S. HRG. 107–961

# NOMINATION OF HAROLD D. STRATTON, JR. TO BE COMMISSIONER AND CHAIRMAN OF THE CONSUMER PRODUCT SAFETY COMMISSION

## HEARING

BEFORE THE

## COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

APRIL 25, 2002

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ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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# NOMINATION OF HAROLD D. STRATTON, JR. TO BE COMMISSIONER AND CHAIRMAN OF THE CONSUMER PRODUCT SAFETY COMMISSION

**THURSDAY, APRIL 25, 2002**

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

The Committee met, pursuant to notice, at 2:30 p.m. in room SR-253, Russell Senate Office Building, Hon. Byron L. Dorgan, presiding.

## OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. Good afternoon. The Senate Commerce Committee is meeting today for a confirmation hearing to examine the qualifications of Mr. Harold Stratton, who has been nominated by the President to serve as Commissioner and Chairman of the Consumer Product Safety Commission.

I have a very brief statement, but I think perhaps even before I give the statement, I will call on my colleague, Senator Domenici, from the state of New Mexico, who is here to introduce the nominee.

Senator Domenici, why don't you proceed?

## STATEMENT OF HON. PETE DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator DOMENICI. That's very generous of you, Mr. Chairman and thank you very much, Senator Wyden. It's a pleasure to be here.

I do have a complaint, Mr. Chairman. Maybe it's just the weight of my body, but these seats that you sit us in are way too low.

[Laughter.]

Senator DOMENICI. You need to put in an order for a couple of more cushions. Would you do that?

Senator DORGAN. We'd be happy to do that.

Senator DOMENICI. We'll join the voucher, 50-50.

Anyhow, having said that——

Senator DORGAN. I don't know that it's a good strategy to start with a complaint, however, Senator.

[Laughter.]

Senator DOMENICI. That's thoroughly a Domenici complaint. That's not his. He's an all right guy.

Senator DORGAN. You may proceed.

Senator DOMENICI. Thank you again, Mr. Chairman. And I've known Hal for a number of years, going back to the days that he served in the New Mexico House of Representatives and then as attorney general of the State of New Mexico. And clearly, Mr. Chairman and Members, if you want somebody who is active, who will participate, who has a lot of energy, you've got the right person. New Mexicans don't elect Republican attorneys general very often, Mr. Chairman. They elected him, and I will say he was a pleasant surprise. He did a marvelous job and has been a rather successful man ever since.

So from my standpoint, I think the President chose a person that is just right for the job. I think he is ready to be the Chairman and provide the kind of leadership that is obviously missing and necessary in this consumer-oriented institution of our national government.

While he was serving the people of New Mexico, he attained and preserved and was appropriately complimented for his willingness to protect the interests of all New Mexicans. I have no doubt that he will carry this trait with him into the CPSC, this same commitment to ensuring the safety of American consumers.

I understand that Senator Bingaman, my colleague, cannot be here in person. He's trying diligently to finish the energy bill on the floor, on which he's doing a very good job. But I understand he will communicate, if he hasn't already, his support for the President's nominee.

I'm pleased to be here, and I hope that you will interrogate as much as you need to and expeditiously report him out to the Senate for approval. Thank you very much, Mr. Chairman

Senator DORGAN. Senator Domenici, thank you very much for being here. We certainly appreciate your input and your strong endorsement of this nominee.

**STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA**

Senator DORGAN. As I indicated, the Senate Commerce Committee is meeting on the confirmation hearing for Mr. Harold Stratton. As we know, the Consumer Product Safety Commission chairmanship is a position that's gone vacant far too long. So long, in fact, that the statutory provision which allows the Consumer Product Safety Commission to operate with a quorum of two commissioners expires at the end of this month.

With that in mind, I'd like to welcome Mr. Stratton today to the Committee. I'm sure that he and his family are proud to be here today, and when I recognize Mr. Stratton, I will ask him to recognize his family.

Mr. Stratton is supported by the two Senators from New Mexico. I'd like to congratulate him on the nomination from President Bush. I note, Mr. Stratton, that in your many years of service, both as a state legislator and as New Mexico's attorney general, you have experience with consumer fraud issues in a certain range of areas, and I'm interested in hearing from you today about how you expect to approach consumer product safety issues which the Consumer Product Safety Commission is charged with overseeing.

I expect that anyone with two young daughters, 2 and 7, already has a great deal of experience, first-hand experience, with child product safety. I certainly have experienced that, and I'm sure you have as well. While I appreciate your willingness to serve our country, I also want to thank your family, because public service relates not just to those who are serving, but their loved ones as well.

I want to point out that this is an independent agency established by Congress in 1972 to protect the public from unreasonable and avoidable risks of death and injury associated with consumer products. Every year there are approximately 28.6 million injuries and 21,700 deaths associated with 15,000 different types of consumer products within the agency's jurisdiction.

The Chairman of the Consumer Product Safety Commission is responsible for all of the executive and administrative functions of the Commission. The investigations, the Commission initiatives, the rules that it adopts, and even how staff resources are spent are all under the control of the Chairman. So today we will examine Mr. Stratton's qualification to be Chairman of this Consumer Product Safety Commission (CPSC) and to get a sense from him about what direction he feels the CPSC might take under his leadership if he is confirmed. If he is confirmed as Chairman of the Consumer Product Safety Commission, he will face many pressing issues and difficult decisions. We hope and expect, if that is the case, that he will confront these issues in a fair and a balanced manner.

I know this is not one of the largest agencies in the federal government, but it is a very, very important agency. The stewardship and the aggressiveness by which someone assumes this responsibility on behalf of America's consumers is very important to all Members of this Committee.

Let me ask Senator Wyden if he has a statement.

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

Senator WYDEN. Thank you, Mr. Chairman. Let me join you in welcoming Mr. Stratton, as well. And congratulations to you on your nomination. As far as I'm concerned, with Pete Domenici and Jeff Bingaman in your corner, you are running with the right crowd.

Mr. STRATTON. Thank you, Senator.

Senator WYDEN. I congratulate you and your family. Let me just mention an area in particular that I want to explore with you, because we know of your background, and particularly that this is a new area, this whole area of consumer product safety and consumer safety that we're going to be discussing today.

You are known, of course, for your long-time interest in addressing free-market approaches to various questions in government. You've written on them. You've been involved in foundations that address areas where free-market approaches are stressed. I want to make it clear that I think that those are very fine and important principles, that free-market initiatives are critically important to our country. However, the Consumer Product Safety Commission really came into being because the free-market alone wouldn't address many of the concerns that children, older people, and the disabled have with respect to consumer protection. So what I'd like to

do is explore with you your sense of what is the proper role of the federal government and what are the areas where consumers have responsibilities. Striking that balance is especially important to me.

I look forward to your statement and having a chance to visit with you a bit this afternoon as we examine your nomination. Again, my congratulations to you and to your family.

Thank you, Mr. Chairman.

Senator DORGAN. Thank you.

Mr. Stratton, why don't you proceed? Your entire statement will be made a part of the permanent record. We would ask you to summarize your statement. We would also like to ask, if there are members of your family present, if you would introduce them.

**STATEMENT OF HAROLD D. STRATTON, JR., NOMINEE TO BE COMMISSIONER AND CHAIRMAN OF THE CONSUMER PRODUCT SAFETY COMMISSION**

Mr. STRATTON. Mr. Chairman, thank you very much. Yes, I have one member of my family who is present today who has been with me through thick and thin through all of those offices that you read off there, which is my wife, Theresa, who is here supporting me, I think.

