OF BUSINESS DOLLARS, CONSUMER NICKELS AND POLITICAL SENSE:

A Political Investigation and Analysis of the Failure of the Office of Consumer Representation Legislation in the 95th Congress

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INTRODUCTION

It wasn't even close: 189 to 227, thirty eight votes short of passage. "That's one hell of a poor performance for a bill that passed by 301 votes eight years ago," one observer noted. There was cheering in the House galleries as the business lobbyists who crowded the isles congratulated each other on a job well done. "It's a tremendous victory," one noted.

There was anything but cheer across the gallery where the consumer advocates sat. In fact, there was something close to dismay. It meant a lot to them--HR 9718. It meant an Office of Consumer Representation for the Federal government. It meant an expression of support for the goals and accomplishments of the consumer movement. It meant an institutionalization of the kinds of whistle-blowing activities they had encouraged on an ad-hoc basis for years.

But its failure meant something altogether different. Sure, it was a personal defeat for Congress Watch, Esther Peterson, and Ralph Nader. It was also a defeat for the consumer. But it was more. It was a sign of the increasing power of business, of the inability of Congress to stand up to pressure, of the collapse of leadership, and perhaps of the waning powers of consumerism in Washington.

At this point, all anybody could think was that something had changed. They were not sure what, but something had changed. Where was the feeling that the problems of the country could be solved with legislative acts? Where was the righteous indignation at the injustices perpetuated by business? What had happened to the credibility of the consumer movement?
To business, the defeat of the Office of Consumer Representation (OCR) meant the end of a legislative concept they had long dreaded and even feared—an agency that would tie their products up in court proceedings, interfere with their ability to achieve reasonable compromises, with regulatory agencies, and saddle them with interrogatories. But for business, too, it meant a great deal more. As *Fortune Magazine* noted, the "smashing" defeat of the consumer bill stands as "a war memorial to the new firepower of business on Capitol Hill...As only one episode among many in support of an arresting political proposition: that the business community has become the most effective special-interest lobby in the country." The defeat was a tribute to the organizational abilities of the business community, a tribute to their power, and perhaps, even a tribute to their credibility. While business might not have become more trusted, cynicism about business seemed to have spread to cynicism about government and even the Nader organization. That was something of a moral victory.

To the House leadership, the bill also meant a great deal. To Tip O'Neill, the bill represented a straight party-line vote—a litmus test of party loyalty. He worked hard for the bill, calling unprecedented meetings and personally contacting a number of members. Just before the vote he even made a rare floor speech in which he flatly stated, "This is good legislation. Never mind the commitment you may have made to a businessman along the line. You have only one commitment, and that commitment is to the public...to the consumer. These are the people whom this Congress represents." Democrats did not heed Tip's advice and the loss of these Democrats was not only a personal blow to the Speaker's prestige, but a very public display of lack of party solidarity in the House. As Ralph
Nader has noted, "When you lose 101 Democrats on a bill like this, there is no party."

To House leadership, the vote clarified the fact that things are very different in Congress than they were a few years ago. There was much talk about the new "independent" Democrats. But from the leadership's point of view, that independence represented only one thing: an increased susceptibility to outside pressures. As Tip noted in his floor speech for the bill, "Why, all of a sudden, is there this tremendous change, where people are coming to me and saying, 'I got myself in some difficulty; I made a promise to business along the line that I was going to vote against the legislation.'" Leadership seemed to count for so little all of a sudden, and interests for so much.

Members of Congress were not without strong emotions on the subject either. "It was a nasty affair for Members," one aide noted. Another noted, "This isn't the kind of vote that you feel like showing off about." Indeed, the general perception was that if the Members had had their own way, the vote would not have come about in the first place. One aide noted, "There was a great deal of resentment towards the President for pushing the bill to a vote, and a great deal of resentment toward the leadership for allowing the President to do that." There were, at very least, seventy five Members who were put in a tough position by the bill. "Vote against, and Ralph calls you anti-consumer. Vote for, and you get hung by (your constituents)," one noted. And of course, there was always leadership to think of. How was voting against OCR going to affect your standing with leadership? And how was your standing with leadership going to affect your standing within the House? At very best, it was a no-win proposition. The fact that it meant
so much to all sides made it still worse.

No one questioned the symbolic importance of the bill. "It was very close to the surface," said one legislative aide. And while you could rationalize a vote in either direction based on the content of the bill itself, you were not fooling any of the major interests involved. "What matters is the way they see it, not the way it is," another aide noted. Indeed, each of the interests saw it as a symbolic expression of allegiance, and, like it or not, Congressmen had to accept that.

Of course the vast majorities of their constituencies were probably unaware of the symbolic meaning of the vote. At least for them, explaining the vote on the basis of the content of the bill itself might work. But even here, there was some doubt. Business had done such a thorough job of educating the public—not so much about the importance of the bill to business or consumers—but about another key element of the bill: it created a bureaucracy. How easy would it be to get that notion out of the minds of the voters? Did Members have the kind of resources to undertake that kind of redefinition/reeducation? No, business had the resources; not Nader, and certainly not Congressmen. Just answering all the mail had their staffs working frantically. And with elections coming up, who had the resources to devote to anything else?

And what did it mean to the public? Did it mean that Congress had caved into business pressure? Did it mean that Congress was representing one select (and admittedly vocal) constituency while ignoring the more general constituency whose attitudes were not well articulated? Indications are that the public thought none of these things. For the most part, they seemed either not to know or not to care.
The decided majority of the public supported the bill. That much was unquestionable. A Harris Poll administered in mid-1977 found a 55% to 28% majority in favor of creating a federal office of consumer representation. In a late 1976 Yankelovich survey, 79% of the respondents supported a federal consumer protection agency. In another mid-1977 Harris poll, a 52% majority of the American public supported the creation of the agency, and support for the consumer movement itself was enthusiastic. In another Harris poll, this one conducted for the House Obey Commission, consumer action groups rated highest in the level of ethics of any institution tested. The Sentry Insurance poll (conducted by Marketing Sciences Institute and Louis Harris Associates) found that 83% of the sample thought "people active in the consumer movement" had done some or a great deal of good while only 4% thought they had done some or a great deal of harm." Less than a year before, Louis Harris himself referred to the consumer movement as "the most widely supported movement" he had tested, and as "strikingly" larger than the equal rights movement, the populist movement, and other major contemporary movements. "The consumer constituency dwarfs them all." 

"Of sure, that's all the stuff that Nader gives you," an aide noted. "But that's not what comes through here." "What does come through here?" I asked. "Two things: A lot of letters from small businessmen (against) and apathy; a whole lot of apathy." This sentiment is echoed in a December, 1977 National Journal article entitled "Where is the Consuming Public on the Proposed Consumer Agency," which notes, "An independent consumer agency--the symbol of the clash between the consumer lobby and business--has proven something of a non-issue outside of Washington."
To some extent, the problem is a fundamental one in American democracy. As Anthony Downs has noted, "Since people consume in many areas but produce in only one, they will concentrate their political efforts in the area of their production rather than in their many areas as consumers. Therefore, producer groups will, within any given policy area, exert more influence than consumers." There was a hard core of businesspeople who were solidly opposed to the bill and a larger mass of constituents who favored it but were unwilling or unable to make their views known. As one top House Democratic strategist noted in the Wall Street Journal, "There was a very vocal Washington constituency for the bill but nothing in the grass-roots. On the other side, there not only was effective Washington lobbying but it was accompanied by a strong grass-roots reaction." Mark Green, director of Nader's Congress Watch and OCR's most outspoken supporter, summarizes the problem well in stating, "The bill's demise is instructive to the consumer, Congressional and business communities. Consumer groups must reconcile two divergent facts. On the one hand, Louis Harris calls consumerism the most broadly supported movement he has ever studied; his studies document a 55 to 28% public endorsement for the consumer advocacy bill. Yet it lost." Part of the reason is fundamental in American politics. There is a natural tendency for specific interests to be overrepresented while the interests of the general public go unrepresented. But this problem hadn't stopped the consumer movement from winning
20 of the 38 key votes in the House in 1977. And it hadn't stopped a more powerful Consumer Protection Act from passing only two years ago. Something had happened to shift the balance of forces. Something had happened to shift the perceptions of the bill. Something had changed not just in the actors or the content of the bill, but in the actors' perceptions of public sentiment.

Ultimately then, the question we address is why did HR 9713, the bill to create an office of consumer representation, fail? Beneath this question we ask a related question: What changed? Why was business suddenly so much more powerful? Why was Congress so much more receptive to their power? Why were the various manoeuvres undertaken to save the bill so ineffective? Why was Congressional leadership so ineffective? Why was the bill suddenly perceived in such a different light? These are some of the questions this paper investigates.

It must be stressed at the outset that no single factor or group of factors was entirely responsible for the failure of HR 9713. Nor is it possible to say just how important any one factor has been. To begin with, the factors overlie each other. Some are structural, some have to do with the merits of the bill, some have to do with the public's perception of the bill, and so on. Second, any time one deals with the motivations of Congressmen, one faces a number of difficult problems. Many Congressmen act on a multitude of factors which they, themselves may not be completely conscious of or able to rank. Also, there is no reason to expect a member of
Congress to be completely candid about the factors which motivate his behavior. And finally, there is no way to account for differences in the way issues are perceived by different Members.

This problem is compounded by our method of inquiry: interviewing L.A.'s. As hard as it may be for a Member of Congress to rate motivationary factors, it is undoubtedly a great deal harder for a Legislative Assistant to guess at the factors which motivate his Member. In some offices the problem is solved because the Member has discussed the vote at length with the L.A. or the L.A. himself has made the voting decision. In other offices, the answers were fairly obvious. The Congressmen's closest friend is president of a large corporation which opposed the bill. Or the Member was a major consumer advocate before he came to Congress. But for everyone of these sorts of offices, there is one where communication between the L.A. and Member is less complete and the L.A. was left to speculate on factors which caused his or her Member's vote.

This undoubtably opens the door for a great deal of bias. In most offices, the L.A. is also the chief political officer. His/her concern with district relations may be greater than the Member's. Also, his/her contact with lobbyists, letters and phone calls is obviously much greater. Without doubt, this may cause him or her to overestimate the value of outside inputs and underestimate the preconceived notions and biases of the Member.

On the other hand, this may be somewhat balanced by the natural taste for discretion which most L.A.'s seem to have. When explaining a vote on a bill, L.A.'s are not often open at the outset.
about the political factors which caused a given vote. They are much more likely to refer to substantive factors such as "We didn't like the labor exemption" than to say "We have a lot of supporters who let us know they disliked the bill." While most of those interviewed did finally get around to discussing political factors, it would be misleading to think that they were anxious to use these factors as "excuses" for their vote. This is particularly true because most members are on record as opposing the bill exclusively on the merits.

