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NOMINATION OF MARY SHEILA GALL, TO CHAIR THE CONSUMER PRODUCT SAFETY COMMISSION

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

JULY 25, 2001

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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NOMINATION OF MARY SHEILA GALL, TO CHAIR THE CONSUMER PRODUCT SAFETY COMMISSION

WEDNESDAY, JULY 25, 2001

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m. in room SR–253, Russell Senate Office Building, Hon. Ernest F. Hollings [Chairman] presiding.

Staff members assigned to this hearing: Moses Boyd, Democratic Chief Counsel; Aisha Pearson, Democratic Assistant to the Chief and General Counsel; Jeanne Bumpus, Republican General Counsel; and Virginia Pounds, Republican Professional Staff Member.

OPENING STATEMENT OF HON. ERNEST F. HOLLINGS, U.S. SENATOR FROM SOUTH CAROLINA

The CHAIRMAN. Good morning. This morning we will hold a hearing on the nomination of Commissioner Mary Sheila Gall to serve as Chairperson of the Consumer Product Safety Commission.

Ms. Gall, we welcome you this morning. I understand two of your children are with you, and if they would stand the Committee would welcome them and recognize them. Good. That is Walter Gall and Rosa Gall.

Ms. GALL. Thank you, Mr. Chairman.

The CHAIRMAN. Glad to have you both here with the nominee.

I have a statement, but I will just file it for the record and yield to Senator McCain.

[The prepared statement of Senator Hollings follows:]

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA

Let me begin by welcoming Commissioner Gall to the Committee and to thank her for her appearance today.

I am sure she is well aware of the seriousness of today's hearing. It has been called to consider her nomination to be Chairperson for the Consumer Product Safety Commission. There is a great deal of interest in this nomination. To get right to the point, a number of nationally recognized consumer organizations have voiced strong concerns about Commissioner Gall's appropriateness to serve as Chairperson of the CPSC, and on that basis are opposing her selection.

As Commissioner Gall will properly acknowledge, she has served as a Commissioner on the CPSC now for 10 years. She was first appointed in 1991 by President Bush, renominated and appointed in 1999 by President Clinton, as she was paired with the then and current Chairman Ann Brown for renomination. In recent times, the Commission has been functioning with three Commissioners. The law requires that at least one of those persons be a member of the opposite party of the Presi-

dent's party. This law is necessary to provide a balance of viewpoints on federal commissions and at independent agencies. Thus under President Clinton, Ms. Gall served as the Minority Commissioner, and was selected by the Republican Members of Congress to maintain and fulfill that role—a deference a President, and members of the other party generally honor. I, along with other members of this Committee, and the Senate supported this effort to have Commissioner Gall re-confirmed for another term.

Commissioner Gall, however, has now been nominated for a different position, which will require her to play a different role and to fulfill different responsibilities. Unlike being a Commissioner, as the Chairperson she will be required to serve as the number one government official in the country on product safety.

Additionally, she will be required to be the head administrator at the Commission; in charge of setting its agenda, determining its direction and the actions it will pursue; in charge of overseeing and directing the Commission's staff, and maintaining their morale; and lastly, in charge of educating the American people about the role their government is playing protecting them from hazards associated with consumer products.

The question before the Committee is whether Commissioner Mary Sheila Gall is the appropriate individual to fulfill this role and these responsibilities.

As I noted, several outside organizations have voiced concerns about Ms. Gall's record. Specifically, they claim that she has a tendency to:

(1) require excessive evidence before promulgating safety standards;

(2) blame consumers for their injuries rather than considering possible defects in products or seeking reasonable ways to minimize potential product hazards; and

(3) oppose the adoption of mandatory standards, even when evidence exists either of industry's noncompliance with a voluntary standard or of serious deaths and injuries associated with a product.

These groups claim that Ms. Gall often takes such positions even in cases involving children. From their point of view, Ms. Gall proceeds from the theory that parents are to be held responsible substantially for their children; thus any time the CPSC considers a case involving children, the first issue to be addressed is parental behavior—has the parent been irresponsible—regardless of whether the product is defective or can be made to be safer.

As I mentioned Commissioner Gall will be given ample opportunity to respond to these charges as I am sure she is prepared to do.

There are two additional points I would like to make before turning to my colleague, John McCain. First, let me make clear that this hearing will be conducted fairly and that Commissioner Gall will be given the opportunity to state her case on the record and in follow-up.

Second, in closing, I would like to make a few comments about the CPSC. It is an agency that is dear to me. The agency was officially created in 1972. Its mission was clear: it was to protect the American public from unreasonable dangers associated with consumer products. That mission is still important, in fact it may be even more so today. Product-related injuries today contribute to more than 20,000 deaths and close to 30 million injuries every year; they cause the death of more children than any health-related disease. We must find a way to protect our children from these kinds of dangers. Losing thousands of children like this every year is uncalled for. This is the charge of the CPSC.

Again, the task before us is deciding whether Mary Sheila Gall is the ideal person to uphold this mission. Her record, and the answers she gives today will be important in that determination.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA

Senator MCCAIN. Well, thank you, Mr. Chairman, and thank you for holding this hearing on this important position.

In 1991 Mary Sheila Gall was nominated to the Consumer Product Safety Commission by President George Bush. The task of the CPSC is an important one, to protect the public against unreasonable risks of injuries and deaths associated with consumer products.

Between 1991 and 1999, Commissioner Gall voted with the majority of the three-member Commission the vast majority of times, supported the Commission's enforcement actions, and sought substantial fines and criminal penalties against companies that violated the Consumer Product Safety Act and other statutes enforced by the CPSC. During this time, Commissioner Gall also cast a number of votes that have since become the focus of efforts to derail her nomination. Let me recite this parade of horribles.

In 1992, Commissioner Gall voted with both of her colleagues against a rulemaking to put choking hazard labels on marbles, balloons, and small toys. One year later she voted, again unanimously, not to begin a rulemaking on baby walkers, opting instead to urge the continued improvement of the product through voluntary standards.

In 1994, Commissioner Gall voted, again with the majority, not to begin a rulemaking on baby bath seats after a petition to ban them was filed. Also in 1994, in response to a petition filed by the National Association of State Fire Marshals, Commissioner Gall voted not to begin a rulemaking on upholstered furniture flammability standards. Despite this, the State Fire Marshals endorsed her chairmanship earlier this year.

In 1996 Gall cast another vote with the majority for which she is now being vilified. That time it was to modify the standards for children's sleepwear so as not to require sleepwear for children under 9 months or snug-fitting sleepwear to be flame resistant. Gall reasoned that parents were putting their children in untreated, more comfortable loose cotton garments rather than the fire-resistant fabrics and that it was safer for children to sleep in snug, untreated pajamas, which were less likely to catch fire. Commissioner Moore agreed with her. Since then, Chairman Brown has agreed that the CPSC should not expend additional resources to reconsider this 1996 action.

That same year, Commissioner Gall voted, this time in the minority, not to initiate a rulemaking on crib slats, commenting that the voluntary standards process had not been given time to work, but cautioning that regulation might still be required if the voluntary process proved inadequate. Voluntary standards have since been adopted and the CPSC's regulatory work is stalled.

After casting all of these votes, for which she is now being portrayed as a cold-hearted industry pawn, in 1999—in 1999 Commissioner Gall was renominated to a second 7-year term by President Bill Clinton. The nomination was sent to the Senate on May 8, 1999. On June 17th, 1999, the Commerce Committee held a hearing on the nomination, during which I was the only member of the Committee to pose questions. On June 23rd, 1999, the Committee recommended by voice vote, with no audible dissension, that Ms. Gall's nomination be favorably reported to the full Senate.

On July 1, by unanimous consent and without a single statement of opposition or concern being entered into the record, Mary Sheila Gall was reconfirmed to a second full term at the CPSC.

Earlier this year, President Bush indicated his intent to nominate Commissioner Gall to Chair of the CPSC. The Senate has already unanimously concurred on Ms. Gall's qualifications to be the CPSC Commissioner. I believe that the President is entitled to his

prerogative to select the Chairman and that the Senate should in most instances defer to his judgment.

I also believe the President has made a good choice with Commissioner Gall, who during her tenure at the CPSC has demonstrated her commitment to reason, to fair process, and to safety.

What I do not believe, however, is the line that Commissioner Gall's opponents have developed recently to justify their opposition to her, and this line is that Mary Sheila Gall, while perfectly fine as a CPSC Commissioner, is not qualified to chair the Commission.

The CPSC, like other independent agencies, is not autocratic. It is a collegial body whose agenda and budget are set by all three Commissioners, all of whom have an equal vote in rulemakings and enforcement actions. It is because the Commissioners must work so closely that Commissioner Thomas Moore, a Democrat who has been at the CPSC since 1995, has come to know her philosophy and work intimately. It is Commissioner Moore who offers what is in my mind the most persuasive commentary on her nomination.

In response to an article that appeared in *USA Today* earlier this year, Commissioner Moore wrote: "I was dismayed to read the article in the April 25th *USA Today* giving an unfairly negative slant to the record and beliefs of Mary Sheila Gall, my fellow Commissioner at the Consumer Product Safety Commission."

He continued: "During my 6 years at the agency, I have been impressed by Commissioner Gall's hard work, the thoughtful consideration of every issue, and been persuaded on occasion by her arguments. For her part, she has been willing to change her views after hearing her colleagues on certain matters. But whether we agree on an issue of note, I can find nothing in her views or her voting record to cause me any alarm about her assuming the chairmanship of the agency."

Finally, he said: "While I may have a different opinion from Commissioner Gall on some aspects of Commission business, I have no doubt she will listen to my views and that, however she votes, her decision will be well-reasoned and give expression to a valid viewpoint shared by many, perhaps the majority of Americans."

I commend Ms. Gall for her service to the CPSC and to this country and I commend her also for her willingness to face the tough, but I hope fair, questions she will be asked today.

Thank you, Mr. Chairman, for holding this hearing.

[The prepared statement of Senator McCain follows:]

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What I do not believe, however, is the line that Commissioner Gall's opponents have developed recently to justify their opposition to her, and this line is that Mary Sheila Gall, while perfectly fine as a CPSC Commissioner, is not qualified to Chair the Commission. The CPSC, like other independent agencies, is not autocratic. It is a collegial body whose agenda and budget are set by all three Commissioners, all of whom have an equal vote in rulemakings and enforcement actions.

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> "I was dismayed to read the article in the April 25th *USA Today* giving an unfairly negative slant to the record and beliefs of Mary Sheila Gall, my fellow Commissioner at the Consumer Product Safety Commission."

He continued:

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> "While I may have a different opinion than Commissioner Gall on some aspects of Commissioner business, I have no doubt she will listen to my views and that, however she votes, her decision will be well-reasoned and give expression to a valid viewpoint shared by many (perhaps the majority) of Americans."

I commend Ms. Gall for her service to the CPSC and to this country, and commend her also for her willingness to face the tough, but I hope fair, questions she will be asked today. Thank you Mr. Chairman, for holding this hearing.

The CHAIRMAN. Thank you, Senator.

Let me as Chairman recoup a minute of my time. Yes, I did vote, Ms. Gall, for you in 1991. In all candor, it was for minority member's position on the Consumer Product Safety Commission. I did not look at any particular record at that time. I am convinced over the 30-some years that we do not as Senators really study in any in-depth manner the record because, as the Senator has pointed out, nominations are the President's prerogative and we give tremendous weight to that.

Incidentally, in 1999, I remember it well because I wanted Ann Brown, and we made a deal. They wanted you; I wanted Ann Brown.

Now I have had occasion to review your record and there are serious misgivings about your votes, in the sense that you will be the Chairman and you will lead that Commission, as Ann Brown has done a magnificent job in my opinion. So let me just say that the reason for the hearing is to make up our minds and have you make a record here with respect to your particular record and answer any questions that we may have.

Let us see, Senator——

Senator MCCAIN. Could I just say, Mr. Chairman, you have always treated every nominee in my knowledge in my years of experience with you in a fair and objective fashion, and I appreciate that and I know that the witness does today.

I thank you, Mr. Chairman.

The CHAIRMAN. Thank you, too.

Senator Wyden.

STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON

Senator WYDEN. Thank you very much, Mr. Chairman, and I am going to be brief.

Mr. Chairman, taking a hands-off approach to hazardous products that endanger the public is not what the American people expect their government to do. I am here to listen this morning because I think that this is an especially important appointment. This appointment is an early signal of where this Administration stands on basic consumer protection issues and that is why it is so important that we review this record that Chairman Hollings talked about carefully.

I was particularly troubled, Ms. Gall, and we talked about it when you came to my office, about your comments referring to the government's role in the consumer protection area as creating a "federal Nanny State." You and I talked about that. You wrote me a letter on that subject.

Mr. Chairman, I would ask unanimous consent that that letter Ms. Gall wrote me be a part of the record.

The CHAIRMAN. It will be included.

[The material referred to follows:]

U.S. CONSUMER PRODUCT SAFETY COMMISSION,
Washington, DC, May 15, 2001.

Hon. RON WYDEN,
United States Senate,
Washington, DC.

Dear Senator Wyden:

I am following up from our meeting on Friday, May 11, 2001, in which you asked me for additional materials in connection with my reference to the "Federal Nanny State." That reference was made in a letter to the editor that I wrote to *USA Today* in connection with a press release that the Commission issued about the practice of "co-sleeping." (Co-sleeping is the practice of adults sleeping in the same bed with infants.) I characterized the press release as a proclamation on behalf of the Federal Nanny State because its basis was not a product over which the Commission has jurisdiction, but rather a cultural practice. It is appropriate for the Commission to warn the public about defective products, but warnings about cultural practices are not within its purview.

So that you may better understand the background against which I made my remark, I am enclosing the press release that prompted the letter, and an associated Commission warning document. You will note that both documents refer to the risks associated with placing infants alone in adult beds, which is a genuine product hazard, because infants may become trapped between the mattress and the wall. Those references were added at my insistence. I am also enclosing a number of press stories that were critical of the Commission press release.

The letter to the editor refers to a "procession of proclamations." In addition to the press release on co-sleeping, I have been critical of Commission press releases that state obvious hazards, such as falling off of snowboards (press release enclosed). Finally, I am enclosing a press article reporting that the General Counsel of the Commission had intimated that motion pictures might be within the Commission's jurisdiction for purposes of depicting safe practices associated with all-terrain vehicle riding.

It was press releases or statements such as these, which seek to lecture people about either practices (co-sleeping) or products (movies) over which the Commission has no jurisdiction, or which lecture people about obvious hazards (such as falling down while moving forward) that prompted my remark about the Federal Nanny State. I hope that this letter has better explained the origins of and reasons for my use of those words

The Commission, of course, has done excellent work and accomplished genuine safety results when it has focused on its core mission of *product* safety. For example, Commission regulations requiring that cigarette lighters be child-resistant saved an estimated 130 lives and prevented 950 injuries and 4,800 fires between 1994 and 1998 (the last year on which we have complete data). Commission regulations on child-resistant packaging for prescription and over-the-counter drugs have saved an estimated 700 children's lives since enactment of the Poison Prevention Packaging Act. The numbers of injuries per 100,000 pounds of fireworks shipped was cut in half from 1976–78 to 1991–93, at least partially as a result of Commission fireworks regulations. These results show what the Commission is capable of achieving when it concentrates on the mission Congress gave it.

If you desire further information, or if you have additional questions, please feel free to have your staff call Patsy Semple or Dennis Wilson.

Sincerely,

MARY SHEILA GALL,
Commissioner.

Enclosures (10)

INFANT-SLEEPING STUDY A CASE OF AGENCY'S 'OVER-REACHING'

Mary Sheila Gall, Vice Chairman, U.S. Consumer Product Safety Commission, Washington, D.C.

USA Today, October 12, 1999

(Copyright 1999, Gannett Company, Inc.)

USA TODAY's article addressing the latest warnings from the U.S. Consumer Product Safety Commission (CPSC) on the perilous hazards of children co-sleeping with their parents requires that I respond ("Study advises against parent-infant 'co-sleeping,'" Life, Sept. 30).

Philosophically, I am troubled by an official report in which this agency instructs mothers on whether they should be "co-sleeping" with their children.

Frankly, as the only current Republican member on the commission, it has been increasingly frustrating, in recent years, to witness the procession of proclamations issued by this agency on behalf of the federal Nanny State.

Specifically, I was unable to find a defective consumer product identified in our "study" as the causation of this hazard. Quite simply, there wasn't any product, defect or jurisdiction—just babies sleeping with their parents.

This may well be a controversial practice, but it is apparently a practice that many leading authorities have proclaimed actually promotes family bonding.

But the lack of any subject-matter jurisdiction over human behavior apparently did not get in the way of this agency's running with an attention-grabbing headline.

In point of fact, this CPSC "study" was never intended to be issued as an official government research effort. This was originally an unofficial, independent effort produced by several employees of the consumer product safety agency.

I should note that I always have supported this sort of independent research by members of our staff—but only as their own personal work product, produced on their own time, and not as an agency-sanctioned or agency-funded effort.

This staff study was deemed retroactively to be an official CPSC study—only after it was completed and written and on the verge of publication by a prestigious professional organization. While I personally admire these staffers for their initiative, I voted against proclaiming this to be an official CPSC study.

Why? Very simply—it was not.

I have been a member of this commission for almost eight years and am very proud of this agency's diligence on behalf of the American consumer. Its agenda does provide a valuable public service.

Our recent efforts on smoke detectors, child-resistant cigarette lighters and fireworks are only a few illustrations of how the consumer protection agency can indeed save lives.

I also should note that I have consistently advocated personal responsibility, criticizing attempts to declare a particular product defective when the only "hazard" has been the bizarre use of a product by the consumer. But, here, there simply is no product—defective or otherwise.

The only peril I can detect in this particular episode is over-reaching by a federal regulatory agency.

NEWS FROM CPSC

U.S. Consumer Product Safety Commission

Office of Information and Public Affairs — Washington, DC 20207

FOR IMMEDIATE RELEASE — CONTACT: Ken Giles
September 29, 1999
Release #99–175

CPSC Warns Against Placing Babies in Adult Beds; Study finds 64 deaths each year from suffocation and strangulation

WASHINGTON, D.C.—The U.S. Consumer Product Safety Commission (CPSC) is warning parents and caregivers about the dangers of placing babies to sleep in adult beds. A CPSC study published in the October issue of the *Archives of Pediatrics and Adolescent Medicine* found that placing babies to sleep in adult beds puts them at risk of suffocation or strangulation. This is a danger of which many parents and caregivers are unaware. The study revealed an average 64 deaths per year to babies under the age of 2 years placed to sleep in adult beds, including waterbeds and daybeds.

A review of incident data from January 1990 to December 1997 linked adult beds to at least 515 baby deaths. Analysis of the deaths revealed four major hazard patterns:

- Suffocation associated with the co-sleeping of adult and baby.
- Suffocation where an infant becomes entrapped or wedged between the mattress and another object.
- Suffocation due to airway obstruction when the baby is face down on a waterbed mattress.
- Strangulation in rails or openings on beds that allow a baby's body to pass through while entrapping the head.

CPSC's study is the first to quantify the number of fatalities resulting from the practice of co-sleeping with babies. Of the 515 deaths, 121 were reported to be due to a parent, caregiver or sibling rolling on top of or against the baby while sleeping. More than three-quarters of these deaths occurred to infants younger than 3 months. The other 394 deaths resulted from suffocation or from strangulation caused by entrapment of the child's head in various structures of the bed. Entrapments occurred between the mattress and the wall, bed frame, headboard, footboard, bed railings or adjacent furniture.

One of the most tragic aspects of these deaths is that they are largely preventable. In many cases, the adult placing the baby in the adult bed was unaware of or underestimated the danger posed. The practice of co-sleeping can result in the adult rolling on top of or next to the baby smothering him or her. Mothers who breastfeed should be alerted to this hazard and should be encouraged to return the baby to the crib after breast-feeding.

"Don't sleep with your baby or put the baby down to sleep in an adult bed," said CPSC Chairman Ann Brown. "The only safe place for babies is in a crib that meets current safety standards and has a firm, tight-fitting mattress. Place babies to sleep on their backs and remove all soft bedding and pillow-like items from the crib."

Of the 394 entrapment deaths, 296 were on adult beds, 79 were on waterbeds and 10 were on daybeds. Bed rails, which are portable railings that can be installed on toddler and adult beds to keep toddlers from falling out of beds, accounted for nine baby deaths. CPSC is working with the bed rail industry on the design of these products to reduce the hazard. The following chart provides more details on the fatality scenarios from entrapment and co-sleeping.

Fatality Scenario	Sleeping Environment				
	Adult Bed	Waterbed	Daybed	Portable Bed Rail	Total
Wedging between mattress and wall	125	3			128
Wedging between mattress and bed frame, headboard or footboard	128	8	6		142
Entrapment between mattress and adjacent furniture	20				20
Strangulation between bed railings	23		4		27
Entrapment between portable bed rail and mattress				9	9
Suffocation on a waterbed mattress		68			68
Total (entrapment)	296	79	10	9	394
Co-sleeping death (rolling on top of or against baby while sleeping)	108	13			121
Total (entrapment + co-sleeping)	404	92	10	9	515

For 1998 and 1999, the Commission is aware of at least 76 additional deaths, 35 due to suffocation associated with co-sleeping and 41 due to entrapments. The *Ar-*

chives of Pediatrics and Adolescent Medicine, a member of the Journal of the American Medical Association family of journals, study "Adult Beds Are Unsafe Places for Children to Sleep," primarily written by CPSC's Suad Nakamura, Ph.D., was co-authored by Marilyn Wind, Ph.D., (CPSC) and Mary Ann Danello, Ph.D., (CPSC). Nakamura gave details about the findings at an AMA briefing in New York today.

CPSC has also issued a Safety Alert warning against placing babies in adult beds.

Consumer Product Safety Commission

CPSC CAUTIONS CAREGIVERS ABOUT HIDDEN HAZARDS FOR BABIES ON ADULT BEDS

Reports of more than 100 deaths from 1999–2001

Just as the U.S. Consumer Product Safety Commission (CPSC) has alerted parents and caregivers to the hazards of soft bedding in cribs, it is now alerting them to the hidden hazards associated with placing infants on adult beds. The CPSC has reports of more than 100 deaths of children under age 2, most from suffocation, associated with features of adult beds. These deaths occurred from January 1, 1999 to December 31, 2001 and involve an entrapment, a fall, or a situation in which bedding or the position of the child was related to the death. Nearly all of the children, 98%, were babies under 1 year old.

Many parents and caregivers are unaware that there are hidden hazards when placing babies on adult beds. Consumers often think that if an adult bed is pushed against a wall, or pillows are placed along the sides of the bed, small babies will be safe as they sleep. However, CPSC data shows hidden hazards for babies on adult beds.

Safety Tips

- Wherever your baby sleeps should be as safe as possible. Babies placed on adult beds risk suffocation from several hidden hazards such as:
  —Entrapment between the bed and wall, or between the bed and another object,
  —Entrapment involving the bed frame, headboard or footboard,
  —Falls from adult beds onto piles of clothing, plastic bags, or other soft materials resulting in suffocation, and
  —Suffocation in soft bedding (such as pillows or thick quilts and comforters).
- Always place the baby to sleep on his or her back, not on its stomach.
- When using a crib, make sure it meets current safety standards, has a firm, tight-fitting mattress and tight-fitting bottom sheet.
- When using a portable crib or playpen, be sure to use only the mattress or pad provided by the manufacturer.

Baby Doll Simulation



Entrapment between bed & wall



Entrapment between bed & object



Entrapment in footboard

MAYBE THEY SHOULDN'T SLEEP AT ALL

The New York Post, October 1, 1999

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No wonder conservatives refer to the federal government as "the nanny state."

The Consumer Product Safety Commission stepped in this week to issue a warning about children under the age of two sleeping in their parents' beds.

It did so based on one survey—one survey—that attributed 515 baby deaths over a seven-year period to sleeping in their parents' bed.

The first question this raises is: Why is the Consumer Product Safety Commission of all agencies conducting this study? Last we checked, neither parents nor babies fall under anyone's definition of "product."

There is no indication that a faulty bed or pillow caused any of these cases of early death. Instead, it is unquantifiable actions such as "overlying" or an adult occasionally suffocating an infant.

The survey attributes 64 baby deaths a year to sharing the parental bed—out of 3.9 million American babies born each year. And it still issued its front-page warning despite the fact that this number is statistically insignificant from the number of babies in cribs—50 a year—who die because they get their heads caught between the slats.