Senator DORGAN. Welcome. Thank you. We appreciate your being here.

Mr. STRATTON. My 7-year-old daughter, I believe, is in school in Albuquerque. She'd better be in school in Albuquerque today. And our 2——

[Laughter.]

Senator DORGAN. She is supporting this nomination, I assume.

Mr. STRATTON. It depends on whether she gets a dog, Senator.

Senator DORGAN. All right.

Mr. STRATTON. She has made it clear to me that if we have to move, she wants a dog. So we're having to do those kind of things.

Our 2½ year old is in Sante Fe today with her grandmother, and we checked on her this morning. She's doing fine. She's having a great time. They love to have a little break from the parents.

Mr. Chairman and Members of the Committee, it's an honor to appear here before you today as the President's nominee to be a member and Chairman of the Consumer Product Safety Commission. I welcome the opportunity to have this discussion with the Committee and respond to your questions.

So that you might know me a little better, I'd like to tell you a little bit about myself. I was born in Muskogee, Oklahoma, and reared in Oklahoma City. My father served in World War II as a B-17 pilot and subsequently practiced law in Oklahoma for over 35 years. My mother and sister and her family continue to live in Tahlequah, Oklahoma, which is the capital of the Cherokee Nation, of which I am an enrolled member.

I attended the University of Oklahoma, where I received degrees in geology and law. Subsequent to graduating from law school, I served my Army ROTC committment in the United States Army. Thereafter, in early 1977, I permanently moved to Albuquerque to practice law.

In 1978, I was elected to the New Mexico House of Representatives where I served four terms. Among other positions, I served as

Chairman of the Judiciary Committee, Vice Chairman of Energy and Natural Resources Committee, and one term on the Transportation Committee.

In 1986, I was elected to the office of attorney general of New Mexico. There, in addition to acting as the attorney for New Mexico State government, I oversaw the state's only dedicated consumer-protection agency and the state's largest white-collar crime prosecution unit. Since I was limited to serving one term as attorney general by the New Mexico constitution, I re-entered the practice of law in Albuquerque in 1991, where I have practiced until the present.

In my career, I've been honored to argue and handle many cases in many courts, including the United States Supreme Court.

In each of the capacities in which I have served, my highest priority has been to work and serve with honesty, integrity, impartiality, and fairness toward my staff and employees, other State Executive and Legislative officials, my colleagues in the legal community, and the people I've served and represented. It is my sincere commitment, should I be confirmed, to continue these priorities as Chairman of the CPSC.

My service in both the executive and legislative branches of government, I believe, provides a helpful perspective from which to appreciate the importance of each branch of government's unique responsibilities. As a result, I understand that this Committee is an important stakeholder in the success of the Commission and its mission to protect consumers. If confirmed, I will welcome a continuing dialog with this Committee.

Finally, I would not purport to be an expert on all issues currently pending before the Commission, nor have I formed any preconceived positions on any pending or potential matters there. I would like, however, to suggest to the Committee three general topics that I believe are important to the future success of the Commission's mission.

First, I'd like to explore ways in which the Commission could improve its performance and increase its efficiencies through various methods, including improved interagency consultation and information sharing. Improved coordination with other agencies could maximize the Commission's budgetary and related resources.

Second, the Commission's consumer education outreach programs and consumer notification procedures are critical to protecting consumers and should be strengthened and enhanced to the maximum extent possible. I believe this effort to be particularly important in relation to our most vulnerable and hard-to-reach consumers, which includes seniors, consumers who are less fortunate economically, and those of our citizens who do not speak English as their first language.

Third, I believe it would be useful to continue to enhance the Commission's oversight of imported products in light of the increasing number of consumer products imported from foreign countries. The Commission's responsibility in this area is substantial.

Mr. Chairman, should you and the Senate decide to confirm me for this very important position, I look forward to carrying out this very important mission of the CPSC.

Once again, it's a great honor to be here today, and I'll be pleased to answer any questions.

[The prepared statement and biographical information of Mr. Stratton follow:]

PREPARED STATEMENT OF HAROLD D. STRATTON, JR., NOMINEE TO BE COMMISSIONER AND CHAIRMAN OF THE CONSUMER PRODUCT SAFETY COMMISSION

Mr. Chairman and Members of the Committee, it is an honor to appear here before you today as the President's nominee as a Member and Chairman of the Consumer Product Safety Commission (CPSC). I welcome the opportunity to have this discussion with the Committee and respond to your questions.

I am joined here today by my wife, Theresa Rivera Stratton, who I would like to introduce at this time. We have two young daughters who are not with us today. Our older daughter, Alexandra, is 7 and in the first grade. She is in school today in Albuquerque. Our younger daughter, Claire, who is 2½, is with her grandmother in Santa Fe today.

So that you might know me a little better, I would like to tell you a bit about myself.

I was born in Muskogee, Oklahoma and reared in Oklahoma City. My father served as a B-17 pilot in the Army Air Corp in World War II as a member of the 8th Air Force, and subsequently practiced law back in Oklahoma for over 35 years. My mother, sister and her family, continue to live in Tahlequah, Oklahoma, which is the capital of the Cherokee Nation, of which my daughter, Alexandra and I are enrolled members.

I attended the University of Oklahoma where I received a Bachelor's Degree in Geology and Juris Doctor degree in Law. Subsequent to graduating from law school, I served my Army ROTC commitment on active duty in the United States Army. Thereafter, in early 1977, I permanently moved to Albuquerque, New Mexico to begin my career in the private practice of law and live in the varied and diverse culture and environment that is New Mexico.

In 1978, I was elected to the New Mexico House of Representatives where I served four terms. Among other positions, I served as Chairman of the Judiciary Committee, Vice Chariman of the Energy and Natural Resources Committee and one term on the Transportation Committee. I also served terms on the New Mexico Judicial Council and the Commission on Uniform State Laws.

In 1986, I was elected to the office of Attorney General of New Mexico. There, in addition to acting as the attorney for New Mexico State government, I oversaw the state's only dedicated, consumer protection agency and the state's largest white collar crime prosecution unit. While serving as Attorney General, I presided over and managed not only the day-to-day activities of the Consumer Protection Division, where we handled between one and two hundred consumer inquiries a day, but also oversaw a number of significant consumer actions and white collar crime prosecutions.

Since I was limited to serving one term as Attorney General by the New Mexico constitution, I re-entered the private practice of law in Albuquerque in 1991 where I have practiced until the present. Since that time, my practice has consisted primarily of complex and commercial litigation, administrative and governmental law and, more recently, consulting and lobbying.

In my career I have been honored to argue and handle cases in the United States Supreme Court, several U.S. Circuit Courts of Appeals, numerous U.S. District Courts, the New Mexico and Oklahoma Supreme Courts and Courts of Appeals and many other courts of lesser jurisdiction.

I am admitted to the practice of law in New Mexico, Oklahoma, Colorado and Texas, as well as in numerous other Federal jurisdictions including the U.S. Supreme Court.

In each of the capacities in which I have served, my highest priority has been to work and serve with honesty, integrity, impartiality and fairness, toward my staff and employees, other state executive and legislative officials, my colleagues in the legal community and the people I have served and represented.

It is my sincere commitment, should I be confirmed, to continue these priorities and to serve on the CPSC with integrity, fairness, and with independent, unbiased judgment as chairman of this very important independent Commission.