The method employed for most of the interviews was open format. A question guide was prepared for each subsample and special guides were prepared for more specific purposes as needed. The interviews, which averaged about 45 minutes, generally took the form of discussions in which I attempted to coax the direction of conversation, rather than direct questioning. I made frequent use of information gained in earlier interviews in the later ones in order to push the level of conversation to the depth I was interested in. For this reason, the earlier interviews were considerably weaker than the later ones. (See Appendix C)

The sample was chosen in an attempt to obtain the greatest insight into the range of pressures operating and with an eye toward explaining change. Roughly speaking, the major sample can be divided into three groups: (1) those who voted for a similar bill in 1975 and against HR 9713, (2) those who co-sponsored 9713 but voted against it, and (3) those who "bucked the odds" and voted for the bill when, based on the most reliable kinds of predictors...
(e.g. party, region), should have voted against. In groups one and two, particular attention was paid to those who were considered moderates or liberals and thus were particularly likely to have voted for the bill. These usually coincided with a group that was publicly lambasted by Ralph Nader as "mushy liberals." The purpose of including group three, who are referred to here as "profiles in courage" was to learn as much as possible about the forces pushing Members to vote against the bill, the theory being that those who buck the pressures would be most anxious (indeed proud) to talk about exactly what sorts of pressures they were under. Group one was chosen to give a good overall idea of the way the situation has changed over the last two years and, in particular, what contextual factors have changed. Group two was chosen to obtain some view of the kinds of pressures Members were subjected to in the few months just before the vote. This group was particularly likely to explain their changes in terms of the political factors operating between November and February.

In addition to this core sample, I also interviewed some of the most important actors in the fight over HR 9713. Those interviewed in this group included Emmett Hines, Chairman of the Consumer Issues Working Group (an ad hoc committee of business to defeat the bill) and the major orchestrator of business's efforts to defeat this bill over the last eight years; Mark Schultz, one of the Chamber of Commerce's (widely considered the decisive factor in defeating the bill) two major lobbyists involved in defeating the bill; and Gene Harpinski, Chief Staff Attorney for Congress Watch,
among others. These interviews averaged two hours and were, without doubt, the most important in shaping this paper. Of those lobbyists mentioned above as well as some others whose names I have been asked to withhold, all (with the exception of Gene Karpinski) declined to be quoted directly and hence will be referred to as "business representatives" throughout the paper.

Finally, I interviewed a variety of other people who were in positions to provide useful information. These interviews included Peter Barash, formerly Ben Rosenthal's Chief D.A., now staff head of Rosenthal's Government Operations subcommittee and generally acknowledged to be guardian of OCR; Sue Kanible and Joan (?), staff directors of the 94th and 95th caucuses respectively; Ed Davis, Waverford College graduate and OCR employee involved in OCR legislation; Miss Larson, in the Speaker's office; and a wide variety of observers of the OCR legislation. These interviews tended to last approximately an hour. I am deeply indebted to all of these people for taking the time to talk with me and I only hope that this paper will do justice to the quality of their observations.

This sample was designed to yield the largest amount of information in the shortest time. The interviews were conducted over a four week period in Washington D.C. Although I attempted to get views from all sides so as to at least identify biases in perception and reporting, the sample is in no way statistically valid. Instead, it must be treated as exploratory, and assertions made here must be treated as hypotheses.

One problem which is particularly difficult to deal with here
is the disagreement which certain groups have over individual questions. For example, there is wide disagreement over the impact of the Nader organization on the failure of the bill. I have, in each case, attempted to identify the logical biases of those interviewed and discount statements which are overtly self-serving or blatantly false. The fairly balanced nature of the sample has made this task possible. But what cannot be determined is biases that are common to all groups interviewed. For example, it is quite possible that all groups interviewed overemphasize the role of political factors in the failure of the bill. For this reason, I have also relied heavily on the advice of outside observers and written materials.

This paper is not an argument on the merits of the OCR legislation. While my personal biases are undoubtedly reflected here, my comments should make it clear the the bill was not obviously "good legislation" -- it had flaws. In the interviews, I found it useful to side with the person I was talking with on the merits of the legislation since this usually caused them to be more open. But, while I will consider the pros and cons of the specific legislation as they related to its failure, I will make no argument for or against the bill itself.

This raises one problem which runs throughout this paper. It is difficult to separate the merits of the bill from the merits of the symbolic significance of the bill. While the merits of the bill itself are clearly questionable, there is no question that the defeat of the bill has been viewed as a defeat for the consumer.
While many Members who opposed the bill attempted to reject this symbolic attachment, it none, the less was a factor in every Member's decision to vote for or against the bill. Take no mistake about it, this was a bill supported by a clear majority of the American people, and its defeat, whether seen as a triumph of the discretion each Member may exercise in the interest of good legislation or a victory for business, was a defeat for the American consumer movement, and indeed, for the American consumer. Any argument which is limited just to the merits of the legislation thus misses the important point that by virtue of its symbolic meaning, the merits of the bill went far beyond the provisions of the bill itself.

The paper is divided into three chapters. The first provides a rather superficial look at what OCR would have been, its legislative history, and the events leading to its failure. The second chapter looks more deeply into the forces operating behind the OCR failure such as the lobbies, the substantive policies of OCR, and the symbolic labels attached to the bill. Chapter three looks at how these factors translated into political decisions, the impact of various political "constraining" forces and a variety of contextual factors within Congress that affected OCR's failure. The conclusion proposes a framework to organize the factors discussed in the three chapters, and looks briefly at some of the implications of OCR's failure.
CHAPTER ONE
The basic intent of the Office of Consumer Representation legislation has changed little since 1970 when the bill was first introduced by Rep. Benjamin Rosenthal and Senator Ribicoff. The bill is primarily designed to create an independent, "no-regulatory" agency to represent the interest of consumers in federal regulatory proceedings. Currently, regulatory agencies make scores of decisions daily that bear upon the consumer's interest very directly. The format of the regulatory agencies is quasi-judicial. They hold hearings, take testimony, consult with parties directly involved, and render "impartial" decisions. In such a format, the interests of business are usually well represented. Firms directly affected by the decisions of the regulatory agencies spend considerable sums for representation at these proceedings. Consumers, on the other hand, have usually gone unrepresented. This problem was well summarized in two highly publicized Senate Government Operations Committee reports released on August 8, 1977. As Senator Ribicoff, Chairman of the Committee noted, the committee reports find that "The public often gets shut out of regulatory decision-making. Industry participants overwhelmingly outnumber and outspend others in regulatory proceedings. In more than half the formal regulatory agency proceedings, there appears to be no public participation at all and virtually none in informal agency proceedings. In those proceedings where participation by public groups does take place, it typically is a small fraction of participation by regulated industry."

Some examples of the kind of imbalances the Senate report points to include (1) eleven major airlines spent $2.8 million to have lawyers represent them before the Civil Aeronautics Board in 1976.
The major consumer organization that practices before the board, Aviation Consumer Action, spent $20,000. (2) The American Telephone and Telegraph Company spent $1.8 million arguing three major economic cases before the Federal Communications Commission in 1975 while there was a total lack of any public interest participation in these proceedings. (3) In six of eight decisions of the Federal Power Commission which had "clear consumer or public impact," the Senate committee found no organized public interest representation of any kind. (4) In 60% of the proceedings of the Interstate Commerce Commission there was no organized public participation.2

The OCR legislation was designed to correct this imbalance and create a mouthpiece for the hitherto unaggregated consumer interest. As Toby Moffett noted in floor debate, it is a "fairness issue."3 "Americans would never tolerate a judicial system in which only one of the parties was represented before the court; similarly, we should not tolerate a governmental regulatory system where only one side of the issue is represented."

But the OCR legislation involved more than simply a "balance doctrine." It is also intended to discourage the "capture" of regulatory agencies by the regulated companies, and to insure that regulatory agencies move quickly to ban hazardous products, that products are adequately tested, and that agency regulations are followed when decisions are made. Examples of the kinds of consumer hazards which the agency's proponents claim it will prevent are inadequate testing of products, failure to force immediate correction of defects in products, failure to act upon evidence of hazards, failure of product safety agencies to devise adequate standards, and so on.
Beyond this, the creation of OCR was intended to be the first step in Carter's regulatory reform package—a consolidation of consumer advocacy functions. Although there are programs within some agencies to provide consumer input in the decision making process, the success of the in-house advocate has depended upon the authority that he or she has been given by agency heads to express consumer views. Even if the consumer advocate is relatively unrestricted in presenting these views, his/her effectiveness still depends upon the availability of resources and information. By consolidating the functions of these offices into a non-regulatory agency with the exclusive goal of advocacy, it was hoped that the consumer voice would be strengthened while, at the same time, the cost of the proposal would be minimized.

The actual provisions of various OCR bills have differed somewhat over the eight years since the OCR concept was first introduced in the House. The original version of the consumer protection legislation (HR 18214), written during the 91st Congress with the assistance of Ralph Nader, was a bill that established an independent Consumer Protection Agency (CPA) to represent the consumers' interest before federal agencies and courts. The bill suffered from a lack of specificity as to what the exact powers of the agency were to be. It also established an Office of Consumer Affairs that would "coordinate or help develop various consumer programs and activities conducted by existing federal departments and agencies." Both agencies were permitted to receive or develop complaints on consumer matters affecting "violation of federal laws, agency rules, court decrees, trade practices, or practices of federal, state, or local governments." In addition, CPA was to be involved in requiring product testing to be conducted by federal agencies, in the designing and developing of improved safety features for products, and so on.
Despite considerable support in the House for HR 18214, the Rules Committee prevented it from coming to the floor for a vote at the end of the session and thus killed the bill for the 91st Congress.

HR 10835, the version of CPA legislation offered in the 92nd Congress, defined the intervention powers of CPA more closely, specifying CPA's powers before other agencies, the power of CPA to take federal agencies to court, and when CPA could intervene in court cases. In all other ways, it closely resembled HR 18214. After resisting attempts to amend the bill by limiting the agency to intervening in court suits on an "amicus curiae" basis, the bill passed the House by 345 to 44. Although President Nixon supported the bill, it reached the Senate just as it was trying to finish its business and was successfully filibustered.7

During the 93rd Congress, Rep. Rosenthal responded to the sentiment of consumer groups that HR 10835 was too weak by adding a provision whereby CPA could obtain information from industry outside the context of a formal intervention and purely in an investigatory capacity. The bill also permitted CPA to intervene in informal proceedings. In addition to these new provisions, HR 13163 also allowed the agency to ask another agency to institute a proceeding, limited the authority of the agency to intervene in proceedings dealing with the imposition of a fine, and authorized CPA to propose to any federal agency that it transmit to specified person interrogatories or requests for reports. This stronger version of CPA did not include a Council of Consumer Advisors or a grant program to help states and cities to set up consumer protection programs. The bill passed the House by 293 to 94 in 1974 but was successfully filibustered by Senators Ervin and Allen. Before the leadership
decided to put off consideration of the bill, President Nixon in-
formed Senators Scott and Curtiss that he intended to veto the legis-
lation. 8

The first really serious erosion of support for the CPA legis-
lation was evident in the 94th Congress. While the vote in the 93rd
Congress was not as unanimous as the vote in the 92nd, this was
widely attributed to its competition with an administration-
backed substitute which would, among other things, have required
the agency to use Justice Department attorneys; expanded exemptions
to cover confidential business information, all functions of the
State and Defense Departments; and deleted an exemption for organ-
ized labor. This substitute was defeated by the surprisingly close
vote of 176 to 223.

