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# CAN FEDERAL LEGISLATION AFFECTING CONSUMERS' ECONOMIC INTERESTS BE ENACTED?

*Philip A. Hart\**

ASSUME there is a definite need for legislation which centers on the economic—not the health or safety—interests of consumers. Can such a bill be enacted? If history, as Francis Bacon claims, does indeed “make a man wise,”<sup>1</sup> then a wise man would not even advocate such a bill, no matter how persuasive the evidence. Although government exists to protect the public interest, a look at history shows that the public—or the consumer—generally has not fared as well as many other special interests.

## I. TRADITIONAL RELUCTANCE OF CONGRESS TO ENACT CONSUMER LEGISLATION

Organized labor, business and farmers have representatives at the Cabinet level to plead their cases before the President and Congress, but the consumer has no spokesman of such rank.<sup>2</sup> As a result, consumers' needs are frequently ignored. For example, in 1913 Congress enacted a law protecting animals from worthless drugs,<sup>3</sup> but it was not until 1962 that the thalidomide disaster forced the enactment of the Kefauver-Harris Drug Amendments,<sup>4</sup> which gave the same protection to human beings. Thus, there is much to suggest that only a disaster can move Congress to offer protection to consumers even in the vital areas of health and safety. Certainly this was true with respect to the two other major bills in this area.

The Food and Drug Act of 1906<sup>5</sup> was the first attempt by Con-

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1. *ESSAYS OR COUNSELS, CIVIL AND MORAL, OF FRANCIS BACON, Of Studies* 218 (1905).

2. Mrs. Esther Peterson was named Special Assistant to the President for Consumer Affairs on January 3, 1964. This position does not give her entrance to Cabinet meetings or the overall authority of a Cabinet member.

3. 37 Stat. 832 (1914), 21 U.S.C. § 151 (1964).

4. The news that the births of more than 7,000 deformed babies were caused by mothers taking thalidomide to ease morning nausea came when Senator Kefauver's bill (S. 1552) was pending before the Senate. The public outcry was great, and President Kennedy asked Congress for speedy action on the bill. Senator Kefauver, joined by Senators Carroll, Dodd, Long of Missouri, and Hart, sponsored amendments which would deal with situations such as thalidomide and which had been in the original bill but were dropped before the committee reported the bill. The amendments, removing the time limit for FDA approval before marketing a new drug and providing for complete animal testing, were adopted by the Senate.

5. 34 Stat. 769.

gress to protect the American consumer against adulterated or unsafe products in the two fields of foods and drugs. It took both a scandal involving the sale to the Army of meat treated with formaldehyde and revelations about tonics and medicines for women (consisting mostly of alcohol, opium, or other ingredients which few ladies would have knowingly used) to spur the public into demanding remedial legislation and to encourage Congress to pass it.

Subsequently, a drive to strengthen the 1906 law was begun in the 1920's with the publication of a large number of books on the abuses of advertising.<sup>6</sup> In 1933, Rexford G. Tugwell was appointed Assistant Secretary of Agriculture by President Franklin D. Roosevelt and shortly thereafter sponsored a new bill in this area. Industry responded to this proposed legislation with a half-million dollar fund and an *ad hominem* attack on Tugwell, asserting that he was un-American. However, in the summer of 1937 seventy-three people died as the result of a deadly poison being used as a solvent for elixir sulfanilimide, and numerous women were blinded by unsafe eye preparations. On the basis of these incidents, the public demanded passage of the Tugwell bill,<sup>7</sup> which was finally enacted as the Food, Drug, and Cosmetic Act of 1938.<sup>8</sup>

If such disasters—and the public outcry they prompted—were essential to secure legislation protecting the lives of consumers, how then can one ever hope to enact a law simply to help shoppers make wise purchases in order to keep their budgets in balance? On a question such as this, I like to seek counsel, not from Bacon, but rather from Edmund Burke, who said that “you can never plan the future by the past.”<sup>9</sup> Nevertheless, on bad days (the ones when I am wandering around the halls of Congress attempting to line up support for my bill, Truth-in-Packaging<sup>10</sup>), I reflect that while Burke was indeed a perceptive statesman, he died in 1797, long before the days of public relations concerns, intra-professional organizations, national editorial services, and lobbyists with the skills of those whom legislators face today. Then I wonder if Burke were in today's situation, if he might amend his flat statement, adding a few exemptions and conditional phrases.