Congress has provided the Commission with the power to undertake actions, which have the potential to affect the safety of every consumer in America, and particularly those consumers who are most vulnerable and hard to reach, such as the elderly and our children. The Commission's jurisdiction over safety aspects of con-

sumer products is broad and far-reaching. The Commission's actions have saved many lives and prevented many injuries, substantially improved the safety of countless consumer products, and heightened the public's awareness and knowledge of consumer product safety.

My tenure in both the executive and legislative branches of government, I believe, provides a helpful perspective from which to appreciate the importance of each branch of government's unique responsibilities and duties. As a result, I understand that this Committee is an important stakeholder in the success of the Commission and its mission to protect consumers. If confirmed, I will welcome a continuing dialog with this Committee. Since the Commission's chairman is responsible for enforcing the laws as passed by the Congress, frequent dialog with this Committee will ensure that the Commission understands the Committee's positions and provides the Committee with the information it needs to effectively perform its legislative responsibilities.

Finally, I would not purport to be an expert on all issues currently pending before the Commission, nor have I formed any pre-conceived positions on any pending or potential matters there. I would like, however, to suggest to the Committee three general topics, in addition to those that may currently be on the Commission's agenda, that I believe are important to the future success of the Commission's mission.

First, I would like to explore ways in which the Commission could improve its performance and increase its efficiencies through various methods including improved inter-agency consultation and information sharing. It is my understanding that several other Federal agencies possess data, information and expertise that could be useful to the Commission's mission. Improved coordination with such agencies could maximize the Commission's budgetary and related resources.

Second, the Commission's consumer education outreach programs and consumer notification procedures are critical to protecting consumers and should be strengthened and enhanced to the maximum extent possible. While I realize that the Commission continues to strive to improve communication with consumers, I would hope to lead the Commission in enhancing its educational programs and communication with the all of the Nation's consumers.

I believe this effort to be particularly important in relation to our most vulnerable and hard to reach consumers. This included seniors, parents, consumers who are less fortunate economically and those of our citizens who do not speak English as their first language. Coming from New Mexico where hispanics constitute 42 percent of the population and Native Americans constitute about 11 percent of the population, I appreciate the necessity of providing Commission information to consumers in a multi-lingual format. I intend to use my involvement and relationship in the Native American community and in the Hispanic and Spanish speaking community to improve and enhance the dissemination of consumer information to this segment of our population.

Third, I believe it would be useful to continue to enhance the Commission's oversight of imported products. I know that efforts toward this goal are well down the line between the Commission and the U.S. Customs Service. In light of the increasing number of consumer products imported from foreign countries, the Commission's responsibility in this area is substantial. While working with the appropriate government agencies, including Customs, I would like to review the existing procedures and, if warranted, attempt to improve the nature of the Commission's oversight of such products.

Mr. Chairman, should the Senate decide to confirm me for this very important position, I look forward to carrying out the mission of the CPSC. I can assure you, that with two young daughters, I think of consumer product safety every single day. I look forward to bringing this interest and concern to the Consumer Product Safety Commission.

Once again, Mr. Chairman and Members of the Committee, I am honored to appear before you today and am prepared to respond to your your questions.

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A. BIOGRAPHICAL INFORMATION

1. Name: Harold D. Stratton, Jr., (Hal Stratton).
2. Position to which nominated: Commissioner and Chairman, Consumer Product Safety Commission.
3. Date of Nomination: March 1, 2002.
4. Address: (Information not released to the public).
5. Date and place of birth: 12/6/50, Muskogee, Oklahoma, USA.
6. Marital status: Married, Theresa Rivera Stratton.
7. Names and ages of children: Maria Alexandra, 7; Claire Qingya, 2.

8. Education: John Marshall High School, Okla. City, 9/66–5/69, High School Diploma; Univ. of Okla., 9/69–5/73, B.S., Geology; Univ. of Okla. 9/73–5/76, J.D., Law.

9. Employment record: Coors, Singer & Broullire (and successor firms), 1977–1982, Attorney; Harold D. Stratton, Jr., P.A., 1982–1984, Attorney; Stratton & Barnett, P.A., 1984–1986, Attorney; N.M. Attorney General, 1987–1990, Attorney General; Stratton & Cavin, P.A., 1991-present, Attorney. The location of all firms is Albuquerque, NM except the Office of the Attorney General which is in Santa Fe, NM.

10. Government Experience: Member, New Mexico House of Representatives, 1979–1986; Western Conference, Council of State Governments, 1981–1984; National Conference of State Legislators, 1979–1986; National Conference of Commissioners on Uniform State Laws, 1985–1986; New Mexico Judicial Council, 1981–1982; BLM Citizens Advisory Committee, ABQ Dist., 1983–1986; New Mexico Attorney General, 1987–1990.

11. Business Relationships: Stratton & Cavin, P.A., shareholder Rio Grande Foundation, President DCI Associates, LLC, contact consultant Americans for Technology Leadership, advisory board member.

12. Memberships: Cherokee Nation of Oklahoma (Registry No. C 2141). Professional Memberships: (a) State Bar Associations: New Mexico Bar Association; Oklahoma Bar Association; Colorado Bar Association; Texas Bar Association. (b) Other Attorney Organizations: State Attorney General Emeritus (affiliate of the National Association of Attorneys General); Native American Bar Association; United States Supreme Court; U.S. Court of Appeals for the Tenth Circuit; U.S. Court of Appeals for the Fifth Circuit; U.S. District Court, District of New Mexico; U.S. District Court, District of Colorado; U.S. District Court, Western District of Oklahoma; U.S. District Court, Northern District of Texas.

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: Co-chair, Republican Lawyers for Bush, New Mexico, 2000; Bush 1988, Citizens Against Crime, 1988; New Mexico Republican Legislative Campaign Committee, 1979–1986; Republican National Committee, NM Legal Counsel, 1984–1987; New Mexico State Republican Party Central Committee; Bernalillo County Republican Party Central Committee; New Mexico House of Representatives, 1979–1986; New Mexico Attorney General, 1987–1990.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years: None except those listed in 13(a) above.

(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: New Mexico State Republican Party, $1,000, 2001; People for Pete [Domenici], $1,000, 2001; Heather Wilson for Congress, $1,000, 2002.

14. Honors and Awards: Philips Petroleum, Petroleum Engineering scholarship, 1969; Union Oil of California geology scholarship, 1969–1972; George Wyatt Brown geology scholarship, 1972–1973; George Wyatt Brown geology award, 1972; Distinguished Military Graduate, Univ. of Okla. R.O.T.C., 1973.

15. Published Writings: Published works which I can recall and provide information about are: *Office of the Attorney General: History, Powers & Responsibilities, 1845–1990*, Hal Stratton and Paul Farley, 1990; *Report of the Attorney General: Crime in New Mexico,* Office of the New Mexico Attorney General, 1990; *Wall Street Journal*, opinion piece, June 10, 1988; *States Derail Microsoft Deal*, ABQ Journal, April 16, 2000; *The Microsoft Mess*, IBD, October 10, 2000; *Gale Norton as Sec. of the Interior*, ABQ Journal, February, 2001; *N.M. Needs a President on the Fast Track*, ABQ Journal, Sept. 13, 2001; *Atty. Gen Madrid and MSFT*, ABQ Journal, July 19, 2001.

From time to time as a New Mexico legislator, I published newsletters to inform my constituents of legislative initiatives and developments related to my district.

As New Mexico's Attorney General, my office occasionally published a newsletter covering current developments in the Office of Attorney General and distributed it throughout the state.