With Nixon out of the White House and a younger post-Watergate
Congress, there was great optimism for this legislation in the
94th Congress. Due the Senate's less stringent cloture rule, a
filibuster which occurred early in the session was overcome and
the bill passed by 61 to 28. But the debate over the details of
the bill had become more intense. The Senate Governmental Operations
Committee upheld the section of the bill which barred the agency
from intervening in labor-management disputes by a narrow 7-6 vote.
This exception had been in the bill since April, 1972, and, although
it was probably unnecessary (since these negotiations are protected
by other laws) it was an important guarantee for labor. Other exemp-
tion disputes concerned exemptions for broadcast licence proceedings
and agricultural issues such as price supports and agricultural
exports. 9

By the time the House version of the CPA legislation reached
the floor in December, 1975, support had severely eroded. In part,
this erosion was due to an effective letter writing campaign gen-
erated by the Chamber of Commerce and a more effective business lobby.
But, more importantly, it was due to a number of very significant changes in public opinion--particularly the growth of anti-government attitudes. The expansion of these attitudes may be attributed to a variety of causes including Watergate, questions about the behavior of the FBI, CIA, and IRS, a post-War on Poverty feeling that government is ineffective, President Ford's concern with regulatory reform, and so on. (The association of OCR with these trends will be discussed at greater length later) In the end, the 94th Congress passed OCR by only nine votes: 208 to 199.10

On the plus side, 1975 was the first time that both the Senate and the House passed OCR legislation. However, the bills were never taken to conference because time was short at the end of the session and President Ford had promised to veto the measure.
OCR IN THE 95th CONGRESS:

The original legislation in the 95th, HR 6115 and, after mark-up, HR 6805, was fairly similar to the legislation passed in the 94th. The following is a list of the major provisions of HR 6805, the bill reported by the committee:

Establish an Agency for Consumer Protection (ACP---an earlier name for OCR) empowered to:

(1) represent the interests of consumers before Federal agencies and the courts,

(2) support and encourage research studies and testing,

(3) make recommendations to Congress and the President,

(4) receive, evaluate, develop, act on, or transmit complaints concerning practices detrimental to the interests of the consumer,

(5) gather and disseminate information about consumer products,

(6) issue written interrogatories to business---except businesses with assets under five million dollars,

(7) gain access to the information of other Federal agencies---subject to some exceptions.

In addition, HR 6805 had a sunset provision set for 9/30/82 and directed the President to submit a reorganization plan.

In representing the consumer, the agency was empowered to intervene in formal and informal proceedings, although it was limited to submission "amicus curiae" briefs in proceedings designed primarily to impose fines. The ACP could, to the extent that any aggrieved person may have such a right, institute a proceeding for judicial review of any Federal action which ACP determines substantially affects the interests of consumers. ACP could file for judicial review even if it did not participate in the original proceeding, so long as it first filed for a rehearing. ACP could
also request another Federal agency to initiate a proceeding and could ask "host" agencies to issue subpoenas—which they would be required to do.11

From the start, the 95th Congress was an entirely new ball game for the OCR legislation. To begin with, in place of a guaranteed veto by the President, President Carter had strongly supported the legislation during his campaign and, in a message to Congress dated April 6, 1977, Carter essentially endorsed the framework laid out in the House bill, specifying that the agency "be empowered to intervene or otherwise participate in proceedings before Federal agencies, when necessary to assure adequate representation of consumer interests, and in judicial proceedings involving Agency action."12 Like the bill that existed in the House at the time, he also asked that the agency be given its own information gathering authority, and that small businesses be exempt from that authority. He added to this framework a pledge to consolidate existing consumer representation in the new agency but gave no specifics at that time.

To underline his seriousness in proposing the agency, Carter also appointed Esther Peterson as Special Assistant to the President for Consumer Affairs. Peterson, who served in a similar role for President Johnson, is an old hand at Congressional lobbying and has many personal contacts in the House. Leaving her job with the Giant-Foods chain, she immediately assembled a small staff to work with Congress on the bill.

Another major change apparent at the outset of the 95th Congress was that the votes to pass the OCR legislation were simply not there in the House. In part, this was due to an intense lobbying campaign by business. In part, this was due to various
changes in Congress and Lobbies (which will be discussed later), and in part, this was due to a deepening of many of the trends in public opinion that had been plaguing the bill since the 93rd Congress. And finally, now that the bill had a chance to become law, it was being scrutinized more carefully by members. As one staffer noted, "In the past, (OCR) was seen as a referendum on consumerism." This section will lay out some of the attempts to save the legislation that took place between April 1977 and February, 1978 when the vote was taken.

While the bill's proponents had sensed that OCR's popularity had slipped in the House, both they and the business people who opposed the bill were shocked when it became apparent that Rep. Brooks, the bill's principal sponsor, did not have the votes to get the bill out of his own committee. As one business representative explained it, "It was then that we realized we could beat the bill in the House...our best bet was to put up all our artillery at every point along the way." After a great deal of last minute lobbying by the leadership, calls by Frank Moore's office, and wake-up calls on the day of the vote from Vice-President Mondale however, the first hurdle was cleared and the bill passed out of the committee on a vote of 22 to 21—a one-vote margin. It was generally acknowledged that without the strong intervention of Tip O'Neill at this point, the bill would not have cleared the committee.

If things were looking bad in the House, there was some comfort to be had by looking over to the Senate side where the bill sailed through committee on a vote of 10 to 2 the same day it passed the House. At this point, the bill's principal proponents decided that its best shot was to get the Senate to pass it first and
hope that it could clear the House on the momentum it gained there. Gene Karpinski notes, "We figured that if we could get the Senate to pass it and the President supported it, the House would be under a lot of pressure to go along." Business, for similar reasons, was hoping to get it to come up first in the House. As one business representative noted, "We were hoping at that point to make a good enough showing in the House so that we could get an effective filibuster organized and block it in the Senate."

However, the possibility of a filibuster in the Senate, combined with a crowded Senate calendar lead Senate majority leader Byrd to flatly state, "If it doesn't pass the House, we won't waste our time on it. It's not a piece of must legislation that has to pass this year," and that he was "not inclined to call (the Senate bill) up ahead of the House this year." I asked a number of respondents whether business had gotten to Byrd, but the general consensus was that he personally did not like the bill, and that, as Gene Karpinski noted, "just the threat of a filibuster is enough to make the Senate leadership not want to bring the bill up." In any event, the battle in the House was pitched.

One problem which was immediately apparent to the leadership and the Nader and Peterson organizations was that the bill lacked any grass roots support. The lack of grass roots support was attributed to two fundamental problems. First, as we will discuss at greater length later, the consumer lobby has always had trouble getting consumers to demonstrate active support for measures addressed to a broad constituency. Individuals' identifications as consumers are weak compared to their other, more specific identifications. And second, the bill was too removed from the direct concerns of consumers. As numerous public opinion polls show, con-
sumers wanted another Consumer Products Safety Commission—something directly involved with consumer products. The affairs of regulatory agencies, and the impact of the decisions of such agencies are too removed from the daily affairs of consumers to generate active concern. (This, of course, is the problem which necessitated the bill to begin with.)

Thus at the same time that Congressmen were hearing nothing from constituents in favor of the bill, they were receiving large volumes of mail from local Chambers of Commerce and small businesses opposing the bill. In an attempt to turn this trend around and to mobilize some of the "latent" support for the Bill, Nader organized what came to be referred to as the "Nickel Campaign."

The campaign, targeted at 78 Members (see appendix for list), involved reaching Congressmen by creating a grass roots movement in their districts. Beginning June 1, the Nader organization left Washington and travelled to districts approaching constituents in shopping centers, on streets, etc. Their pitch was as follows:

"Big business has thousands of lobbyists in Washington getting what it wants, including higher prices and profits. But who is fighting for the consumer? Congress is now considering legislation to create a consumer advocate in Washington...It would cost about a nickel per American and represent your concerns about high prices, harmful products, and dishonest business practices."

The brochure from which this quote is taken goes on to urge constituents to send a nickel to their Congressmen along with a note in favor of the bill.

Although the ultimate success or failure of this campaign is an open question, the inflow of nickels over the summer was impressive. In all, about 40,000 nickels were received by the targeted
offices with one office receiving more that 3,500 nickels and many receiving in the neighborhood of 1000. Reactions to the influx of nickels varied. The unanimous immediate reaction was that the nickels were "a pain in the ass." They had to be returned with the letters from the member stating his/her position and in general, this process occupied a large amount of office time. Beyond this, there was much disagreement about the impact of the nickels.

Gene Karpinski, of Nader's Congress Watch noted, "The nickels opened doors for us...it got the thing back to the merits." According to Karpinski, the Nickels allowed them to discuss the merits of the proposal with Congressmen who previously said that they couldn't even talk about it.

Whether or not the nickels actually opened doors for a time, the general consensus on the Hill by the time I interviewed was that the nickels had largely been discounted by the offices that received them. The reasons for their being discounted varied, but the major arguments were as follows:

(1) The campaign was too "processed": many of the cards came in with no return address. Many were clearly written by the same people. Since Nader reached people at shopping centers, etc. there was no confidence that those who wrote in had given much thought to their cards. This was especially true since the cards themselves were usually printed and only needed to be signed.

(2) Even those cards that appeared legitimate were discounted because it was felt these constituents didn't understand what they were asking for. As one I.A. put it, "they thought the agency was to get their toasters fixed."

(3) There was no belief on the part of the Congressmen's
offices that their constituents were "watching." They were keenly aware that those who were writing in against the proposal belonged to an information network and that they would continue to watch the vote. The Nader inspired nickels on the other hand, had been a one time thing. Nader was back in D.C. now and the likelihood was that most of those who wrote in would never again think about the proposal.

(4) Even if the nickel senders were watching, the feeling among Members was that it would be much easier to explain their vote to these people than to the business people who wrote in and whose livelihoods were presumably affected by the legislation. In short, it mattered little to the nickel senders, and a lot to the opponents.