Certainly I do not mean to imply that the forces which oppose consumer economic legislation in general, and Truth-in-Packaging

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6. See WILCOX, PUBLIC POLICIES TOWARD BUSINESS 211 (rev. ed. 1960).

7. *Ibid.*

8. 52 Stat. 1040, 21 U.S.C. §§ 301-92 (1964).

9. *Letter to a Member of the National Assembly*, in 4 WORKS OF THE RT. HONOURABLE EDMUND BURKE 55 (1899).

10. The exact title of this bill is Fair Packaging and Labeling Act, S. 985, 89th Cong., 1st Sess. It was introduced on February 3, 1965, with twelve co-sponsors.

in particular, are immoral in their conduct. If I were engaged in opposing the bill, I would not feel I had to apologize for doing similar things. The problem with such consumer legislation is not that there is a division between good and evil forces, but rather that the opposition is organized—meticulously organized—and the 195 million consumers are extremely unorganized. Thus the opponents' position is stated persuasively and in the right quarters. In contrast, the consumers' position is presented infrequently and less powerfully, and is generally voiced in the family kitchen rather than in the halls of Congress. Because the consumers' channels to Congress are less effective, it is not too difficult for opponents to persuade legislators that consumers are indifferent to such economic legislation. Indeed, the claim of consumer apathy is a keystone in the arguments against consumer bills.

## II. TRUTH-IN-PACKAGING—A CURRENT CASE IN POINT

### A. Legislative History

The specific problems which face attempts to enact consumer economic legislation can be pinpointed by using the Truth-in-Packaging bill as a study. The bill, which was introduced in the Eighty-eighth Congress as S. 387, was offered as an amendment to the Clayton Act. This bill was the outgrowth of extensive investigative hearings held by the Senate Antitrust and Monopoly Subcommittee during June, October, and December of 1961 and February, March, and April of 1962.<sup>11</sup> At these hearings, forty-one witnesses testified on the subject of packaging and labeling practices, and twenty-two statements were put in the record. The subcommittee also held eleven days of hearings on S. 387 during March and April of 1963.<sup>12</sup> Forty-seven witnesses were heard, and forty-six written statements were submitted. This proposed legislation was considered by the subcommittee on June 13, 1963, and it was favorably reported to the full Judiciary Committee.<sup>13</sup> However, the Judiciary Committee declined to act on the bill, which therefore died at the close of the Eighty-eighth Congress in 1964.

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11. *Hearings on Packaging and Labeling Practices Before the Senate Subcommittee on Antitrust and Monopoly*, 87th Cong., 1st & 2d Sess., pts. 1-3, (1961-62). Late in the second session of the Eighty-seventh Congress, I had introduced a packaging and labeling bill, S. 3745, for the purpose of receiving comments and suggestions from interested parties. These suggestions were considered in drafting S. 387.

12. *Hearings on Packaging and Labeling Legislation Before the Senate Subcommittee on Antitrust and Monopoly*, 88th Cong., 1st Sess., pts. 1-3 (1963).

13. The vote was five to three in favor of the amended bill. The affirmative votes were cast by Senators Kefauver, Dodd, Long of Missouri, Keating, and Hart. Senators Dirksen, Hruska, and McClellan were opposed to the bill.