16. Speeches: I have not delivered any formal speeches which are responsive to the question.

17. Selection: (a) Do you know why you were chosen for this nomination by the President? I believe I was chosen by the President as a result of my broad public service and private sector work experience, and my general reputation for honesty, independent judgment and a strong work ethic. My service as New Mexico's Attorney General and as a four-term New Mexico State legislator provides me with a unique experience and pragmatic understanding of the demands and essential interrelationships of the Executive, Legislative, and judicial branches of government.

Those positions also provided me with administrative, agency management and substantive consumer affairs experience. Moreover, combined with my experience as founding partner of the law firm Stratton & Cavin, P.A. in Albuquerque, NM, I have a keen awareness of the power of investigative and litigation authority as well as the attendant costs and risks. Finally, I am committed to public service and I bring to this task a willingness to learn from the Commission's staff, other Commissioners, this Committee and others in the consumer products community.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment. I believe my management and consumer protection experience in the New Mexico Attorney General's office qualifies me for this position, as does my experience in managing my law firm. As Attorney General I was the primary State official responsible for protecting consumers through the Consumer Protection Division of the attorney generals office. The office was also involved in statewide criminal prosecutions emphasizing white collar and consumer crime. This gives me a solid, practical perspective on the enforcement of consumer laws, related criminal violations and prosecutions, and civil investigatory procedures.

I also have considerable experience in legislative matters from serving four terms in the New Mexico legislature. That service provides me with knowledge of consumer and related legislative issues as well as an appreciation for the importance of considering legislative intent. My service in the legislature provides me with a heightened awareness 4 and sensitivity of this Committee's interest in and responsibility to the Commission. I believe this legislative perspective can also be a positive asset for the Commission.

Finally, as a practicing lawyer and former Attorney General, I believe I have a good grasp of administrative law and procedure and the concept of due process of law as applied to administrative agencies.

Senator DORGAN. Mr. Stratton, thank you very much. Let me ask you a series of questions. I'm trying to understand a bit about how you would administer the CPSC and also what your objectives would be. You described several of them, including consultation with other agencies and consumer education.

The first question is why do you want to be the Chairman of the Consumer Product Safety Commission?

Mr. STRATTON. Mr. Chairman, I have been in public service, and I want to do some more public service. I've been out in the private sector for the last 10 years, and I've enjoyed that, as well, but there's nothing like being a public servant, and I've done it, and I look forward to doing it again.

Now, the CPSC is of particular interest to me, because, notwithstanding some of the things I've read in the newspaper, I've had a very active effort in consumer protection. It's very important. Consumers are what run this country, and they do need to be protected from the harms that the Consumer Product Safety Act provides. So it's a very important mission.

As you indicated earlier, with two kids, 7 and 2, it just brings home the importance of that, and it gives me a chance to run an agency that I think is—it's certainly one of the more important consumer agencies in the government.

Senator DORGAN. What do you think of Ralph Nader?

Mr. STRATTON. Mr. Chairman, I'm sorry, you mean as an individual?

Senator DORGAN. Well, the reason I'm asking the question is—I guess it's a philosophic question, really, in terms of consumer products and so forth. Several decades ago, Mr. Nader raised the question of unsafe automobiles, and we went through a long period of debate about these issues. The automobile he raised questions about caught fire when it was rear-ended because of the way the fuel tank was placed. He raised a lot of questions about the auto-

mobile industry and became very controversial. He has since become a consumer advocate, and I'm just curious how you view—perhaps I shouldn't have used Ralph Nader, per se—but how do you view the consumer advocates out there, perhaps symbolized by him?

Mr. STRATTON. Mr. Chairman, I think, of what I know—I mean, that's a very broad question, but, of what I know, I think they're an important stakeholder in the consumer safety area, and I think they play an important role before the Commission.

Senator DORGAN. If one is a pro-business, free-market person, one, perhaps, comes down on the side of saying, you know, "I don't like this notion of intrusion and constantly taking on those that are making these products, whether it's child seats or automobiles, for that matter." We, of course, will want someone in the Consumer Product Safety Commission who says, "Look, I'm here on behalf of the American consumer and the American public, paid by taxpayers' dollars, and I'm going to be a tiger on these issues of demanding that products be safe; and when not safe, I'm going to take on the companies who produce them." How do you feel about that charge?

Mr. STRATTON. Mr. Chairman, that is a charge I've had before as a consumer advocate at the attorney general level, and I believe in it very strongly. I don't want to filibuster you, and I certainly don't intend to do that, but I would not call myself a pro-business person. I know some people maybe have, but there are a lot of businesses out there that, after my service as attorney general, didn't consider that. I am a free-enterprise, free-market person, and I think that really is more pro-consumer than it is pro-business.

Senator DORGAN. Tell us, if you would, a bit about what you did as attorney general of New Mexico, because most attorneys general, of course, are the top consumer advocates in their states. They're the top law-enforcement people. Your office, perhaps, as the office in North Dakota and many others do, had the charge of consumer protection. Can you tell us a bit about what you did as attorney general in New Mexico?

Mr. STRATTON. I'd be happy to, Mr. Chairman. In fact, you are absolutely correct, we really are the only consumer protection agency in New Mexico, so we do serve that role.

The first thing that we do that I think is very important, and the CPSC has a role in this, too, is we have an 800-number that consumers can call. And when I was there, we got approximately 100 calls per day from consumers needing consumer help. We got almost another 100 on our normal telephone line. And although that doesn't make headlines, and that's not something that shows up in the newspaper all the time, that is a very important role, to have people have a place to call.

During my service as attorney general, I think there was one particular case which exemplifies, not only my philosophy there, but exemplifies what my philosophy is going to be at the CPSC, and that was a case that's still talked about called the "Frontier Ford" case. We had a particular car dealership that was abusing consumers. It was the tenth largest car dealership in the country. It also provided half of the advertising to all the media outlets in New Mexico, and was a big employer, but they were doing the kind

of things which we don't have time to go into here today. But we talked with them, and they wouldn't stop it, so we proceeded to sue them to get consumers' money back and to enjoin them from engaging in the kind of activity that they were engaging in—locking people in rooms without insulin, throwing people's keys on the roof, lying to people about what they sold consigned cars for, and many other things I'd rather not mention that are subject of affidavit, but that I don't know personally. So we proceeded to sue the company, and we recovered $1.2 million for consumers in that particular case, from one company.

Now, that was a lot of money in New Mexico, in a state of 1.3 million. But that company eventually went out of business. And the issue was, well, are you going to put a company out of business over a consumer issue? And sometimes you have to. And I know that's an issue at the Commission. You have businesses who, from time to time, say, "We can't do this recall. We can't do this remedial action. It'll put us out of business." Well, if they're violating the statute, which is the most important thing here, and that is to enforce the Consumer Product Safety Act—I mean, that is what the job is—then you go out and you do what you need to do, and you let the chips fall where they may, and you've got a charge, and that's the way you handle it.

That case took up a lot of time and was a very important case, so that was one of the cases. I don't know how much you want. I can go through a number of other things we did, telemarketing fraud, charitable contribution issues, art fraud—we have a lot of art fraud in the State of New Mexico because of the art community—pyramid promotion scams that we went into and stopped.

And then, maybe even more importantly, in New Mexico, we were the lawyer for consumers at the Public Utility Commission, so we represented consumers in regard to rate hearings for their electricity. And we possibly saved them more money doing that than maybe by doing all the other things that we did.