If the nickels themselves were taken lightly, the Nader method of obtaining support was not. For in addition to going into Representative districts to generate mail to Congressmen, Nader himself was going into the districts and blasting the members on radio and television. Particular targets of his wrath were Reps. Schroeder, Giamo, and Foley, all moderate democrats who were leaning or who had announced against the bill. This incursion into the districts was not taken lightly by members, who registered their displeasure by making irate calls to Congress Watch and sending letters to local papers. Nader's rationale in moving to the districts was to "educate" constituents on an issue which their Congressmen were clearly unwilling to undertake such a task. But the overwhelming reaction of Members, as exemplified by Pat Schroeder, was that Nader was trying to unseat them. As one L.A. noted, "No Member likes someone to fool around with his district. (Congressmen) are very sensitive about that."
And Congressmen did not seem anxious to hide their displeasure. The story told by Schroeder was fairly typical. After an article in Business Week Magazine about Nader implied that he might work to defeat her, she called Nader headquarters and was assured that no such "hit list" had been drawn up. Later that day, Nader held a press conference in her district to attack Schroeder for her stand on OCR. In retaliation, Schroeder wrote a letter to Business Week in which she recounted the story and noted "so much for truth in advertising at the Nader Headquarters." Of course, Nader had not worked to defeat Schroeder. He had merely assailed her stand on one issue. As Mark Green noted in a letter responding to Schroeder, "Surely you appreciate the difference, as the Federal Elections Commission does between an effort at election time to defeat x and elect y; a speech critical of x." This little incident, which is not unique, indicates the degree to which the Nader organization may have underestimated that sensitivity.

Nader also antagonized these pivotal votes by terming them "mushy liberals" in his annual report on Congress. The net effect of all these attacks was probably to solidify opposition to the bill among segments of the liberal to moderate Democrats. There is only one case where the attacks definitely lost a vote: Robert Giamo; Giamo was genuinely undecided until Nader blasted him in his district and there is one case where they seem to have gained a vote; Paul McCloskey. Beyond this, the attacks caused Members to come to the aid of other Members. As an aide to Andy Jacobs, one of the Congressmen blasted by Nader noted, "Most people around here know Tom Foley and know what he stands for. The Nader attacks only angered them and encouraged them to come to his aid. Also, they
were afraid that they might be next on the list." The Nader attacks seem to have provided a convenient excuse to ignore the emphasis placed on the legislation by the Nader organization itself. Thus solidifying the opposition may have had a larger effect than one might at first suppose because it limited the effectiveness of the Nader organization.16

Another major push for the legislation was kicked off by the President in a rally held on June 1 at the Old Executive Office Building. Calling together representatives of labor, business, and consumer groups, Carter urged that they "act aggressively during the coming weeks, because we have permitted misinformation put forward by special interest groups who are selfish to capture the consciousness and the attitudes of the public almost by default..."17 While the ostensible reason for the rally was to gear up the forces of the consumer movement to generate public support for the bill, the major purpose was obviously to put the full force of the President behind the bill in an attempt to reverse the momentum which seemed to still be running against OCR. Although exact vote counts from this period are hard to come by, both business and consumer organizations agree that at least 50 votes were still wavering.

In early August, Carter moved to substantially undercut one of the bill's critics major arguments: that it would create additional bureaucracy. In a statement issued August 1, the President provided the specifics of his earlier promise to consolidate currently existing consumer departments under the new agency. The statement lists 26 organizations which, according to an attached message signed by Bert Lance, "will no longer be necessary in the present form when the consumer agency is established."18
In all, the consolidation plans would have freed up $20 million. Since the first year budget of OCR was to be $15 million, the consolidation plan would have resulted in a $5 million reduction in bureaucracy.

Despite the efforts of Nader and the President over the summer, when Congress reconvened, it was apparent that the votes for passage were simply not there and that business opposition to the bill had only intensified. At this point the sponsors of the bill met with Esther Peterson and the Nader organization and decided that the best way to overcome opposition to the bill was to create a compromise which answered some of business's objections to the bill but preserved OCR itself. The major changes in the bill are as follows:

1. Carter's consolidation plan was expressly included in the legislation,
2. OCR would have been given no greater rights than the rights already enjoyed by advocates for business interests: (a) the power to issue interrogatories to business was removed (b) OCR would be given no greater rights to judicial review of agency proceedings or to use host agency subpoenas than any business entity,
3. OCR would have been authorized to represent the interest of small business when this interest was consistent with the consumers,' and 4. OCR would have no authority to set up testing labs or regional offices.

The strategy behind the compromise legislation was to pick up a number of supporters who had previously opposed the legislation as cosponsors (McCloskey, Neal, etc.) and then rush the legislation through before business could get in and begin to tear the legislation apart. As Gene Karpinski notes, "We were hoping to push the bill through very quickly...before business got geared up."
Along with a flurry of "dear colleague" letters, meetings were organized by leadership to explain the new legislation, and leadership itself was exerting heavy pressure on Members. Even the now superconfident Chamber representatives admit, "For a while, it looked like we were going to lose it." For one thing, a number of votes they were quite confident about, actually cosponsored the bill (Neal, Steed, Volkmer, and Rose). Other votes they were counting on were suddenly wavering. "There were some pretty nervous moments in those few days," a business representative notes. With the bill scheduled to come up November second, it was unclear what would happen. Business thought it had the votes, but wasn't certain. Nader was fairly confident that he had the votes as was Peterson's office. But Brademus came up short. Based on Brademus's vote counts, Tip pulled the bill from the calendar on November 1. The compromise strategy had failed.

The reasons for this failure reach to all levels of our analysis. This chapter will attempt to explain the more apparent reasons for the failure. Chapter two and three will consider more contextual factors.

The most obvious reason the compromise failed was that business was better prepared for this possibility than anyone had guessed. The day after the compromise was released, business was on the Hill in force with literature explaining why the compromise was really no different from the old bill. As one aide to a Republican who ultimately voted for the legislation, "There is no question that business attempted to mislead Members about the content of the legislation."
Business, for their part, termed the compromise a "monumental deception." The reasons for business's continued opposition may be stated as follows:

1. From the outset, business had decided to oppose the OCR legislation in any form. As one business representative I talked with noted, "We decided that even if Esther Peterson agreed that business could write the bill, we would still be against it." This strategy was necessitated by a desire to maintain solidarity and thrust behind business efforts to defeat the bill. As one representative noted, "It's much easier to organize an all-out effort to defeat something than to amend it." Also, since the compromise potentially split the interests of small and big businesses, immobilizing the Chamber, (which is dominated by small business), an all-out strategy was the only way to insure that such a split did not occur.

2. Business realized that there was a considerable chance that if any bill got out of the House, it could be strengthened in conference. And even if the bill was not strengthened this year, it could pick up additional powers and funding later on. One business representative notes, "Congress often passes toothless alligators... and puts the teeth back later."

3. To a great extent, the involvement of small business in opposing OCR was based on ideological differences with the bill rather than substantive disagreements. Small business, in fact, had been exempted from the interrogatory section even in HR 6805 and probably stood to gain from any actions taken by OCR. Obviously, the ideological elements of their opposition remained and in the interest of solidarity business leaders continued to push these.
Whatever their reasons, business's renewed campaign had a devastating effect on the compromise. Since many of the bill's new cosponsors had signed on before the bill was actually distributed, business was able to convince many Members that they had been deceived. One business representative noted, "There was a large backlash," in reaction to what was perceived as a deception. John Anderson, among others, entered "extensions of remarks" in reaction to this "deception."

Beyond this, many Members shared with business the feeling that no matter what the House did, the bill would be altered in the Senate. Although Esther Peterson had indicated a willingness to bring the House-passed version of the bill to the Senate, this did not mean that the Senate couldn't alter it. And, like business, they feared the agency would grow.

But the bottom line on the failure of the compromise was that it did not deal adequately with the symbolically-drawn lines of the conflict. The anti-bureaucracy argument remained forceful even though OCR would actually have lead to a consolidation. Those whose positions had been solidified by Nader's attacks were not inclined to back down. Business remained as solidly against the bill as ever, and for many who might have seen the bill as a political "out", the avenue was closed because it was clear that it would be impossible to explain the differences to their constituents. Constituents understood the legislation in only the most symbolic ways (either as a "voice for the consumer" or "another OSHA") and the compromise did not address these problems. Business's ability to generate a new wave of letters against the compromise contributed to Congressmen's beliefs that a symbolic redefinition had not taken place and would be difficult to accomplish.
And finally, as Peter Barash (staff head of the subcommittee responsible for the bill and generally considered the chief political strategist for the OCR legislation) notes, "The bill was just too visible. You just can't slip something like that through Congress." By "visible," Barash means two things: (1) the bill itself was too closely observed, and (2) the content of the bill was too straightforward to hide in the complexities of compromise. Joe Crapa (former staff head of the 94th Caucus) adds to this comment in noting, "Most of the issues that Congress deals with are technical. There are very few issues that Congressmen have to make moral decisions on." While this issue was not exactly moral, it was far from being technical. This meant that the pressure on Congressmen was intense and related to the basic substance of the legislation. The fact that business was unwilling to take a partial victory and was prepared to continue using the tactics it had been using essentially predestined the compromise to fail.

Tip's decision to pull the OCR legislation from the calendar in November was based on the Whip's estimate that despite the last-minute efforts to push the bill through, it was as many as a dozen votes short of passage. The Speaker's judgement was also based on the timing of the vote, which would come near the end of the session when many Members had already left for their districts. While no one disputes that the Speaker "acted in good faith" in pulling the bill, the Nader and Peterson organizations felt that they had the votes. According to one consumer advocate, "We felt it was going to be tight but that we had it by a vote or two."

Whatever the true situation in November, the waiting time between November and February only seemed to weaken the bill. The nickel campaign had run its course, the Nader organization had done all it
could to get some grass roots support, and Peterson had already visited most of the offices explaining the differences between HR 8605 and HR 9718. As Gene Karpinski noted, "By December, the effects of the nickel campaign were gone and once again we couldn't get into a lot of offices." Worse still, the momentum of the compromise had given way to a business-generated backlash, and many of those who might have gone for HR 9718 between the momentum, the pressure and confusion in early November, were now firmly back with business. Mark Schultz of the Chamber of Commerce notes with some reluctance, "We lost some people briefly, but we got them back."

Predictably, there is wide disagreement on exactly how many votes were lost between November and February. In an article in *The Nation* 20, Mark Green points to twelve votes that were almost definitely lost after November. (Reps Rose, Neal, Steed, Volkmer, English, Pressler, Cavanaugh, Cornwell, Fish, Gammage, Koch, and Badillo). Peterson's office agrees that a number of votes were lost, but thinks the losses may have been balanced by people who would not have voted for the bill in November because they had not been given time to scrutinize it. The Chamber and the Consumer Issues Working Group (business) feel that little changed after November. On balance, then, it seems reasonable to estimate that about a dozen votes were lost after November, but it remains impossible to determine what the effect of the bill's momentum in November might have been and how many votes were on the line.