In 1965, I redrafted the bill (S. 985)<sup>14</sup> as an independent act rather than as an amendment to the Clayton Act, and it was assigned to the Senate Commerce Committee. That committee heard fifty-eight witnesses and accepted seventeen statements for the record.<sup>15</sup> No further action was taken by the committee during 1965. A compromise bill was finally reported out by the Commerce Committee May 13, 1966.

Thus, it is possible to cover in eleven sentences the five-year legislative history of the bill. However, the chronological account of the congressional action (and inaction) demonstrates only that passage of consumer economic legislation is difficult; the reasons are not reflected in the chronology.

### B. *The Provisions of the Bill*

Before considering the complications that have frustrated efforts to pass the bill, it is important to examine its provisions as introduced. These five requirements were mandatory: (1) net weights must be stated on the front panel of packages; (2) minimum standards for type sizes of quantity designations must be established; (3) deceptive qualifications, such as "giant half quart," are prohibited; (4) the use by manufacturers of "cents off" on packages is prohibited; and (5) misleading illustrations or other pictorial representations are proscribed.

Six additional provisions were discretionary: (1) designation of reasonable weights in order to eliminate proliferation of sizes which make comparisons almost impossible; (2) prevention of deceptively shaped packages; (3) definition of container sizes to eliminate confusion between one manufacturer's "large" size and another producer's "king" size; (4) establishment of standards for the size of individual servings so that competing products may be compared on the basis of quantity; (5) establishment of meaningful standards for comparing competing products in situations where weight is not significant; and (6) designation of requirements relating to ingredient information.

The compromise bill—in the nature of a substitute—which was reported by the Commerce Committee maintains the general thrust of S. 985. However, it deletes the authority of the regulatory agencies to establish regulations over package shapes and allows industry use of the Department of Commerce voluntary product standard pro-

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14. See note 10 *supra*.

15. *Hearings on Fair Packaging and Labeling Before the Senate Committee on Commerce*, 89th Cong., 1st Sess. 719 (1965).

cedure for establishing standards of weights and measure before FDA or FTC would promulgate them.

The new bill is weaker than S. 985, as introduced. But it is still a good bill.

### C. *Industry v. Consumers*

Truth-in-Packaging, which I initially felt would not attract much attention, makes an ideal study for our question because the battle lines are clear. On one side we have a \$100 billion industry, and on the other side we have 195 million consumers. There are no middlemen.

A mere reference to the Truth-in-Packaging Bill in the presence of an industry representative is similar to pulling the string in a child's talking doll. The response is generally limited to a few standard phrases: "Present law is adequate," "the marketplace is its own best regulator," "you are depriving the consumer of freedom of choice," or "consumers are perfectly happy." On the other hand, consumers generally complain that: "I try to shop wisely but it is impossible with these packages," "the package said it would serve four; they must have meant four two-year-olds," or "I'm tired of paying cookie prices for air."

As previously noted, the critical difference between the two sides is that the industry voices get through to Congress more effectively and more frequently than the consumer voices. The chief reason the bill has not been enacted thus far—assuming that it is a meritorious bill—is this difference in the power to communicate.

I do not have the figures on industry expenditures of time and money for fighting the Truth-in-Packaging bill. However, on the basis of my observations of the methods and the results, it appears that the investment of time and money has been considerable, and certainly a large number of persons have been involved in the effort. The magnitude and degree of organization of the industry forces were described accurately in a recent issue of *Consumer Reports*:

This year [1965] the food industry has succeeded in pulling its pressure groups together for an all-out, no-holds-barred drive to defeat Truth in Packaging.

It has taken time to orient fully such a behemoth as this \$80,000,000,000 industry<sup>16</sup> can command. There are over a hundred separate national trade associations in the food processing business alone, among them such giants in their own

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16. The \$80 billion figure used by *Consumers Reports* encompasses only the food industry. The \$100 billion figure used in the present article as representing the opposition to the bill includes allied industries, such as bottlers and canners.

right as the National Canners Association. Then there are the organizations of the industries selling packaging supplies and equipment to food processors—the bottlers, box makers, glass manufacturers, and the like. There are also the many trade associations of food brokers, wholesalers, retailers and supermarket chains. And there are those in the allied industries selling in food outlets—branders of soft drinks, paper products, household supplies, etc. Beneath this array of national groups are thousands of state and local replicas. At the peak of the pyramid is the Grocery Manufacturers Association, known in the trade as GMA. And finally, there are the two super-peaks—the Chamber of Commerce of the United States and the National Association of Manufacturers.