Now compare these numbers with the hundreds upon hundreds of millions of babies born for millennia who have slept close to their parents.

Child safety is vitally important. But it is nothing short of irresponsible for the federal government to be terrifying parents based on the flimsiest of evidence. And it's nothing short of shocking for the Consumer Product Safety Commission to be butting in.

Here's something of a radical notion—how about letting parents decide how best to care for their babies? Uncle Sam, consider yourself relieved of this particular baby-sitting duty.

'CO-SLEEPING' CAN BE HAZARD FOR BABIES, FEDERAL OFFICIALS WARN

The Washington Post, September 30, 1999

by Caroline E. Mayer, Washington Post Staff Writer

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. . . old sleep in bed with their parents, setting off a new debate over whether the increasingly popular practice puts children at risk of suffocating.

The Consumer Product Safety Commission warning about "co-sleeping" was prompted by a new CPSC study that found the practice causes about 15 deaths a year.

"There is some evidence to suggest that the practice [of co-sleeping] may introduce a hazard of death by overlying" with a parent rolling on top of the baby, or next to it and smothering him or her, said the CPSC study, which reviewed death certificates nationwide from 1990 through . . .

A number of prominent co-sleeping advocates—who encourage bed-sharing as a way to promote breast-feeding and increase bonding between parent and child—immediately criticized the CPSC warning.

James J. McKenna, a biological anthropologist . . .

. . . who filled out death certificates. The findings ignore studies that show that "even in the deepest stages of their sleep, mothers respond within seconds to a strange noise, sudden movement, grunt or cough of their co-sleeping infant," McKenna said.

Pediatrician William Sears, who endorses co-sleeping in his best-selling guide, "The Baby Book," agreed. "If you look at the data very carefully, you can conclude that more infants die alone in cribs than die in a parent's bed," Sears . . .

. . . in their cribs and suffocate, mostly due to defects or broken parts in older cribs.

The study, released yesterday at an American Medical Association briefing, is the first to quantify the number of fatalities resulting from co-sleeping, said the commission, which has been active in a number of issues aimed at decreasing infant deaths, such as improving crib safety.

According to the CPSC data, 515 infant deaths occurred in adult beds from 1990 through 1997. Of these, 121 were caused by co-sleeping, with 77 percent of these deaths occurring in infants younger than 3 months old. While earlier studies said most overlying deaths occurred on waterbeds, the CPSC study found only 11 . . .

KIDS IN THE BED;
A GOVERNMENT PRONOUNCEMENT ON THE DANGERS OF "CO-SLEEPING" DESERVES A CLOSER LOOK

Time, October 11, 1999

by Amy Dickinson

(Copyright 1999, Time Inc.)

You've got to love the Consumer Product Safety Commission, nanny to the nation. They're the guys who put those impenetrable safety caps on aspirin bottles and rounded off the corners of our furniture; they're the original authors of WARNING: CONTENTS HOT and THIS LADDER IS TO BE USED FOR CLIMBING. Without the CPSC, Americans wouldn't know the dangers of rickety swing sets, toxic crayons or detachable doll's eyes. Last week the CPSC announced that parents shouldn't allow infants to sleep with them in bed, owing to the risk of suffocation, strangulation or death by "overlying"—when a sleeping parent mistakenly rolls onto an in-

fant. This announcement was based on data collected from 1990 to 1997 showing that on average, 64 American babies die each year while "co-sleeping" with their parents in adult beds.

The CPSC presented this warning to parents in absolute terms, saying that babies should never be allowed to sleep on adult beds, daybeds or waterbeds; that doing so exposes the child to a "potentially fatal hazard." The CPSC acknowledges "limitations" with its data, in that the reported cause of death in some cases is based on "anecdotal information." In some of the cases the babies might have been victims of sudden infant death syndrome (SIDS); it is also not clear if parents' consumption of alcohol or drugs might have contributed to the "overlay" deaths. (Interestingly, even safety equipment is dangerous if misused: eight infant deaths during this period involved baby rails, intended to keep the child from rolling out of bed.)

So consider yourself warned. Now, if you're like me, you're thinking about ignoring the CPSC, but you're anxious about the consequences (I used to feel like a criminal when I put my baby to bed in a non-flame-retardant sleeper). I asked Ann Brown, chairwoman of the CPSC, if she thought the co-sleeping warning isn't just a touch overblown. Hoarse from defending the CPSC's position on co-sleeping, she said the "huge number of deaths meant it would be wrong for us to withhold this information from parents."

The fact is, 3,880,894 American babies were born in 1997, the most recent year for which we have statistics. Sadly, 28,045 died before their first birthday. But only 64 of them died on adult beds, compared with 736 who died of other accidental injuries—for instance, 160 babies under the age of one year died in motor-vehicle accidents.

Death is quantifiable, as the data sadly show. What can't be measured so easily is the benefit of closeness, both for the baby and the parent. There is no question that parents and their babies should have as much intimate contact as possible. The problem is how to get it. Dr. John Kattwinkel, who headed a task force on infant-sleep positions and SIDS for the American Academy of Pediatrics, told me that if parents can avoid "loose bedding, pillows, soft surfaces, waterbeds, mattresses that might pull away from bed frames, smoking and drinking in bed," then co-sleeping was O.K. Otherwise they should have their infant within reach in a bassinet. "They have this kind now that straps to the bed," Dr. Kattwinkel offered. "Straps? I don't know. Sounds like a hazard to me," I said. He assured me that there are bassinets out there that have been tested and approved by the Consumer Product Safety Commission.

Whew! Now don't we all feel better?

See our website at time.com/personal for more on child safety and nurturing.

NEWS FROM CPSC

U.S. Consumer Product Safety Commission

Office of Information and Public Affairs — Washington, DC 20207

FOR IMMEDIATE RELEASE
January 24, 1995
Release #95–068

CONTACT: Kate Premo

CPSC Says Snowboarding Boom Leads To More Injuries

WASHINGTON, D.C.—The U.S. Consumer Product Safety Commission (CPSC) today is releasing statistics showing a 42 percent increase in snowboard-related injuries from 1993 to 1994. Snowboarding is the fastest growing winter sport and is rapidly gaining popularity at ski resorts across the country.

CPSC Chairman Ann Brown said, "Snowboarding is one of the hottest new sports on the slopes and a great way to enjoy the winter outdoors. We all know that falling or 'wiping out' is inevitable. Snowboarders should take lessons to help them enjoy the sport and reduce the risk of injury."

An estimated 27,000 snowboarding injuries were treated in hospital emergency rooms in 1994, up from about 19,000 for 1993, an increase of 42 percent. Unlike skiing, where the largest number of injuries involve the knee, the greatest number of snowboarding injuries involve the wrist or arm. About 27 percent of snowboarding injuries in 1994 involved the wrist or arm and 9 percent involved the knee. Skiers experienced more knee injuries (27 percent of injuries) and fewer wrist or arm injuries (7 percent). Snowboarders and skiers were equally likely to sustain shoulder injuries (20 percent for snowboarders and 21 percent for skiers).

Over half the snowboarding injuries in 1994 occurred to persons age 15–24. Males accounted for about 19,000 of the injuries. Although the sport has traditionally been

popular among young men, snowboarding is quickly catching on as a family sport and is attracting more women each year.

Most snowboarding injuries result from falling. Relatively few of the reported injuries involved collisions with trees, other snowboarders, or skiers. Factors contributing to snowboarding injuries include a lack of skill or instruction for novice snowboarders and high risk behavior.

Since 1991, CPSC has received reports of five deaths from snowboarding, all involving males between the ages of 15 and 28. Most of the fatalities resulted from suffocation in deep snow.

As the number of snowboarding participants surpasses 2 million, many ski resorts and facilities are offering snowboarding lessons and providing guidance on snowboarding etiquette to help prevent injury.

THE BRAKES ON CULKIN'S RIDE

The Washington Post, May 26, 1994

by Lois Romano

(Copyright 1994, The Washington Post)

Warner Bros. might see it as just good fun and box office receipts, but the Consumer Product Safety Commission isn't laughing.

The federal regulatory agency has strongly warned Warner that safety procedures had better be followed in scenes where child star Macaulay Culkin zooms around on a controversial all-terrain vehicle (ATV) in the upcoming "Richie Rich."

And that means the appearance of safety as well. It might not be obvious on screen, for example, that 13-year-old Culkin's driving is being supervised by adults—or that he is not speeding. "We want to make sure an adult is in the scene—otherwise the wrong impression is left," said CPSC general counsel Eric Rubel.

The scene was shot recently, and a spokeswoman for Warner said last night that the company "did its best to meet the guidelines suggested by the commission." Although the spokeswoman said Culkin wore a helmet and did not drive wildly or on pavement, she would not address the appearance issue.

The CPSC claims the recreational vehicles have been responsible for more than 2,000 deaths in the past decade, nearly 900 of which were of drivers under 16.

"Kids don't know the difference between reality and the movies," Ann Brown, chairman of the CPSC, tells us. "When they see a role model appearing to drive around unsafely, that sets a bad example."

The agency, which put guidelines in place in '87, got tipped off by a manufacturer contacted by Warner that Culkin would be driving an ATV. It is, in fact, the manufacturers that are subject to the regs; the CPSC has no enforcement authority over Warner. But, according to Rubel, the agency is studying whether it could expand its jurisdiction on the grounds that films are consumer products.

(P.S. The film is based on the popular and very rich comic book character.)

STUDY: CHILDREN AT RISK WHEN SLEEPING IN ADULT BEDS

The Associated Press, September 29, 1999

Supporting recommendations that all infants sleep in cribs, a new study found that an average of 64 young children die each year while sleeping in bed with their parents or other adults.

Children risk getting their heads trapped or being rolled on by an adult when sleeping in adult beds, according to the study by the U.S. Consumer Product Safety Commission.

The study, published in the October issue of the *Archives of Pediatrics and Adolescent Medicine,* found that the greatest number of deaths involved children under 1 who became trapped between a mattress and a bed frame. Children also can suffocate on waterbeds or in depressions in mattresses, the report said.

Researchers who examined three commission databases found that 515 children died from 1990 through 1997. They said it is difficult to determine whether that number is accurate because the databases do not include all bed-related deaths for children under 2. But the researchers didn't know of a better source of information than the databases.

James McKenna, a University of Notre Dame professor who has studied parent-baby sleeping, took issue with the researchers' warnings that mothers who sleep with their infants to encourage breast feeding may be putting their children at risk.

"The recommendation tries to simplify a very complicated issue, and it suggests that all bed-sharing is dangerous, which is not true," McKenna said.

He said his studies show that even in the deepest stages of sleep, mothers respond within seconds to their baby's slightest noises. He said the only time his studies have shown parents to be unresponsive is when they are desensitized by drugs, alcohol or some other means.

BEWARE, THE PARENTING POLICE

The New York Times, October 1, 1999

By Penelope Leach

(Copyright 2002, The New York Times Company)

LONDON—In the Western world, anxious parents love to follow scientific studies that tell them what to do with their babies.

The Federal Consumer Product Safety Commission played into this obsession on Wednesday when it issued a stern warning: parents who sleep with their babies and toddlers are at risk of accidentally smothering or strangling them.

Before making such a stark declaration of cause and effect, a government agency should make its case very carefully. In this particular instance, one would expect the commission to establish beyond a doubt that some babies died solely because they were sleeping in their parents' beds.

But it did nothing of the kind, and its dire warning could end up hurting, rather than helping, parents and their babies.

First, as its authors admit, the study did not adequately account for other risk factors. It found that from 1990 to 1997, 515 children under the age of 2 died as a result of sleeping in their parents' beds. How did the study determine this? It looked at the death certificates of infants, coroners' reports and news accounts.

But death certificates often don't mention other risk factors. Did the parents drink? Did they smoke or take drugs? Above all, were the babies lying on their stomachs? All these elements have been shown to play roles in sudden infant death syndrome.

Three other studies, in the United States, New Zealand and Britain, reported no direct risk to babies from sleeping in parents' beds. The studies, published in medical journals in 1996, 1997 and 1999, blamed other factors for deaths. The New Zealand research found that sudden infant death syndrome could be reduced by 35 percent if babies slept on their backs instead of their stomachs. This is now accepted advice everywhere.

Even without definitive scientific proof, is there any harm in warning parents that it may be dangerous to sleep with their babies? Well, yes. We are talking about something that is very important in the lives of many parents. Being close at night helps parents bond with their babies, and for mothers who aren't at home during the day, bed-sharing is a vital aid to breast-feeding.

What happens if mothers are convinced that their duty is to keep the baby in the crib? How many will get up night after night when a baby cries, nurse the baby, rock the baby to sleep, put the baby back in the crib, then go to bed? When a mother nurses an infant in her bed, both get more sleep.

The new study seems to play to the vulnerability of Western parents, who, lacking traditional supports like extended families, village elders and traditions, rely on experts.

For instance, an obstetrician says, "For the sake of the baby, you must have a C-section." Any woman has to say yes. No wonder more than a fifth of all births in the United States are by Caesarean.

I'm not knocking experts, but I do think we should avoid offering advice until we're absolutely sure that it accounts for every variable. How many times has one study come out, only to be contradicted by another?

And sometimes experts should trust the parents. As long as the parents don't drink, smoke, sleep with thick comforters or put babies on their stomachs, there is no real evidence against sleeping with a baby, as most people in the world do.

Senator WYDEN. Mr. Chairman, I will wrap up with this, by way of saying that certainly, Ms. Gall, there are examples where the federal government has overreached in a variety of areas, but when you use the words "federal Nanny State" in a lot of quarters that is code for saying that there should not be an activist role for the government in the consumer protection area. That is something that I profoundly disagree with.

So I am here to listen. I think there are a number of issues that need to be explored, but I will tell you, to vote for you I need to be confident that your philosophy is not incompatible with the basic mission of the Consumer Product Safety Commission to protect the consumer, kids, seniors, and others, because otherwise we are talking about bringing a fox into the henhouse, and that is something I cannot support. I look forward to exploring these issues with you this morning.

Thank you, Mr. Chairman.

The CHAIRMAN. Very good.

Senator Kerry.

STATEMENT OF HON. JOHN F. KERRY,
U.S. SENATOR FROM MASSACHUSETTS

Senator KERRY. Thank you, Mr. Chairman.

Mr. Chairman, I think there is a distinction between membership and leadership as the chairperson of any commission. I think it is appropriate for the Committee to measure any nomination by a different standard, if you will. That does not suggest that there is an automatic difference in capacity of the nominee. I do not suggest that at all.

I do not come here with my mind made up. I do have questions, and I want to ask those questions and gain some insights on the nominee's thinking about a number of areas. I think that is fair. That is precisely what the confirmation process is supposed to be about.

However, the CPSC is an entity that is not very well understood and not very visible, yet it has a profound impact on the lives of our citizens. There are some 15,000 consumer products that it oversees. Among those are thousands of products that are available to our children. We have some 22,000 deaths a year related to consumer products. That is half, almost half the deaths a year of the Vietnam War over 10 years, and we know what that did to this country.

So every year, 22,000 people, because of some product they are using, die and almost 30 million are injured. The CPSC's mission that we have charged it with is to reduce the occurrence of deaths and injury and to try to find ways to warn people about foreseeable consequences of either legitimate use or, in many cases, the foreseeable non-legitimate use. There are certain products where you know someone might go out and use it a certain way and you want to warn them accordingly.

There are also sometimes incidental things, like the question of sudden infant death syndrome and parents sleeping in beds with their children, in which the Commission has had varying attitudes. Those instances have elicited some of the comments that our colleagues have made with respect to judgments you have made, and I think we need to explore that.

The bottom line is that the Chairperson needs to be a vigorous advocate on behalf of consumers and especially children, and this Committee wants to ensure that the next Chair is really going to enforce the Consumer Product Safety Act fully, completely, according to the intent of Congress. We want a Chair who reinforces the idea that products should be designed safe at the outset and that

people should be fairly notified about the potential consequences of their use.

Now, none of us want a federal government that is replacing parenthood and responsibility and so forth. I think we understand that. But, I share my colleagues' concern about code words and about people's interpretations, and I look forward to exploring with you, and I certainly hope that the Committee can find adequate comfort that the consumer product safety law and the Commission will continue to do what they are intended to do.

Thank you, Mr. Chairman.

The CHAIRMAN. I believe Senator Allen is next, or maybe it is Senator Burns.

Senator Burns.

Senator BURNS. Pass.

The CHAIRMAN. Very good.

Senator Boxer.

STATEMENT OF HON. BARBARA BOXER,
U.S. SENATOR FROM CALIFORNIA

Mr. BOXER. Mr. Chairman, I ask unanimous consent that my entire statement be included in the record, and I will summarize in just a moment.

The Consumer Product Safety Commission was created in 1972 and its mission is "to protect the public against unreasonable risks of injuries and deaths associated with consumer products." That is the mission.

As the committee with jurisdiction over the activities of the CPSC, I think it is our responsibility to make sure that the head of the Commission is someone consumers can trust completely to protect them. I think this hearing clearly gives us the opportunity to decide whether this nominee is the right choice.

I had a very pleasant meeting with Ms. Gall, and I was very open with her, and I told her I had two areas of concern that I will be exploring, and I know others will as well. The concerns are these: one, I see a tendency as a member of the Commission to blame consumers when injuries occur from products; and two, I see an unwillingness to subject industry to mandatory regulations even when the evidence indicates that voluntary standards are not working to reduce safety hazards and to prevent injuries.

I am also concerned that this philosophy, if I am right on thinking that is what we have here, could well victimize innocent children and the elderly, who do not have as much dexterity or strength as others.

I believe in the mission of the Consumer Product Safety Commission, and I particularly think it is the most vulnerable that need to look to the Commission as a leader in this area. Call me old-fashioned, but I do believe someone who is chosen to head a Commission such as this should be a fierce, fierce advocate.

As a Commissioner, it is a different situation. There may be a reason to put someone on the Commission to add a certain balance to it, but I do believe the head of this Commission should be someone fiercely dedicated to protecting the most vulnerable, who are the most likely to be injured.

So Mr. Chairman, I look forward to this hearing. I thank you very much.

[The prepared statement of Senator Boxer follows:]

PREPARED STATEMENT OF HON. BARBARA BOXER,
U.S. SENATOR FROM CALIFORNIA

Mr. Chairman, thank you for calling this hearing on the nomination of Mary Sheila Gall to Chair the Consumer Product Safety Commission (CPSC). The CPSC was created in 1972. Its mission is to "protect the public against unreasonable risks of injuries and deaths associated with consumer products."

As the U.S. Senate Committee with jurisdiction over the activities of the CPSC, it is our responsibility to make sure that the head of the Commission is someone consumers can trust to protect them. This hearing gives us an opportunity to investigate whether Commissioner Gall is such a person.

In my review of her record, I see two areas of concern that I hope Commissioner Gall will address here today:

- One—A tendency to blame consumers when injuries occur from products; and
- Two—An unwillingness to subject industry to mandatory regulations even when the evidence indicates that voluntary standards are not working to reduce safety hazards and to prevent injury.

I know that the nomination process is difficult and I expect the questioning during this hearing to be rigorous. Like many of my colleagues, I am concerned that Commissioner Gall's philosophy is contrary to what I believe should be the philosophy of the Chair of the CPSC and that is to protect consumers from harm.

I am also concerned that this philosophy could well victimize innocent children and the elderly who do not have as much dexterity or strength as others.

I believe that is why the CPSC was established: to protect consumers, *particularly the most vulnerable,* from death and injury caused by dangerous products. I look forward to hearing from Commissioner Gall as to why she believes the CPSC was established and how she intends to carry out that mission in light of her record on products such as bunk beds, baby bath seats, and baby walkers.

The CHAIRMAN. Senator Ensign.

STATEMENT OF HON. JOHN ENSIGN,
U.S. SENATOR FROM NEVADA

Senator ENSIGN. Thank you, Mr. Chairman. I also ask unanimous consent that my full statement be made part of the record.

The CHAIRMAN. It will be included.

Senator ENSIGN. Mr. Chairman, thanks for calling this hearing today, and I am pleased to lend my support to the President's nominee, Mary Sheila Gall, as Chairwoman to the Consumer Product Safety Commission. It should be noted that Commissioner Gall has a distinguished record of public service, having served her country for almost 30 years in many executive and legislative branch positions.

Commissioner Gall has also extensive experience with consumer safety issues, having served as Commissioner since 1991, and as Vice Chairman of the Commission for the past 5 years. Commissioner Gall also served as Assistant Commission of the U.S. Department of Health and Human Services in the first Bush Administration, where she worked closely on issues affecting children, families, and the disabled.

Mr. Chairman, I have three small children, deal with safety issues all the time, everything from car seats to a pool in our back yard that is fenced in and it is a constant fear. I think that parents are so much more aware today of the dangers of products and we all want the safest products possible.

But I also understand, because I read so often about products being out there in the marketplace, where parents were frankly just completely irresponsible. We want the safest products as possible, but we also do not want a marketplace in which personal responsibility never comes into play. There are cases in which parents were unattentive and children drowned. Well, if you know anything about having children around water, you never leave children unattended, whether it is a pool or whether it is a bathtub. You do not answer the phone. You do not do anything that would leave the children unattended.

I think what Ms. Gall has demonstrated is that balance, understanding that personal responsibility as parents has to come into play as well when we are looking at whether a product caused a situation or whether the parents had some culpability. As tragic as it is when accidents happen, we can never prevent 100 percent of accidents from happening.

So I lend my support to Ms. Gall because I believe that she has the interest of parents, the interest of children, in mind, but also the interest of some reasonable balance in all of this.

Thank you, Mr. Chairman.

[The prepared statement of Senator Ensign follows:]

PREPARED STATEMENT OF HON. JOHN ENSIGN,
U.S. SENATOR FROM NEVADA

Thank you, Mr. Chairman for calling this hearing today. I am pleased to lend my support for the President's nominee, Mary Sheila Gall, to Chairwoman of the Consumer Products Safety Commission.

It should be noted that Commissioner Gall has a distinguished record of public service, having served her country for almost 30 years in many executive and legislative branch positions.

Commissioner Gall also has extensive experience with consumer safety issues, having served as Commissioner since 1991, and as Vice Chairman of the Commission for the past five years. Commissioner Gall also served as Assistant Secretary to the US Department of Health and Human Services in the first Bush administration, where she worked closely on issues affecting children, families, and the disabled.

At the Commission, Commissioner Gall demonstrates a strong commitment to ensuring product safety in the marketplace by balancing the interests of consumer safety and private business.

Commissioner Gall's nomination is supported by the National Association of State Fire Marshals, the American Textile Manufacturers Institute, as well as by one of her current colleagues, Commissioner Thomas Moore.

The Consumer Product Safety Commission is a vital component in protecting the public against harmful or flawed consumer products. It is imperative that the Commission adhere to its mission of working with the business community to protect the public from risk, injury, or even death.

I believe that Mary Sheila Gall demonstrates the expertise and commitment to public safety necessary to achieve the mission of the CPSC, and I will support her nomination to be Chairwoman.

Again, thank you Mr. Chairman.

The CHAIRMAN. Very good.

Senator Breaux.

Senator BREAUX. I am here to listen and learn, and I will pass.

The CHAIRMAN. Thank you.

Senator Edwards.

STATEMENT OF HON. JOHN EDWARDS,
U.S. SENATOR FROM NORTH CAROLINA

Senator EDWARDS. Thank you, Mr. Chairman. I will be very brief because I am looking forward to the opportunity to ask the witness questions.

The Consumer Product Safety Commission, in my judgment, plays an enormously important role in this country, providing protection for consumers from products that are unsafe and particularly providing protection for those who cannot protect themselves, young children and babies. Obviously, the Chairman of that commission has an elevated responsibility over the other commission members. So I am very interested.

I am still open-minded, still willing to listen to and interested in listening to your answers to questions. I do have to tell you, Ms. Gall, I have reservations, though, and those reservations grow out of some instances in your record where it appears that fairly minor changes could have been made in products that would have made them safer, would have protected kids, and your reaction seems to have been to find the responsibility with others—parents, adults.

I just have to tell you, I do not think—and I agree only with part of what my colleague from Nevada just said. I also have young children. I have a 1 year old and a 3 year old. There is no question that I have an enormous responsibility to those children. There is also no question that they cannot protect themselves.