The final debate on HR 9718 took place on February 7 and 8. The bill was brought up then because of pressure from the Executive to get the vote over with so that consumer groups could move on to other issues. Despite continuing discouraging vote counts by the Whip, the Nader organization professed confidence that the bill
say that it would be close but that the bill would pass.

Originally, the Peterson organization and leadership had hoped that by keeping the bill off the calendar until the last possible moment, they would catch the business lobby off guard. But, through its own intelligence sources, business managed to pinpoint when it would come up and get a "Action" call out to its members even before the Nader organization mobilized.

The pressure on Members once again became intense in early February. The business lobby came alive. This was reflected in Tip O'Neill's floor statement in which he noted, "I have been around here for 25 years. I have never seen such extensive lobbying." Ben Rosenthal, the bill's principal proponent, and a number of other bill proponents noted that the lobbying was the most intense they had ever witnessed. Added to the business lobby, there were visits by Ralph Nader and Esther Peterson themselves to the offices of leaning Members. There were also calls by the President to a few Members urging them to vote for the legislation. And finally, there was pressure from leadership. In addition to his floor speech, Tip was meeting with Members individually and letting them know in strong terms that he considered the vote a test of Democratic loyalty.

According to most informed sources on the Hill, by the time the vote was taken, even the leadership thought there was an outside chance. A lot of votes that had been with business were now leaning, and Tip had anywhere from eight to twelve votes in his pocket when he got to the floor. Peter Barash notes, "The vote was a lot closer than it looked. The Speaker had ten to twelve votes in his pocket and we figured we were short by about that many votes...We could have made it by a vote or two." A slightly more optimistic version of this story was given by Peterson's and Nader's aides.
The jockeying for votes continued when the bill hit the floor. One committee staffer notes, "We decided in advance that we would take any amendment that would get us votes and wasn't crippling." Indeed, during the floor debate, seven amendments were accepted, all but two by unanimous consent.

The first test for the bill was a vote on the rule to allow debate on HR 9718, which was offered as an amendment in the nature of a substitute for HR 6805. While there was considerable debate on the rule, it passed by a handy 271-138.

The second major test was on an amendment offered by Levitas (OCR's most vocal opponent on Government Operations) to require that the agency give 30 days notice to the Executive before filing suit. This was considered crippling by Brooks (the floor manager) and Rosenthal, and was turned back by 219 to 195. Some interpreted this victory as a hopeful sign that the bill might pass.

The last hurdle was the Glickman substitute which would have scrapped OCR in favor of improving the internal advocates within the regulatory agencies. Members like Schroeder, anxious to avoid the appearance of being anti-consumer, jumped on this bandwagon hailing the bill as "refreshing" and "innovative" (which it certainly was not). This substitute never had a chance according to most observers, and eventually it failed by 313 to 93.

In the end, it was not a close vote. The reason, it seems, was that business and Republicans were able to get their Members to vote early. As a result, the bill was down by about 20 votes until the last minute. The undecided and leaning Members refused to vote until they saw how the vote was going, and once it looked like the bill was going down, they saw no reason to vote for it. Thus, in the last two minutes, the margin narrowed slightly and then shot up as the undecideds went against the bill. At this point,
there was no need for Tip to use the votes he had in his pocket, so most of these ten or twelve also went against the bill.

It is difficult to determine the importance of the factors we have discussed in this chapter; particularly the importance of timing, momentum, and strategy. I have attempted to demonstrate that throughout the OCR debate, there was some, though no one knows how much, leeway in the vote counts of the various opposing actors. These vote counts also differed from one group to another by substantial margins. However, whether or not the votes that were swayed by these factors were sufficient to put OCR over the top will never be known for certain. In the next two chapters, I will focus on the factors behind Congressmen's voting decisions and hopefully, provide more insight into the failure of the various attempts to save the legislation I have outlined as well as into the failure of the legislation itself.
CHAPTER TWO
CHAPTER TWO

In the previous chapter, I attempted to give a rough idea of what happened to the consumer protection legislation and the role that certain elements played in its failure. I have also attempted to capture some sense of the importance of the momentum of the legislation in its failure. Although I gave some brief explanations of why certain attempts to save the legislation failed, I have intentionally avoided discussing why the legislation was in trouble and precisely how the various pressures on Members operated. This chapter will discuss the major sets of factors that influenced Congressmen's voting decisions—particularly material objections to the content of the legislation itself, and the lobbies—in an attempt to explain the way in which the legislation was viewed by the Members. The next chapter will consider how these factors came together in the context of the political decision, and the manner in which the political motivations of Members interacted with factors discussed here.

In the introduction it was noted that despite the symbolic importance of the OCR legislation to the consumer movement, the concept of the bill itself was far from perfect. Not surprisingly, every staffer who I talked with pointed to disagreements with the content of the bill itself before mentioning other factors which effected their voting decision. In addition, I collected copies of letters sent to constituents who wrote in about OCR and found that without exception the Congressmen's voting was explained through substantive factors. Does this mean substantive factors necessarily played a major role in the failure of the OCR? Obviously not. Again, almost without exception, those I talked to eventually (after
the atmosphere of the discussion grew more comfortable) began to refer to the various pressures their Members faced and also to the political nature of their decision. Furthermore, all the "outsiders"—lobbyists, observers, caucus staffers, and so on—clung almost exclusively to political rather than substantive explanations for the failure of the bill.

A strong prima facie case can be made for the importance of other factors over substantive factors. The bill changed little in eight years, yet, its popularity changed tremendously. Between May and February, the only change in the bill was that it was weakened, yet its popularity continued to drop. Add to this the fact that the compromise bill answered most of the objections Members had previously voiced and business's active opposition, and the direct role of substantive factors seems likely to be trivial.

But a number of warnings are in order. First, my sample has a built-in bias on this question since I interviewed people who, for the most part, were on the borderline. These were the people who were likely to have few strong feelings about the legislation in either direction and were more likely to be carried by political factors. Second, that substantive factors did not have much direct impact on Members is not to say that they had no impact. Obviously, these factors had an impact on public opinion and the lobbies, which in turn, had an impact Congressmen. Finally, the process of separating a Member's own views from those of his constituents can often be difficult, if not altogether impossible. In many cases, Members come from their districts with a similar way of viewing problems as their constituents. It is only where a clear
division between the views of the constituency and the views of the Member can be discerned that judgements about the role of other factors can be made.

With these warnings in mind then, it is worthwhile to review some of the substantive objections to the concept and structure of the legislation mentioned by Members. The first, and undoubtedly the most potent argument in opposition to the legislation was that it would create yet another government bureaucracy. Virtually every press release, floor speech, magazine article or editorial opposing OCR began with this argument. The argument, of course, had many variants. The more conservative Members tended to stress the need for less government "interference" while the more liberal Members simply questioned the "need" for an addition to the bureaucracy.

Behind this fear was the belief that the agency would grow to enormous proportions. This was reenforced by a Chamber of Commerce piece which lists four relatively new bureaucracies (EFOC, EDA, OSHA and the Consumer Product Safety Commission) that have grown astronomically in the last five to ten years and gives their total allocation for each of those years. There was tremendous skepticism about Carter's consolidation plan and fear that any limitation placed on the agency by the House would be knocked by the Senate. The proponents of OCR responded to these criticisms by pointing out that OCR was to be a different kind of agency, that it was to be funded at only $15 million, and that it represented a consolidation rather than expansion of bureaucracy. But opponents probably correctly suspected that the agency would indeed grow. One Business representative noted, "the luckiest break we got was that anti-bureaucratic feeling became so popular. We were yelling about it until we were blue in the face eight years ago and no one would listen." There
is no question that this was the issue that killed the bill. But it is difficult to say whether this attitude came from the Members themselves or from constituent pressure. Clearly, Congress has had few qualms about spending 15 million dollars in the past (particularly when it results in a 5 million dollar saving). It was business's ability to symbolically attach this issue so firmly to the OCR legislation in the mind of the public that was ultimately the key to much of the bill's loss of support.

Along with this anti-bureaucracy argument came the objections to "excess regulation." Representative Sisk (D-Ca) summarized the attitudes of his district on this issue as follows: "We have become an over-regulated society. That is what is being said, if I understand what the people are saying. So what we are confronted with again today is more and more regulation." Unlike the "more bureaucracy" argument, this argument was exclusively attributed to constituents' wishes. This is not surprising when one considers that the OCR was not in any way a regulatory agency. In fact, its sponsors argued that it was a necessary component of regulatory reform, that it would keep regulatory agencies in line.

Behind this argument is a very simple problem: Nader was unable to convince Members that OCR was the kind of legislation that constituents wanted. It was too removed from the direct concerns of consumers; its potential victories too intangible. Constituents wanted another Consumer Product Safety Commission, not an advocate buried in the depths of regulatory agencies. In addition, to these more potent arguments are at least ten more sophisticated, though probably less potent arguments. Unlike the first two, they are...
quite divorced from public opinion although they generally formed the announced basis for Members' opposition to OCR. In the interest of saving space, they are listed below:

1) There is no single consumer interest: This argument was usually backed up with reference to the saccharine ban or the seat belt interlock. Opponents tried to deal with this point by saying that the agency would represent all unrepresented interests in cases where there was more than one consumer interest. While the opposition argument has a certain amount of logic (since it is hard to imagine a single 15 million dollar agency fighting on more than one side of the issue). Representative Rosenthal has argued that there is no reason why the agency should not be capable of deciding on a single interest to represent. This is common practice in other agencies such as the Labor Department or Commerce.

2) The authority of the agency is too broad; it would create a consumer czar: This argument was popularized by Leon Jaworski, who was paid by business to write a letter in opposition to OCR to Chairman Brooks. Jaworski noted, "The new Agency for Consumer Protection ... would be vested with authority so broad that it could easily be turned to political advantage of those who control it."² This argument was at the base of one of business's greatest fears about the legislation: a lack of checks on the Agency's activities. Once the administrator of OCR decided to follow one path it would be endowed with the symbolic importance of being "the consumers' interest" and would be difficult to fight. (More on the Jaworski letter later). The counter this argument is, of course, that the agency has no authority whatever beyond the power of an ordinary citizen.
If its arguments are bad, a regulatory agency is free to ignore them or find against them.

3) Opposition to encouraging intra-government litigation: This was Reps. Folse's and Schroeder's major arguments. There is no question that intra-government litigation is legal and exists now, but there was some concern that setting one agency of government against another is wasteful and even dangerous. An excellent, more sophisticated argument for this very telling criticism was made by Stephen Chapman in The New Republic: "Instead of suggesting genuine options, however, the consumer agency's promoters offer only the logical conclusion of the perverted modern doctrine of pluralism— an agency for every interest, and every interest in its agency." Chapman goes further, attacking the belief that encouraging intra-governmental pluralism is an effective way to organize government.