Despite its proportions, communication throughout this commercial network is fairly effective. A trade press serves each particular group. National, regional, and state conferences are held annually, and between times trade association secretaries at all levels can keep in close touch with their members. Thus any one of the organizations at any time, or all of them at once, can be deployed in a legislative drive. Local bottler associations, for example, can take over the job of talking to Congressmen in their home areas while Chambers of Commerce whip up a letter-and-telegram campaign to Washington, D.C., where the big-time GMA lobbyists pin-point the pressure on the leaders of both the House and the Senate.<sup>17</sup>

The significant factions of this industry team are the trade associations and the members of industries which are not directly engaged in food manufacture but whose livelihood depends on the manufacturers, such as the canners and bottlers.

The fact that the industry opponents left nothing to chance in the fight against Truth-in-Packaging is indicated by their action in forming an *ad hoc* committee to fight the bill. During committee meetings, representatives of the trade associations and companies planned the over-all attack on the bill and assigned areas of responsibility to each group.

Unfortunately, the representatives of consumers, while impressive individually, are handicapped as a team. Supporters of the Truth-in-Packaging Bill include all the major labor unions, the National Consumers League, the Cooperative League, the National Federation of Business and Professional Women's Clubs, the National Federation of Independent Businesses, the National Retired Teachers Association, and the American Association of Retired Persons. If these groups combined their available resources, I feel

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17. *A Story for Our Times, Or, what is the chairman of General Foods really trying to say to Mary Jones?*, 30 CONSUMER REPORTS 118-20 (1965).

they still would find it impossible to produce the finances to support the bill that the three largest members of GMA could contribute alone. Moreover, the consumers themselves have no trade associations, very little internal communication, and, as a result, virtually no organized economic power. I point this out not to suggest that there is anything wrong with the industry wanting to spend money, time, and talent to fight a bill it does not like, but rather to illustrate how handicapped consumers are when it comes to presenting their views.

#### D. *The Impact of the Press*

It is true that the National Council of Senior Citizens recently devoted two full pages of its monthly tabloid to an article on the bill and urged its enactment.<sup>18</sup> However, such a presentation does not have the impact of the multi-page article, "Let's Keep Politics Out of the Pantry," by Charles G. Mortimer, Chairman of General Foods Corporation, which appeared in the January 26, 1965, issue of *Look Magazine*.<sup>19</sup> The author of the latter article presented a broad attack on the Truth-in-Packaging Bill and various other consumer programs of the federal government. In denying my request to present the consumers' side of the argument, the publishers of *Look* stated that they did not think another article was warranted, since it was their impression that the public did not feel any strong need for reform in the area of packaging and labeling. However, my files contain about ten thousand letters from consumers which give some indication of the public's interest in reform in the area. In fact, I also have numerous copies of letters that consumers sent to *Look*, but which were never published.

This experience with *Look Magazine* is particularly interesting in light of a speech before the Television Bureau of Advertising's annual convention in November 1962.<sup>20</sup> The speaker was Paul Willis, who was at that time president of GMA. He commented on a meeting he had conducted with sixteen top management people from national magazines "to discuss with them the facts of life covering advertising-media relationships."<sup>21</sup> He reported that he had suggested to the publishers that "the day was here when their editorial department and business department might better understand their interdependency relationships as they affect the operating re-

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18. Senior Citizens News, Jan. 1966, p. 4.

19. *Look Magazine*, Jan. 26, 1965, p. 80.