If they are exposed to a product that could by reasonable means be made safer, that would keep them from being hurt, I do not think that and parental responsibility are mutually exclusive. I think in fact we ought to do both. We ought to do everything in our power to make sure parents are properly educated about the dangers associated with products. But at the same time, these kids cannot help themselves. They cannot protect themselves.

I think the Chair of the Consumer Product Safety Commission has an enormous responsibility to those children who cannot protect themselves, and anything that can reasonably be done to make a product safe ought to be done. It appears to me from looking at what I have seen so far, but I want us to talk about it, that thousands of children have been injured by products that you did not believe were defective, that you did not believe needed to be changed. Those are the things I think we need to talk about during the course of this hearing.

But I am very interested in your answers. I do have serious reservations because of the reasons I have just stated, but I look forward to asking questions.

Thank you, Mr. Chairman.

The CHAIRMAN. The Chair is pleased to recognize our distinguished member, Senator Allen.

STATEMENT OF HON. GEORGE ALLEN,
U.S. SENATOR FROM VIRGINIA

Senator ALLEN. Thank you. Thank you, Mr. Chairman and members of the Committee.

It is my privilege to introduce an outstanding Virginian from McLean, Fairfax County, Mary Sheila Gall, for your consideration.

I know you already have been considering her for Commissioner of the Consumer Product Safety Commission, as Chair.

I know many remarks, Senator Ensign and Senator McCain, have mentioned some of the things in here. This is obviously a hearing on consumer protection and I want to make sure it is not witness protection needed in this.

Listening to Senator McCain—excuse me—Senator Edwards, I think that you will find in Mary Sheila Gall somebody who does balance needs. Yes, consumer protection needs to be an issue that clearly the government has a role in warning and making sure products are safe, and then there is also obviously a parental responsibility.

You see it all over the world with different approaches. Listening to Senator Edwards, it struck me. I remember on a trade mission trying to promote Virginia peanuts in Great Britain. You know, Virginia style peanuts, many of which are grown in North Carolina as well, are the best and the largest peanuts. It is true, a fact.

But trying to promote those peanuts in Great Britain with KP Foods, they say, we have a hard time getting mothers to buy peanuts for their kids. I said, well, what is the reason? They say, well, there is a government warning label that we have to put on all these packages that says small children may choke on these contents, which makes mothers very worried about them giving their children peanuts. The Virginia style peanuts grown in eastern North Carolina and Virginia, of course, being the biggest, are probably even more of a danger.

This is truly a marketing problem for them. And I said: You know, in the United States our mothers and parents tell kids to chew their food before they swallow it. But nevertheless, those warning labels end up having an impact on the export of our products.

But regardless of all that, that little instruction in British consumer protection harming young children, not being able to eat nutritious peanuts because of the fear of the warning label. Ms. Gall received her bachelor's degree, Mr. Chairman, from Rosary Hill College in Buffalo, New York, and, more importantly, her master's degree in special education from Old Dominion University in Norfolk, Virginia.

She has called Virginia home for the last 20 years. I am also happy to see two members of her family here, daughter Rosa and son Walter. If you would please stand up. It is good to see you both here. Thank you for coming.

Mrs. Gall, Mr. Chairman, has had a long, distinguished record of public service, including her last 10 years as one of the Commissioners of the Consumer Product Safety Commission. She was first nominated by President Bush, the first President Bush, in 1991, and then nominated again by President Clinton in 1999. For the last 5 years Ms. Gall has served as Vice Chairperson.

I feel that her judgment, her experience and well-grounded philosophy make her an exceptional choice to serve as the Chairperson of the Commission. Her long and distinguished career in government also includes service as Assistant Commissioner of the Human Development agencies in the United States Department of Health and Human Services, where she was responsible for 55 Fed-

eral programs serving children, families, people with disabilities, the elderly, and Native Americans.

She also served as counselor to the Office of Personnel Management and chaired President Ronald Reagan's Task Force on Adoption.

Mary has been a very strong proponent of consumer protection, especially for children. Her thoughtful and exhaustive review is tied closely to the law and the intent of Congress, and in trying to figure out what the intent of Congress is she tries to utilize reasonable industry standards whenever possible.

Now, when those voluntary standards are not possible, when regulatory action is called for, she seeks a reasonable, science-based approach, supporting such proposals of regulation nearly 90 percent of the time when regulation is indicated.

Now, I am confident, Mr. Chairman and members of the Committee, that Ms. Gall's background and experience, especially in the area of product safety, and her concern for her fellow human beings will enable her to continue her outstanding service and contribution to Americans in her new role as Chairperson of the Consumer Product Safety Commission.

So Mr. Chairman and members of the Committee, it is my pleasure to introduce and present to you Mary Sheila Gall, an exceptional nominee, this morning and wholeheartedly recommend her confirmation.

Thank you, Mr. Chairman.

The CHAIRMAN. We thank you very much.

[The prepared statement of Senator Carnahan follows:]

PREPARED STATEMENT OF HON. JEAN CARNAHAN,
U.S. SENATOR FROM MISSOURI

Thank you Mr. Chairman. The Consumer Product Safety Commission is the federal agency principally responsible for protecting the public against the unreasonable risk of injuries and death associated with consumer products.

I expect the Chair of this agency to be a vigorous advocate for consumers willing to support reasonable health and safety regulations.

Mr. Chairman, I approach today's hearing, as I approach all Presidential nominations, with a predisposition towards supporting the President's choice. However a number of serious questions have been raised about Commissioner Gall's approach to the CPSC that have caused me to have some misgivings.

Of course the President is entitled to deference on his nominations.

But if it is determined that a nominee is not committed to the goals Congress has established for the agency to which he or she has been nominated, it is appropriate for the Senate to withhold its advice and consent. This is *particularly* true if the nominee is to serve as the agency's chair.

As a member of the Senate, charged with providing advice and consent, I am seeking to determine whether my concerns about Ms. Gall's approach to the CPSC rise to such a level to warrant rejection of her nomination.

I look forward to hearing Ms. Gall's testimony today. I will pay particular attention to her responses to my questions and the questions of my colleagues. Thank you, Mr. Chairman.

The CHAIRMAN. We are now pleased to recognize Ms. Gall.

STATEMENT OF MARY SHEILA GALL, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

Ms. GALL. Thank you, Mr. Chairman. Before I begin, I have a full statement that I would like to submit for the record.

The CHAIRMAN. It will be included.

Ms. GALL. Thank you so much.

First I would like to thank Senator Allen for his gracious remarks and his tremendous support for my nomination, and remind me to buy some Virginia peanuts. I would also like to thank Senator McCain and his staff for their continued support and, Mr. Chairman, I would like to thank you and your staff for scheduling this hearing and the cooperation they have given me in the preparation for this hearing.

I note that the Vice Chairman of the Consumer Product Safety Commission is here with me today, Commissioner Thomas Moore. Commissioner Moore is a life-long Democrat, a Clinton appointee, and actually worked for Senator Breaux for some years. He is here with his entire staff today to demonstrate their sincere support for my nomination, and I thank him for being here.

I guess I better stop thanking people now or it will sound like the Academy Awards. I do want to say I very much appreciate the demonstration of faith that the President has given by honoring me with the nomination to be Chairman of the Consumer Product Safety Commission.

As has been noted here this morning, I have 30 years of honorable public service in the executive and legislative branches. I have spent the last 10 years serving at the Commission as a Commissioner, embracing fully the mission of the Commission, and I have been delighted to work alongside an expert and committed and dedicated staff.

As mentioned earlier, I was nominated by President Bush in 1991, nominated for a second time by President Clinton. Both those times I was reported out of Committee without objection and confirmed unanimously by the Senate.

I have been privileged to serve with two CPSC Chairmen, Ann Brown and Jacqueline Jones Smith. If confirmed, I want to build upon their successes. In addition to the work we have under way at the Commission now, I would like to focus attention on some other initiatives: some new ideas in fire safety, greater focus on international issues, outreach to the elderly and our senior citizens, and improving ways to reach hard-to-reach populations with our important safety messages, recall alerts, and so on.

Our biggest challenge at the Commission is the issue of resources. We have a number of new laws that require us to do certain activities that will bring about significant expenditures. Some of those are new data security measures, telecommuting, electronic commerce, and access by individuals with disabilities. We also are facing some important expenditures for critical investments at the Commission, including database integration, laboratory modernization, and hopefully a research budget to continue our good work.

In the 10 years I have been a Commissioner, I have cast almost 700 votes and some persons disagree with some of the votes that I have taken. That is understandable. I am sure you all have had occasion to have some folks disagree with some of the votes that you have cast. My written statement contains an explanation in detail of some of those votes that have been mentioned as criticism and I hope you will take a few minutes to take a look at those explanations.

I ask that you consider my nomination in its entirety, the record in its entirety. I have voted with the majority 97 percent of the time in matters of enforcement, 97 percent of the time. I have voted with the majority in all other matters presented to the Commission 93 percent of the time. With regard to regulations only, I have voted with the majority almost 90 percent of the time. Clearly, I think this is a record of someone who is committed to consumer protection and the mission of the agency.

If I am confirmed by the Senate, I will provide energetic and consistent leadership to ensure the agency stays on course with its crucial mission to protect American consumers from unsafe products. I would be happy to answer any questions that you may have.

[The prepared statement and biographical information of Ms. Gall follow:]

PREPARED STATEMENT OF MARY SHEILA GALL, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

Good morning, Mr. Chairman and Members of the Committee. My name is Mary Sheila Gall and I am honored to appear before you today as President George W. Bush's nominee for Chairman of the Consumer Product Safety Commission.

I have served as a Commissioner of the CPSC since December 1991. I was renominated to a second seven-year term by President Clinton in 1998, and confirmed by the Senate in 1999. As a result of my nearly ten years of active service at the Commission, I am thoroughly aware of its statutory responsibilities and procedures, its day-to-day operations and the regulatory, enforcement and other issues that Commissioners and the Chairman must confront. Prior to my service with the Commission, I served as an assistant secretary in the Department of Health and Human Services, where I oversaw 55 federal programs, a staff of approximately 1,000 employees and an annual budget of five billion dollars. I also worked in the White House and for a number of Members of Congress. These almost thirty years of public service in both the legislative and executive branches of government help me to understand the Commission's functions and how it interacts with Congress, the regulated community and the other stakeholders who have an interest in the Commission's mission and operations.

For Senators who are new members of the Committee, let me provide some background. The mission of the Commission is to protect consumers from unreasonable risk of death and injury associated with the approximately 15,000 types of products within its jurisdiction. The Commission's major programs are designed to (1) identify and analyze product hazards, (2) assist industry in developing voluntary product safety standards, (3) monitor compliance with voluntary standards, (4) issue and enforce mandatory product safety standards, (5) obtain recalls of dangerous products, (6) penalize companies that violate the law and the Commission's regulations, and (7) inform and educate the public about potential product risks.

To carry out this mission, the Commission employs approximately 480 FTE's, about two-thirds in the Commission's Bethesda, Maryland headquarters and Gaithersburg, Maryland laboratory, and about one-third in its field offices. The Commission's budget for fiscal year 2001 is 52.4 million dollars and the request to Congress for fiscal year 2002 is 54.2 million dollars.

The Commission is authorized to have five Commissioners but has been operating with three since the mid-1980's. The Consumer Product Safety Act requires an explicit partisan division among the Commissioners. Thus when Congress created the Commission it not only provided that regulatory decisions should be made by a collegial body, and not be a single official, but that that collegial body itself should have members of different political philosophies. If only one point of view was expressed a large segment of the public would never have their views heard. The Commissioners are available to critique one another's reasoning, and this leads to better and more informed decisions.

The rest of this statement is divided into two parts. The first will address the challenges that I see lying ahead for the Commission, and how I believe that the Commission can meet them. In the second, I address certain aspects of my record as a Commissioner. I am aware that there is some opposition to my nomination. I intend to address the issues that I have heard raised and to state why I took the positions that I did. I think when you read the entire record that was before the

Commission, even people who continue to disagree with me will understand the basis for my actions.

Commission Accomplishments and Challenges

The Consumer Product Safety Commission is a strong and effective organization, one that gives the American taxpayer great value for the resources devoted to it. The Commission has grown stronger during the tenure of the two Chairmen with whom I have been privileged to serve. Chairman Jones-Smith oversaw the move of the Commission to its new headquarters in Bethesda, and worked with Congress to reauthorize the Commission. Chairman Brown has raised the visibility of the Commission considerably during her tenure and has proven very effective in disseminating the Commission's safety message, particularly in the area of product recalls. The Commission has accomplished a great deal, especially in improving the safety of children's products. I intend to build upon this record of success, to be an effective steward of the mission of the Commission and of the public monies entrusted to it, and to enhance the efficiency of the Commission's operations.

Imports and Exports of Consumer Products

There are three areas of Commission operations that I intend to emphasize if I am confirmed as Chairman. The first lies in the area of imported and exported consumer products. When the Commission began its work in 1973, relatively few of the products over which it had jurisdiction were imported. Today that situation has changed dramatically. Moreover, U.S. manufacturers have increased significantly their own export markets for consumer products. The large growth in imports and exports means that the Commission needs to be more active in protecting consumers from defective products while at the same time facilitating the obvious benefits of imports and exports.

Consumer Product Safety Standards Harmonization

There are two ways in which the Commission can improve the safety of imported and exported consumer products. First, Commission technical staff should participate more in the effort to harmonize international product safety standards through U.S. representative bodies to international voluntary standards-setting organizations. It can also take advantage of the existing activity of U.S. government organizations such as the National Institutes of Standards and Technology, the International Trade Administration, and the Technology Administration within the Department of Commerce. Commission staff participation will give voluntary standards-setting organizations the benefit of both the technical expertise of Commission staff and its commitment to product safety.

Product standards harmonization should never be an excuse to *lower* the level of protection available to American consumers. International consensus is not a justification for permitting the importation of products that pose an unreasonable risk of death or injury to American consumers. I am, however, confident that the excellence of both the U.S. standards-setting process, and of the standards that it produces, are apparent in the international arena, and that the effort to harmonize international product safety standards is worth the support and encouragement of the Commission.

Communicating with Importers

The second area through which the Commission can improve the safety of imports is to communicate its safety message and requirements to industries and governments in other countries that export to the United States. The Commission already makes such efforts. Commission laws and regulations are available to anyone with access to the Internet through the Commission's web site. Commission representatives travel regularly to the People's Republic of China, to inform its industry and government representatives about Commission regulations, emphasizing products such as fireworks, toys, and cigarette lighters. We need to continue this effort and to disseminate the Commission's message to countries that may be exporting consumer products to the U.S. for the first time. The Commission should focus more on imports arriving from Mexico. The value of imports into the U.S. from Mexico more than doubled between 1994 ($49.5 billion) and 2000 ($136 billion). Given that dramatic increase in the volume of trade, the Commission needs to ensure that consumer products imported from Mexico meet U.S. safety standards. The Commission also needs to strengthen ties with Mexican government and private organizations that create, enforce, and monitor consumer product safety standards.

The Commission's resources available to carry out this effort are limited while the resource requirements of disseminating information internationally are immense. In order to get the Commission's message out within its resource limitations, we need

to leverage the resources of other government agencies through strategic alliances to better inform foreign governments, industries, and trade associations of Commission regulations and activities.

Getting the Commission's Message Out

Another area that I believe can be improved is the Commission's communications with the public. The present Chairman has done a very good job in publicizing the Commission's product recalls through television appearances. The Commission will continue to use this important mass media outlet to reach members of the public. The Commission also has ongoing a pilot project with industry to see if the return rates of product registration cards can be improved. This pilot project needs to be completed, and the Commission needs to assess all other ways in which companies with product recalls and the Commission itself can expeditiously and efficiently inform consumers.

Beyond notice of product recalls is the Commission's more general information and education effort. The Commission has improved its effectiveness in this arena, through such activities as baby safety showers, many of which are carried out in cooperation with congressional field offices. Another successful information and education effort has been "Recall Roundup," an annual Commission project to inform the public about previously-announced recalls, where the Commission has reason to believe that unreturned and still dangerous products remain in the hands of consumers. Yet another successful campaign of information and education has been an inter-agency effort known as "Back to Sleep." This program tells new parents and other caregivers to place newborn infants on their backs to sleep. Various studies have shown that placing young infants in this position reduces the incidence of deaths associated with Sudden Infant Death Syndrome (SIDS), some cases of which may be related to suffocation in a face down sleeping position. Since the advent of the "Back to Sleep" campaign, the SIDS rate in the U.S. has decreased by about 46% since 1992, saving the lives of more than 2,600 babies every year. All of these efforts should be continued and reinvented when necessary.

The Commission needs to do more to get its message out to populations that have limited access to important consumer safety information. Efforts to reach minority and low-income populations will require all of the Commission's ingenuity and creativity. I intend to leverage Commission resources by working with community groups, plus state and local governmental entities and other federal agencies. The Commission needs to pay particular attention to our elderly citizens. America's elderly are particularly vulnerable to product safety hazards involving fires and falls. They are more likely to have older products that do not meet present safety standards, possibly even products that have been recalled by the Commission. Older Americans, especially the elderly over 85, represent the fastest growing segment of the U.S. population. The Commission needs to enhance its present information and education efforts that reach the elderly and initiate new efforts to reach them even more effectively. The National Fire Protection Association and the Centers for Disease Control have a program designed to reduce the incidences of fires and falls among our senior citizens. The Commission provided much of the information used by that campaign, and should remain involved in it, as well as using other innovative means to make sure that America's elderly citizens have the most up-to-date and useful information to enhance their safety.

Resource Challenges and Better Operations

The Commission will be facing a number of resource challenges in the next few years. These challenges must be met if the Commission is to continue its life-saving mission activities, while at the same time complying with the other mandates that Congress has given to it.

Public Access to Government Materials

Recent legislation requires Federal agencies to improve public access to government materials. Virtually all of the agency records and reports that are publicly available at the Commission will need to be made available in an electronic format so that the public can gain access through and view them over the Internet. At the same time, sensitive Commission materials, such as cases under investigation by the Compliance staff, must not be disclosed. State of the art "firewall" computer software will have to be maintained and continually upgraded.

There are other new government-wide mandates that have substantial resource implications for the Commission. The Government Paperwork Elimination Act requires that much of what we do presently through paper must be done electronically. Fulfilling this requirement will require virtually universal use of electronic signatures. The mandate known as "Section 508" requires that all of the equipment that the Commission acquires be usable by persons with disabilities. Information

made available to the public must also be made available for persons with disabilities. At this time, we have no specific dollar estimate of the costs of compliance with these requirements, but it is likely to be significant.

Telecommuting

Congress has also passed legislation requiring federal agencies to adopt telecommuting programs that will cover an agency's entire workforce by April 2004. We are developing a pilot telecommuting program for Commission headquarters staff. The Commission has substantial telecommuting experience already from its implementation of a telecommuting program in the field. Our program in the field saved money, because the Commission was able to close a number of small field offices and reduce the sizes of others. We achieved savings overall, but the implementation of the telecommuting program required a substantial investment in new equipment. A telecommuting program for headquarters staff will be different, because it will be a part-time program, enabling employees to work from their homes at least one day a week. The Commission must maintain office space for employees and computer stations will need to be upgraded and modernized so that the employee can work effectively from both home and office. Telecommuting at headquarters will result *not* in budget savings but rather in increased outlays.

Laboratory Modernization

The General Services Administration (GSA) is studying the existing Commission laboratory facilities and operations in Gaithersburg, Maryland. We expect GSA to recommend that the Commission undertake a five-year redevelopment plan to enable the lab to continue to support the Commission's operations. Without this redevelopment, lab operations will suffer. These operations are housed in facilities that were designed originally to support a Nike missile-tracking radar site from the early 1950's, not a modern laboratory. The FY 2002 Budget Request does not contain funding for this redevelopment plan.

Without additional funds to invest, all of the requirements described above would eventually have to be satisfied by reductions in the Commission's operations. We will be unable to sustain our effort to integrate the Commission's hazard databases, to continue to modernize our information technology system, to maintain a replacement cycle for computers, or even to sustain our present level of activity. I intend to work aggressively to secure the funding for these critical investments and activities.

Better Operations

The Commission, like any organization, is dependent for its success on very important people who work behind the scenes. Since the Commission is a data-driven agency, its ability to collect, analyze and disseminate data is crucial to its effectiveness. At the present time, the Commission maintains five databases: epidemiology, consumer complaint, news articles, and compliance, which has separate databases for its regulated products and for its other recalls. A Commission employee, trying to locate all of the Commission's death and injury information about a particular product, must search all of these databases. Moreover, some of this search must be through paper documents. We want to integrate our databases and to convert paper documents into electronic format. The Commission has made progress in this project, but it has been hobbled by resource limitations. Similarly, resource limitations have prevented the Commission from implementing a regular program of replacing and improving information technology equipment.

In addition to problems caused by lack of resources in the area of information technology, the Commission has not had a research budget. If the Commission had a research budget, it could contract out for research into significant consumer product safety problems that require substantial resources to understand and to evaluate. For example, residential electrical distribution systems (e.g., circuit breakers, panel boards and wiring) were implicated in an estimated 38,000 fires, resulting in 280 deaths and $680 million in property damage in 1998. One project that the Commission has considered is conducting long-term testing and evaluation of the performance of circuit breakers and panel boards to determine if the safety standard for these products should be upgraded. It is true that industry performs research, but most of it is for product development, rather than to evaluate the overall safety of classes of products and the adequacy of voluntary safety standards. The research contemplated by the Commission will spur research and innovation by manufacturers. But the preliminary work must often be done by a government agency, which is why most other federal health and safety agencies have a separate research budget. As Chairman, I intend to work to secure the resources so that the Commission can integrate databases, meet its information technology needs, and undertake research projects.

Record

I have been a Commissioner since 1991. In that time I have cast almost 700 votes. I have, in addition, made a number of public statements, both in connection with those votes and in other contexts. Given that number of votes and public statements, I am bound to have taken positions on specific issues with which some people may disagree. I urge you to consider my record in its entirety, and not just one, or even several, votes on issues on which you find that you reach a different result.

Voting Record

My voting record at the Commission shows that I do not hesitate to support recalls when products are dangerous, and to impose penalties when businesses have violated Commission regulations. On questions of enforcement, such as recalls, subpoenas and civil and criminal penalties, I voted approximately 97% of the time with the majority. My only disagreements were four votes: the amount of two civil penalty settlements; the timing of the issuance of a subpoena and special order; and the timing of the filing of an administrative complaint. I have *always* supported staff recommendations that an administrative complaint be filed seeking to have a product recalled. Similarly, I have *always* supported civil penalty and referrals to the Department of Justice to seek civil or criminal penalties.

My voting record on regulatory matters does not differ a great deal from my record on enforcement matters. I have voted with the majority in approximately 93% of the votes that I have taken. There have been several votes I have cast against proceeding with regulation that have been criticized. I will address those votes and opinions below.

Baby Bath Seats

The controversy surrounding baby bath seats is perhaps the best example of where I believe my opponents' criticism is misguided. Baby bath seats and rings are products designed to facilitate the bathing of a slippery, squirmy infant. They entered the U.S. market in the early 1980s. Unfortunately, some caregivers left infants placed in such bath seats or rings unattended in tubs of water, with the tragic result that the infants drowned. In some cases, the infant ended up in the water because the bath seat overturned when the suction cups failed.

In 1994, the Commission staff presented the Commission with a series of options, including an outright ban of the product. The staff recommended that the Commission issue an Advanced Notice of Proposed Rulemaking. Most of the discussion at that time centered on an outright ban of the product.

I joined my colleague, Commissioner Jacquelyn Jones-Smith and voted against rulemaking. Commissioner Jones-Smith and I did instruct the staff to begin an information and education campaign to alert consumers about the hazards of leaving infants unattended in tubs, with or without a bath seat. I voted against beginning rulemaking at that time because my review of the in-depth investigations showed me that the presence of this product had nothing to do with the reasons that persons left infants unattended. The "theory" of the proponents of banning baby bath seats is that people are more likely to leave infants unattended in bath seats than they are without a bath seat. This theory had as its basis statements by persons who had left infants unattended in tubs with a bath seat. They said that they had left the child only for "an instant" or for "a short time." When I read the in-depth investigations of these drowning incidents, however, which included police, medical examiner, emergency room, social worker and paramedic interview reports, they revealed that these caregivers had often left the victims unattended for extended periods, sometimes for over an hour. In one case, a baby sitter placed an infant in a bath seat in a stationery tub in the laundry room and left the room. The baby sitter admitted that she knew that the baby could turn the water faucets on. The baby did turn on the hot water and died of thermal burns over 85% of his body when hot water filled the tub. The baby sitter forgot about the baby in the tub until water flowed through several rooms before reaching the room in which the baby sitter was located. I simply could not find that the bath seat was in any way defective or determinative of why caregivers left infants unattended.