4) Delay: Along with the above argument was the argument that such an agency might cause delay in bringing new drugs and products to the market. While this charge was denied by the bill's sponsors, it probably has some validity.

5) The Guilt Trip-- Congress is not doing its job: A number of Members voiced fears that passage of this legislation would represent Congress's failure to adequately oversee the regulating process. By passing the legislation, Congress, it was argued, would be delegating responsibility to look out for the consumers' interests because it was incapable of looking out for these interests itself. While this argument was played up in an NBC radio commentary by David Brinkley, it did not gain wide popularity outside Congress.
Given Congress's increased concern with oversight and its realization of its failures in that regard, this argument may have carried more weight than most Members admit.

6) There is no need for the Agency anymore because Carter's appointments to regulating agencies have solved the problem. This argument was particularly popular in the press. *The Washington Post*, in its influential editorial opposing OCR noted, "Since President Carter took office, some excellent appointments and a real shift in governmental attitudes have greatly improved the prospects for real regulatory reform. Thus, there is much less need for any separate intervenor with limited powers..."6 There is no question that Carter's appointments have considerably improved the situation at the regulatory agencies.7 However, this argument is limited by the fact that many of these newly appointed regulators wrote a letter to Chairman Brooks expressing their opinion that the agency is still necessary.8 Also, as Nader has pointed out at numerous times last year, even the most fervent consumer activists (e.g. Joan Claybrook) tend to get bogged down by their role in regulatory agencies. Regulatory agencies are, after all, meant to be quasi-judicial.

7) The agency is too broad; it will not be able to focus effectively on individual regulatory proceedings because it will lack the expertise of those who work in the regulatory agency itself. Hence the agency will be less effective than the current situation. A better solution is to fix up the present agencies' consumer divisions. This was the argument presented in favor of the Glickman substitute to H.R. 9718. The problem with the argument is that it is impossible for someone working under the Chief of the agency to do a decent job taking on the administrator. Because of the structure
of the agencies, he is just too vulnerable. The Glickman substitute gave many Congressmen who wanted to vote against OCR while appearing as though they backed consumer rights, a convenient "out." Although most people interviewed agree that Glickman offered the substitute "in good faith," no one disputes the fact that the substitute never had a chance of passage.

8) OCR will make the job regulatory agencies obsolete: In theory, regulatory agencies are themselves supposed to represent the consumers' interests. Currently, one of the most difficult jobs is determining that interest. According to this argument, by giving this job to a separate agency, one is making their job "too easy" and replacing an already balanced system with a monster of pluralism. This argument is well articulated in the New Republic article by Stephen Chapman mentioned above.

9) Consumer interest versus the long-term interests of society: There can be little question that these two interests do not always coincide. As the Chapman article notes: "Not even Nader would argue that the consumer interest should take precedence over the broader interests of society as a whole; but it would be the role of the consumer agency to make exactly that case..." A frequently sighted example of this problem is gas prices—low prices are in the immediate interest of the consumer, but high prices may be in the long range interest of the country. The argument against this logic is simply that it is correct but that it is the regulatory agency's responsibility to determine the broader interest of society against both the consumer and business interest. All OCR calls for is a consumer voice.

10) The OCR legislation is just symbolic; it has no substance:
This argument was only made in public by Pat Schroeder. However, it came up quite frequently in the interviews and was publicized in an article by Charles Rowse in The Washington Post. There is no doubt that a lot of H.R. 9718 was symbolic, but so is much of the legislation Congress passes. Also, getting OCR into existence would probably mean that it would grow to be an effective advocate even if it did not start as one. It should be noted that the bill's proponents do not concede, either privately or publicly that the bill was purely symbolic.

Another aspect of this argument, a popular one among the opponents, was that the bill was a "Nader appreciation bill;" that it was Nader's attempt to erect a permanent memorial to himself. This is a rhetorical argument which points to Nader's inability to get the bill defined as a "must" piece of consumer legislation. Obviously the various symbolic associations the bill carried were its downfall; but, this does not mean the legislation itself had no substantive value.

11) Beyond the reasons listed above, there are a number of other reasons for opposition that seem to be clearly secondary. These include: A) H.R. 9718 was never considered by a committee; no report was issued and no hearings were held. B) Opposition to the section which exempts labor negotiations from OCR's jurisdiction. C) Opposition to the failure to include adequate exemptions for agriculture. D) Arguments to the effect of "Consumers aren't gullible anymore," and so on.
Looking at these criticisms from an overview, the question that arises is whether OCR was "good legislation" as Tip O'Neill referred to it, or "bad legislation". Obviously, the answer depends to some extent on who you talk to. Frequently Congress says one thing and thinks another. On Post Office closings, for example, it is generally understood that these closings are inevitable and even wise. But political reality prevents Members from taking this position publicly and even prompts them to cosponsor legislation to prevent the closings.

Along these lines, I tested two possibilities:

1) OCR is really bad legislation but pressure from consumer advocates and the symbolic import of the legislation meant that Members with a certain kind of constituency support it. Or,

2) OCR is really good legislation but pressure from "misperformed and greedy interests" (as President Carter termed them) have forced Congressmen to back off from supporting the bill.

My method of testing was simply to ask those who opposed the legislation whether they (privately) thought the legislation was "good legislation" and those who favored it whether it was "ineffective legislation". I usually saved the question for the end of the interview when a trust relationship had developed.

The answers were revealing. A number of those who favored the legislation publicly thought it was symbolically important but had little substance. Others thought it was good legislation. Among those who opposed it, very few seemed to think it was great legislation, but many felt guilt about not supporting a bill which was so symbolically associated with consumerism. In short, the sample split about 50/50 on whether H.R.9718 was "good legislation", but very little stress was laid upon the content of the bill in the in-
This observation suggests an important conclusion: It was not so much the content of the bill as the symbolic definitions it received that lead to its failure. These symbolic definitions were not achieved within Congress, but were attached to the bill by the various interest groups involved. Thus, in looking at the lobbies, we must look not just at their direct ability to sway votes but at their more subtle ability to effect public opinion. As Ralph Nader noted, "the battle is won or lost in the districts, not in Washington."

In the introduction, I made reference to an article in *Fortune* which presented the following proposition: "the business community has become the most effective special-interest lobby in the country." This conclusion is certainly supported in the interviews. The Chamber of Commerce, Consumer Issues Working Group (business), Congress Watch, and most observers on the Hill give business exclusive credit for killing the OCR legislation. In this section, I examine just how the business lobby worked on Congress, the tools at its disposal and the general growth of business power in Congress. The next sections will cover the other interests involved in the OCR legislation, in an attempt to explain how they effected the fate of OCR.

For business, the OCR legislation represented the most threatening piece of legislation in Congress since Common-"situs picketing bill. OCR would make it difficult for them to achieve fair compromises with regulatory agencies. They felt that the regulatory agencies (particularly the FTC and FCC) were difficult to handle already. OCR would certainly make matters worse. Because most businesses paid outside law firms to do their regulatory work, OCR would mean higher legal fees. It would also mean more delays,
and probably less latitude in bargaining with regulatory agencies. But, what scared business most was that OCR, by threatening to file lawsuits, would be able to affect the decisions of regulatory agencies before they were made. As a result of these factors, business pulled out all stops to defeat the bill.

Business's attack on OCR was launched from many levels. The most visible was the use of Washington lobbyists. The business operation in Washington was, according to all those interviewed, infinitely "slicker" than the operation of the Peterson or Nader lobbies. Frequently, business lobbyists travelled in groups of three: a representative of the Chamber of Commerce, a representative of the National Federation of Businessmen and a representative of the Consumer Issues Working Group. In addition, lobbyists for independent corporations visited Members. All of these lobbyists were professionals, many with more than twenty years experience in Washington. They knew the offices and had the connections that gained them access. As one business representative noted, "We asked to see the Member himself-- and we didn't get a single turn down." But this was only the tip of the iceberg. Behind these individuals was a steering committee made up of 25 representatives of industry and small business and an ad hoc committee of 400 such representatives. One of the principle tasks of the steering committee was to find, contact and mobilize top business people within the Congressmen's districts. More often than not, the businessmen contacted were friends of the Members. These businessmen were asked to either personally contact the Member or write to the Congressmen's office. Since the business operation against the bill had been going for eight years, this
network of contacts was well established by the time 9718 came up in February.

But perhaps the most effective aspect of the business lobby was its ability to generate grass-roots support. Through the Chamber of Commerce, business was able to generate thousands of individual letters within 48 hours. Mark-Schultz of the Chamber explained the process this way: "When we send out an 'Action Call', it goes through our four regional offices where they issue action alerts to a special group of members who have agreed to write letters on 48 hours notice." The letters written by this army of writers are individual— they are not form letters, taken from the same draft. Each member is sent a package of information about the bill, but asked to compose his own letter. The response rate to these "Action" alerts, according to Schultz, is "over 80%". In addition to creating the impression of stable opposition to OCR, these letters strengthened the hold of business lobbyists in Washington when they visited Members.

Beyond this, business had access to the press. In addition to hiring a news service to issue "canned" cartoons and editorials, the business organization relied heavily on individual connections with editors. These contacts, like those with Members, were orchestrated by the steering committee with tremendous success. The impact of the numerous editorials against OCR in most major daily and weekly papers on the shaping of public attitudes toward OCR is immeasurable.

In short, business had the tools needed to beat OCR. They had the contacts with the newspapers, and the mechanism to create the appearance of grass-roots support, but that, in itself, does not
explain business's success. As *Fortune* points out, even with those resources, business has lost many battles, such as minimum wage. One of the keys to business's success was what Emmett Hines has termed "a lucky coincidence of events," some of which business controlled and others which happened of their own accord.

First, there was the election of President Carter on an anti-government platform. This, in addition to the increasing sensitivity toward big government, was undoubtedly a major factor in OCR's defeat. As *Ex: biz* points out, "the business lobbyist is most convincing when he can point out to legislators that he is working not for a narrow self-serving group, but for wider and more representative interests." (p.56)

Second, there were events like the Jaworski letter. Jaworski, it seems, was a law partner of a member of the business steering committee and happened to mention that he opposed OCR. The partner reported this to the steering Committee which subsequently asked him to testify for a fee. Chairman Brooks, however, was unwilling to submit a letter. Jaworski's letter was reprinted by business as a full page advertisement in the *New York Times*. Business's ability to enlist big names was an important feature of their ability to turn public opinion around.