20. For a complete transcript of the speech, see *Hearings, supra* note 12, pt. 1, at 479.

21. *Id.* at 481.

sults of their company; and as their operations affect the advertiser—their bread and butter.”<sup>22</sup> Mr. Willis noted that apparently the publishers had understood, since they had begun to run articles to create “a favorable public attitude” toward food advertisers.<sup>23</sup>

Apparently his meeting was effective in other ways as well. Two of the magazines whose publishers met with Mr. Willis—*Reader's Digest* and *The Saturday Evening Post*—commissioned writers to produce articles on my Truth-in-Packaging Bill but never printed the stories.

In 1963 my office sent background materials on Truth-in-Packaging to the leading women's and home magazines on the theory they might be interested in writing something—pro or con—on the bill. However, none of the magazines was interested in discussing the bill, and Jose Wilson, food and features editor for *House & Garden*, was quite frank in his reply: “I think the bill is certainly needed but I doubt whether we can mention it editorially.”<sup>24</sup> In fact, there was a total blackout on Truth-in-Packaging by mass circulation magazines until a *Coronet*<sup>25</sup> article last year and one by *Pageant*<sup>26</sup> this year. These two magazines were not mentioned by Mr. Willis as being among those with whom he had met. It also should be noted that *Pageant* carries no advertising and *Coronet* carries no food advertising.

Opponents of Truth-in-Packaging also have made use of canned editorials, such as those circulated by the United States Press Association, which has access to 1,199 weeklies and 150 dailies.<sup>27</sup> A congressman reading his mail will recognize these as canned editorials because they are sent to him from several different papers at the same time. However, the typical reader of a local newspaper has no way of knowing that such an editorial represents industry's view of pending legislation and not that of his local editor. In an article on these editorial services, *Harper's Magazine* reported that the National Association of Manufacturers has sent out editorials for three years which have been picked up, usually verbatim, by six hundred daily newspapers.<sup>28</sup>

Numerous other journalistic resources, such as the internal publications of industry-sponsored organizations, also have been utilized

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22. *Id.* at 481-82.

23. *Id.* at 482.

24. Letter to Author From Jose Wilson, Food and Features Editor, *House & Garden*, June 17, 1963.

25. Hart, *Don't Be Fooled by Deceptive Packaging*, *Coronet*, April 1965, p. 10.

26. Hart, *The Great Food Packaging Deception*, *Pageant*, Jan. 1966, p. 94.

27. See Bagdikian, *Behold the Grass-Roots Press, Alas!*, *Harper's*, Dec. 1964, p. 102.

28. *Id.* at 103.

in the effort to defeat the bill. For example, a recent *Federal Legislation Report* of the Michigan State Chamber of Commerce was devoted entirely to Truth-in-Packaging. The position of the National Chamber of Commerce was reflected quite clearly in this report, the first sentence of which began: "The Hart packaging bill (S. 985) whose false front of 'consumer protection' masks an extreme degree of federal regulation of business . . ."<sup>29</sup> Two paragraphs were devoted to comments in support of the bill, but the bulk of the report (thirty-one paragraphs) expressed arguments against it. These opposing arguments ended with the statement:

Inescapably, one concludes the Hart bill is not really aimed at consumer protection, for that's already available in existing law. The measure is little more than a federal grab for power to make decisions that heretofore have been made by consumers and by business—a power grab based on the fallacious concepts that the consumer is Casper Milquetoast, Business is Al Capone, and government is Superman.<sup>30</sup>

Readers were urged to inform the Senate Commerce Committee of their opposition to the bill, and the pamphlet suggested that "similar communications from any of your suppliers and business associates would be useful."<sup>31</sup>

Actually the Michigan Chamber of Commerce was more reserved in its evaluation of the bill than many of the other industry spokesmen. One representative of the National Association of Manufacturers, Mr. D. Beryl Manischewitz, testified:

The effect of this bill, if enacted, will flow into hundreds of communities in every State, influencing the commerce and industry, the payrolls, and the economies of those places.