In 2000, the Commission received a petition to ban baby bath seats. My review of the in-depth investigations showed the same pattern of infants left unattended in tubs for the same reasons, unrelated to the presence or absence of a bath seat. It is notable that my colleague, Chairman Ann Brown, who had voted to begin rulemaking in 1994 and who had generally favored a ban on the product, changed her position and said that a ban was not justified.

The evidence before the Commission, however, revealed developments in the use of bath seats that caused me to reconsider the position that I had taken in 1994. The new data showed that infants were tipping over in bath seats and sliding

through the leg openings *even in the presence of caregivers.* It also showed that bathtubs increasingly are being made of non-slip resistant material to which suction cups do not adhere. Finally, although progress had been made in developing a voluntary standard, it still did not deal with the issue of infants sliding through the seats, and its only attempt to address the problem of non-skid bathtub surfaces was an inadequate labeling requirement on the packaging. As a result of these new developments, in May 2001, I joined my colleagues and voted to begin a rulemaking that has as its objective the development of a performance standard for baby bath seats.

What conclusions should the Members of this Subcommittee draw from the bath seat example about my regulatory philosophy? As a regulator my task is to assess whether or not the *product* was defective, and whether it poses a substantial risk of injury to the public, the statutory criteria upon which the Commission is empowered to take action.

In 1994, I found that the record would not support a ban, because the evidence before the Commission failed to show any characteristic of bath seats that induced caregivers to leave infants unattended more frequently or for longer periods than they did in the absence of a bath seat. In 2001, the evidence available to the Commission changed. The record still failed to show that the presence of a bath seat induced caregivers to leave more frequently or to stay away longer, but it did show that bath seats tipped over or children slid through leg hole openings in the presence of caregivers. Moreover, the Commission staff, which had not proposed any ideas for a performance standard in 1994, had several ideas about improving the stability/retention of bath seats and minimizing the hazard of infants becoming entrapped by sliding through the leg hole openings. I was, therefore, persuaded that beginning rulemaking was justified.

Baby Walkers

In 1994, the Commission was petitioned to ban the sale of baby walkers. The Commission staff recommended that the Commission begin formal rulemaking to develop mandatory performance standards for baby walkers. I voted against rulemaking in this case for two reasons. First, the record showed that just as many babies fell down stairs who were not in walkers as fell down stairs who were in walkers. This fact suggested to me that the real problem was an open staircase. The simple act of closing a door or using a safety gate would protect babies in or out of walkers. Second, I thought that any changes needed in the product could best be addressed through the voluntary standards setting process. The Commission staff and industry worked together to develop voluntary standards that prevent babies in walkers from going down stairs. These standards appear to be adequate and compliance with them appears substantial.

Bunk Beds

The question of whether and how to regulate bunk beds posed a different issue. In the cases of baby bath seats and baby walkers, the product contemplated some level of caregiver involvement and supervision. One should never leave an infant alone in a tub of water and one should always block access to hazards such as stairs that might threaten a child in or out of a baby walker. Bunk beds, however, contemplate that the caregiver *will* leave the child unattended while the child sleeps. Thus, the design and construction of the bunk bed must give the child a safe place in which to sleep, separate and apart from the actions of the caregiver. Some bunk beds had guard rails or end pieces with spacing that resulted in fatal entrapments of children.

The bunk bed industry was aware of this problem and first adopted safety guidelines in 1978. By the time that the Commission considered its mandatory rule, the industry voluntary standard had virtually eliminated the entrapment hazard and differed from the mandatory rule in only minor technical points. In my experience as a Commissioner, I have found few voluntary standards groups that have been as responsive to the Commission's concerns as the bunk bed industry.

Both the Consumer Product Safety Act and the Federal Hazardous Substances Act require that the Commission not promulgate regulations if an existing voluntary standard eliminates or adequately reduces the risk of injury, and it is likely that there will be substantial compliance with the voluntary standard. In the case of bunk beds, the voluntary standard had been effective and had been under constant revision to make it even more effective. Moreover, compliance with the voluntary standard in the seven years preceding adoption of the Commission of the mandatory standard had been in excess of 90%, and may have been 100% at the time that the Commission adopted the rule. It was my view that the statutory criteria were more than fulfilled by the record before the Commission, and I voted, therefore, not to

adopt the mandatory standard. By the time that I voted, the bunk bed industry, threatened by inconsistent state legislation mandating bunk bed specifications, had changed its position and actually favored a mandatory standard. Since the time that the mandatory standard has gone into effect the Commission staff negotiated the recall of 200 bunk beds in October 2000 as a result of a collapsing hazard covered by the voluntary, but not the mandatory, standard. There will be an intensive program in the field to search for non-conforming bunk beds in the fall of this year.

The basis of my decision against a mandatory standard for bunk beds was very different from the basis of the decision in baby bath seats and baby walkers. I did not vote against a mandatory standard because the product could be used safely with reasonable caregiver attention, or even with reasonably foreseeable misuse. I did not cite caregiver neglect as a basis for opposing regulation, even though the record showed that most of the bunk bed fatalities occurred when infants were placed on bunk beds, a clear misuse of the product that is warned against. Rather, I rejected a mandatory standard because the statutes under which the Commission operates require that it defer to the voluntary standard under these circumstances. Congress made the voluntary versus mandatory standards policy call when it amended the Commission's statutes in 1981 and the Commission must adhere to this Congressional direction.

Crib Slats

The Commission has had crib spacing regulations in effect since 1973 and they have helped to reduce significantly the number of fatalities associated with entrapments in cribs. The Commission's mandatory standard does not include criteria for structural or mechanical integrity of cribs. There is, however, an ASTM voluntary standard governing crib integrity, which was first published in 1989 as a result of a Commission staff request. The Juvenile Products Manufacturers Association (JPMA) has a third party certification program in place for cribs.

Between January 1985 and September 1996 the Commission became aware of incidents in which the crib slats disengaged from the side rails. Once the slats came loose from the side rails, they were free to move, which could create an entrapment hazard. The Commission staff asked that the ASTM subcommittee consider adopting a Canadian standard that required crib slats to withstand a certain amount of torquing (twisting) force.

Manufacturers were concerned that the Canadian standard would not detect the type of problem that caused crib slats to separate from crib rails. Eventually the Commission staff agreed, and proposed an amendment to the voluntary standard different from the Canadian standard. I voted against publishing an Advance Notice of Proposed Rulemaking. I did so because I believed that the Commission had not given the voluntary standards setting process sufficient time to test and to comment on the standard that the staff was then proposing. For most of the time that the voluntary standards subcommittee had been considering the issue, the Commission staff had been advocating the use of the Canadian standard that the staff itself eventually conceded was inadequate. At the time that the Commission was asked to vote on the ANPR, the Commission staff-proposed standard, which was much different than what the staff had recommended previously, had been before the voluntary standards subcommittee only about two and a half months. The subcommittee chairman had committed to considering the standard as early as the very next month. Manufacturers needed time to test and evaluate the staff-proposed voluntary standard. Under the circumstances I believed that it was *premature* for the Commission to begin rulemaking while the voluntary standards setting process appeared to be actively considering and in the process of adopting a standard. I did note in my statement that there was a definite problem with crib slats, and that mandatory rulemaking remained an option if sufficient progress was not made on the voluntary standard. The ASTM subcommittee did adopt a voluntary standard that the Commission staff found acceptable and which became effective in March 2000. The Commission staff is presently monitoring the extent of compliance with the voluntary standard in order to determine whether it can recommend the withdrawal of the ANPR.

In both my decisions on bunk beds and on crib slat retention, the issue of deferral to voluntary standards was crucial. A preference for voluntary standards is not just my own personal decision as a Commissioner. Rather the Commission's own governing statutes *require* deferral to a voluntary standard whenever compliance with the voluntary standard would eliminate or adequately reduce the risk of injury addressed by the voluntary standard, and it is likely that there will be substantial compliance with the voluntary standard. Congress has itself adopted voluntary standards when it has chosen to legislate product safety standards. For example, in 1994, Congress adopted as interim bicycle helmet mandatory standards the fol-

lowing voluntary standards: American National Standards Institute Standard Z90.4–1984, Snell Memorial Foundation Standard B–90, or ASTM Standard F 1447. Thus, Congress itself has recognized the advantages of voluntary standards when it has acted in the area of product safety.

Nor is the statutory preference for voluntary standards irrational. Voluntary standards are easier to adopt and to amend when flaws are detected, when new designs emerge, or when changing patterns of consumer use reveal new hazards. It is true that mandatory standards do have enforcement advantages. But it would be a mistake to regard "regulated" as a synonym for "safe." Some products that the Commission regulates have violation rates that are surprisingly high. For example approximately 33%–40% of imported fireworks violate some aspect of Commission regulations, and 25% of imported fireworks are sufficiently violative so as to be actionable. Since 1998, the Commission has had 48 separate recalls involving 189 models of cigarette lighters that violated Commission regulations. In fiscal year 2001 alone, the Commission staff found over 14 million non-conforming units. So the existence of federal mandatory regulations does not mean that products always comply with the regulations.

Choking Hazards

In 1979, the Commission issued a small parts regulation under the authority of the Federal Hazardous Substances Act to ban certain toys and other articles intended for use by children under three because they posed a choking hazard if aspirated. In 1992, the Commission staff recommended: (1) mandatory labels for balloons warning of choking hazards in children up to age eight; (2) mandatory labels for marbles warning of choking hazards and reminding children not to put them in their mouths; (3) a ban of small balls less than 1.68 inches in diameter marketed for children under three, and a mandatory warning label on all games and toys with balls less than 1.68 inches in diameter.

I voted with my colleagues not to proceed with rulemaking along the lines recommended by the staff. I found that the statutory requirement that there be an unreasonable risk of injury was not present, and further found that the proposed regulations would do little or nothing to alleviate the risk that did exist. In the case of balloons, the risk of injury or death was low to begin with, there existed an ASTM voluntary standard for warning labels for balloons, and even the proposed mandatory regulation would apply only to about two-thirds of the balloons sold in the U.S. Upon my motion, the Commission did instruct the staff to cooperate with ASTM to improve the voluntary standard.

In the case of marbles, the risk of injury or death was again low and the mandatory standard would have applied only to about 30% of the marbles sold in the U.S. (marbles sold for industrial or collector purposes would have been exempt). Although there was no voluntary standard for labeling, a number of manufacturers did provide warnings about the well-known hazard of very young children putting marbles in their mouths. The situation was similar in the case of small balls and small parts in toys and games for children aged three and four years: low risk of injury or death, coupled with widespread consumer knowledge of the hazards of letting children under three play with items that can potentially choke them.

Industry had opposed the proposed regulations in its submissions to the Commission. In the aftermath of the Commission's decision not to proceed with regulation, the State Legislature of Connecticut passed a toy labeling law and other state legislatures began considering similar legislation. Industry attempted to have the Connecticut law struck down as an unconstitutional infringement on Congress's power to regulate interstate commerce. When court decisions upheld the Connecticut law, however, industry changed its position and asked for congressional intervention to prevent inconsistent state laws from requiring different labels.

Congress subsequently passed the Child Safety Protection Act, which codified many of the staff recommended labels. Congress is, of course, free to make this policy call and need develop no record further than a majority of the House and Senate. Congress, for example, exempted products manufactured outside of the U.S. from the labeling requirements if the products were shipped directly to a consumer and if "accompanying material shipped with the product" contained the warning. I accept that Congress can choose to act even when the record before the Commission is insufficient to support rulemaking, and I have supported enforcement actions under the authority of the new law.

"Nanny State"

Questions have been raised about a statement that I made in a letter to the editor that appeared in the October 12, 1999 issue of *USA Today,* in which I referred to certain Commission activities as "proclamations issued by this agency on behalf of

the federal Nanny State." My statement was in connection with a Commission press release about the practice of "co-sleeping." ("Co-sleeping" refers to adults and infants sleeping together.) I characterized the press release as a proclamation on behalf of the federal Nanny State because its basis was not a product over which the Commission has jurisdiction, but rather a cultural practice. It is entirely appropriate for the Commission to warn the public about defective products, but warnings about cultural practices are not within its purview. The press release in question also warns about the practice of placing infants in adult beds, which presents the genuine product hazard of entrapment between the mattress and the wall, and to the dangers of infants sleeping on soft bedding. These additional *product* warnings were inserted at my insistence.

My statement referred to a procession of proclamations. In addition to the press release on co-sleeping, I have been critical of Commission press releases that warn against obvious hazards, such as falling off snowboards. Finally, the Commission's General Counsel stated to the *Washington Post* in May 1994 that the movie industry might be within the Commission's jurisdiction if movies depicted unsafe practices with consumer products, such as stunts by children riding all-terrain vehicles. It was press releases or statements such as these, which seek to lecture people about either practices (co-sleeping) or products (movies) over which the Commission has no jurisdiction, or which lecture people about obvious hazards, such as falling down while moving forward, that prompted my remark about the federal Nanny State.

Threshold for Commission Action

I have been asked whether I have a higher "threshold" or "burden of proof" for Commission action than other commissioners. My answer is that all Commissioners must adhere to the statutory requirements, either for enforcement or regulatory actions. To order a recall, the Commission must find that there is a substantial product hazard or that a product is a misbranded or a banned hazardous substance. To issue regulations, the Commission is bound by detailed procedural regulations set forth in its governing statutes, and by findings that it must make in order to justify the regulations. These statutes are binding on all Commissioners and upon the Commission staff. Persons who do not believe that the statutes have been followed may seek judicial review of Commission decisions and actions.

Perhaps what prompted the questions about my "threshold" or "burden of proof" for enforcement and regulation is my practice of asking detailed questions at staff briefings about the cases that are being relied upon to support staff recommendations to go forward with regulation. These questions are based upon my personal reading of the in-depth investigations (IDIs) of incidents of deaths and injuries associated with the use of products. They may include police reports, medical examiner reports, social worker reports, hospital emergency room and paramedic reports, and the Commission staff's own interviews with the participants.

Reading IDIs and asking questions about them is a practice to which I have adhered faithfully as a Commissioner. I will continue to do so if I am confirmed in the position of Chairman. One cannot evaluate the need for product regulation without understanding all of the facts and circumstances surrounding deaths and injuries associated with the use of the product. I may find that the presence of the product was incidental, and that the real causes of the death or injury were not associated with the product, but lay elsewhere. These deaths or injuries could not have been prevented by any conceivable product safety standard. If regulation of the product will not reduce the risk of death of injury, then the Commission is not justified in proceeding with regulation.

Conclusion

One of the rewards of public service is the privilege of working every day with people who share the goal of helping others. This has been my experience during my more than nine years of service at the Commission. The hard-working, dedicated, career staff at the Commission fuels the engine that allows a small agency to operate effectively. What provides me with the greatest personal satisfaction is the fact that our work at the Commission helps protect America's families.

Mr. Chairman, I believe that my service and record at the Commission demonstrates a consistent, compassionate and responsible commitment to protecting our nation's consumers from unreasonable risks posed by defective consumer products. I believe that I can do even more as Chairman of the Commission. I am attaching two letters to this testimony in support of my nomination, one from my fellow Commissioner Thomas Moore, and one from the National Association of State Fire Marshals. I ask that they be made a part of the record. Mr. Chairman, I want to thank you again for this opportunity to testify before you and share my views with the

Members of the Committee, and to discuss my qualifications to serve as Chairman of the Commission. I would be pleased to answer any questions that the Committee Members wish to pose to me.

Attachments

NATIONAL ASSOCIATION OF STATE FIRE MARSHALS,
Government Relations, *January 8, 2001.*

Hon. GEORGE W. BUSH,
President-Elect,
Bush-Cheney Presidential Transition Foundation, Inc.,
McLean, VA.

Dear Mr. President-Elect:

On behalf of the most senior fire official of each of the 50 states and District of Columbia, the National Association of State Fire Marshals wishes to express its support of Commissioner Mary Sheila Gall as Chairman of the United States Consumer Product Commission. Commissioner Gall has served the Commission for nearly a decade and well understands the workings of this important agency.

Over the course of her tenure, our association has disagreed with Commissioner Gall on occasions. But, in the spirit of your Administration, we believe these are times to focus on areas of agreement. We have never doubted her concern for the safety of American families and the importance of individuals taking responsibility for their actions, be they single parents in public housing or corporate CEOs.

We will work with whomever you select to Chair the Commission, Mr. President-Elect, but we believe that it is Commissioner Gall's turn at the Commission's helm.

Sincerely,

GEORGE A. MILLER,
President.

U.S. CONSUMER PRODUCT SAFETY COMMISSION,
Washington, DC, April 26, 2001.

The Editor,
USA Today,
Arlington, VA.

Dear Sir:

I was dismayed to read the article in the April 25th *USA Today* giving an unfairly negative slant to the record and beliefs of: Mary Sheila Gall, my fellow Commissioner at the U.S. Consumer Product Safety Commission. As the article notes, Commissioner Gall has served at CPSC for ten years. She was initially appointed by President Bush and then re-appointed only a couple of years ago by President Clinton. As a life-long Democrat, and a Clinton appointee, I find it disturbing that Mary Gall would be attacked for her convictions and her beliefs now that she is being nominated for the Chairmanship of the agency.

Reading the article one might not know that the Commission is a three-member decision-making body. At any one time the agency may have no more than two members of any political party. At the moment there are two Democrats, myself and current Chairman Ann Brown and one Republican, Mary Gall. To search for some nefarious motive for Commissioner Gall's selection as Chairman is to fail to understand the political reality. She is the only sitting Republican and the President has the right to name his own chairman of the agency. Characterizing Commissioner Gall's appointment as 'political' is saying nothing more than the truth about Presidential appointments—they are all political.

Perhaps it is my own naivete speaking, but I was under the impression that being true to one's convictions was a virtue. That those convictions may not be shared by everyone makes them no less worthy of consideration. During my six years at the agency, I have been impressed by Commissioner Gall's hard work, her thoughtful consideration of every issue and been persuaded, on occasion, by her arguments. And for her part, she has been willing to change her views after hearing her colleagues on certain matters. But whether we agree on an issue or not, I can find nothing in her views or her voting record to cause me any alarm about her assuming the Chairmanship of the Agency. (Anyone who looks at the totality of her record

will find that she has voted with the Democratic majority or formed a majority with one or another Democrat on the Commission many, many more times than not.)

One of the results of Presidential and congressional elections is that periodically the philosophy of government changes. Our laws are designed to encourage that. It is healthy for the pendulum to swing back and forth between liberal and conservative views. If only one view was ever expressed or exercised, a large segment of the public would never have their views heard. While I may have a different opinion than Commissioner Gall on some aspects of Commission business, I have no doubt she will listen to my views and that, however she votes, her decision will be well-reasoned and give expression to a valid viewpoint shared by many (perhaps the majority) of Americans. To attack her nomination as Chairman because her thoughts on government intervention are somewhat different than her predecessor's is to trivialize our system of government and Commissioner Gall's very thoughtful approach to it.

Sincerely,

THOMAS HILL MOORE,
Commissioner.

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names or nick names used.) Mary Sheila Gall.

2. Position to which nominated: Chairman, United States Consumer Product Safety Commission.

3. Date of nomination: May 8, 2001.

4. Address: (List current place of residence and office addresses.) Home Address: 6811 Dillon Avenue, McLean, Virginia 22101. Office Address: The U.S. Consumer Product Safety Commission, Suite 722, 4330 East West Highway, Bethesda, Maryland 20814.

5. Date and place of birth: July 19, 1949 in North Tonawanda, New York (near Buffalo).

6. Marital status: (Include maiden name of wife or husband's name.) I am single, never married.

7. Names and ages of children: (Include stepchildren and children from previous marriages.) The names of my children are Maria Rosa Gall ("Rosita" age 17) and Walter Paul Gall (age 22.) I adopted my children as a single parent.

8. Education: (List secondary and higher education institutions, dates attended, degree received and date degree granted.) Bishop Neumann High School, Williamsville, New York. Attended from 9/63 to 6/67. Received a New York State Regents Diploma 6/67.

Rosary Hill College, Amherst, New York. Attended from 9/67 to 5/71. Received a B.A. in History and Government, minor in Education, 5/71.

Trinity College, Washington, D.C. Attended from 1/70 to 5/70—special junior year semester program. No Degree.

Old Dominion University, Norfolk, VA (Northern Virginia Campus). Attended night and weekend classes from 6/96 to 12/98. Received a Masters of Science in Education/Special Education, 12/98.

9. Employment record: (List *all* jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

1991–Present
Commissioner
U.S. Consumer Product Safety Commission (CPSC)
Bethesda, MD

Determine policy and priorities of the CPSC which has over 15,000 consumer products subject to its jurisdiction. Specifically, as Commissioner, I approve or reject petitions, promulgate regulations, refer matters for civil or criminal penalties, initiate administrative complaints, approve or reject settlements for civil or criminal penalties, accept or reject settlements in substantial product hazard proceedings, review appeals from administrative law judge determinations, prepare and submit testimony to Congress, approve or disapprove staff proposed budget requests, approve or disapprove annual operating plans, approve or disapprove officers of the Commission, and supervise and evaluate staff in my own office.

1989–1991
Assistant Secretary
Human Development Services
U.S. Department of Health and Human Services
Washington, D.C.

Administered the Human Development Services agency, the U.S. Department of Health and Human Services division serving children, youth, families, people with disabilities, the elderly and Native Americans. Oversaw a yearly budget of $5 billion and the activities of 1,000 employees. Worked closely with the Administration and Congress to develop and implement program policies, such as Head Start expansion, the Americans with Disabilities Act, foster care. Chaired the White House Working Group on the Family and served as a member of the White House Working Group on Disabilities.

1987–1988
Chair
President's Task Force on Adoption
Washington, D.C.

Worked with over 130 special interest organizations and many federal, state and local agencies to identify barriers to adoption and methods to promote adoption. Presented the Task Force report to the White House Domestic Policy Council and to the President. Conducted White House press briefings and gave interviews to national media. Testified before Congress. Organized White House and Congressional events to highlight adoption issues.

1986–1989
Counselor to the Director
U.S. Office of Personnel Management
Washington, D.C.

Senior confidential advisor to the Director on administration and agency policy development and implementation. Worked directly with the White House Cabinet Councils, federal agencies and public interest organizations on matters pertaining to the federal civil service (3 million civilian employees) and other national policies affecting the federal workplace.

1981–1986
Deputy Domestic Policy Advisor
Office of Vice President Bush
White House
Washington, D.C.

Provided policy option analysis for White House Cabinet Council and Cabinet meetings. Delivered oral and written briefs for the Vice President's issue/special interest and media use. Represented the Vice President at the Cabinet Council meetings and meetings with the public. Worked with federal, state and local government agencies. Extensive domestic travel with the Vice President.

1980–1981
Reagan-Bush Presidential Campaign and Transition Team
Alexandria, VA & Washington, D.C.

Contributed to the domestic issues section of the debate briefing book for the Reagan/Carter debates. Handled communications and policy transition work for the Vice President Elect. Worked with President Elect's transition team planning scheduling for the first 90 days in office.

1980–1981
Senior Legislative Analyst
House Republican Study Committee
Washington, D.C.

Analyzed legislative proposals for publication and distribution to Republican Members of Congress and interest groups. Conducted issue research, wrote floor and other speeches for Members, drafted articles for publication.

1979–1980
Director of Research
George Bush for President Campaign
Alexandria, VA

Provided oral and written briefings to the candidate on foreign and domestic issues. Traveled with candidate and provided briefings for the candidate, his family, campaign staff and supporters. Supervised full-time staff and volunteers. Wrote daily news summary for candidate.

1971–1979
Legislative Aide
Individual Members of House and Senate
Of United States Congress
Washington, D.C. and Buffalo, N.Y.

Employed by Senator James Buckley (C.R., N.Y.), Representatives Jack Kemp (R., N.Y.), and Tom Coleman (R., Missouri). Work included drafting bills and amendments, floor speeches, casework, and supervision of a nine-county Senate office in upstate New York.

10. Government experience: (List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.) All listed above.

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.) None.