Third, there was the *Washington Post* editorial which came the day before the vote. While business representatives admit that they were able to influence many newspapers, there is evidence that the *Post* rejected such attempts at influence.\(^{13}\) Despite this, the *Post* reversed its previous stand on OCR and came out against. An indication of the importance of this editorial is that it is reprinted in the *Congressional Record* five times in the course of the debate.
Fourth, the Reader's Digest article opposing OCR came out in January. While it was well known that the article would be forthcoming, most observers expected it in October.

These are only a few of some of the "breaks" that ran with business. In truth, they are really an indication that public opinion -- and hence the momentum -- were swinging around in favor of business. Because of this swing, business representatives indicate that their primary strategy was to delay OCR. Every day it seemed that some new piece of "luck" developed to help the business cause.

Beyond these factors, there was the tightness and preparation of the business organization. The Consumer Issues Working Group had been fighting this bill for eight years; their contacts were established. They knew who to hit, when to hit, and how to hit. Perhaps most importantly, they hit the Congressmen where they were most vulnerable--in the districts. This was something that the Nader organization, with the exception of a two month campaign, was unable to do.

Business was also more flexible than Nader. If one approach didn't work, they tried another. They were willing to trade votes on one issue for votes on another; and although they hoped to convince Members on the basis of merit, they recognized that argument alone was insufficient to win. According to one business representative quoted in Fortune, "There are no clear answers. Everything becomes a matter of trade-offs. You have to walk away with the idea that you are entitled to win."\(^{14}\) Nader has been unwilling to do this. His reticence in this regard may have cost him popularity in the House.
Finally, business had the money to finance campaigns. While nobody claims that business crudely said to Members, "I'll finance your opponent if you don't vote my way," the impact of business political action committees may well have been considerable. As one Member jokingly told a Nader representative, "If you could throw me a $100,000 fund raiser, I might vote for this bill." While this quote probably exaggerates the effect such a vote would have on business contributions, there can be little question that business money was a factor for many Members. Unfortunately, it is one of those factors which is so difficult to gauge because offices are reluctant to talk freely about it.

Does all this mean that business power has grown? The answer is emphatically yes! Business power has grown enormously in the last two years. The increase in power can be attributed to the following factors:

1) The astronomical increase in the size and number of business political action committees (PAC). PACs began to proliferate at the end of 1975, when the Federal Election Commission established the ground rules for their operation. In 1976, 450 company PACs contributed a total of $12.5 million, and both the number and wealth of these PACs is increasing geometrically. By the end of 1978, many observers except up to 1500 PACs to be established, with total contributions in excess of $15 million.

In addition to the increasing number and wealth of these committees, business is learning how to spend the money in ways that yield the best results. They are carefully interviewing candidates, investing more time and money in primaries and concentrating on open seats where the chances of success are better. With the cost of
running for election rising rapidly, the demand for money from PACs is likely to grow still further.

2) Proliferation in the number of businesses with Washington offices: A few years ago only 150 corporations had Washington offices. Now over 400 companies have set up offices and the number promises to double shortly.\(^{18}\) Thus, the "balance of resources" in Washington is shifting.

3) Members have increasing need for information (the reasons are discussed in chapter three): Business has answered the need with a new kind of lobbyist-- the consultant, an expert in a particular field, he frequently comes out of the White House or some other top level bureaucracy. The Congressmen's reliance on this "free" information source gives business yet another advantage.

4) The resurrection of the Chamber of Commerce: For many years the power of the Chamber had been waning because of the anti-business mood of the country and because of what current Chamber leadership terms "a neanderthal approach." The Chamber was seen as hopelessly out of touch, right wing and reactionary. Their lobbyists were old and unappealing and their policies unwaveringly conservative.

Recently however, the Chamber's Washington operation was revamped. Their two top lobbyists now (Jeff Josephs and Mark Schultz) are both under thirty years old. They know how to play the political game and make allies with such unlikely groups as the consumer lobby on some issues and other groups on different issues. Their policies have become more moderate and thus more rational in the eyes of the Members. And, of course, their new communication network has given them almost instant access to the kind of "grass roots' support that organization has been able to assemble.
5) In the past, the business people tended to avoid taking an active role in lobbying, leaving it up to Washington representatives. Recently, however, business has learned the technique of bringing these corporate heavy-weights down to Washington to meet directly with the Congressmen. If nothing else, this has certainly helped business get access to Congressional offices.

6) Beyond these factors, business has learned to package facts in ways that are more persuasive. They have learned how to attach their goals to broader societal attitudes and thus make them more acceptable.

7) Business has learned to organize itself better through the use of ad hoc groups such as the Consumer Issues Working Group. All the business representatives I spoke with stressed the importance of this lack of serious division within business. When business has split over a particular bill as it did over the minimum wage legislation, it almost inevitably loses.

8) And finally, the down-turn of the economy inevitably seems to lead to less faith in government (when a Democrat is in the White House) and a little more trust in business. There is less willingness to do something which business opposes when the economy is bad.

In summary, a considerable growth in business's political resources has taken place. While the only really new feature of the business approach is the use of grass roots support methods, their overall impact has been greatly increased. These resources combined with a few elements of "luck", a few structural changes in Congress (see chapter three), and a number of other factors to give business the victory over OCR.
The question that arises at this point is: what was the overall impact of business on the failure of OCR? There are many ways to answer this question. No one doubts that without business opposition OCR would have continued to sail through the House. Both business and legislative aids concede "there was almost no spontaneous opposition to OCR. Business was responsible for generating all of the substantive objections noted at the beginning of this chapter. But business could not have succeeded were it not for other factors. We have looked at some of these factors already. In particular we have mentioned the growth in anti-bureaucratic sentiment amongst the public-- a major factor in the bill's defeat. One of the keys to business's success was that it was able to use its resources to tie these broad contextual factors to the OCR legislation through public opinion, the press, and lobbying.

As important as the success of the business lobby was, the failure of the three major proponents of the legislation-- the Nader organization (Congress Watch), Esther Peterson's office and the President--cannot be dismissed. The following sections will cover the problems and weaknesses of these advocates.

"The Nader Nadir?"

As the above headline from NationalJournal indicates, as business was growing stronger, the Nader organization appeared to be losing ground in Washington. Starting late in 1977, articles in virtually every influential daily and weekly, from the Village Voice and Straight Creek Journal to the Wall St. Journal and Newsweek, reported the demise of Ralph Nader. The symptoms of this of this slipping generally revolved around the problems of OCR legislation
in the latter half of 1977. Nader was leaning hard on a number of Congressmen with remarkably little result. His attacks on "mushy" liberals drew a storm of indignant protest and his threats of defeating candidates were laughed off. Andy Jacobs, for example, noted that he would list Nader's attack on him as a campaign asset.20

There was wide disagreement among those I interviewed about whether Nader is really slipping. According to public opinion polls, his reputation has never been better. The Sentry Insurance poll finds that the Nader organization is rated considerably higher than any other consumer organization in in terms of the job they do.21

Furthermore, only 15% of the public sampled believe the consumer movement is running out of steam. Despite these statistics, the Chamber of Commerce characterized Nader's push for OCP as his "swan song," and roughly half the legislative aids interviewed agreed. Interestingly, with the exception of Andy Jacobs, those members who Nader attacked do not believe that Nader is losing his clout (although they believe he made a serious tactical error in pushing so hard for this bill).

If Nader is slipping, the question is Why? Four major factors seem to be playing into Nader's apparent loss of political power. They are:

1) "The age of justified outrage is over... The spirit that Nader captured-- and indeed embodied-- a decade ago is no longer self evident."22

2) A Democrat in the White House combined with a general feeling that consumer needs are being well attended to may have lessened some of the urgency which gave power to the Nader organization.
3) The Nader organization has a built-in support problem because being a consumer is not a primary identification for most people. Hence, while the Nader organization presumably stands for the general good, it is difficult for Nader to prove he has the support of the people. For this reason, Nader is planning to concentrate on gaining grass roots support over the next two years rather than just lobbying in Washington.23

4) To some extent the rejection of the seat-belt interlock and the saccharine bans by the public has undermined faith in the consumer movement. There is a backlash against over-protection and the Nader organization may be suffering as a result.

Whether or not Nader is really slipping there is not much question that Nader did little to help OCR in 1977 or 1978. The primary problem appears to have been Nader's "arrogance". Members reacted very negatively to his incursions into their districts and came to the aid of their colleagues whom Nader accused of being "mushy" liberals. The press also responded negatively to these attacks, frequently editorializing in support of the Members. Even representatives of the Nader organization are said to have noted that Ralph himself was perceived as "irrational" was thus not much of an asset.

The Nader organization was much less prepared than the business lobby. Lacking connections in many offices, they had trouble gaining access. They also lacked the resources to pull in grass roots support or even to obtain accurate vote counts. They were frequently unruly and disorganized. But perhaps the greatest drawback was their inability to maintain steady contact with Congressional offices. As Carol Tucker Foreman, formerly executive director of the
Consumer Federation of America, told a conference of public interest lobbyists last year, "We got poor marks... working with Members who don't support us all the time... we also get poor marks working with Members before they're sworn in, between elections and in general between the times when we want something from them." These same problems plagued Nader throughout the OCR debate.

Ultimately, Nader's biggest error in selling the OCR legislation may be that his approach was mismatched to his aims. His target was the core of moderate-liberal Members, who rightly or wrongly, fancy themselves as independents. Nader's accusations that they had "sold out" not only angered them and made them less willing to back down, but made them question Nader's attempt to attach his own symbolic meanings to the bill. As Straight Creek Journal noted, "If they're not under the thumb of Tip or Jimmy... these Independent Members are not about to cower to Ralph either." (p.93) Nader's attacks put Members in the position of feeling like they would be bowing to Nader if they voted for the bill; they would be giving into what one legislative aid termed "the Ralph Nader Appreciation Bill."

A surprisingly large number of people have attempted to blame the defeat of OCR on Ralph Nader. While, as I have noted, Nader's behaviour may have antagonized members and made them more reluctant to go along with the compromise or to be won over, it is very unlikely that Nader actually hurt the chances of OCR. This is particularly true since Nader only attacked those Members who had announced their opposition to the bill. Blaming Nader seems a convenient, though childish, method of dispelling blame.