Senator DORGAN. Mr. Stratton, perhaps because of where I come from, I've never considered the issue of art fraud. I guess we would think art fraud is bad art.

[Laughter.]

Senator DORGAN. I think I understand what you mean, coming from New Mexico and serving as attorney general. Let me ask one additional question. I asked you to recite what you had done with respect to consumer protection as attorney general, and I'm aware of your accomplishments because I've reviewed your record, but I wanted you to be able to put it on the record, as well.

There is one thing that I read about you that concerned me just a bit, and I would like you to respond to it. When you were attorney general, you wrote to the *Wall Street Journal*, taking your fellow attorneys general to task on an issue of merger guidelines, an area of business regulation. You said, quote: "They are using the cover of 'consumer protection' to impose their anti-business, pro-government-regulation views on the entire nation and are bypassing the legislative process to put in place 'enforcement guidelines' that Congress itself refuses to pass." And I believe this dealt with airline advertising.

Then there was a "compact" dealing with horizontal corporate mergers in which 44 attorneys general signed, but you did not, saying, "We have enough government interference in our economy without a new group joining the anti-business parade."

That's part of the reason I asked you the question before about being pro-business. All of us are pro-business. Business is what represents the economic engine in this country. However, the head of the Consumer Product Safety Commission has to be a tiger and an advocate on behalf of consumers with respect to product safety. When a business produces a product that's unsafe, we need someone that's going to move very quickly. It won't be considered pro-business to move quickly against those that produce an unsafe product, but it will be considered part of the charter of the head of the CPSC.

So if you will, respond to me on the two issues that I just raised that were also part of the briefing here. Those were both when you were attorney general, and your statements with respect to them suggest a slightly different mindset than when I asked the question about being pro-business. Would you respond to that for me?

Mr. STRATTON. Yes, Mr. Chairman. Thank you for the opportunity to respond to this. I've been looking forward to it for some time now. The airline guidelines that the National Association of Attorneys General put together were illegal. And the United States Supreme Court found that specifically, to the guidelines. They found that they were preempted by the ADA, which is the Airline Deregulation Act, and that the power to do what we were trying to do as states attorneys general really lay in the Federal Trade Commission and in the Department of Transportation.

So that was the first problem. And if there's something, in my opinion, that any attorney general, or any attorney shouldn't be doing, that is going out and acting illegally. And we knew it was illegal when we were doing it. It didn't matter to some of them. All of these are my friends, by the way. This is nothing personal with my fellow attorneys general. We're a very close-knit group. But that is first and foremost. It was a federal government function, just like the CPSC has functions, the Federal Trade Commission, as well as the Department of Transportation have functions. And that was their function. The state attorneys general didn't like the way it was going to be done, so they decided to come in and usurp the power of the FTC and the DOT. The U.S. Supreme Court found that they shouldn't do it.

In New Mexico, we didn't have one single complaint about airline advertising. Yet they wanted me, in my small state, to throw in with them—California, Texas—and support these guidelines in their states. We weren't going to do it. We were doing our job in the state of New Mexico, and we had an Unfair Practices Act which clearly took care of that.

Now, there was—you mentioned the horizontal merger guidelines. They were attempting to do that. They were attempting to regulate interstate mergers the same way as the Justice Department and the FTC did, and I opposed those, as well, which they were illegal, as well.

And one other area that they were trying to do it in was car rental. And I've got to tell you, I was awfully tempted to go along on

the car rental situation, because there was a lot of abuse going on, but we had other mechanisms with which to do that, rather than enter into an illegal compact amongst the States and try to usurp the power of other federal agencies.

Senator DORGAN. Mr. Stratton, thank you for your response.

Let me call on the Ranking Member of the Full Committee, Senator McCain.

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

Senator MCCAIN. Thank you, Senator Dorgan, and thank you for holding this hearing. I believe that Mr. Stratton is a highly qualified individual. I congratulate him, and I thank him for his patience throughout the process. We all know how important the Consumer Product Safety Commission is, and we need you there for it to be working with all of its members. As the Chairman knows, the 6-month statutory deadline that allows the CPSC to perform its duties with only two commissioners expires on May 1, so it's important that we move as quickly as possible. We don't want the agency to cease its functions.

I didn't quite get your explanation on the airline advertising, but I'll accept it anyway, Mr. Stratton.

I thank you, Mr. Chairman. I look forward to working with you, Mr. Stratton. And congratulations, again, not only for this appointment, but your previous service to the State of New Mexico, of which Arizona was once part of the New Mexico Territory, as you recall.

[The prepared statement of Senator McCain follows:]

PREPARED STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

Good afternoon. I want to thank Chairman Hollings for holding this nomination hearing and I know that the Administration, and in particular, Mr. Stratton, are appreciative of his nomination to serve the nation in the important position of Chairman of the Consumer Product Safety Commission (CPSC). I thank him for his patience throughout this process.

The Consumer Product Safety Commission is charged with the responsibility of protecting consumers "against unreasonable risks of injuries associated with consumer products." The CPSC works to ensure that the more than 15,000 products under its jurisdiction are safe for consumer use. It is important that those who serve on the Commission have a firm grasp of the authority and limitations of the Consumer Product Safety Act, and take appropriate action to fulfill the Commission's mandate.

Mr. Stratton's background demonstrates that, not only is he a skilled lawyer who has worked in private practice for over 10 years, but he also holds an appreciation for public service, having served in the New Mexico House of Representatives and as New Mexico's Attorney General. Mr. Stratton has been described by his former Deputy Attorney General as someone who is "always cautions about following the law and living within the restrictions imposed by the law. He does not overstep his authority."

I believe the nominee is extremely qualified for this position and will work to fulfill his duties within the bound of his authority, and in the best interest of this nation's consumers.

Mr. Chairman, as you are aware, the six-month statutory deadline that allows the CPSC to perform its duties with only two commissioners expires on May 1st. Thus, the timely confirmation of Mr. Stratton is becoming increasingly important.

Again, thank you Mr. Chairman. I hope that we can approve this nomination promptly and enable timely action by the full Senate.

Mr. STRATTON. Thank you, Senator.

Senator MCCAIN. We were very glad to have been split off. I thank you, Mr. Chairman.

[Laughter.]

Senator DORGAN. Perhaps New Mexico is, as well.

[Laughter.]

Senator DORGAN. Maybe not.

Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman.

Mr. Stratton, the first area I want to explore with you involves individual responsibility and how you look at that in connection with the kind of decisions that come before the Consumer Product Safety Commission. You've stressed this in your writings, and again, as with the free-market matter, this is an area that I wholly agree is an important principle. It's a fine one, and it's got to be respected. However, at the same time, we know that people are human, and, particularly, you may have some people who don't use a product perfectly and can end up getting hurt as a result, particularly children and seniors.

Tell us, if you would, how you would balance the question of individual responsibility, which I think you're right to stress, with the need to have government on the side of people who really don't have a lot of clout, kids and seniors, and find it hard, for example, to stand up to these big companies.

Mr. STRATTON. Senator, thank you for that question. I think I would not look at it as a balancing test, because I don't believe, when you look at the Consumer Product Safety Act, and you look at the mission of the Commission, that it talks about balancing personal responsibility. I don't think that's an issue, frankly. I mean, I know it's an issue from an evidentiary matter, but I believe that the issue is whether the product creates an unreasonable risk to injury. And if it does, then there's a mandate to do something about it. And I don't see, absent some other type of facts being present, individual responsibility really entering into that mandate.