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.) I am a member of St. John's Church in McLean, VA. I taught Sunday School there for four years. Prior to St. John's, I was a member of the St. Thomas More Catholic Church in Arlington, VA. I currently teach Sunday School at St. James Church in Fall Church. I have served, in a voluntary capacity, as a soccer coach, Cub Scout den leader, homeroom mother for my children's schools, member of the Parent Teacher organizations of each school, etc. Also previously served on the National Committee for Adoption, Special Needs Adoption Committee and the North American Council for Adoptable Children. I was a hotline volunteer for the National Wildlife Rescue League in 2000.

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate. I was elected a member of the Republican City Committee of Alexandria, VA in the late 70s. I was also elected as a delegate to the State Republican Conventions in the late seventies. These were not "public office" elections and I did not campaign or spend any money.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years. None.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $500 or more for the past 10 years. No campaign contributions of $500 or more.

14. Honors and awards: (List *all* scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.)

Scholarships:

1. Full four year teaching scholarship for D'Youville College, Buffalo, N.Y. (turned it down).
2. New York State Regents Scholarship.
3. Scholarship from Rosary Hill College, Buffalo, N.Y.

Honors/Awards:

Secretarial Commendation from Dr. Louis Sullivan, Secretary, Department of Health and Human Services.

Several service awards from Vice President Bush.

Warner Lambert Company Salute to American Family Award for Work to Promote Adoption.

Distinguished Service Award from National Committee on Adoption.

Father Clement DeMuth Award for Service to Children.

Christian Service Award for Outstanding Service to Children.

15. Published writings: (List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.) I wrote a story called "Little Red Socks" that was published in a book entitled, *The Greatest Gifts Our Children Give Us* (Simon and Schuster, '97).

I chaired President Reagan's Task Force on Adoption and was responsible for the final report, "America's Waiting Children" (1987).

I wrote several articles promoting adoption and some about the need to cherish our children. These were during my service as Assistant Secretary at HHS.

There are several letters to the editor of the *Washington Post* concerning HHS issues, such as the impact of parental drug abuse on children. While serving as Commissioner of CPSC. I have written letters to the editors of major newspapers about agency issues.

16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of on topics relevant to the position for which you have been nominated. Typically, I do not give formal speeches from a prepared text. I have enclosed a number of my policy statements for your review.*

17. Selection:

(a) Do you know why you were chosen for this nomination by the President? The President has nominated me as Chairman of the CPSC based on my over 9 years of service at the Commission. My record as a Commissioner demonstrates a strong commitment to the safety of the American public in their homes and communities. This commitment and my regulatory philosophy are consistent with those of the President.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment? I was originally nominated to serve as Commissioner in 1991 based on my broad experience in the public sector focusing on issues relating to children, individuals with special needs and my experience with consumer safety issues. During my tenure as Commissioner, I have become thoroughly familiar with the statutory responsibilities and day-to-day operations of the Commission. This knowledge and experience qualify me for the position of Chairman.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Not applicable.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe *all* financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers. None.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. None.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated? None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. As Assistant Secretary for Human Development Services, HHS and as Commis-

*The information referred to has been retained in the Committee files.

sioner at CPSC I have testified before various House and Senate Committees on matters under my jurisdiction.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.) Not applicable. I have nothing that could ever result in a conflict of interest.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details? No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. None.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. Please describe how your previous professional experience and education qualifies you for the position for which you have been nominated. I have served as an incumbent Commissioner for the past 9 years, and I am thoroughly familiar with its day-to-day operations and statutory responsibilities. The chairman and the two other commissioners each have one vote on all regulatory and enforcement matters undertaken by the Commission. These matters include decisions to: (1) issue, withdraw or amend regulations; (2) file administrative complaints seeking to have products recalled; (3) issue subpoenas and special orders; (4) settle civil penalty cases; and (5) refer civil or criminal penalty cases to the Department of Justice for prosecution. In addition, many major decisions affecting Commission operations, such as the budget, hiring of senior staff, reorganization of agency program offices, and the operating plan require my involvement. I served previously as an Assistant Secretary with the Department of Health and Human Services. I was head of the Human Development Services Agency and oversaw 55 federal programs with a staff of 1000 employees and a $5 billion budget. As an appointed federal official, I have appeared before the national media as spokesman for various Administration initiatives. I came to the position of Commissioner with over 20 years of public service experience.

2. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills? Based on my many years of government service and my work at the Commission, I believe that I have developed and demonstrated the skills necessary to assume the responsibilities of Chairman of the CPSC.

3. Why do you wish to serve in the position for which you have been nominated? I wish to serve as Chairman of the CPSC because I will improve the safety and well

being of the American public in their homes and communities. The Commission has done much good work in the past improving public safety and I am certain that it can do even better in the future. The Commission can, through information and education campaigns conducted in cooperation with industry and with public interest organizations, educate the public more effectively in the safe use of consumer products. Without in any way compromising safety, the Commission can work with the regulated community more cooperatively. In my previous service on the Commission I have made a significant contribution by bringing a sense of balance and a "limited government" perspective to the Commission's regulatory mission. I believe that I can contribute even more in the position of Chairman.

4. What goals have you established for your first two years in this position, if confirmed? International trade has expanded dramatically since the Commission began operations in 1973. Increasing numbers of consumer products are made in countries outside the United States and U.S. manufacturers export greater numbers of consumer products every year. The Commission needs to be more active in seeking to improve the safety of products being distributed in international trade. One of the best ways to accomplish this objective is to enhance Commission participation in the technical aspects of international product safety standards.

One of the major challenges of the Commission is getting notice of recalls and other safety information to consumers, especially the most vulnerable communities, who need it. The Commission needs to enhance its existing effort to reach consumers with notices of recalls and other crucial information about safe practices. I will leverage the Commission's resources by cooperative efforts with other Federal agencies, with industry, and with state and local entities that deal with these consumer constituencies. I would especially like to work with local fire departments.

I intend to work with Congress in order to obtain the level of resources adequate for the Commission to meet its obligations to comply with requirements for: (1) public accessibility of Commission information; (2) availability of Commission facilities and data to persons with disabilities, and (3) telecommuting options for Commission employees. I also will continue to ensure that our staff has the appropriate tools to address the increasing number of technologically complex hazards.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when should society's problems be left to the private sector, and what standards should be used to determine when a government program is no longer necessary. I will set forth my philosophical views in the context of the mission of the Commission: consumer product safety. We need product safety regulation to protect the public. But the nature of the regulations needs to be targeted at the true hazard. If the hazard lies in some defect or dangerous aspect of the product, then regulations and enforcement action to address and correct that hazard are appropriate. But where the nature of the hazard lies in careless consumer behavior in the presence of the product, and not with the product itself, then regulation and enforcement action are not appropriate. Regulation of or enforcement action against products when consumer behavior is the real problem does *not* promote enhanced safety because it does not address the underlying cause of deaths and injuries. Determining when a hazard is in the product and when it is not is often difficult. The Commission has a highly capable technical staff, and the input of consumers, the regulated community and other stakeholders to assist it. I have served as a Commissioner with a strong commitment to maintaining an appropriate balance in the respective roles of government, industry and the consuming public in attaining the critical goals of this agency.

I believe that the Commission should adhere to risk-based policy making. This is a process by which the Commission balances the degree of risk of a hazard, the vulnerability of the population at risk to the hazard, the susceptibility of the hazard to remedial action and the cost of the remedy in deciding whether and what type of regulatory or enforcement action to take. A government agency must focus its efforts in addressing those areas where it can do the most good in the most efficient and effective manner possible. With regard to this Commission, Congress has clearly established a preference for Commission participation in the development of, and deferral to, voluntary safety standards and for the use of cost-benefit analysis when the Commission does undertake rulemaking. When voluntary efforts at product safety have proven to be a failure, then it becomes the responsibility of the Commission to take action, if the other criteria necessary to promulgate mandatory rules are present.

Finally, I believe in the principle of strict statutory construction. In our system of government, it is Congress that provides the specific authorization for Agency action. An Agency is never at liberty to amend its statutory authority in the guise of "interpretation," in order to achieve a particular result, no matter how desirable

that result might appear. The authority to amend a statute is reserved to Congress itself.

6. *In your own words*, please describe the agency's current missions, major programs, and major operational objectives. The mission of the Consumer Product Safety Commission is to protect consumers from the unreasonable risk of injuries and deaths associated with the approximately 15,000 types of consumer products under its jurisdiction. The Commission's major programs are designed to identify and analyze product hazards, assist industry in developing voluntary safety standards for products, monitor compliance with voluntary standards, issue and enforce mandatory standards, obtain recalls of unreasonably dangerous products and to inform and educate the public about potential product risks and good safety practices.

The Agency's operational objective, given limited agency resources, has been to streamline operations while enhancing productivity. We have implemented telecommuting for the majority of our regional employees. We are upgrading our computer technology and enhancing and integrating our databases to give our staff better access to our data systems. We have significantly reduced the amount that the General Services Administration charges us for lab space by consolidating our laboratories and we continue to work to modernize our laboratories and improve our technical capability.

7. In reference to question number six, what forces are likely to result in changes to the mission of this agency over the coming five years. The overall mission of the Commission, the protection of the public from the unreasonable risks of injury associated with consumer products, will not change. There will, however, be changes that will affect the way that the Commission carries out that overall mission.

One of the greatest changes will be in the growth of international trade. Increasing numbers of consumer products are being imported into the U.S. and U.S. manufacturers are exporting larger numbers of consumer products. These changes pose two challenges to the Commission. The Commission must seek to make the existence and nature of its regulations available worldwide to manufacturers who are sending products to the U.S. The Commission must also work with our trading partners to harmonize product safety standards so that consumers are protected from unreasonable risks without unnecessarily impeding commerce. This work will often lie in participating in the voluntary standards-setting process carried on by international standards-setting organizations.

Channels of communication have changed dramatically since the Commission began its work in 1973. For example, at that time there were only three major television networks for consumers to watch. Today consumers obtain information from numerous print and electronic media (e.g., cable and satellite television, the Internet and specialty publications). Yet many of our most vulnerable populations have only limited access to print or electronic media. The Commission needs to continue to assess innovative means of communication that help the Commission get its message out when it has announced recalls or other safety information.

The composition of the U.S. population is changing. Changes in the demographics in the U.S. will challenge the Commission to deliver its message to different dynamic communities, especially our most vulnerable populations.

8. In further reference to question number six, what are the likely outside forces which may prevent the agency from accomplishing its mission? What do you believe to be the top three challenges facing the board/commission and why?

Response to First Question

There are relatively few outside forces that may prevent the Commission from accomplishing its statutory mission. No one opposes consumer product safety, although there may be differences of opinion in how that objective should be attained.

The Commission will always face the prospect of limited resources. The Commission must, therefore, strive to use the resources allocated to it by Congress as efficiently as possible and strive to be as effective as possible in its choice of the activities that it undertakes to accomplish its mission.

There are some outside forces that impact how the Agency performs its mission. In the past few years, the Agency has had to address a growing number of unforeseen serious product safety hazards involving very complex technological issues. We have also become more involved in protracted legal negotiations in order to arrive at an equitable solution for both consumers and industry. Addressing these problems has required substantial staff and financial resources.

Response to Second Question

I consider the following to be the top three challenges facing the Commission.

The Commission needs to improve consumer product safety by harmonizing international consumer product safety standards. This harmonization will involve more

effective participation by Commission technical staff in the voluntary standards setting process carried out by international voluntary standards setting organizations. The Commission also needs to leverage the existing resources of government by strategic alliances with other government organizations that have an existing international presence (e.g., commercial officers).

The Commission needs to work cooperatively with consumers, the regulated community, public interest groups and other stakeholders to disseminate information about recalls, and other safety messages, as widely as possible.

The Commission needs to work with Congress to review the appropriate role of the Commission. The Commission needs to work especially closely with Congress to ensure that its resource level is adequate to permit it to accomplish its mission while meeting other mandates such as information accessibility and telecommuting.

9. In further reference to question number six, what factors in your opinion have kept the board/commission from achieving its missions over the past several years? Inadequate resources and lack of management attention devoted to international standards-setting activities have limited Commission effectiveness in this area. In addition, the Commission has not sought to partner effectively with U.S. government agencies outside of the U.S.

Unjustified criticism of companies' "speed of reporting" or disagreement with Commission staff on the details of recalls makes companies reluctant to report. Fair treatment would encourage reporting. Unjustified criticism also tends to focus public attention on perceived "villains" rather than the Commission's safety message.

Internal disagreements as to the proper jurisdiction of the Commission and differences of opinion as to the most responsible methods of accomplishing its legitimate regulatory objectives have been the most serious impediments over the past few years.

10. Who are the stakeholders in the work of this agency? The "stakeholders" in the mission of this Commission are the consuming public and those organizations that manufacture, distribute and market consumer products. Other organizations with a safety-related mission, such as fire departments follow and participate in the activities of the Commission, as do a number of public interest organizations. In addition, the Congress and State and local safety agencies and trial lawyers also have an active interest in the operations of this Agency.

11. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question number ten. The primary responsibility of each member of the Commission is to protect the consuming public. The Commission accomplishes this responsibility by communicating safety-related information to the public, as well as taking other actions, consistent with the Commission's mission and procedures, designed to remove defective products from commerce and to ensure that consumer products in commerce do not have unreasonable risks associated with their use. The Chairman is the principal executive officer of the Commission. The Chairman is the person principally responsible for the efficient functioning of the Commission, and its compliance with the requirements incumbent upon government agencies. The Chairman is also the principal spokesperson for the Commission and takes the lead in the Commission's relationships with other government agencies, with the Office of Management and Budget, and with Congress.

Product safety further requires the active participation of the consumer, industry and government. I believe that the Commission must work with and solicit the cooperation of both consumers and industry when possible in order to fulfill its regulatory mission. I encourage cooperative efforts between the Commission and state safety agencies.

12. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you?

In my experience, the key factors integral to sound agency management include:

- clearly defined and easily understood mission statement, goals and objectives
- providing staff the tools to do their job (training and equipment)
- opportunities for upward mobility and professional development
- supportive workplace environment
- recognition of employee achievement
- 'walking the line'—unscheduled visits to employee workstations to remind them of the importance of their work
- maintain an open-door policy

• encourage employee 'minority views' on issues without fear of reprisal

I also believe in delegation of responsibility and authority. In general, managers should be given sufficient authority to resolve matters at their designated level of responsibility, and then be held accountable for the results.

I have never had an employee whom I supervised bring a complaint against me personally. As an HHS official, my name appeared on one employee complaint brought against the Agency. The employee dropped the complaint.

13. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe. In my role as Assistant Secretary at HHS, I was asked to testify before the Senate and House Committees on various issues under my jurisdiction. My Agency worked very closely with committee staff to supply information and assist with our budgets. As a Commissioner, I have testified before House and Senate authorizing committees on several occasions pertaining to issues of Commission authority and decisions that the Commission has made. I have also testified before House and Senate committees on our budget requests and other issues under the Commission's jurisdiction. I have maintained a working relationship with Members of Congress and committee staff. Committee staff and Members' personal staff often call upon my office for assistance. It is my belief that an open line of communication between Congress and the Commission, including the office of the Chairman is key to the effective functioning of the Agency.

14. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your board/commission comply with the spirit of the laws passed by Congress. I intend to keep the pertinent committees of Congress aware of all of the pending rulemaking activities under way at the Commission. I maintain an open door policy to allow members of the public and industry to communicate their concerns to the Commission and I actively seek their input. My staff and I have also been very diligent in working with Members of this Committee and other Congressional Committees of jurisdiction in addressing issues of mutual interest and concern. I welcome inquiries and other communications from all Members of Congress and intend to assure that congressional correspondence is answered promptly and accurately.

15. In the areas under the board/commission jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views. Congress last authorized the Commission in 1990 and Congress may need to consider whether there is a need for legislative action.

16. Please discuss your views on the appropriate relationship between a voting member of an independent board or commission and the wishes of a particular president. I believe that Commission members must be independent in their judgment. At the same time the President has the Constitutional responsibility to ensure that the laws, including the laws administered by the Commission, are faithfully executed. The Commission should, therefore, cooperate with a President's Administration to the extent that it can do so without compromising its independent judgment. For example, the Commission has cooperated with the Office of Management and Budget in preparing a regulatory agenda and plan in response to executive orders requiring that it do so. I also believe that the Commission may comply with certain requests of an Administration without undermining its independence.

The CHAIRMAN. Very good.

Let the record show that the Consumer Product Safety Commission has eliminated a lot of trial lawyers. I know that will make a lot of people happy, but that is the greatest call upon any profession, is to eliminate itself: the doctors seek to eliminate all diseases, the ministers all sin. If we lawyers can get rid of injury cases, that would be the greatest honor. I harken when this Committee was confronted with the flammable blankets.

We had many a hearing there with respect to the little babies burning up in the cribs with those blankets, and so we instituted the Consumer Product Safety Commission. Over the years, the agency has saved many lives. I just note that Ms. Ann Brown has done an outstanding job in continuing its mission.

Other than that, I will yield to my colleague Senator McCain.

Senator MCCAIN. I thank you, Mr. Chairman.

Let us try to address a couple of the issues that have been raised, Ms. Gall, in the time that I have. The question has been raised about a letter to the editor of October 12, 1999, in which you referred to certain Commission activities as "proclamations issued by this agency on behalf of the federal Nanny State." Was that in connection with a press release from the Commission about co-sleeping?

Ms. GALL. Yes, Senator, there were three issues that I addressed in that letter. First let me say that that letter also contained high praise for the Commission and its important work with regard to cigarette lighters and other issues that we had undertaken.

There were three issues I was concerned about. First, a press release and a study from the Commission that addressed the issue of co-sleeping. Co-sleeping is when parents, usually the mother, will take the baby to bed, perhaps to breastfeed, and sleep with the baby in the bed. Some staffers at CPSC independently, not as a Commission responsibility, but independently had undertaken a study to review death certificates to see how many circumstances there were where a baby died when co-sleeping with a parent. They just looked at death certificates. They did not look at the circumstances associated with it, whether there was alcohol or drug-related incidence with the parents and perhaps that had something to do with it.

I felt that it was inappropriate to issue a press release on a cultural practice. There was no product involvement. The Academy of Pediatrics, Maternal and Child Health at NIH and the offices at HHS never suggested, never opposed the concept of co-sleeping. I am sure the Senators here would never tell a member of their staff who may be nursing, a new mother, that she should not take her baby to bed and nurse the baby there. Certainly it would not be your business any more than it would be the business of the Consumer Product Safety Commission to tell parents how they sleep with their children. That concerned me greatly.

The second item was a press release which said that if you go snowboarding you can fall. Well, I think it is pretty obvious to most folks that if you move you can fall. So I did not think it was necessary to use our press release to inform people of something that was that obvious. I felt that we devalued the coinage of a press release when we use it for something along those lines. That is what my dear father would say, mistaking motion for progress.

The third issue I was concerned about was a newspaper article that I read. You can imagine I am drinking my coffee one morning at home before going to work and I read this article saying that the general counsel of the Consumer Product Safety Commission thinks that we can exert jurisdiction over the movie industry. Why? Because one particular movie called "Richie Rich" showed a picture of a child riding an ATV.

Now, I am the first one to say that children have no place on ATV's, adult ATV's. That simply is unacceptable. But I do not believe that automatically gives us jurisdiction over the movie industry. That is like saying if you show a bus speeding in a movie that the Department of Transportation has jurisdiction over the movie industry.

Senator MCCAIN. Ms. Gall, I have several other questions.

Ms. GALL. All right. You see I enjoy my subject matter.

Senator MCCAIN. You have been criticized for voting not to bring a rulemaking on bunk bed entrapment hazards. It has been said you relied on a legal technicality to avoid providing needed protection for children who were dying as a result of getting stuck in the bunk bed railing. Can you explain this legal technicality?

Ms. GALL. Sure. There were two different issues with bunk beds. The first one was a few years ago and it pertained to two fatalities in lower berth bunk beds. So the case would be that there would be one fatality per 40 million bunk beds. The second fatality was in a bed that would not be covered by a voluntary or a mandatory standard. So we were looking at something that the voluntary standard could accept.

The issue that you are talking about, Senator, was more recent. It pertained to a voluntary standard that was being introduced automatically to be accepted by the Commission as a mandatory standard. Our regulations and our law tells us we must look first to voluntary standards before, to see if they cover the issue and deal with the problem and second if there is substantial compliance.

When the issue was brought to the Commission in a briefing, there was over 90 percent compliance with the voluntary standard, over 90 percent. I asked the staff if they were aware of a single instance of where a company was not in compliance with the voluntary standard and they said no, at the time of the briefing they thought it was 100 percent.

So our law tells us we must look to voluntary standards first. The proposed language was absorbing the voluntary standard as a mandatory standard, and I said that that was unacceptable. Commissioner Moore agreed with that analysis that that was not the basis on which to act.

Senator MCCAIN. I am very pleased that Commissioner Moore is here today and we appreciate you being here, Commissioner Moore, and the rest of the staff.

In 1994 you voted with the majority not to begin a rulemaking on baby bath seats. And I believe it was because you were not sure that baby bath seats were safer or less safe than not using one. Do you have any answer yet to the question of whether drownings occur at a higher rate when baby bath seats are not used?

Ms. GALL. Senator, there was a study done, the Mann study, which has not been peer reviewed or published, that took a look at the use of baby bath seats for 5 to 10 month old babies. In addition, our staff did its own independent research. There are some who believe that the data demonstrates that it may be safer for a baby to be in a bath seat than in a bath tub without a bath seat.

I did not base my vote in either case, in 1994 or this year, on that basis, because my concern most recently was that we saw a number of cases where the caregiver was present and there was a near miss, where the baby was able to slide down through the bath seat and could have drowned if the parent had not been there to act.

The biggest concern I have had is that in 1994 when we looked at bath seats we had 12 or 13 cases; all except one, the parent was absent at the time. Many of these were egregious cases. Now, I

know most people have heard that it is the mother turned away for just a moment to get a towel or answer the phone, but that was not the case. These were very serious, egregious cases of being away from the baby for prolonged periods of time.

Fast forward to 2001, we now have 70 cases where in many cases again these are egregious cases where children are left alone for long periods of time. But we did see that there were now 40 cases where babies had a near miss with the parent actually there. So that was the basis on which, along with some other factors, I decided that we had to move forward to begin mandatory standards to address this issue.

Senator MCCAIN. Thank you. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Lott, we are delighted to have our Leader here. Senator Lott, do you have a statement or anything which you would like to make? I know you have got other responsibilities on the floor.

STATEMENT OF HON. TRENT LOTT,
U.S. SENATOR FROM MISSISSIPPI

Senator LOTT. Well, thank you very much, Mr. Chairman. I do not want to break in line here, but I do have a statement I would like to submit for the record, and I do want to say how pleased I am to offer my support to Mary Sheila Gall. I have known her for a long time and I appreciate the work she has done and the service she has given to her country. I also appreciate the kind of person she is as an individual and her work on things unrelated to her government service on issues such as adoption. The fact that she has two adopted children is a side of her personality that people do not really see, so I wanted to mention that.

Mr. Chairman, I do not want to go through her long record of service, but I do want to note that she has been on the Consumer Product Safety Commission for 10 years and that she was reappointed to a 7-year term by President Clinton in 1999. I also want to remind my colleagues that she has been confirmed by the Senate without a single dissenting vote, I believe, twice.

She has lengthy experience working on Capitol Hill for Senators and for Congressmen from two different States. She worked in the Reagan Administration in a critical position and the Bush Administration in critical positions. She served as Assistant Secretary of HHS, and I think she has done exemplary work at the Consumer Product Safety Commission.

I know there will be some people that will be critical of some of the positions that she took. I would note that I believe some of those positions she took actually occurred before the last vote that confirmed her unanimously, and that on this Commission it is not always easy to come to a conclusion. There are sometimes very strong arguments on both sides. There are difficult questions and you have to weigh them and come to the best decision within your own judgment, within your own conscience.

I do not quite understand why there is this mounting opposition to this confirmation now, and I want to question anybody's reasoning in opposing her. She clearly is qualified, even though I saw some Senators suggest yesterday that she was not qualified to be

Chair of the Commission she has served on for 10 years. With her personal record, and through probably 25 years of service to government, I think she certainly is qualified. I wanted to be here to personally offer my support.

Thank you for letting me interject my thoughts at this point, Mr. Chairman. I look forward to further supporting this nomination.

The CHAIRMAN. Very good.

Senator Kerry was next here.

Senator KERRY. Mr. Chairman, thank you very much.

Ms. Gall, I would like to review with you the area that Senator McCain just inquired about with respect to bunk beds.