The jobs of designers, artists, engineers, molders of glass and plastic, steel and tinplate workers, machinery workers, and employees in paper mills, printing plants, advertising agencies, and many others will be regulated or jeopardized by this bill.

In one way or another you may expect a disruption of these enterprises, their employees, their suppliers, their investors, and the smaller services which surround them. . . .

The inevitable effect of the bill will be to roll back the packaging and marketing revolution of this generation. Had we lived in recent years under such a law, we would not buy our products as fresh, as clean, as unbroken or unspoiled, as accurately measured, as easily handled or as cheaply as we do today.<sup>32</sup>

Mr. Albert W. Wilson, editor of the trade magazine *Pulp &*

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29. MICHIGAN CHAMBER OF COMMERCE, FEDERAL LEGISLATION REPORT (1965).

30. *Id.* at 2.

31. *Ibid.*

32. *Hearings, supra* note 12, pt. 2, at 552, 565.

*Paper*, expressed the industry's position succinctly in the headline of his editorial against the bill: "That phony Hart bill is back again—threat to mills, labor, whole economy."<sup>33</sup> While the editorial undoubtedly represented the industry's view of Truth-in-Packaging, it apparently did not reflect the sentiments of some of the employees. One industry secretary tore the editorial out of the magazine and sent it to me with the note, "I'm all for you."

#### E. *Recurring Argument That Present Law Is Adequate*

The all-inclusive headline of Mr. Wilson's editorial overlooked only one argument against the bill: "There are enough laws and regulations in regard to packaging; all that is needed is for these laws to be enforced with the full power of the federal government." Of course, supporters of the bill disagree with this view. One such supporter is George P. Larrick. Testifying as Commissioner of the Food and Drug Administration before the Senate Commerce Committee, Mr. Larrick stated that the FDA has "lost every contested action involving deceptive packaging of food."<sup>34</sup>

Nevertheless, the argument that present law is adequate can be found in nearly all attacks on Truth-in-Packaging. Industry is quick to laud present laws as reasonable, helpful, and responsive. However, these laws did not rate so high with industry in the 1930's, when they were first being considered. At that time, the general counsel for the Proprietary Association stated, "The only manner in which the present bill could be properly amended is to strike out all after the enacting clause. . . . I have never in my life read a bill or heard of a bill so grotesque in terms, evil in its purposes and vicious in its possible consequences as this bill would be if enacted."<sup>35</sup> A representative of the National Drug Trade Conference said, "The present Food and Drug Act [of 1906], which has operated so efficiently and is faulty only because of later developments, can be made effective in destroying every one of these abuses, about which we all know and some of which have been presented to us today."<sup>36</sup> Similarly, the Drug, Chemical, and Allied Trade Section of the New York Board of Trade published a single-sheet flyer with the following warning: "The 'Tugwell' Food and Drug Bill is anti-NRA. It will seriously affect employment and morale in the industries indicated. It will put thousands of men and women out of

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33. Pulp & Paper, April 19, 1965.

34. *Hearings*, *supra* note 15, at 24.

35. *Hearings on Food, Drugs and Cosmetics Before a Subcommittee of the Senate Committee on Commerce*, 73d Cong., 2d Sess. 172 (1933).

36. *Id.* at 91.

work. It will close dozens of manufacturing plants and hundreds of stores. It will hurt thousands. It will help none."<sup>37</sup>