Senator WYDEN. Well, that's a very good answer. That was what I was hoping to hear. There's no question in my mind that there are instances of products that are defective that you've really got to stand up for the consumer for, and you've got to do it even if people aren't using them perfectly, because the world doesn't always play out that way.

Let me ask you, along the same lines that I talked about earlier, with respect to free-market principles, where you would draw the line between voluntary standards and mandatory standards at the Commission? As you know, the Commission tries to use voluntary standards to the greatest extent possible. That's something that, again, I think makes sense. It's a good use of resources. At the same time, there have got to be instances where you do use the mandatory approach, which, of course, carries the force of law. Companies can be fined for compliance. When, in your view, in terms of just conceptually, do you think mandatory standards are appropriate?

Mr. STRATTON. Senator, once again, you have done this work for the Commission, because you have put in the Consumer Product Safety Act that provision as to when you do it and when you don't

do it. And I believe the Act requires the Commission to look at voluntary standards when they would eliminate or adequately remediate the risk of injury and there's a substantial likelihood of compliance.

So if you have a voluntary standard, in every fact situation, you look at those and determine whether—and there's another part of that also that really isn't that section of the statute, and that is that the Commission needs to set up a way to monitor that to make sure that they know that. Because if the Commission doesn't know that, it doesn't do very much good.

So if the standard doesn't meet those criteria, then you have to move to the rulemaking proceeding, I think, and enact a mandatory standard.

Senator WYDEN. There is one other area that I wanted to explore with you on this round of questions. You've got big decisions coming up at the Consumer Product Safety Commission, decisions with respect to arsenic and various kinds of materials that children may come in contact with on playgrounds. There are some significant questions of consumer safety coming up. You cannot prejudge any of those, and I don't want to ask you to do so today, but I think it would be very helpful in terms of getting a sense of how you would approach these kinds of questions, whether there are certain principles—other than the Act, of course, and I appreciate your earlier answers where you've made it clear that you're committed to following the Act—but tell us, if you would, given the fact that there are some big decisions coming up, give us a sense of how you're going to go about tackling them, recognizing that you certainly can't comment on things like that at this point.

Mr. STRATTON. Mr. Chairman, I think the way you have to go about this, and I think it's—I think, you know, as you're well aware, the CPSC is a quasi-judicial, or an adjudicatory body, and so you're sitting there like a judge in a way, and I think you have to go about it by looking at all the evidence that's presented to you. Although I haven't had an opportunity to be out there, I'm told that they have an excellent staff, great scientists, great engineers, and they're involved in making all these decisions. These aren't just decisions that I come in and make, and there are two other commissioners, after all. But I think the only way I can answer that is to say look at the evidence as objectively as possible and try to make the right decision, with the continuing mission in mind that we're trying to make the marketplace as safe as we can for consumer products.

Senator WYDEN. The only other question I wanted to ask today—most of your previous record, you know, relates to consumer fraud. But the Consumer Product Safety Commission really isn't aimed primarily at outright fraud. It's obvious that products can be unsafe even if manufacturers are well intentioned and honest. What would you cite as your big consumer accomplishments up to this point, other than in areas combating fraud?

Mr. STRATTON. Well, Mr. Chairman, I think it's—those are—we call it business practices, actually, as opposed to safety practices, so I think the biggest one, I've already talked about, and I don't know that I've had any records—I certainly haven't served on the Commission, so I can't cite you anything there. And I don't think

unless you've served on the Commission you can cite any record of doing anything for the government as far as consumer safety. But I think I've pretty well run down the record for you the best I can of the types of consumer things I've done.

Senator WYDEN. Well, let me wrap up, then, by saying, given the limited resources at the Consumer Product Safety Commission, you're going to have to make some choices. You're going to have to make some choices about what your priorities are going to be. And, if you would, wrap up for me by saying a little bit about what principles you'd use in setting your priorities, if confirmed, at the CPSC.

Mr. STRATTON. Senator, I think the main principle is—and you're certainly right about the priorities, and you're certainly right about the limited resources. That's one of the things I've heard about the most as I've dealt a little bit with some of the people out there. But I think what you have do is, you just have to prioritize based on the degree of risk. I mean, we want to find the worst products and work on them first and get them out of the marketplace. I think you just have to—I'm not prepared today to set that up for you, because I don't know the record or the evidence at the Commission, but I think what we want to do is get the worst products and the worst doers out of the way and then proceed down the line.

Senator WYDEN. Thank you, Mr. Chairman.

Senator DORGAN. Senator Fitzgerald. Senator Fitzgerald is the Ranking Member of the Subcommittee on Consumer Affairs.

**STATEMENT OF HON. PETER G. FITZGERALD, U.S. SENATOR FROM ILLINOIS**

Senator FITZGERALD. Well, thank you, Mr. Stratton, for being here, and congratulations. I enjoyed the opportunity to visit with you in my office. I think you have an outstanding record, both in the private sector and in public service, having served as the attorney general of New Mexico, and I think you'll make an outstanding Chairman and Commissioner on the Consumer Product Safety Commission. And I just look forward to working with you. In this Committee, we're very actively involved in consumer affairs, and look forward to working with you. And I see nothing in your background, really, that needs any clarification, in my judgment. And I just want to congratulate you on your accomplishments to date, thus far, and I hope you have smooth sailing through the process here.

Mr. STRATTON. Thank you, Senator.

Senator FITZGERALD. Thank you.

Senator DORGAN. Senator Fitzgerald, thank you very much.

Let me ask another question. As we have obviously perused all of the records that have been submitted to us about your background and your work, there is one question regarding your role as the president of a non-profit organization, the Rio Grande Foundation. On its website, in the announcement of its creation it states: "The Rio Grande Foundation promotes public policy founded upon the principle of limited government, economic freedom, and individual responsibility."

In the context of the Consumer Product Safety Commission, which, by its charter, is not about limited government, it's about

using that agency to take a look at all the businesses that are producing products and trying to find those that are putting unsafe products on the market and prevent that from happening. So describe to me how one reconciles what this organization, the nonprofit, says, and what the role of the Consumer Product Safety Commission Chairman requires and how you will straddle that.

Mr. STRATTON. Yes, sir. Well, the Rio Grande Foundation is a completely different concept than what we're here about today. New Mexico, we believe is—we're living in the greatest state in the best place in the country, but we have some economic problems down there. We're No. 1 in poverty. We're 49th in per capita income. We're 50th in growth of per capita income. We've got an 8½ percent income tax and some other higher taxes. And it's always been my feeling, throughout my service, that we needed a think tank to provide some ideas about how to resolve these types of problems. And the primary focus of the Rio Grande Foundation, notwithstanding what the mission statement says, is the tax structure in New Mexico, the spending structure, the education system, and those types of things.

Let me just put on the record now, in addition, to kind of conclude those thoughts, the issue of the free-market system, which we all believe in here today. The first thing I'll say about is, it's not perfect. There's no system that I know of that is perfect. And it's not anarchy. It is a system of laws that we've set up, which is protected, frankly, by laws that are passed here.

And I see the Consumer Product Safety Act as a plug in the dike there for harmful consumer products out there when it comes to the free-market system, and I don't see it inconsistent at all. All of us, I think, believe that the government is supposed to protect its citizens from harm, whether it's the events of 9/11 or foreign threats or hazardous consumer products. So I wouldn't be doing this unless I saw the visions to be completely compatible.