Ms. GALL. Sure.

Senator KERRY. From the period of 1990 to 1998 the Commission received reports of 89 bunk bed-related deaths. Of this number, 64 percent involved entrapment, 24 involved children being hung from the beds by objects such as clothing, bedding, and belts, and another 8 were falls from the beds. CPSC's statistical survey found that about 31,400 children were treated in emergency rooms for bunk bed-related injuries.

Now, although there was a voluntary standard in place, to which you have referred, the field staff visited 55 retail outlets in 39 cities, examining 58 manufacturers' bunk bed models, and they made the following findings: Of the 58 models, 23 were found to be in noncompliance with the voluntary standard. That is almost 50 percent of the voluntary standard not working. Seven firms were repeat violators. Five manufacturers were discovered to have significant entrapment hazards associated with their products, three of whom, more than 50 percent, were clearly aware of their voluntary standard. All in all, the staff found 630,000 beds in noncompliance.

You interpreted the law and said the following. I quote you. You said: "Our statute provides that the 'Commission shall not promulgate' a mandatory rule unless an existing voluntary standard: 1) 'is not likely to result in elimination or adequate reduction of such risk of injury' or 2) is 'not likely' to have 'substantial compliance.'" You then hung your decision, the sole dissenting vote, on the notion that you thought there was at least it appears, presumptive, of substantial compliance. Correct?

Ms. GALL. Yes.

Senator KERRY. Now, the law actually says otherwise. You actually applied the law incorrectly. The law says "it would eliminate or adequately reduce the risk of injury addressed and"—not "or"; "and"—"is likely there will be substantial compliance."

Ms. GALL. Yes, that is correct, that is correct.

Senator KERRY. So your decision was based on only substantial compliance when the staff in fact recommended that children are dying, they are being seriously injured in high numbers in the presence of the voluntary standard, and that evidence was sufficient because it was not accomplishing what the law said, doing away with the injury. Therefore, they wanted to move to a mandatory standard.

How do you justify, number one, misinterpreting the law; number two, ignoring the evidence of the Commission with respect to the injuries that were continuing to be committed?

Ms. GALL. Well, first of all, I did not misinterpret the law. The law says that a voluntary standard must do two things. It must adequately address the problem at hand—that is not exact language, of course—and second must have substantial compliance.

Senator KERRY. But that is not what you said in your statement. In your statement you said otherwise.

Ms. GALL. OK, all right. Well, thank you——

Senator KERRY. Do you acknowledge then that you were incorrect?

Ms. GALL. It must be both of those things together.

It is true that we found a significant number of beds that were out of compliance, and that demonstrates two things: first, that our staff has the capability to identify problem beds; and second, it has the capability under a voluntary standard to take action under section 15. Second, it demonstrates that we are able to work with people who are in violation and bring them into compliance with the voluntary standard.

Senator KERRY. Well, with all due respect, Ms. Gall, I am sorry to interrupt you, but you are not, in fact, answering my question.

Ms. GALL. Well, I am getting there.

So what the staff had proposed was the exact language of the voluntary standard to be incorporated as the mandatory standard. If we thought that the voluntary standard was not adequate to address the problem, why would we propose that as the language for the mandatory standard, point number one.

Point number two——

Senator KERRY. Well, because for the following four reasons: because the staff said, number one, by making it mandatory it would allow them to pursue civil penalties for violations; number two, it would facilitate the recall of defective beds; number three, it would increase compliance; and number four, it would prevent the importation of noncomplying beds by foreign manufacturers—all four of which things you could not do under the voluntary——

Ms. GALL. Actually, Senator, we did identify noncomplying beds, as you noted, and we did take action against those noncomplying beds. So that is incorrect.

Senator KERRY. Because they voted to make it mandatory, and you voted against it.

Ms. GALL. No, this was before. This was before, Senator.

If I may continue, what they proposed was the voluntary standard to be incorporated as a mandatory standard. To say that the mandatory standard would automatically increase compliance from over 90 percent to 100 percent is not justification for moving in that direction because the law does not say that. The Congress told us to look to voluntary standards first. The Congress said if those were adequate and if there was a high rate of compliance, that was what we were to do.

To change that interpretation of the law to say that automatically a mandatory standard is going to have a higher rate of compliance than a voluntary standard is not what the law states, number one, and number two, is not necessarily true. We have mandatory standards at the Commission. We would like to think that they have 100 percent compliance, but in the last year we had over a million cigarette lighters stopped at the docks that were not in

compliance with the mandatory standard. We have fireworks, where we have about a rate of 56 percent compliance with the mandatory standard.

We are working hard to improve that, but that does not necessarily mean there will be a higher rate of compliance if the standard is mandatory rather than voluntary, and that is not what the law tells us to do.

Senator KERRY. Well, my time is up. It raises a very serious question, if I may say, and I will just say this very quickly. See, this is what underscores the question of sort of a philosophy or a point of view. If two members of the Commission were prepared to move to mandatory and the staff was saying overwhelmingly we are not protecting these children adequately, the voluntary standard has not worked over 8 years, but you hung your hat on a substantial compliance concept, erroneously putting it into one segment of a two-part law. You effectively turned away from the mandatory promulgation and based it on a percentage.

Now, indeed percentages are statistics, but for the 10 percent, you can have 10 percent of a large number of people which is too many of our children being submitted to a particular risk. The question is which way were you willing to fall in that balance.

Ms. GALL. But Senator, first of all, I was following what the law said. Commissioner Moore agreed with me that the general counsel's interpretation was incorrect.

Second, making something a mandatory standard does not guarantee a higher rate of compliance than having a voluntary standard. If we have 90 percent of people in compliance with a voluntary standard, we have a mandatory standard on another issue where there is 56 percent of compliance, or we have a million cigarette lighters coming into the country that are not in compliance with the mandatory standard, I think that demonstrates that, while we try to go for 100 percent compliance with a mandatory standard, we do not always reach that. And the law tells us we must look to voluntary standards first.

The CHAIRMAN. Senator Burns.

Senator BURNS. I am going to pass this first round.

The CHAIRMAN. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman.

Ms. Gall, every Senator here has acknowledged that there is a role for individual responsibility and consumer misuse on these issues. But what we are concerned about is whether you are going to skew the balance toward saying that the consumer is at fault rather than looking at product shortcomings. I want to review with you three statements that you made that suggest that you will skew the balance against the question of investigating whether the product is part of the problem and give you a chance to respond.

On the baby walker issue, you said: ". . . the problem here is not with the walker, but with the failure of those entrusted with caring for small children. . . ." On the gas-fired water heater you said almost the same thing: ". . . the problem before us is one of consumer behavior rather than a defective product." In the baby bath seats issue you said, again virtually the same thing: "The problem is not with the product, but with the use of the product by the adult."

So in three significant cases you said that the problem is with the consumer rather than the product. Here is what troubles me because, like my colleagues, I think there is a clear and key role for individual responsibility and the question of consumer misuse has already been talked of. But what concerns me is that you voted not to even look at the question of whether a product's shortcoming is part of the problem as well.

In other words, you were not voting on the baby bath seats initially on a ban, which is what you told me, and I was troubled when you said that. You were voting against investigating whether there was a potential product shortcoming.

So my question to you is, if you get to be the Chair are you going to investigate only when a product is so unsafe that it is a problem even when you have perfect consumer behavior every time in the marketplace?

Ms. GALL. Well, first of all, Chairman Brown talks about the Federal safety triangle. There is a role for government, for industry, and for the consumer, as you have noted.

With regard to baby walkers first, my concern was that there were about 18,000 babies per year going flying down the stairs in baby walkers. There were the same number of babies the same age falling down the stairs who were not in baby walkers. Obviously, I am concerned about both groups of babies, and the simplest way to address that of course is to put up a baby gate or to close a door, as the Senators who have young children here acknowledge, that that is a safety measure you have to take when you have young children around the home.

With regard to baby walkers, I felt that it was inappropriate to move forward on a mandatory standard. However, I recommended that we work closely with the voluntary standard community and the Juvenile Products Manufacturers Association to develop any necessary work to address some of these issues with baby walkers. In point of fact, it did not take a mandatory standard to correct and to improve baby walkers so that they have either braking mechanisms or they are now stationary. It did not take a mandatory standard.

Unfortunately, as we have these discussions about various issues, just as with the Senate, at the Commission there is no one size fits all solution to every issue that comes before us. There are lots of different ideas about patients bill of rights and prescription drugs and so on that come to the Senate in a mix. We have to think at the Commission outside those blinders of it must be a mandatory standard all the time and look at the best way to address an issue.

Sometimes it is a mandatory standard. Sometimes it is working with the voluntary standards community. Sometimes it is sitting down, as with gas-fired water heaters, it is sitting down with industry, bringing them all together. Gas-fired water heaters is a success story, Senator.

Senator WYDEN. Well, Ms. Gall, the time is short. In each one of those statements, though, you did not say what you just said.

Ms. GALL. Sure I did.

Senator WYDEN. No, ma'am. I quoted you. In three proceedings you in effect blamed the consumer. What I want to make sure is

that if you are Chair of this Commission that you are willing to at least investigate—I am not talking about what the remedy is—to at least investigate whether or not product shortcomings are part of the problem as well, because in three proceedings you said you would not even take the initial steps to investigate whether there are product shortcomings.

My second question to you is would you approach your job differently if you are confirmed as Chair than you did, say, as a member? Everybody has got a right to change, and I have certainly made changes on my views over the years. But, I would like to have you say for the record whether you are going to handle your position as Chair the way you handled your assignment during your previous 10 years.

Ms. GALL. Senator, I would just like to follow up quickly. I did agree to work with the voluntary standard community with baby walkers and it was successful. With gas-fired water heaters, we called industry together. I worked very closely with industry. They had to develop new technology and they have done so. It is now being field tested and we will have some wonderful news for you in the near future.

With regard to bath seats, I voted based on the facts and the law before me at the time. I did so again, changing my mind because there was new evidence, in the recent vote that we took. I look at the evidence and I look at the law. I will not change the way I conduct business by looking at the evidence and looking at the law.

With bath seats, in 1994 we had the extreme cases. As I mentioned to you, some of them were very extreme, where children were left for long periods of time, but the bath seat functioned properly. It was attached to the tub, it was sitting upright. There were extreme circumstances.

Again this year, there were extreme circumstances. You know, I think very few of you would agree to regulate when there is an issue, for example, of a mother who is drunk, she puts her child in a bath seat in the tub, turns the water on, goes downstairs; the water fills the tub completely, overflows, floods the bathroom floor, seeps through the bathroom floor to the living room ceiling below. There is no mandatory standard, there is no performance standard, there is no ban, that will protect that baby in that kind of circumstance. That is an egregious case.

That was the kind of thing we saw frequently with the cases before us in 1994.

Senator WYDEN. My time is up. I only want to say, Ms. Gall, what troubles me is that when we create this balance between consumer use and product shortcoming, it still looks to me like your reaction is going to be to first blame the consumer rather than to initiate an effort to examine whether product shortcomings are part of this as well.

I look forward to the next round, Mr. Chairman.

The CHAIRMAN. Next we will have Senator Allen.

Senator ALLEN. Thank you, Mr. Chairman.

Having come and gone, I am not sure what was being covered, but I think everything from car seats to bunk beds have been. Let me ask you something that is maybe not in the various safety matters, but I was looking at your response to the second question as

far as the top three challenges facing the Commission. The first one that you brought up was "The Commission needs to improve consumer product safety by harmonizing international consumer product safety standards," and more participation with the technical staff and so forth. Then you get into "leveraging of existing resources of government by strategic alliances with other government organizations that have an existing international presence."

Yesterday I met with the Secretary of Commerce on some of the issues. I was reading on the issues as far as international trade, and I read just yesterday how there is actually some pretty good positive comments coming out of Great Britain with the U.S. counterpart on having not just a NAFTA for North America, but having the Americas and Europe harmonizing trade, which would be beneficial, I think clearly beneficial to Americans, to be able to get our products into Europe. There are some very good products out of France and Germany and Britain and the Netherlands, the Swiss, and Austria and elsewhere that we would like as well.

Now, the key to that I think, in the event that there is that harmonization and that we can get our products easily into Europe and European countries can get their products into our country, clearly one of the things that they talked about is the safety standards. Clearly, your agency would have to be involved in that.

Ms. GALL. That is right.

Senator ALLEN. You made that a number one priority, which I think is very good because it means jobs and opportunities for this country. How do you see your agency or this agency or this Commission working with your European counterparts? Where would you see any problems or where do you see—do you think that their regulations of consumer protection would be so difficult that we could not be able to agree with them, or do you see that as fairly easy, although with some negotiations, in harmonizing their safety standards with those of the United States?

Ms. GALL. Well, first of all, we have had limited experience at the Consumer Product Safety Commission on addressing those issues. We have not done much in the last several years. Many of the safety organizations in Europe are voluntary standard-setting organizations. Some individual countries of course have mandatory standards as well.

We believe that our safety standards here in the United States, at least certainly the ones involved with the Consumer Product Safety Commission, are the best in the world and we would never consider lowering the standards to accommodate European standards. So let me say that first.

Second, we would probably be very closely involved with the Trade Representative, State Department, Commerce, and so on. But I think we need to go beyond that because we have new markets emerging, countries who are bringing their goods into the United States for the first time. We need to work with those countries to let them know what our standards are and what we expect when we import goods from their countries.

One area I think we need to address is Mexico. We have had a doubling of imports from Mexico in the last 10 years. There are consumer products, everything from textiles to small appliances and toys and cigarette lighters, coming in through the Mexican bor-

ders. So that is an area I would like to see us open up communications with Mexico.

We have an ongoing good relationship with Canada and we will continue that, of course. But the harmonization of standards I think is a very important issue.

There are other international issues that we need to take a look at as well. We have had the opportunity in the last couple years to do some research with our European counterparts. There have been concerns raised here in the United States and in Europe about the use of diosononophthalates in polyvinyl chloride, which is used to soften toys, and there have been some concerns raised about whether or not those chemical compounds are toxic to organs within the body and perhaps cancer-producing.

We issued a report saying that we had taken a look at these issues and we felt that DINP was safe. But our American companies voluntarily removed it from their products that children would mouth, such as teething rings and pacifiers and those kinds of things.

But that kind of exchange when we are both addressing the same issue, concerns about chemicals in products, is something that is very healthy. We developed a methodology that the Europeans are going to adopt as they do their testing for their products. So that exchange, that international exchange, is a healthy consequence of some of the work that we do at CPSC. But again, the harmonization is a very important issue.

Senator ALLEN. I do not have much time left.

Ms. GALL. I'm Irish; I tend to talk a lot.

Senator ALLEN. I know that you look at having industry voluntarily come up with standards. I think that what you will find in this area is that sometimes you will find that the industry, wanting to enter say the European market or the Europeans wanting to enter our market, whether it is on tractors or chain saws or appliances or whatever it may be, they are going to agree to maybe a stricter standard because they just want to please everyone with it, but it is good for business and it is good for consumers as well. So your voluntary approaches may have industry actually saying, here is what we want to do, which is maybe further than we may want to constrain them.

The CHAIRMAN. Very good.

Senator Boxer.

Senator BOXER. Ms. Gall, I am going to make a couple of comments and then at the end I am going to ask a question about recalls and your philosophy on that.

Ms. GALL. All right.

Senator BOXER. I want to pick up on what you said about an example you gave of a drunk mother—it could be a drunk mother or a drunk father—who puts a child, let us say, in a baby bath seat, walks downstairs and, to use your example, forgets about the child and so on.

How do I feel about that? I would go after that mother or that father with the full backing of law enforcement. But you know what else? I would make that baby bath seat the safest it can be. If it can be made safer, do everything to protect that child. That

child should not be punished because that poor little innocent has a neglectful parent, mother or father.

So that is one place where I do not see the two being incompatible. You go after the negligent parent, you make that baby bath seat the safest it can be.

You have said to me privately, and you repeat it today, you voted 97 percent of the time with the other Commissioners. You said in my office that——

Ms. GALL. Right, on enforcement.

Senator BOXER. Let me finish.

—I am not extremist. Now, we have looked at most of the votes in the Commission. Most of them are noncontroversial, Mr. Chairman, such as voting to publish a notice in the *Federal Register,* appoint staff, accept settlement agreements, or to commend a company for taking certain actions.

But you see, what troubles me is this kind of dual message we get from you. You say that; on the other hand, you said in your testimony before this very Committee in 1999 when you were up to be back on the Commission, quote, quote from you: "The other Commissioners and I do not always agree. In fact, a lot of the time we do not agree."

So it seems to me there is a kind of a changing deal here. Sometimes you do not agree with them and now you say you agree with them, and I am very, very troubled by this conflict.

I want to talk to you about this education campaign that the Commission embarked upon to let parents know that if they do take a child into bed with them there are certain risks. It was an education campaign. It did not have to do with recall of a product. It did not say the bed was faulty. It just let parents know that there are 64 deaths every year from suffocation and strangulation when this occurs.

Now, clearly it is up to a parent, but I found that to be important for parents to think about. You could roll over on a child, the child could slip down between the mattress and the guard rail. These are things that are important for parents to know.

Well, how did you react? You not only did not agree, but you wrote a big article in the *USA Today.* I have it. I would ask unanimous consent to place this into the record.

The CHAIRMAN. It will be included.

[The material referred to follows:]

INFANT-SLEEPING STUDY A CASE OF AGENCY'S 'OVER-REACHING'

Mary Sheila Gall, Vice Chairman, U.S. Consumer Product Safety Commission, Washington, D.C.

USA Today, October 12, 1999

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USA TODAY's article addressing the latest warnings from the U.S. Consumer Product Safety Commission (CPSC) on the perilous hazards of children co-sleeping with their parents requires that I respond ("Study advises against parent-infant 'co-sleeping,'" Life, Sept. 30).

Philosophically, I am troubled by an official report in which this agency instructs mothers on whether they should be "co-sleeping" with their children.

Frankly, as the only current Republican member on the commission, it has been increasingly frustrating, in recent years, to witness the procession of proclamations issued by this agency on behalf of the federal Nanny State.

Specifically, I was unable to find a defective consumer product identified in our "study" as the causation of this hazard. Quite simply, there wasn't any product, defect or jurisdiction—just babies sleeping with their parents.

This may well be a controversial practice, but it is apparently a practice that many leading authorities have proclaimed actually promotes family bonding.

But the lack of any subject-matter jurisdiction over human behavior apparently did not get in the way of this agency's running with an attention-grabbing headline.

In point of fact, this CPSC "study" was never intended to be issued as an official government research effort. This was originally an unofficial, independent effort produced by several employees of the consumer product safety agency.

I should note that I always have supported this sort of independent research by members of our staff—but only as their own personal work product, produced on their own time, and not as an agency-sanctioned or agency-funded effort.

This staff study was deemed retroactively to be an official CPSC study—only after it was completed and written and on the verge of publication by a prestigious professional organization. While I personally admire these staffers for their initiative, I voted against proclaiming this to be an official CPSC study.

Why? Very simply—it was not.

I have been a member of this commission for almost eight years and am very proud of this agency's diligence on behalf of the American consumer. Its agenda does provide a valuable public service.

Our recent efforts on smoke detectors, child-resistant cigarette lighters and fireworks are only a few illustrations of how the consumer protection agency can indeed save lives.

I also should note that I have consistently advocated personal responsibility, criticizing attempts to declare a particular product defective when the only "hazard" has been the bizarre use of a product by the consumer. But, here, there simply is no product—defective or otherwise.

The only peril I can detect in this particular episode is over-reaching by a federal regulatory agency.

Senator BOXER. In which you wrote, among other things, and let me quote it directly: "Infant sleeping study, a case of agency's overreaching." You wrote, and I am just quoting because of time a couple of the things: "Frankly, as the only current Republican member on the commission"—which I find—I did not think we think of ourselves when we are on a commission, but fine—"it has been increasingly frustrating"—your service on the Commission—"in recent years to witness the processing of proclamations issued by this agency on behalf of the federal Nanny State."

Then you go on and say: "While I personally admire the [sic] staffers for their initiative, I voted against proclaiming this to be an official CPSC study."—in other words, studying if kids die if they are brought into bed with their parents. You say: "The only peril I can detect in this particular episode is over-reaching by a federal regulatory agency."

Well, that is incredible to me when you look at the fact that there are 64 deaths each year, but the only peril you see is overreaching.

I am a believer that information is very, very important, and I worry because, again, being on the Commission is one thing; being the Chair, you impact the staff, you have tremendous influence over the staff. I worry about a chilling effect on the staff when they are told not to give information to the public.

Now, obviously people will make that decision, but you know, a breast-feeding mother might just say: I never thought of that, so I am going to bring my baby into bed with me and when I am done I am going to change that baby's diaper and put her back into her crib that has safety standards, and maybe that would in fact save lives—64 kids a year.

So it greatly troubles me that not only would you oppose the Commission informing parents, but you go so far as to write an oped piece mentioning that you were the only Republican and you are worried about the direction of the Commission.

I wanted to ask you about recalls. It is my understanding—please correct me if I am wrong—that the way a recall works is the staff will recommend a recall and they will sit down with the product, the maker of the product, the manufacturer, and together they will come to some conclusion about a recall; is that correct? You do not directly vote on recall, is that correct?

Ms. GALL. No, we do not. We are informed along the process and give direction if necessary.

Senator BOXER. Well, I had heard a tape of one of these discussions with the Commission, Mr. Chairman, where you, Ms. Gall, are talking about a baby walker. It involved the Safety First baby walker, where children were getting their teeth caught in a seam on the handle of the baby walker. You know how kids teeth on everything, that toddlers would teeth. What would happen is they would put their teeth down and literally their teeth would pop out and they would lose their teeth on this "Safety First" baby walker.

I was listening to your questions and I was frankly stunned, because your line of questioning was, and I am quoting directly from your question: "The teeth we are talking about are baby teeth, right? Would that damage be permanent?"

In other words, your whole approach to it was to sort of belittle the fact that these kids were losing their teeth, and we know that in fact if baby teeth are lost prematurely it impacts on the speech development of the child and all the rest. So just your approach to these things is very worrisome.

My time has run out, so we can either ask you to respond to that baby teeth question or we can wait until the next round, Mr. Chairman.

The CHAIRMAN. Well, let the witness respond. Go ahead, Ms. Gall, any response you have.

Ms. GALL. Thank you very much.

That was in a closed compliance meeting, so it is interesting that someone gave you that tape. But the essence of the discussion was this. I wanted to understand the extent of the injury that was caused. I supported the recall.

Senator BOXER. Did you say that? Did you say you supported it?

Ms. GALL. I may not have said that when you heard the tape, but the agency knows that I supported the recall for that product.

I was asking questions to establish the amount of the injury. I did not know what the impact of losing baby teeth would be on permanent teeth and that was the question I was asking.

The CHAIRMAN. Good.

Senator Hutchison.

STATEMENT OF HON. KAY BAILEY HUTCHISON, U.S. SENATOR FROM TEXAS

Senator HUTCHISON. Thank you, Mr. Chairman.

Thank you, Ms. Gall, for the information you are providing. You have corrected the record in a lot of instances in today's hearing and I think you are acquitting yourself quite well.

As a grandmother of five, I want to compliment you on the vote to rescind the infant sleepwear rule requiring that pajamas be flame-resistant and therefore polyester. Our grandchildren have suffered from heat and have not worn pajamas at all because they are so hot in the summertime because they could not be all cotton. I know that that has been twisted and made you to look like you were not for the flame-retardant safety. You have, in fact, been able to look into it, get the facts, and determine that actually the flame-resistant sleepwear did not make that much of a difference.

I appreciate your willingness to stand up, and a lot of mothers and grandmothers in the southern States especially appreciate it in the summertime when they want cotton next to their children's bodies, not polyester.

Did you want to elaborate on your reasoning behind that and clarify what I think has been a distortion of your record on that point?

Ms. GALL. Thank you very much, Senator. Both Commissioner Moore and I agreed in our concern that parents wanted, and grandparents wanted, to place their children in safe cotton alternatives, and we discovered that there were many burn injuries with large size tee shirts, adult size tee shirts that children were wearing to bed because that was the cotton alternative.

So we looked for a safe cotton alternative for parents to use. The tight-fitting sleepwear that we proposed as a safe alternative retards the spread of the flame. It is designed for a single point ignition of a small flame, if a child is playing with a cigarette lighter or matches or whatever. It is less likely to catch because it is snug-fitting.