Of course, none of these events occurred after the enactment of the Food, Drug, and Cosmetic Act of 1938. Nevertheless, industry is currently predicting that such consequences would result if it were required to put sufficient information on a package for a consumer to make a rational buying decision, as outlined in the Truth-in-Packaging Bill. For example, one large manufacturer sent all its employees a booklet containing an article entitled "The Day the Brands Died," which was reprinted from the March 1965 issue of *Printers' Ink*, a trade journal.<sup>38</sup> This article details the black day of November 17, 1973, when Stanley Jurasik learns that the 101-year-old soap plant where he has worked for forty-five years is being forced to close. It appears that his town will lose ten per cent of its jobs, and it is made clear that the situation at his plant will be multiplied at other local plants and throughout the nation. Literally millions of people will be thrown out of work. And where did all this start? With the Hart packaging bill, of course. First came standardization of packages (which is not in the Hart bill), then grade labeling, which was given prominence over brand name; then companies were limited to an advertising budget proportionate to that spent by their smallest competitor. That step was fatal.

This pamphlet represents the type of attack on the bill which at the kindest can only be called "overenthusiastic." It is typical of the statements industry opponents have made over and over—through either misunderstanding or distortion—to create the impression that the Truth-in-Packaging Bill does things it does not. Indeed, a witness at the Senate Commerce Committee hearings claimed the bill would require that the holes in Life Savers be filled.<sup>39</sup> Similarly, the president of the National Biscuit Company told the Committee the bill would outlaw the stack pack for one of the types of Nabisco crackers.<sup>40</sup> However, I wish to emphasize that the bill would not produce these results or any of the other dastardly related consequences which are frequently assigned to it. Many of the ominous predictions will not stand up when compared to the language of the bill, and others could occur only if the bill did not contain the extensive safeguards now written into it.

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37. *Id.* at 471 (chart).

38. The booklet was distributed to employees of the Kirsch Company, Sturgis, Michigan, April 1965.

39. See *Hearings*, *supra* note 15, at 639 (testimony of S. Burr Sifers, Vice President, National Confectioners Association).

40. See *id.* at 294 (testimony of Lee S. Bickmore, President, National Biscuit Co.).

### F. *An Unexpected Opponent*

Although I underestimated the vehemence of the opposition to the bill, I had anticipated the identity of most of the opponents. However, one member of the group came as a surprise to me: the American Bar Association. The House of Delegates of the ABA, moving as groups of such size frequently do, in 1963 followed the recommendation of its study committee and summarily adopted a resolution against the Truth-in-Packaging Bill. Initially this action confounded me, but subsequently I examined the membership of the seven-man Advisory Committee of the Food, Drug, and Cosmetic Division of the Corporation, Banking, and Business Section that made the recommendation, and discovered a possible explanation—that several of its top members were affiliated with the food industry.

### G. *The Opponents' Objectives*

The onslaught of the opponents of this piece of consumer economic legislation is designed to achieve two objectives: to persuade the public that it is happy and to persuade Congress that the public is happy. With respect to the first objective, my mail and the packaging industry's own survey demonstrate that success has not been achieved.<sup>41</sup> The survey of 51 million consumers—conducted by the industry with its own questionnaires—indicated that twenty per cent (over 10 million) of the people questioned were concerned about packaging practices.

On the other hand, the industry has been more successful on the congressional front. Faced with the war in Viet Nam, Medicare, civil rights, and other crucial matters, members have had little time to do in-depth personal research on consumer issues. Therefore, when industry representatives characterize Truth-in-Packaging as a bill which will increase producers' costs, increase consumer prices, and cause unemployment, congressmen tend to believe that this is indeed a less-than-ideal piece of legislation. Similarly, when industry-inspired letter-writing campaigns turn his mail count into a lopsided figure against the bill, it is easy for a congressman to believe that consumers do not want any new federal controls on packaging.

### III. SUMMARY AND CONCLUSION

The Truth-in-Packaging story, while a little easier to document than some others, is no different from the fate awaiting any con-

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41. See *id.* at 128-222. The results of the survey, which was conducted by Opinion Research Corporation for the Grocery Manufacturers Association, are included in the testimony of Walter Barlow, president of Opinion Research. *Ibid.*

sumer economic legislation. A study of Senator Douglas' Truth-in-Lending Bill (S. 2275), which would require full disclosure of the amount and true rate of interest on loans and installment purchases, would reveal similar opposition.<sup>42</sup> There is less opposition to the proposal to create an Office of Consumers, which was first introduced by Senator Kefauver and later by me,<sup>43</sup> primarily because in five years that bill was granted only two days of hearings before a congressional committee.<sup>44</sup> The House this year has started a series of hearings on the proposal.

