return to a concept we're slipping away from. Return to thinking of our government as a product of our people, and not as the engineer of our people: government is still more the mirror of us, and less the artist or architect. End of quote.

If government is the mirror of us all and we are the artist shaping this destiny, then we are, indeed, on a "collective" or community journey in shaping our present and our future. Wishard further states, and I quote:

"You and I are living in the midst of the most difficult period America has ever known. More difficult than WW II, the depression, or even the civil war. For America is at the center of a global cyclone of change, a change so vast and deep that it is difficult to encompass it as we pursue our daily routine.

We can stand at the bottom of the grand canyon, pull a hand-held telephone out of our shirt pocket, and call

Paris. A mother can carry the fertilized ovum of her daughter in her womb, and give birth to a baby who is simultaneously her child and grandchild. Soon we will be able to pre-determine some of that child's characteristics. We are re-defining the roles of men and women, roles that had been accepted in most cultures throughout history.

We can stand on the moon, literally move mountains, or build new structures atom by atom." And, I add, don't forget the power of our television.

Wishard reminds us that Henry Adams predicted in 1905 that at the rate of progress since 1800, every American who lived into the year 2000 would know how to control unlimited power; he would think in complexities unimaginable to an earlier mind. Wishard goes on to say that in achieving this power, we re-define our understanding of reality. This re-definition reaches into the very core of the human psyche.

According to Wishard, such profound change causes us to experience mass confusion about everything -- about the economy, about education, about values, about sexual roles, about the function of a family, about sources of authority, about the role of the state, about the real meaning and content of love, about the well-springs of freedom, about the existence of god -- indeed, about the very meaning of life... End of quote.

Now I ask, could it also be so that in this mass confusion, we are also subject to obfuscation and manipulation in these matters by confused philosophies. As to the role of the state, for example, we hear continuously the shibboleth that less government is better.

But think about it - would AFDO's founders, Ohio's Joseph Blackburn and Michigan's Elliot Grosvenor think that today we really need less uniformity, less of a state/local and national government partnership approach to food and drug safety, and to consumer product safety, less unified protection of the environment, in the face of ever-increasing -- even internationalization -- of mass marketing, mass product manufacturing, and mass consumer product and food and drug distribution systems? Think about it!

We the people must continuously assert ourselves. We need more than ever, more vigilance, and more thoughtful unbiased, clear-minded - not ideological! - participation in forging a government by the people and for the people in efforts to re-define the role of the state -- in efforts to redefine what we should expect from a modern government of the 21st century.

For those of us who may be confused, who may have forgotten that government is the "mirror" of us - or, for those of us who would refuse to act for whatever reason -- who, very much unlike AFDO's founders of one hundred years ago, would insist on sitting on the side lines as others define our future, I leave you with this poem, My Enemy, by Edwin Sabin: My Enemy!

An enemy I had, whose mien  
    I stoutly strove in vain to know;  
For hard he dogged my steps, unseen,  
    Wherever I might go.

My plans he balked; my aims he foiled;  
    He blocked my every onward way.  
When for some lofty goal I toiled,  
    He grimly said me nay.

"Come forth!" I cried, "Lay bare thy guise!  
    Thy wretched features I would see."  
Yet always to my straining eyes  
    He dwelt in mystery.

Until one night held him fast,  
    The veil from off his form did draw;  
I gazed upon his face at last --  
    And, lo! Myself I saw.