We also maintained the flame-resistant sleepwear such as nightgowns and other kinds of pajamas, so that people have the alternatives available to them. The cotton alternative is very carefully labeled so that a parent knows that he or she can make that choice and clearly understand the parameters of the choice they are making.

The other point to note is that the Canadians and several other countries have adopted this same type of sleepwear and none of those countries have experienced burn injuries related to the safe cotton alternative. Theirs was less stringent than our alternative that we devised, and we too have not seen the burn injuries that we saw previously.

We still continue to see burn injuries with children in tee shirts, but we are hoping that now that we have provided this alternative parents will not put the children in tee shirts, but will put them in the safe cotton alternative instead. It appears to be quite a success story. Unfortunately, it has been, as you noted, distorted to make it sound as though we want children to burn to death.

There is no alternative for sleepwear in a whole-house fire. Really, there is not any fabric that will protect a child in a whole-house fire. But this is to give children a chance if they come across a small single point ignition, matches, cigarette lighter, and so on.

Senator HUTCHISON. Thank you very much for that.

I just want to ask if you think common sense plays a role when you are in a regulatory position and where you would apply the common sense, as I think you did in this particular instance? Are

there places where you think common sense should be more a part of the regulatory processes that you as Chairman, if you are confirmed, would be able to affect?

Ms. GALL. Well, first of all, we look at the law, we look at the evidence. But I think common sense certainly comes into play when we are talking about consumer behavior. I mentioned an extreme case earlier about the drunk mother who leaves the water running and the child in the tub. That is an extreme case. There is very little that we can do about that, and I am encouraged to hear that Senator Boxer agrees with me that that is the kind of thing we need to go after in terms of the parent behavior.

To follow up on your point, Senator Boxer, about the bath seats, we are taking steps, as I noted to you earlier, to look at rulemaking for bath seats. We are concerned if we devise too safe a looking bath seat that that will encourage parents to leave children for longer periods of time. So it is a delicate balance. You have to look at both sides.

We have learned from air bags in the front seat passenger side and the impact on young children that, while something may sound good, we have to do that delicate balance. Certainly common sense plays a role in looking at consumer behavior.

There is a role for addressing through a mandatory or voluntary standard consumer foreseeable misuse. Gramma leaves her pills out on the kitchen table because she cannot open the child-resistant top to her medicine, so she leaves her medicine out on the table. Her grandchild comes along and thinks the medicine is candy, takes it, and is poisoned. When we noted an increase in the number of cases where we saw children being poisoned by their grandparents' medicine because the caps were left off, we moved forward with providing adult-friendly, child-resistant caps that have a two-step cognitive process where you can remove the cap easily, so that we do not have the experience of medicines being left out and open.

There are a number of other issues where I believe we have to address, the law tells us to address, foreseeable misuse. So it is a balance and it is common sense, that is true.

Senator HUTCHISON. Thank you very much.

Ms. GALL. Thank you.

The CHAIRMAN. Very good.

Senator Breaux.

STATEMENT OF HON. JOHN B. BREAUX,
U.S. SENATOR FROM LOUISIANA

Senator BREAUX. Thank you, Mr. Chairman.

Ms. Gall, thank you for coming before the Committee and answering these questions and your statement. I think that the fact that you were appointed originally by President Bush, reappointed by President Clinton, and now appointed by President George W. Bush is important to show that you had the support in a bipartisan fashion over the years.

I would make the point, however, that it is one thing to be appointed as a member of a Commission and it is another thing to be appointed to chair that Commission, because the Chair obviously has a great deal more responsibility in setting the tone, set-

ting the policy, and setting the schedule for a commission to operate. That is true in all of our commissions.

So it is not inappropriate, I think, for us to explore further your philosophy in how you would take the Commission, in what direction. I am particularly interested in your comments in a number of cases with regard to your position on mandating design changes to products when in fact your opinion is that the accident was caused by the negligent use of that product and/or by a lack of supervision in using those products.

It would seem to me that in the baby walker case you said that in normal use in a protected environment, under appropriate supervision, there is no evidence that the design or the manufacture of the walkers present an unreasonable risk of falls. In the baby bath case you said that it is clear that irresponsible actions of those entrusted with caring for these children have almost without exception caused their death.

My concern is that we do not live in a theoretical world where everybody does things properly and appropriately and in a supervised manner. If everyone drove cars in a responsible fashion we would not need seat belts, we would not need air bags, we would not need cars that are built to higher safety standards. But the fact is in the real world people operate machinery and use equipment and products in an unsafe manner. That is particularly true among seniors, that is particularly true among children, who do not have the capacity to always act in a responsible manner. We as a society know that.

So my question I think is, it seems to me that your position has been consistent in not mandating design changes when, in your opinion, the cause of the accident is the negligent use of the product. It would seem to me that we have to take into consideration that products in fact are used in a negligent manner, that they are in fact used without supervision, that this is a fact of life, and therefore, when we can redesign a product to take that into consideration we in fact should do that.

That does seem to be your position in a very consistent manner, and I would like you to talk to me about that.

Ms. GALL. Sure. Thank you. First of all, let me take one example, gas-fired water heaters. It was true, at least in my view it was true, that consumer misuse had a great deal to play in that issue. We noted in the data of the in-depth investigations that young men between 18 and 26 were storing gasoline—predominantly young men, not always—were storing gasoline improperly, not putting covers on it and so on, where the vapors would escape and go across the room. The hot water heater worked appropriately, the way a hot water heater is supposed to work, but when it was exposed to vapors from improperly stored gasoline or gasoline that was being used to clean hands, for example, or whatever at the time, that the vapors would build up and cause a fire incident.

That required a multi-prong approach. The gas manufacturers did a very in-depth education, information campaign that was widely recognized as a model for industry, so that was one point. We worked very closely with them on that.

Senator BREAUX. My question to you is directly—I know we can cite examples, but I have given you two examples where some

would argue that the redesign of a product can take into account the improper use of that product, and it is not going to be adequately supervised, that people are going to misuse the product.

Ms. GALL. I am getting to that.

Senator BREAUX. Your position has been in those two cases that you feel that if the negligent use of the product caused the accident, we should not consider redesigning those products. Am I correct in saying that or not?

Ms. GALL. Let me continue on with the gas-fired water heater.

Senator BREAUX. Just tell me what you believe.

Ms. GALL. I believe that we need to take a look at products. We also need to take a look at behavior. Some behavior is extreme, and you cannot devise a voluntary or mandatory standard to address extreme behavior. We can look at foreseeable misuse and we can address issues related to foreseeable misuse, and I have done that quite often.

Senator BREAUX. But you did not do it in the two baby cases, the baby walker and the baby bath case. You said that if it was used properly it would not be a problem.

Ms. GALL. Well, Senator, my concern was not only for the children in the walker, but the children who fell down the stairs who were not in the walker, and that is why I felt it was important, first of all, that parents close doors and engage safety gates.

Senator BREAUX. But parents do not do that sometimes.

Ms. GALL. But let me finish, Senator. I did support working with industry to devise a voluntary standard and to redesign product. I did not feel it was necessary to go forward on a mandatory standard because we had a good track record with this industry.

When we do not have a good track record with the voluntary standards on a particular issue, we do not have a good track record with industry devising a response, then we have to move forward on a mandatory standard, and I have done so with bath seats, cigarette lighters, a whole host of other issues.

But to get back to gas-fired water heaters, since that was one of your examples, we did call together——

Senator BREAUX. I did not mention that. That was your example.

Ms. GALL. Well, someone's example. We did call all the industry leaders together. We have worked with them on devising new technology. There was not anything we could do a mandatory standard about at the time. The technology did not exist. So we have worked with industry. We have done a tremendous amount of research with industry. They have devised some new designs. That shows how we can work together without having a mandatory standard forcing the issue.

I just disagree that we require that all the time to get the job done in working with industry.

Senator BREAUX. Thank you.

The CHAIRMAN. Thank you.

We will recognize Senator Edwards. He has got to preside here momentarily. Senator Edwards.

Senator EDWARDS. Thank you, Mr. Chairman.

Good morning, Ms. Gall.

Ms. GALL. Good morning. It is a long morning.

Senator EDWARDS. It is still morning.

I wanted to follow up on some answers you gave to Senator Kerry a little earlier today. He made reference specifically to your dissenting vote against issuing a Federal safety standard for bunk beds. In 1999, you were the sole vote against issuing a safety standard for bunk beds.

Ms. GALL. Right.

Senator EDWARDS. The two of you talked about two components in the law that are necessary in order to find that a voluntary standard is adequate.

Ms. GALL. Right.

Senator EDWARDS. The voluntary standard for bunk beds had been in place since 1992, I believe; is that correct?

Ms. GALL. Yes. There had been changes throughout, but——

Senator EDWARDS. But it had been there for 7 or 8 years.

Ms. GALL. Yes.

Senator EDWARDS. The two requirements in the law, one of which you made reference to when you made your decision, was—it is actually the second requirement—that there be substantial compliance with such voluntary standards. Some would argue that 630,000 recalls over the course of 7 or 8 years is not substantial compliance.

But, I want to focus on the first requirement, which is that you have to find that the voluntary standard would eliminate or adequately reduce the risk of injury. Now, a voluntary standard, as of the time of that vote, had been in place for 7 years. Since 1990, 89 children had died in bunk bed-related accidents, 57 from entrapment.

My question to you is, did you find in making that decision and rendering that vote that there had been adequate compliance, number one; and number two, that the voluntary standard eliminated or adequately reduced the risk, even in the face of 50 some odd children dying while the voluntary standard was in place?

Ms. GALL. First of all with regard to the number of children who had died, obviously every death is a tragedy, especially when it is a child. Of those 57 deaths, most of them were beds that would not be covered by a mandatory standard because they were institutional beds that were taken and used by individuals.

Senator EDWARDS. But you would concede that some children died during that period of time, would you not?

Ms. GALL. I concede they had.

Senator EDWARDS. My question is if children are—excuse me, I am sorry. If children were dying during that period of time, whatever the number is, and maybe we could argue about that, but whatever the number is, if children died while the voluntary standard was in place—and in fact by 1999 it had been in place for 7 years—if children died during that period of time, from your perspective did that voluntary standard eliminate or adequately reduce the risk of injury?

Ms. GALL. Senator, my point about the——

Senator EDWARDS. Can you answer that question and then I would be glad to hear your explanation.

Ms. GALL. I would be happy to. First of all, the deaths would not be covered by the voluntary or the mandatory standard. That is the first point. These were homemade beds, they were altered beds,

they were institutional beds that had been removed from dorms, never would have been—let me finish, Senator, please. They never would have been covered by either the voluntary or mandatory standard. That is one point.

Senator EDWARDS. Yes, ma'am, but were you saying——

Ms. GALL. The second point is the adequacy——

Senator EDWARDS. Excuse me, I am sorry. Are you saying that all those children who died who fell in the categories you just talked about—none of the children who died would in fact have been covered by the standard? For example, sitting two rows behind you is Lyn Starks, who lost her daughter, I think in 1997, her 3 year old child in 1997, 5 years after this voluntary standard had been put in place. Would you say to her that this standard adequately protected her daughter from the risk of injury, excuse me, from this bunk bed?

Ms. GALL. Senator, what I am saying is that a significant number—I am not saying every single death—was associated with a bed that would not have been covered, number one.

Number two, with regard to the adequacy of the standard, if the staff felt that the voluntary standard was inadequate the question is why would they propose that to be a mandatory standard. Why would they do that if they thought it was inadequate?

Senator EDWARDS. I do not know, but two of your colleagues apparently——

Ms. GALL. That is the question——

Senator EDWARDS. Excuse me. Two of your colleagues apparently thought that it was important to have a mandatory standard. They laid out the fact that 89 deaths had occurred, 57 by entrapment, that Ms. Starks had lost her child in 1997, her 3 year old daughter, 5 years after a voluntary standard had been put in place.

Let me ask you about a second area if I can. One of the responsibilities of the Commission is you have authority over whether or not to pursue legal action against companies that manufacture defective products, correct?

Ms. GALL. Right.

Senator EDWARDS. I want to ask you about an area that I do not think you have been asked about before, which is sprinklers, sprinklers to avoid fires, put out fires, sprinklers in homes, dormitories, hospitals, that sort of thing. You opposed the filing of an administrative complaint, and I think you alone opposed it, against the sprinkler company that had been found to be manufacturing sprinklers that did not operate properly. They were in homes; they were in schools; they were in hospitals; they were in dormitories.

The result of the complaint, I think, was a resolution where a huge number of these defective sprinklers were recalled. However, you were the sole dissenting vote against the Consumer Product Safety Commission taking action against a company that had manufactured sprinklers, put them in homes, hospitals, dormitories, all over this country. The result of the legal action that was taken was a successful resolution. These sprinklers were recalled.

Am I correct about that? Were you the sole vote against it?

Ms. GALL. Senator, I have twice voted against an administrative complaint with one reason and one reason only, and that is I would like to see these matters resolved before going to administrative

complaint, because my concern is if we have protracted legal battles that go on for years the products, the unsafe products, remain in the home or in the school. I had asked that we——

Senator EDWARDS. But, in fact, in this case there was, as a specific result of the action being filed by the Commission, which you opposed, there was a specific resolution recalling all of these defective sprinklers. In the mean time, if you did not take legal action and you were just engaging in discussion, these sprinklers stay in place, these defective sprinklers stay in place, and the risk of families, students, and patients in hospitals being hurt as the result of a fire continues, does it not?

Ms. GALL. My point was this. In both cases my point was this——

Senator EDWARDS. If you could answer my question first, and then I would be happy to hear your point.

Ms. GALL. Senator, my point was that if we set a date certain by which time we are unable to negotiate a settlement that would remove the unsafe product from the home quickly, then I would approve of an administrative complaint. My effort in both cases was to go back and try one more time, one more time to try and get a settlement, so we would not have to potentially go into protracted legal battles.

Every single administrative complaint that we have filed—and I have supported all of them except two—thank God, has resulted in a settlement that got the unsafe products out of the home. But every time we go for an administrative complaint the potential exists that those products can remain in the home or in the school for years as we go through these battles.

I would prefer to see us settle these matters as quickly as possible to remove those unsafe products from the home.

Senator EDWARDS. Thank you, Mr. Chairman.

Thank you, Ms. Gall.

The CHAIRMAN. Thank you.

Senator Smith.

STATEMENT OF HON. GORDON SMITH,
U.S. SENATOR FROM WASHINGTON

Senator SMITH. Thank you, Mr. Chairman.

Thank you, Ms. Gall, for being here. Is it your view that there are businesses out there that sell and run, that are flim-flam operations?

Ms. GALL. I think for the most part industry wants to make a safe product because they want to sell more of them. But we have had occasion to see that there have been some bad actors. We have had problems with imports coming into the United States where the child-resistant feature on a cigarette lighter was deliberately disengaged. That is a case where I think we have to go after people with criminal penalties and have a severe response and a quick response.

We are often able to stop those products from crossing the border with our good help from U.S. Customs. But occasionally they get to the shelves, and that is harder for us to stop once they have reached the store shelves.

We have had experience with bad actors, but for the most part I think companies try to manufacture a sound product.

Senator SMITH. But there are some bad actors.

Ms. GALL. Yes.

Senator SMITH. That is why your Commission exists. That is why we have trial lawyers what seek civil justice. That is why we have criminal laws to go after those with criminal intent, and those things are ongoing. But it is your experience that most in business are trying to produce products that are safe, affordable, and that serve their purpose, and they want to sell the American consumer not one day, but every day if they can?

Ms. GALL. That is right.

Senator SMITH. What percentage of the bad actors, the sell and run types, do you think are out there?

Ms. GALL. Well, we see those with cigarette lighters occasionally. We see them with fireworks occasionally. We have had a number of criminal penalties related to fireworks and to the cigarette lighters. Small, inexpensive import toys sometimes are a very serious problem for us and we work aggressively to stop those from coming into the country, and when they are on the store shelves we work aggressively to go after them with recalls.

Senator SMITH. You are a mother; you care about safety in products in the home?

Ms. GALL. Of course.

Senator SMITH. I wonder if you can tell me, because I am new to this Committee, what difference will there be in your role as a member of the Commission, which I understand you will continue to be whether or not confirmed to be the Chairman or not. You will continue until 2006; is that correct?

Ms. GALL. That is right.

Senator SMITH. What different role would you have, what influence change would you have, if you were the chair?

Ms. GALL. Well, certainly Chairman Brown has done a terrific job with highlighting public attention on the Commission and she has vigorously enforced the law and she has made a particular project of going after children's potential hazards. That will not change. I strongly support those initiatives.

Senator SMITH. The current Chairman is a Democrat?

Ms. GALL. Yes.

Senator SMITH. And supports your nomination?

Ms. GALL. She has not publicly supported my nomination. In private she has supported my nomination, but not in public. Commissioner Moore, the Vice Chairman, has supported publicly my nomination.

In addition to carrying on the mission as Chairman Brown has, I also have highlighted in my opening remarks some areas of interest that I would like to pursue with regard to senior citizens and with regard to fire safety and some other issues as well, as well as critical investments that we need within the agency to do our jobs and do them well.

Senator SMITH. Do you have an adequate budget in your agency?

Ms. GALL. That is a loaded question, is it not? I think that we need to have some additional funds to meet the needs of the new laws that have been imposed on the Commission and also to fund

a research budget. We do not have a research budget. We need to do that. There are opportunities for studying circuit breaker fires, some wiring issues, that we do not have the capability of doing right now, that I would like to see us get involved in.

Industry does research, but it is product development primarily. We would be interested in doing safety-related research and working with industry to address those issues.

Senator SMITH. I think what every Senator who is going to vote on your confirmation is really struggling with is do you have a different threshold than other members of the Commission for when, or burden of proof, if you will, for when you regulate or when you resort to voluntary. Is your standard different from others?

Ms. GALL. Well, I look at the evidence and I look at the law, and I assume that my fellow Commissioners do the same. I also take into account consumer misuse and abuse, foreseeable misuse and abuse, when determining whether or not to proceed with a mandatory standard. I also look to see what voluntary standards are out there and whether or not they are adequate to address the problem at hand and if there is substantial compliance. If that is the case on both counts, then I look first to the voluntary standard, as required by law.

Senator SMITH. You are usually consistent with other Commissioners on that kind of approach?

Ms. GALL. Yes, I believe so.

Senator SMITH. One of the Commission's most important functions, I have learned, is that of compliance. Can you explain how you have supported the Commission's compliance efforts?

Ms. GALL. The staff does the day to day negotiations on recalls. I have supported all the recalls. I have supported, with two exceptions, administrative complaints, and I have explained why, because I wanted to make one last effort to settle before going to administrative complaint. I have supported enforcement issues, votes, 97 percent of the time.

One instance I felt that, rather than going for a subpoena, we should either request the information or go for a search warrant if there was a concern that the information would not be forthcoming, and so I took a different direction than my colleagues on that one instance.

But for the most part, overwhelmingly I have supported compliance activities and in fact have sometimes pressured the staff to go for criminal penalties in situations that I thought were particularly egregious, for example the deliberate disengagement, as I mentioned earlier, of cigarette lighter child resistance. I feel that when there is deliberate intent like that that we should aggressively pursue a criminal penalty.

Senator SMITH. Thank you, Ms. Gall.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Nelson.

STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA

Senator BILL NELSON. Thank you, Mr. Chairman.

I asked your staff to provide us with examples of deaths of elderly Floridians particularly that were occasioned by space heaters and other kinds of unfortunate accidents. I would like for you to talk to us a little bit about how you would propose to deal with a vulnerable population like the elderly.

Ms. GALL. Well, in the past 7 years we have done some terrific work with AARP and others, but it has been primarily focused on grandparents as caregivers. That is an important consideration, certainly, as I mentioned earlier about medication, children being exposed to medication not in a proper container. We often see grandparents as primary caregivers of young children these days. That is on the increase.

So that work has been very important. But my concern is that when we look at fire data and other data related to injuries and deaths we see that we are not reaching the elderly, we are not reaching the elderly poor, and that is a concern of mine that I would like to pursue. If you look at the census data, you see that the elderly are on the increase. In fact, those over 85 will double in the foreseeable future. So that is a particular interest of mine, especially the elderly poor that are less likely to have up to date wiring in their homes, they have pre-standard furniture in their homes, they are more likely to smoke and so that is a potential fire hazard there.

So there are a whole host of these kinds of things that I think we need to address.

Senator BILL NELSON. Exactly. You have identified, I think, very correctly that they are a very vulnerable population. My question is how do you propose to deal with that? Talk to me, for example, about how you would go about educating the elderly?

Ms. GALL. Well, there are two important things. Obviously, we can use the traditional resources: the Office of Aging, the AARP, and we reach a number of elderly that way. The elderly poor are another circumstance, just like new immigrants are another circumstance. They are difficult to reach with safety messages.

So I would propose that we use some creative, outside the box, shall we say, approaches to meeting, to providing them with safety information. I am in the process of developing those and, if confirmed by the Senate, I will pursue that.

Senator BILL NELSON. Give me some ideas. What is outside of the box?

Ms. GALL. I think, as with other cases that we have seen in the past with new immigrants, government agencies are not traditionally in close contact and have an authority basis for the elderly. You can reach them perhaps through a message in the Social Security envelope when the check comes, but there are non-traditional, non-government approaches that can be used.

For example, working with Congressional offices to identify leaders in those communities and to work through some non-traditional leadership roles to reach the elderly poor through day care settings and so on, where elderly may be coming into a day care setting, a senior day care, those kinds of activities.

Also, providing information, I think, on the web for those who care for older citizens. We do not have that kind of information in one place where someone who is either caring for them or someone

who is running a senior day care center or a social service provider or a family member needs to be able to go to one place to get the kind of information they need. So I would like to set up something like that as well.

Senator BILL NELSON. What would you propose with regard to minority populations of elderly, where there is a language barrier?

Ms. GALL. Well, again, that is why you have to be creative and you have to go right to the source in that community to find those who speak the language and who have the contacts, whether that is through a church community or other local resources, where you can address the language problem. Again, that is an issue with new immigrant populations as well that I am concerned about not receiving the kinds of information we need to get across.

Senator BILL NELSON. You talked about outside of the box. What kind of additional resources are you going to need in order to do this?

Ms. GALL. Well, I am a great believer in leveraging resources, in working in partnerships with State and local agencies and with nonprofit organizations and so on. I have not defined a particular budget, but, believe me, you will know about it when I do. I think it would require some additional resources, but I do not have a dollar figure for you at the moment.

Senator BILL NELSON. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

On the second round, Senator Burns.

STATEMENT OF HON. CONRAD BURNS,
U.S. SENATOR FROM MONTANA

Senator BURNS. I have sat here and listened to the dialog this morning, and what a novel thing it is to have a person up that has 10 years experience with the Commission and still has a sense of humor.

Ms. GALL. Senator, you have to to get through this.

Senator BURNS. How novel it is to have product knowledge and understand the human being and still approach it with a common sense type thing of trying to solve problems without going into court. Sometimes that is the most desirable way, is working with organizations.

I think there have been some examples here that have been pretty far-reaching this morning. So I am going to support this nomination. After listening—I sat here just to listen this morning more than to ask question, to be right honest with you, because I am not real sure after hearing all this that I could—we did not have bath seats for kids. I think our kids got a bath in the kitchen sink. We could not afford it. And I am not sure I could raise kids any more. I do not know what it is all about.

But I know that I guess when we lost our daughter when she was 15 years old and we had an unfortunate accident, I guess I could go through a lot of things and probably blame somebody else. It is easy to do that under those circumstances.

But I like your approach. I know there are going to be three votes on that Commission and the desires of the Commission I would imagine will be seen by a majority of two to one. I served on a three-panel commission on a county and I was not always on

the majority. But nonetheless, I am going to support this, and your answers, and just to keep approaching these problems under a common sense approach. I think we need more of that in government.

So I appreciate all the questions that everybody else asked and I am going to take that into consideration. But I appreciate your positive attitude, approach to some very serious problems we have in product safety. We cannot make them safe enough and then on the other hand be able to afford them at all. So I appreciate what you do.

Thank you, Mr. Chairman, and that is my statement and I am sticking to it.

The CHAIRMAN. Good.

Ms. GALL. Thank you.

The CHAIRMAN. I participated in the initiation of the Consumer Product Safety Commission. Once again, it was the flammable blankets. This has saved, as you indicated otherwise, it saved a lot of legal procedures.