As I have pointed out, the opposition to these consumer economic bills differs not at all from that expressed when consumer health and safety legislation has been introduced in the past. National disasters drowned out the opposition in the past—a situation we would not anticipate and obviously would not hope for with consumer economic legislation.

Are we then championing a totally hopeless cause? I do not think so. Three forces—time, consumer awareness, and the President—are now at work, and together they may win victory for Truth-in-Packaging. Ironically, if the Truth-in-Packaging Bill is enacted, much credit must go to its opponents.

Admittedly, Truth-in-Packaging is a novel bill. Opponents would go further and describe it as a radical bill. Nevertheless, it is agreed that the approach is unusual in that it would substitute by law some across-the-board industry rules for the case-by-case prosecution that the FTC and the FDA have had to use in dealing with unfair and deceptive practices in packaging. Traditionally, novel bills have required more consideration before legislators were willing to enact them. Furthermore, novel bills need greater public support, as in the cases of the Civil Rights Act of 1964 and Medicare. The essential ingredients in both respects are time and events.

Truthfully, I think that if the opponents of Truth-in-Packaging had simply ignored S. 387 when it went into the hopper in 1963—never mentioning a word about it anywhere—the bill would be dead today. However, they decided to fight it. It seemed that many times when the bill faltered and almost died, a fresh industry on-

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42. For a discussion of the problems involved in requiring disclosure of costs of credit, see Jordan & Warren, *Disclosure of Finance Charges: A Rationale*, 64 MICH. L. REV. 1285 (1966).

43. The bill number in the 89th Congress is S. 1052.

44. Hearings were held on the Kefauver bill in June, 1963, by a subcommittee of the Senate Government Operations Committee, which was chaired by Senator Humphrey but is now defunct.

slaught would bring it back to life. Thus it is still with us today, when the time is much riper for its passage.

In buying time for the bill, opponents also contributed greatly to consumer awareness. I am certain that many of the current supporters of the bill first investigated it as a result of the vehement attacks of industry. An equally significant development is the fact that nearly all consumers who have learned of the bill have become supporters of it. Each consumer who has recognized that help is on the horizon in an area where he has previously accepted frustration, and who has asked his representative in Congress to support the bill, has increased the chances for its enactment.

Victor Hugo's words concerning the strength of an idea whose time has come might apply with equal force to any piece of legislation that represents a new approach to a problem. However, the Civil Rights Act of 1964 and Medicare are two recent reminders of the fact that the strongest ideas often need not only the support of Congress, but also the guidance and support of the President. The public and Congress built up a momentum for the bills, but in each case the time came when the cause needed a general—the President.

Truth-in-Packaging seems to have reached a similar stage in its development. Fortunately, President Johnson has determined to lend his support to the bill. The consumer front is not a new one for him. He endorsed the Truth-in-Packaging Bill in his Consumer Message in 1964 and reiterated his support in his Economic Message to Congress in 1965. This year he emphasized the importance he places on the bill by including it in his State of the Union Message, his Economic Message, and his Consumer Message.

Thus, it is clear that President Johnson is solidly behind Truth-in-Packaging. It is also clear that in 1966, Truth-in-Packaging will meet its greatest test. Along the way we should discover the answer to our initial question: Can federal legislation affecting consumers' economic interests be enacted?

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After the writing of this article, the Senate, by 72-9 roll call vote, on June 9, 1966, passed the Truth-in-Packaging bill, thus clearing one hurdle toward the bill's enactment. There are still hearings to be held and a vote to be taken by the House of Representatives.