Senator DORGAN. There are some, I must say, who don't feel that way, though. I mean, there are some who feel that if someone produces an unsafe product, it means that eventually people will experience it being unsafe and not purchase it, and the free-market actually will ultimately correct itself. I don't share that view. But there are some who say: "just take a hands-off approach." We have some—not in Congress, fortunately—but we have some people writing to us saying there ought not be inspection of meat, for example. If people are producing unsafe meat making people sick, eventually no one will buy from them and that's the way to resolve this, through the free-market system.

So there are people on that side of the issue. I wouldn't want someone like that to come to the Consumer Product Safety Commission, and your responses today tell me that that's certainly not your view.

I think Senator Wyden's questions go to the point. We hope that we have a Consumer Product Safety Commission that is active, aggressive, and that, at the end of the term of the new Chairman of the Consumer Product Safety Commission, that we can look back and say, this was a person that was a real tiger on issues where the American consumers, and especially children, were being injured by unsafe products. He used, or she used, the tools of that

office aggressively and effectively relative to the charter of that Commission. Speaking for myself, that would be my aspiration, and I believe of others on the Committee, as well.

I think your responses today have been helpful to us, Mr. Stratton. Again, with all of those who come to the call of public service, our country thanks those who offer themselves to public service. Our Committee will certainly evaluate your response today, but your responses have been very helpful to me, I must say.

Let me include in the record a statement by the Full Committee Chairman, Senator Hollings, who was not able to be at this hearing.

I believe we perhaps, also have some questions that we will want to direct and ask that you respond in writing. Mr. Stratton, do you have any other final concluding comments?

Mr. STRATTON. No, sir.

Senator DORGAN. All right. Well, this Committee appreciates very much your attendance today. And, as I said, I think your responses have been helpful to us, and you've been very forthcoming.

[The prepared statement of Senator Hollings follows:]

PREPARED STATEMENT OF SENATOR ERNEST F. HOLLINGS

Americans rely upon the Consumer Product Safety Commission to protect the public from unsafe consumer products. And the stakes could not be higher. Each year there are 28 million injuries and 21,000 deaths linked to a wide range of consumer products under the agency's jurisdiction.

The CPSC conducts research on potential product hazards, educates the public and the media about potentially dangerous products, develops voluntary standards with industry, enforces mandatory standards, and sometimes bans or recalls defective or dangerous products.

Without question, this Commission has played an important role in preventing thousands of injuries and deaths. Such an impact is difficult to quantify because we cannot know who or how many people would have been injured had some of the products stopped by the CPSC remained on the market. One of those injuries might have been inflicted on someone sitting in this hearing room, or someone we know. Therefore, we need a strong leader at the helm of the CPSC to see that these laws are strongly enforced for the protection of our citizens, especially those least able to protect themselves.

The Administration has nominated Harold D. Stratton, Jr. to be Commissioner and Chairman of the Consumer Product Safety Commission. Mr. Stratton earned his law degree at the University of Oklahoma, and from 1979 to 1986 he served as a member of the New Mexico House of Representatives. He opened a private law practice in 1982, and later formed a partnership, Stratton and Barnett, in 1984. From 1987 to 1990, Mr. Stratton served as Attorney General for the State of New Mexico. He is now a partner at the law firm of Stratton & Cavin.

While Mr. Stratton has a long political background, I am concerned about his lack of experience in product liability law and consumer safety issues. The Chairman of the CPSC needs a strong understanding of these matters to be an aggressive advocate for protecting consumers. Therefore, I need Mr. Stratton to answer these questions fully and completely as we consider his nomination. Because Chairman of the Consumer Product Safety Commission is a position of trust, we must trust that he has the experience, ability and courage to strongly enforce the law and protect the American people from dangerous products.

This hearing is adjourned.

[Whereupon, at 3:10 p.m., the hearing was adjourned.]

# APPENDIX

WRITTEN REPONSES TO POST-HEARING QUESTIONS FROM SENATOR BILL NELSON

*Fire Safety*

*Question 1.* Mr. Stratton, I am very concerned about fire safety issues. Hundreds of deaths and terrible injuries, to say nothing of the enormous property damage, occur every year in this country from upholstered furniture fires alone. I understand that the Commission has been considered an upholstered furniture fire safety rule for 7 years, and that the Commission staff has presented a recommendation to the Commission for a proposed rule. Do you have a sense for what will be your timing on considering this issue?

Answer: I agree that fire safety issues are among the most important issues before the Consumer Product Safety Commission (CPSC). I strongly believe that time is of the essence with all safety issues, and the Commission should act as quickly as possible on these issues, including the initiation of rulemaking proceedings. One of my goals is to significantly shorten the decisionmaking process at the CPSC. If confirmed by the Senate, I hope to resolve action on upholstered furniture fire safety issues as quickly as possible upon assuming the duties of Chairman. I am aware that this issue is of great importance to the Members of the Committee; Senator Rockefeller expressed a similar concern to me. Please know that I plan to establish an open dialog with the Committee and its Members on the critical issue of fire safety and other matters before the Commission.

*Question 2.* Mr. Stratton, the Commission itself has said that—and I quote—"[s]ocietal costs associated with furniture fires are among the highest associated with any product subject to the Commissions authority"[1] and that upholstered furniture fires are "one of the biggest killers among all products under CPSC's jurisdiction."[2] The Commission has also stated that "CPSC staff believes that a small open flame performance standard for upholstered furniture could effectively reduce the risk of death, injury, and property loss resulting from small flame ignitions."[3] As the Chair of the Commission, would you permit the staff recommendation on furniture fire safety to come to a vote before the Commission?

Answer: I am not familiar with the details of the Commission's staff recommendations on upholstered furniture fire safety. The tragic deaths and injuries that result from such fires are disturbing and should be prevented. Should I be confirmed by the Senate and assume the duties of Chairman, I will promptly become familiar with this issue. I will certainly review all of the evidence before the Commission, discuss the issue with the staff and the other commissioners, and take other reasonable and necessary acts to ensure that upholstered furniture is as safe as possible for consumers.

*Arsenic Treated Wood*

*Question 3.* As you may be aware, last year an amendment I sponsored on the VA-HUD appropriations bill, the appropriations bill which includes the EPA and the Consumer Product Safety Commission, directed the EPA and the Consumer Product Safety Commission to study whether arsenic-treated lumber playground equipment was safe. The Consumer Product Safety Commission provided an interim report to me on February 15, 2002, regarding the study but, the report did not include any conclusions because the study had not progressed to that stage.

This is a matter of grave importance to the people of Florida and the country because playgrounds in Florida and in other parts of the country have closed due to high concentrations of arsenic in the soil which leached from the playground equipment.

I would like your commitment to continue that study, to allocate the resources necessary to complete the study as soon as possible and to provide me a report on your conclusions as soon as possible.

Answer: I agree that the final CPSC study on arsenic treated lumber playground equipment—with conclusions and recommendations—should be completed quickly. I will, of course, make sure the Committee receives the results as soon as possible. I appreciate your bringing this partially completed study to my attention. I know this is a matter of great concern to the Committee. Senator Wyden also raised the

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[1] 64 Fed. Reg. 64084, Nov. 22, 1999.

[2] Letter to Sen. Robert C. Byrd from Maureen O'Leary, Director, Congressional Relations, Consumer Products Safety Commission, April 2, 2001.

[3] 63 Fed. Reg. 13017, March 17, 1998.

issue of arsenic treated lumber at my confirmation hearing. I want to make sure our playgrounds are safe for all of our Nation's children.