Senator BURNS. You know, I sat on the board of directors at one time of the Shriners Hospitals for Children. As you know, we have three burn centers. No other organization in the world has done more research on burns than that organization. When we looked at different circumstances that caused, after we dealt with it, what caused this thing and fire and fire retardants and this type thing, we finally came to the conclusion sometimes the fire retardant wear did more damage under certain circumstances than, say, just straight cotton in what we slept in as kids.

So we have some experience with this. So I am glad to see some common sense approach to this situation.

The CHAIRMAN. Dr. Curtis Arts is the eminent physician on burns, and I have worked with him.

I just want to emphasize on my little minute here that we started with Love Canal and all the toxic fumes and disease and death that that caused up there in Buffalo, and we instituted the Environmental Protection Administration, and that saved a lot of law cases. The Consumer Product Safety Commission has saved a lot of law cases as well as lives and injury.

While I have worked for some 34, almost 35, years now in the cancer field, it was not Dr. Koop and Dr. Kessler. On the contrary, it was trial lawyers who got that $368 billion settlement. Now, when I go to the tobacco-growing area of Florence, South Carolina, in the courthouse they have got no smoking. The trial lawyers really have saved the lives. In deference to my doctor friends, they have saved a lot of lives. But, it was not until we really brought that case and got that settlement that people understood the dangers of smoking.

Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman. I appreciate your having a second round, Mr. Chairman, because this is really a signal today about how the Administration is going to handle consumer protection issues and, frankly, I am very troubled about what we have heard in the last couple of hours.

When I and my colleagues have given you these examples of these cases where you essentially said it was the consumer's fault,

your response has essentially been to cite extreme cases of individual irresponsibility. We talked about drunk drivers—excuse me, drunk parents this morning, and it seems to me that you are overlooking the significant role that the product is going to play in the vast majority of mainstream cases where the consumer has behaved responsibly.

How would you respond to that?

Ms. GALL. Well, Senator, when we believe there is a defect or an unreasonable risk of injury through some means, then we address that issue. We do not always address it with a mandatory standard. I think that is one of the things I really have to get across here. Since Chairman Brown——

Senator WYDEN. That is not what——

Ms. GALL. May I finish, Senator?

Senator WYDEN. But just so we are clear now, and I would like you to respond to the question, that is not what your record shows. Your record shows that you will not even begin the inquiry, and you cite this question of extreme irresponsibility for not beginning the inquiry. That is what I would like you to respond to.

Ms. GALL. Senator, since 1994 we have gone with 23 mandatory standards and 118 voluntary standards. That is a five-to-one margin of a demonstrated preference for voluntary standards when we think they will work. That is with Chairman Brown, Commissioner Moore and myself voting on those issues.

Our statutes tell us we have to look to voluntary standards first. Those are the statutes that the Congress has given us.

There is not a one size fits all solution to every problem. Yes, there is extreme consumer behavior. No mandatory standard will address that. But when there is foreseeable, foreseeable consumer misuse or abuse, we address it—not always by a mandatory standard, sometimes by a voluntary standard, sometimes by bringing industry in and working on the problem together.

That is the way I like to do business, and that is the way the Commission has done business. Twenty-three mandatory standards, 118 voluntary standards. The record stands for itself.

Senator WYDEN. Could you give some examples in the last 10 years where you opposed an industry position that industry felt strongly about?

Ms. GALL. Well, I can think of one right off the bat, and that is the very controversial issue of child-resistant caps for medications and for household products that are toxic. Industry went to great lengths and great expense to develop child-resistant caps for these products, and it took a long period of time and a great deal of patience to come up with the appropriate caps.

Then we saw, as I mentioned earlier, an increase of poisonings because the caps were so hard to use, especially for people who have arthritis or have one hand or some situation like that. They were very difficult to get off. I had problems with them myself. Sometimes I used inappropriate language when trying to open some of those caps.

We sat there and we saw the increase on poisonings and we had to go back and develop an adult-friendly, child-resistant cap that has a two-step cognitive process where you twist and pull open. That was expensive. Industry was not interested in doing that for

the most part. They had to come up with new designs, because it is not just caps on medicine, it is also tubes and other kinds of individual blister packs and so on. We had to come up with this child-resistant, adult-friendly.

We get trounced in our appropriations hearing for doing that. There was tremendous pressure from industry, segments of industry, not all industry. So we went ahead and did it anyway.

Senator WYDEN. In 10 years there was once where you voted against industry?

Ms. GALL. No, I am citing that as one example. I am citing that as one example.

Senator WYDEN. Could you give me a couple of others?

Ms. GALL. Well, there was some resistance on efforts on some other products where industry has come around after we have negotiated with them and so on, and I do not particularly care to mention those particular industries, however, given that we are in a delicate situation with them, where there was strong initial resistance and we were able to bring them around and have us work together in a non-threatening approach.

I think that is the best way to do business. You can club people over the head with an advanced notice of proposed rulemaking or you can sit down with them and work something out and get a good result.

Senator WYDEN. I think we ought to hold the record open on this point, Mr. Chairman. But the witness has said that in 10 years at the Consumer Product Safety Commission she voted against industry in one instance.

Ms. GALL. I am not saying that, Senator. I am saying that is one example. I would be happy to provide you additional examples for the record.

Senator WYDEN. Why do you not tell us those. Why do you not tell us those this morning? Why do you not give us those this morning?

Ms. GALL. I think I understand what you are getting at. You have to understand from my perspective that there is initial resistance with industry on a number of issues that we deal with, but when we come to the table and we work together and they understand that we mean business, then we are able to come up with a result, after we negotiate internally among the Commissioners, we are able to come up with a workable result. That is the way it is supposed to work.

Senator WYDEN. I want to wrap up with this, Mr. Chairman, because I think this is right at the heart of the question. There is no question that one size does not fit all, and you need creative solutions. What has troubled me the most about what you have said today and in the past is that when you will not even initiate an inquiry in most instances you cannot get industries to the table in order to start looking for these kind of practical solutions.

Ms. GALL. I disagree with that, Senator. I disagree with your premise.

Senator WYDEN. That is what happened in the baby walker case. With all due respect, that is how you finally began to make some progress there.

Ms. GALL. I disagree with that.

Senator WYDEN. I came here today open. This has been an area I have specialized in since my days with the Gray Panthers. I think your views on consumer protection regrettably are not in the mainstream.

Mr. Chairman, I appreciate the second round.

The CHAIRMAN. Very good.

Senator Boxer.

Senator BOXER. Thank you, Mr. Chairman, very much.

Ms. Gall, thank you for praising my very strong belief that negligent parents should be held accountable. I have a long record on this. I have gone after deadbeat dads in welfare reform. I have gone after parents who leave guns unsupervised, unlocked, so kids can get their hands on them.

But, unhappily, you do not have a similar record going after dangerous products, because I think you have got to do both. You have got to take a firm stand against people who would neglect their children and also make the safest possible products. I do not see that balance in your record.

Let us be clear. Voluntary standards cannot be enforced. They cannot be enforced and that is important.

Now, I am troubled by many of these inconsistencies that keep coming back up in your testimony. Again, you cite 97 percent of the time you voted with your fellow Commissioners, and yet, in your own words, "The other Commissioners and I do not always agree. In fact, a lot of the time we do not agree."

So you keep bringing up 97 percent of the time and yet I have pointed out how many of these votes——

Ms. GALL. With enforcement matters, 97 percent of the time with enforcement.

Senator BOXER.—how many of these votes are routine votes.

Now, in answer to Senator Nelson's questions, you said you would educate the elderly. You think it is important to work with groups to educate the elderly. Yet, when we try to educate parents about placing their children in adult beds, you not only oppose it, but you write a letter to the editor and you condemn the Commission staff. I shudder to think the chilling effect that making you Chairman would have on that staff.

Sixty-four kids a year, Mr. Chairman, died because of this. I think it is good—I am a grandmother. I think it is important that my daughter knows of this problem, and she can make her own choice on how she wants to deal with it.

But, you condemn it. How are we supposed to believe you that you are going to educate seniors? You do not want to educate parents. You think it was an overreaching of the staff. But in answer to Senator Nelson, oh, you are going to educate seniors. I do not believe it. I do not believe it. You can have an opinion, but then you write an op-ed piece striking out at the staff for what they did, saying the only issue here was overreaching.

I simply think these inconsistencies are very, very troubling, and I do not believe that you will educate the elderly because you did not want to educate the kids or even a grandma who might take her grandchild into bed when there is an infant involved. You do not want to do that. So I have a problem with it.

Now, you then say, in response to Senator Edwards' questions about the sprinkler, oh, you did not want to take that issue on because it takes too long. Do you know how long it took to resolve that once the complaint was filed? Do you have that information? Tell me?

Ms. GALL. I do not recall the number of days.

Senator BOXER. Well, I will tell you. I will tell you. That complaint was filed in March, and it was resolved in October. So your point that, oh, when you issue a complaint it takes a lot of time, is disproved by the facts. It was resolved in October, and people were saved.

Then you say you voted for all but two administrative complaints. How many were there in the last 8 years, do you know?

Ms. GALL. I believe there were about 10 or 11.

Senator BOXER. In the last 8 years—we just checked—there were 3. There were 3 according to the Commission.

Ms. GALL. I think there were more than that, but anyway.

Senator BOXER. It is not "but anyway." I mean, I am really frustrated.

I think, Mr. Chairman, we have a witness here who is recasting herself and saying, well, 97 percent I voted with the Commission, I only voted twice against administrative actions, complaints, when in fact there were only 3 in the last 8 years, to make us believe that she is in the mainstream. Now, we got this information from the Commission staff, that there were only 3 in the last 8 years.

So I have to say this is a deeply troubling nominee.

I want to talk to you about the baby walkers in the time I have remaining. You voted against a rule for baby walkers because caregivers were failing to provide "adequate supervision." We have gone over that, and I have told you I agree we want to give adequate supervision to our children; but a child does not choose its parents and if there is a real problem and the parent does not supervise, we want the safest products possible for the child, to protect the child.

You know, with the bunk beds you said the parents should not put the kids in the upper bunk. Try controlling a kid from climbing up into the upper bunk in the middle of the night. It is not easy in the real world. A kid does not read the warning. You know on the mattress label they always have a warning. Kids do not read that. They do not read the warning with the product, and they may climb up onto the top bunk.

Well, here is what we know. As a result, you voted against a rule for baby walkers and yet the injuries dropped 60 percent in 5 years as a result of the redesign. You voted against the rulemaking proceeding. Now, as a result 11,300 injuries to babies have been prevented each year. Would you change your vote, knowing that?

Ms. GALL. Senator, I voted in opposition to the ANPR, but I supported and worked with industry to make the changes.

Senator BOXER. You voted against a rulemaking——

Ms. GALL. May I finish, Senator?

Senator BOXER.—is that correct?

Ms. GALL. I voted against an ANPR at the time and moved forward to support making changes, working alongside with industry.

Senator BOXER. Mr. Chairman, anyone who knows anything knows the reason industry sat down was because of that rulemaking.

Ms. GALL. I disagree with that.

Senator BOXER. Well, you can disagree, but that is a fact.

We have the safest products in the world because we have people who serve on these commissions who care, who are fiercely fighting. And when they slack off, we do have trial lawyers what come in, much maligned as they are. We have the safest products in the world because we have a system that protects consumers.

If we have the head of the Consumer Product Safety Commission, Mr. Chairman, who is anything less than vigilant and a fighter and an advocate—Ms. Gall, I say you are on the Commission as a balance. You wrote you were the only Republican, you disagreed with your colleagues. It is healthy, it is healthy. I do not mind that. That is fine. But to make you the head of this Commission, it seems to me to be wrong, because we need a fighter. We need someone who is going to get out there and advocate, not someone who says, well, the rulemaking had nothing the do with the fact that the people came to the table. I think that is why the people came to the table.

So I just want to make sure I am right. Knowing that 11,600 kids each year—let me correct that—11,300 injuries to babies have been avoided, would you still vote against that rulemaking?

Ms. GALL. I believe that the juvenile products group——

Senator BOXER. Could we have a yes or no?

Ms. GALL. Senator, may I please——

Senator BOXER. Could we have a yes or no?

Ms. GALL. May I finish? I am very frustrated as well, because I would like to comment on a couple things you said.

First of all, we were able to work that out without a mandatory standard. That is the important thing to remember. A mandatory standard is not always the answer. We are able to work cooperatively with industry on many occasions. That is point number one.

Point number two, I truly believe in educating seniors about the dangers of consumer products, how to upgrade their consumer products. I do not believe in educating parents about cultural practices that are their own business in the privacy of their homes. We are not the Consumer Cultural Practices Commission. We are Consumer Product Commission. We need to confine our role, which is a big role because we oversee 15,000 consumer products. We need to address the concerns about consumer products, not about private cultural practices.

Let me say again, the American Academy of Pediatrics and the maternal and child health folks at NIH never stated that co-sleeping was dangerous in any way. We were trounced in the press repeatedly, with articles in *The New York Times, Time* magazine, *Newsweek* and others who criticized us heavily for that co-sleeping study. I will just leave that at that.

I do believe in working with people to inform them about safety issues related to consumer products.

With regard to baby walkers, I disagree with you. I have to be honest about it, I have a longer degree of experience in dealing with juvenile products people and the industry itself. They were

more than willing to work with us. It did not take a mandatory, the initiation of a mandatory standard to work with them, just as it did not take the initiation of a mandatory standard to solve issues related to gas-fired water heaters. Industry came together, we asked them to work with us, they did. That is a success story. It does not always take a mandatory standard or the beginning of a mandatory standard. Our staff can initiate investigation about products without beginning rulemaking.

My response to you is we use common sense. The 97 percent that you are quoting was with regard to enforcement. I have clearly stated that to you several times. It is with regard to enforcement issues. With regard to all issues before the Commission, including some of the things you cited, Senator Boxer, my record is 93 percent at the time. That includes everything, from budgets, operating plans, civil penalties, and so on, 93 percent of the time; 97 percent of the time with enforcement issues.

When it comes to regulatory matters, it is about 87 to 90 percent support for regulatory issues. This is not an extreme record, Senator.

If I am confirmed, I will aggressively act as the leader of the Commission. Let me also say for the record that the Chairman plays an important role as the administrative leader at the agency, the point person for Congress, the point person with regard to the media. But the Commissioners play important roles as well. We vote yes or no on civil penalties, administrative complaints. We deal with the daily operations of the Commission: budgets, operating plans, monitoring of voluntary standards, hiring of the top people at the agency, reviewing performance plans, reviewing requests for increases, salary increases. We have to vote on press releases. We have to vote on all the issues that pertain to the Commission.

I have 10 years worth of experience in dealing with all of those issues. So I hope that I will be confirmed by the Senate and reported out by this Committee.

The CHAIRMAN. I yield you my time. Go ahead.

Senator BOXER. Thank you so much.

Mr. Chairman, let the record show that Ms. Gall did not answer my question as to whether she would cast the same vote against a rulemaking that dealt with baby walkers, which we all know the other Commissioners voted for.

Ms. GALL. I would be happy to answer that, Senator.

Senator BOXER. Well, excuse me. You had time to talk. That was my question. Instead of answering yes or no, you went on and on. The bottom line is you did not answer it. I am sure that the Chairman will give you the chance to answer it.

But, I want to point out that as of this point in a direct question, Ms. Gall refused to answer would she cast the same vote. What she said was, I work with industry. Well, why do you think industry came to the table? Because the other Commissioners had the guts to say that 11,300 injuries a year to babies is too much to take. Yes, industry came to the table. Good, good for those Commissioners. And then you got in the act, good, good, good. But as Chairman of the Commission, you should be the one leading the charges.

I would finish and say this. What troubles me tremendously is the fact that you voted against agency action on the bath seats, again claiming negligent parents. You reversed your vote in 2001 as controversy against your nomination was building. Seventy-eight children have died using these baby bath seats.

You also voted against a rule for bunk beds. About ten children die every year from entrapment. While your primary reason for opposing the rule was to defer to voluntary standards, which had not worked, and the record will show that, you also voiced your views that the real cause of death was the parents inappropriately placing children under 4 years old in the upper bunks.

So it seems to me that this approach is repeated and repeated and repeated and repeated. I do not want to do anything on my watch that is going to punish children because they cannot read the warnings or is going to punish elderly people because maybe they are not as swift as they once had been.

This has been an extraordinary experience for me, this hearing. I think, if anything, we can see here that, while someone may provide a balance on a commission as a commissioner—and I do not question your integrity in any way. You are doing what you believe in. You believe that industry should fix itself, you believe that parents are to blame, and that is what you believe and you have a right to believe it.

But, you do not believe in making products safe. That is what I think about your record. You do not believe in doing what it takes to make products safe, and you would rather let it go to industry to deal with it. I think that is a problem when considering your nomination to be the Chairman of a commission whose mission is making products as safe as they can be.

Thank you.

The CHAIRMAN. Ms. Gall, you have every opportunity to respond.

Ms. GALL. Thank you, Mr. Chairman.

Well, as might be stating the obvious, I disagree with Senator Boxer's characterization of my record. I believe you need to address consumer product issues based on the issue before you. I do not believe that there is an automatic requirement to go to a mandatory standard every time in every issue, just as there is not a one size fits all answer for every issue that comes before the Senate.

My vote with regard to bath seats changed because the evidence before us changed. I looked at the evidence and at the law and I based my decision on that and that alone. Perhaps if Senator Boxer had observed me over the last 10 years, she would know that any implications about my nomination are false with regard to how I voted that time.

I must say that the people who have criticized my nomination have stated that repeatedly, and that simply is not true. I looked at the evidence and I looked at the law. The evidence had changed and consequently my vote changed. I would think that the fact that I am willing to change my vote based on the evidence before me would be a good thing, not a bad thing.

Obviously, Senator Boxer and I view things differently. Apparently she believes that a mandatory standard, the beginning of a mandatory standard, is a must in every circumstance. I disagree

with that. I know that there are times when it is necessary, and I have done so when it is necessary.

I have supported child-resistant cigarette lighters when we saw the circumstances, the data, the evidence, and what the law instructs us to do. I also did so with multi-purpose lighters, those lighters you use to light charcoal on a grill. They are long, they have the long nose and the trigger mechanism, and children really like those. So I voted for a child-resistant mechanism for those. I have supported poison prevention packaging throughout the history of my role at the Commission.

So really, if you take a real look at my record, you will see that I am willing to address issues that come before the Commission with an appropriate fix. That is not always the beginning of a mandatory standard. Sometimes it is. But if you look at the record of the Commission, 118 voluntary standards and 23 mandatory. I think that tells you something about the record of the Commission and the fact that we must look to voluntary standards first before we address the issue of mandatory standards.

The CHAIRMAN. Very good.

We have the statement of the Honorable Rosa DeLauro. It will be made a part of the record, and I am going to furnish you a copy, too, Ms. Gall, so you can respond, and do it as promptly as you can. [Refer to Appendix.]

The CHAIRMAN. I have not talked with Senator McCain, but it would be the hope perhaps of the Committee to look at this nomination and vote on it before we leave for the August break. I am not sure of that.

Otherwise, the Committee is indebted and appreciative of your appearance here this morning, and the Committee will be in recess subject to the call of the chair. Thank you all.

[Whereupon, at 11:54 a.m., the Committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF HON. ROSA L. DELAURO,
U.S. REPRESENTATIVE FROM THE STATE OF CONNECTICUT

Thank you Mr. Chairman and members of the Committee for allowing me to be here today to share my concerns about the nomination of Mary Sheila Gall to chair the Consumer Product Safety Commission.

Ms. Gall, who has served on the Commission since 1991, has repeatedly voted against stronger consumer product safety regulations throughout her tenure. Given a choice between consumer safety and the manufacturers, Ms. Gall came down on the side of the manufacturers, deciding in favor of products that are dangerous and put our children at risk. She has a history of blaming consumers when injuries result and she has shown a clear reluctance to impose mandatory safety standards when evidence shows that voluntary standards are not enough to reduce safety hazards and prevent injuries.

Accordingly, I am here today to urge my Senate colleagues to reject her nomination. I speak from my own experience on this issue. Over the years, as a member of Congress, I have introduced legislation on children's sleepwear flammability standards, upholstered furniture standards and I have fought against dangerous candy products that posed serious choking hazards to our children.

Mary Sheila Gall's record speaks for itself, but I would respectfully like to highlight a few key points in Ms. Gall's history that illustrate that she does not have the interests of children and families in mind.

On the children's sleepwear issue, Ms. Gall voted in 1996 to eliminate the fire-resistant standard for infant sleepwear putting millions of additional children at risk of injury. This 25 year old standard had been credited with helping reduce the average death rate from clothing ignition for children younger than 14 from 60 deaths each year to only four per year. This was the most effective measure taken to protect children from injury in the event of a house fire. In her statement, in support of repealing the standard, Ms. Gall said that non-flame resistant sleepwear did not pose an "unreasonable risk." Ms. Gall's vote put millions of children at risk of death or injury and put her odds with the National Fire Protection Association. The Association strongly opposed her position, saying that Ms. Gall put the burden of safety standards on consumers.

Fire-resistant pajamas is a common-sense standard, and I have introduced legislation to instruct the CPSC to return to the strict fire safety standard that governed children's sleepwear for a quarter of a century. We cannot allow children to be put into bed wearing pajamas that pose a fire hazard.

Ms. Gall's position with respect to baby baths is also disconcerting. From 1983 to 2000, 69 infants died and 95 were injured in accidents involving baby bath seats. In 1994 Ms. Gall voted against the regulation of baby bath seats, saying "infant drowning . . . resulted not from the design or manufacture of the product, but rather from irresponsible behavior of the care-givers." On August 9, 2000, Ms. Gall voted to publish a *Federal Register* notice to invite interested persons to comment on a petition to regulate baby bath seats and rings, all the while publicly commenting that, "Infant drownings that occurred while a baby bath seat or ring was present resulted not from the design or manufacture of the product, but rather from the irresponsible behavior of the caregivers in leaving an infant alone in the tub . . . I have reviewed these incidents as they have been reported and have found nothing that causes me to alter the opinion that I expressed in 1994."

Mr. Chairman and members of the Committee, since 1972, American families have relied on the Consumer Product Safety Commission to regulate unsafe products and protect them from potentially hazardous ones. In regulating potentially dangerous products, I believe the American people prefer us to err on the side of caution. They do not want products that endanger their lives sold in the stores where they shop. The Chairperson of the Commission must be a leader who will demand the strictest safety standards for consumer products. Yet, Mary Sheila Gall's

record as a CPSC Commissioner indicates an overt hostility toward the commission's mission.

Her impact on this nation's children doesn't stop at sleepwear and bath seats. In a statement dated June 30, 1994, Ms. Gall, in opposition to the proposed government regulation of baby walkers, once again blamed parents and babysitters for accidents that had occurred. In some instances that may have been true. But didn't she think that there might be a way to build a safer baby walker—one that would not fly off down the hall or down the stairs the moment a parent turned around. Parents will be the first to agree that sometimes they get distracted, but that is no reason not to try to make a safer walker. This proposed regulation was supported by the American Academy of Pediatrics, the National Association of Pediatric Nurse Associates and Practitioners and the American Medical Association. The American Medical Association wrote in a letter to the Commission, "We believe that this product should be taken off the market. . . . baby walkers account for higher numbers of injuries annually than does any other type of nursery product." Her opposition to the rule demonstrated an astounding lack of sensitivity toward child safety.

Time after time, Mary Sheila Gall has voted against consumer protections and for manufacturers of unsafe products. Ms. Gall questioned the need, when crayon makers agreed to remove asbestos fibers from their products. She voted against safety standards for bicycle helmets, opposed labels to warn consumers about indoor charcoal burning, endorsed the move to block rules on flame resistant furniture and opposed bunk bed standards to prevent strangulation—since 1990, 57 children have died by entrapment in bunk beds.

Mr. Chairman, I have fought very hard to protect consumer safety during my tenure in Congress. I am here today, because safety for this nation's children is something that I deeply believe in. The Chairperson of the federal agency charged with protecting consumer safety has an important job to do in protecting the health and safety of the nation. How many children have to be harmed or killed in burning sleepwear because we failed to enact strict flammability standards. In my opinion, if we could prevent one child's death—just one child—then a regulation is warranted. She could be your child or your grandchild or your neighbor's child. I urge you to consider Ms. Gall's record, her reluctance to use the authority invested in her as a member of the Commission. And consider whether we ought to have her as the head of the nation's consumer protection agency.

Thanks for the opportunity to testify today.

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