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WRITTEN RESPONSES TO POST-HEARING QUESTIONS FROM SENATOR JOHN D. ROCKEFELLER IV

*Fire Safety*

*Question 1.* I hope that you share my concerns regarding fire safety, and the hundreds of deaths and terrible injuries, to say nothing of the enormous property damage, that result in this country every year due to upholstered furniture fires. As you are no doubt aware, the Commission has considered an upholstered furniture fire safety rule for several years. It is my understanding that the Commission's professional staff has presented a recommendation to the Commission for a proposed rule.

Can you let the Committee know your sense of how the Commission should proceed on this issue, and the approximate timetable?

The Commission is on record as saying:

1. "The societal costs associated with furniture fires are among the highest associated with any product subject to the Commission's authority."

2. Upholstered furniture fires are "one of the biggest killers among all products under CPSC's jurisdiction." and,

3. "CPSC staff believes that a small open flame performance standard for upholstered furniture could effectively reduce the risk of death, injury, and property loss resulting from small flame ignitions."

As the Chairman of the Commission, are you inclined to permit the staff recommendation on furniture fire safety to come to a vote before the Commission?

The United Kingdom has much more stringent standards for furniture flammability than the United States. In this country, the State of California has similar furniture fire safety regulations. Data suggest that the rate of deaths and serious injuries resulting from furniture fires in California and throughout the United Kingdom is lower than that in the remainder of the United States.

As Chairman, do you believe it would be appropriate for the Commission to examine the lower rate of deaths and serious injuries in those jurisdictions to determine if a link could be established between the flammability standards and the lower death and accident rates?

If the link can be established, would that tend to convince you to have the Commission promulgate furniture fire safety regulations for the whole country?

In 1992, the CPSC rolled back fire safety requirements for children's pajamas, exempting so-called "snug fit" pajamas. Fire safety groups, including the Shriners, have repeatedly called for reinstating the stronger standard, arguing that it has resulted in increased deaths and injuries to children. Several bills in Congress are intended to improve flammability safety standards for children's sleepwear.

Would you comment on whether, with 10 years worth of evidence related to the risks posed to children by this change in the agency's regulatory requirements, it is now time for the CPSC to revisit the issue of fire safety for children's pajamas?

If not, why not?

Answer: Without having the benefit of reviewing the evidence before the Commission on furniture fire safety, I cannot at this time prejudge how the Commission should proceed on this critical life-and-death issue. I assure you, however, that it is my belief that time is of the essence with all safety issues before the Commission. I intend, if confirmed as Chairman, to resolve every issue, including rulemaking proceedings, as quickly as reasonably possible. Senator Nelson also expressed his concerns over this issue, so I am aware of its importance to Members of the Committee.

It is very appropriate to examine all competent information including other furniture flammability standards and performance records from other domestic and foreign jurisdictions such as those you mentioned in the United Kingdom and California. If a link can be established between the flammability standard and the safety record, it could be very helpful to the Commission in establishing safety performance standards in this area.

I also appreciate your bringing the issue of children's pajamas to my attention. Senator Breaux has expressed concern on this issue as well and there is legislation pending in the Senate introduced by Members of the Committee and by other senators. Should Congress pass legislation enhancing flammability standards for children's sleepwear, as Chairman I would see that sleepwear laws, and all laws passed by Congress, are vigorously enforced. I certainly want all of our children to wear safe pajamas. I do not, however, currently have enough information to form a specific opinion as to whether the child sleepwear issue should be further considered by the Commission. As Chairman, I will promptly look into the evidence and the

record before the Commission to make a determination as to whether Commission action is warranted at this time in the absence of legislation.

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WRITTEN RESPONSES TO POST-HEARING QUESTIONS FROM SENATOR JOHN BREAUX

*Fire Safety*

*Question 1.* In 1992, the CPSC rolled back fire safety requirements for children's pajamas, exempting so-called snug fit pajamas. Fire safety groups, including the Shriners, have repeatedly called for reinstating the stronger standard, arguing that it has resulted in increased deaths and injuries to children. Senator Burns and I have introduced S. 2188, while Senator Clinton and Senator Biden have introduced S. 2208, to enhance flammability safety standards for children's sleepwear. Do you think that fire safety for children's pajamas is something the CPSC should take a look at now that 10 years have elapsed since the agency's change in the regulatory requirements?

Answer: Children's sleepwear is of particular interest to me since I have two young daughters at home whom my wife and I help get into their pajamas every night. Senator Rockefeller has expressed concern about this as well, and there is legislation on this particular issue introduced in the Senate by Members of this Committee and by other senators. Should Congress pass legislation enhancing flammability standards for children's sleepwear, as Chairman I would see that sleepwear laws, and all laws passed by Congress, are vigorously enforced. I certainly want all of our children to wear safe pajamas. I do not, however, currently have enough information to form a specific opinion as to whether the child sleepwear issue should be further considered by the Commission. Please know that I will promptly look into the evidence and the record before the Commission to make a determination as to whether Commission action is warranted at this time in the absence of legislation.

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WRITTEN RESPONSES TO POST-HEARING QUESTIONS FROM SENATOR GEORGE ALLEN

*Question 1.* Mr. Stratton, I am very concerned about fire safety issues. Hundreds of deaths and terrible injuries, to say nothing of the enormous property damage, occur every year in this country from upholstered furniture fires alone. I understand that the Commission has been considered an upholstered furniture fire safety rule for 7 years, and that the Commission staff has presented a recommendation to the Commission for a proposed rule. Do you have a sense for what will be your timing on considering this issue?

Answer: I agree that fire safety issues are among the most important issues before the Consumer Product Safety Commission (CPSC). I strongly believe that time is of the essence with all safety issues, and the Commission should act as quickly as possible on these issues, including the initiation of rulemaking proceedings. One of my goals is to significantly shorten the decisionmaking process at the CPSC. If confirmed by the Senate, I hope to resolve action on upholstered furniture fire safety issues as quickly as possible upon assuming the duties of Chairman. I am aware that this issue is of great importance to the Members of the Committee. Please know that I plan to establish an open dialog with the Committee and its Members on the critical issue of fire safety and other matters before the Commission.

*Question 2.* Mr. Stratton, the Commission itself has said that—and I quote—"[s]ocietal costs associated with furniture fires are among the highest associated with any product subject to the Commissions authority"[1] and that upholstered furniture fires are "one of the biggest killers among all products under CPSC's jurisdiction."[2] The Commission has also stated "CPSC staff believes that a small open flame performance standard for upholstered furniture could effectively reduce the risk of death, injury, and property loss resulting from small flame ignitions."[3] As the Chair of the Commission, would you permit the staff recommendation on furniture fire safety to come to a vote before the Commission?

Answer: I am not familiar with the details of the Commission's staff recommendations on upholstered furniture fire safety. The tragic deaths and injuries that result from such fires are disturbing and should be prevented. Should I be confirmed by the Senate and assume the duties of Chairman, I will promptly become familiar

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[1] 64 Fed. Reg, 64084, Nov. 22, 1999.

[2] Letter to Sen. Robert C. Byrd from Maureen O'Leary, Director, Congressional Relations, Consumer Products Safety Commission, April 2, 2001.

[3] 63 Fed. Reg. 13017, March 17, 1998.

with this issue. I will certainly review all of the evidence before the Commission, discuss the issue with the staff and the other commissioners, and take other reasonable and necessary acts to ensure that upholstered furniture is as safe as possible for consumers.

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