Nader's main problem had little to do with his own actions or
standing with the public. As Peter Brash and George Condemus both noted, he did the best he could "under the circumstances". His literature was good, his arguments were well thought out and his strategy, at least passable. His problem was that business's ability to gain what appeared to be grass roots support cut at the claim that he, not business, represented what the majority of the people wanted. Given his resource and structural support problems, Nader was unable to demonstrate that he had the kind of support to enforce his claim that voting against the bill would hurt the incumbent at the voting booth. There was no feeling that the people who sent those nickels would vote their beliefs on this issue. In truth, because of Nader's lack of grass roots organization and the nature of the OCR legislation, it is doubtful that they would (this will be discussed at greater length in chapter three).
The President and Peterson:

After years of Presidents who threatened to veto the OCR legislation, the election of Jimmy Carter was a tremendous occasion for the consumer movement. Carter was on record as favoring OCR during the campaign, and the movement pressed him hard to follow up on his promise once he reached office. Carter did that on April 6, 1977 in a message to Congress proposing the agency as well as on a number of occasions afterward. And when it became apparent that the bill was in trouble, Carter held a rally. According to CQ, "Carters active advocacy will do more than anything else to improve the chances of the legislation, both friends and foes of the legislation agree."26

Unfortunately, Carter's support did next to nothing for the bill. Nader himself states the problem well in saying, the Executive, "just can't get anywhere with Congress because they don't develop leverage...They have nothing to give Congress so they don't play dirty politics the way others have done...They don't say we'll get you a dam here, a contract there. And the second is they won't go over Congress's heads. What the hell have you got left? A White House Tea?"27 This reaction is echoed by Peter Barash who noted, "The President has nothing to give so Members see no reason to back him up."

These quotes hint at two of the reasons why the President was so ineffective in his advocacy of OCR. First, he refused to play the "quid pro quo" game and give away dams. And second, he didn't use his option of going to the people to gain a constituency for OCR. As Nader notes later in the article quoted above, "Imagine the speech he could have made to arouse the public. With specifics that everyday people are reacting against, with specific issues
like food prices, utility rates, home fuel, gasoline, things like that one after another. There’s nothing easier to sell."

Why the President failed to do this is a subject of considerable speculation and very little firm evidence. One fairly likely possibility is that he did not want to antagonize Congress at a point when there was a lot of more crucial legislation he needed passed. Another possibility (which is advocated by Ed Davis of DSG) is that the President had already given up on the legislation and was not willing to invest any more political capital in another losing proposition. Still a third possibility was that the President was being essentially forced by Nader and Peterson into backing the legislation which he personally was only luke-warm about. In all probability, some combination of these factors was operating.

Regardless of why the President’s support of OCR was not backed up more firmly, there were other reasons why he was so unsuccessful at getting votes. First, he was personally perceived as doing very badly in public support. Hence, he seemed to have no personal constituency. Members certainly did not want his support during the mid-term elections, and saw nothing to be gained by a political alliance with him.

Second, the President campaigned as an outsider to Washington and was being treated like one now. This factor was mentioned by a great proportion of those interviewed.

Third, whether it was through incompetence or lack of interest (I suspect it was a combination of both) the President was very ineffective in his direct contacts with Members concerning the bill. The day before the vote, Carter apparently called a handful of Members and briefly urged them to support the bill giving no other reason than that he thought it was good legislation.
And finally, there was considerable resentment in Congress for forcing the bill to a vote. Many members would have preferred to let the legislation die until the next session, but Peterson and Nader pushed Carter into asking leadership to put the bill back on the calender (against leadership's wishes).

The failures of the President had considerable impact on Peterson's effectiveness as an advocate of OCR. Barash notes, "Ester was great, but all she could bring the bill was her personal contacts and her expertise. She wasn't backed up." Clearly, the White House gave Peterson very little support and left Peterson on her own in drumming up support for OCR.

Whether or not she was effective without the White House is an open question. A few of the offices I talked with said that Esther had been a major factor in their own decisions. Many observers noted, "She had hundreds of friends on the Hill," and that without her personal contacts, OCR would have been defeated by a much larger margin. And there can be little question that she was instrumental in devising the compromise. But these feelings were far from unanimous.

Others felt that while Peterson herself may have had some positive effects, her office was disorganized and ineffective. One particularly cruel comment was that, "Peterson thought this legislation was to get broken toasters fixed." Others simply thought the office did not know what was going on half of the time. They were frequently unaware of developments and misinformed on vote counts. They often relied on the wrong people to bring votes with them (e.g. they hoped McCloskey would bring a number of Republicans with him...He brought one). It is difficult to tell from
the interviews which of these views is more accurate.

OTHER LOBBIES

In addition to the major lobbies on OCR, a few smaller and more peripheral lobbies were active. The most important of these was the labor lobby.

Labor professed strong support for OCR. A number of Unions testified at the hearings on it and sent mailings to their members discussing it. But the labor lobby was not a major force in the OCR debate. They apparently spent about a week just before the bill came up sending around their lobbyists, and sporadically lobbied between November and February. But the clear impression was that labor was not solidly behind OCR. One staffer noted, "A couple of their people came around and gave us the pitch. But we didn't get any input from the locals in the district." Labor made no attempts to get out support in the districts. They did not send letters to Members (as they frequently do on important legislation) and even their direct lobbying seemed half-hearted.

Undoubtedly, the major reason for labor's tepid response was that it had more important matters to worry about. Humphrey-Hawkins had not come up yet and a variety of other measures were slated for committee action. Beyond this, the bill suffered from the same problems among rank and file labor people as it did among the general population. It did not address the needs they most wanted answered. And, while the bill would have helped organized labor in the same way that it would have helped any citizen, it offered no more than that to labor. And finally, there was always the haunting fear that the labor exemption, which prevented OCR from interfering in labor-management relations, could be knocked out,
making OCR actually an anti-labor law.

The last lobby which is worth at least brief mention is the pro-OCR business lobby. This was comprised of a group of 100 corporations headed by Levi-Strauss Inc. which supported the bill. The pro-OCR lobby opened a Washington office and hired a few staffers to lobby for the bill. But in truth, the corporations included only a few major ones, and represented a tiny fraction of business. They exerted little influence because they could not begin to outweigh the input that Members had received from anti-OCR forces in their districts.
CHAPTER THREE

Fenno posits three principal goals of congressmen: reelection, House influence, and making good public policy. As the introduction noted, the OCR legislation placed the goals of House influence and reelection into direct opposition. The findings from interviews conducted indicate that for most members, reelection goals were considered far more important than either making of good public policy or House influence. This, of course, is in keeping with Mayhew's thesis that most Congressional behavior can be explained through the reelection goal, as well as with Kingdon's framework of congressional decision-making.¹

Chapters one and two discussed factors contributing to the failure of OCR that were essentially external to the Congressmen's decision-making process. This chapter will begin with a consideration of how these factors were translated into a political decision, and the political factors which effected Members' votes. The second half of the chapter will look at changes in Congress that impacted on this decision-making process making Members particularly sensitive to the political cues they received. The conclusion will attempt to make some judgements on what the failure of OCR and the advent of the various changes we have discussed may mean in terms of future Congressional decision-making.

In order to isolate political factors in the voting decision, it is important to first look at the characteristics of members who voted against OCR. There are many dividing
lines we could use to categorize these voting decisions. To begin with, all but seventeen Republicans, and most Southern Democrats voted against the bill. Most of these members also voted against the bill two years ago, and their votes can best be attributed to their ideological opposition to big government and to interference with business. While these members were also subject to constituent and lobbying pressures, the fact that the symbolic considerations of the bill were so clearly against the Members' espoused beliefs makes the decision-making among this group politically rather uninteresting. This is not to say that external forces, particularly business input, had no impact on this group. Clearly, business's ability to redefine the issue was a key to their vote. But politically, most members of this group were not subject to any constraining factors that might have so much as tempted them to vote for the bill.

No one expected many votes from these groups on OCR. The votes that were really responsible for OCR's failure came from groups that might normally have been expected to back OCR--and in some cases, had backed OCR in the past. In particular, these were, (1) the freshman Democrats, and (2) a large group of so-called moderate to liberal "independent" Democrats. How do we explain the loss of these two "groups?"

The most salient factor that came through in interviews with members of these groups was the Members' perceptions that their districts oppose the legislation. Not a single
office voting pro or con indicated a feeling of widespread support for the legislation in their districts. This, of course, is a curious finding in light of the fact that numerous opinion polls have found that OCR is supported by a very clear majority of the American people. To understand this contradiction it was necessary to examine Members' methods of determining the political popularity of OCR in their districts.

Members typically employ more than one method of obtaining public opinion. First, they consider the mail. Excluding the nickel campaign (as Members generally did) mail on OCR ran heavily and strongly against OCR.

While this, in itself, might not have had much impact, the volume of mail (between 100 and 500 personal letters), the fact that the mail was personal, and the fact that it came from many influential citizens in the district made it hard to ignore, particularly for members in marginal districts. While every office recognized the strong inherent bias in determining the mood of the district by using mail, the mail was "hard to overlook" because in most cases those who wrote were seen as "attentive constituents" who might base their political actions on the Congressman's vote.

Another method of determining district opinion was the newsletter/poll. This method was used by only a few Members, and was usually designed to gain support for the stand which a Member had already taken. For example, McCloskey (R-CA)
did a poll giving constituents a choice between no bill, the "McCloskey Substitute" (a more watered down version of HR 9718), or HR 6805. Not surprisingly, the response, as reported in a letter from him to Ester Peterson, was almost 7-1 in favor of the McCloskey Substitute. The majority of the members did not include mentions of OCR in regular newsletters and indicated that they did not want to make the vote more visible than it already was.

And finally, Members cite their own impressions of district feeling based on forums and informal contacts. One particularly funny example was a Member who picked up some suits from the cleaners and found a note opposing OCR pinned to the lapel of a jacket. With the exception of one forum held by Pat Schroeder, to overwhelming consensus among those interviewed was that the Members' personal contacts lead him to believe that the bill was unpopular.

In general, Members stressed that you have to "use your judgement" when determining district opinion. Staffers readily conceded that the methods cited above were only partial indicators of district opinion. Nevertheless, it is important to note the way the mobilizing activities of the business lobby coincided with C'men's indicators of district sentiment. By activating an unusually large number of district residents against the bill, contacting many of the individuals who constitute a Congressman's informal information...
network, and working with newspapers, business had provided a set of overwhelmingly negative cues for Congressmen which were completely unbalanced by input from the other direction. The well-publicized failure of Nader to gain grass-roots support in favor of OCR contributed to Members' impressions that all attentive constituents who might potentially act on the Congressman's vote were against OCR. Thus, while Members may have been consciously aware that there was also tacit support for the bill in the district, they were given no reason to act on it.

More secure members, tended to exercise more independent judgement. Unlike their less secure counterparts, they had more confidence in their ability to "reeducate" constituents through responses to letters. The reason for this discrepancy is probably attributable to the following factors: (1) more secure members have less to lose if the reeducation fails, (2) they are more willing to devote resources because they don't need them to fight an opponent, (3) they are not as afraid of giving an opponent an issue, (4) they have more faith in their ability to carry out a reeducation because they have been successful at it in the past and (5) because these members have generally been in Congress longer, they have a greater personal constituency and thus feel they are more likely to be believed or that their vote will not effect their reelection goals.

But aggregate public opinion was only one part of the voting decision. Another factor had to do with the relative
political gains/losses to be had from the vote. OCR was viewed as a no-win issue for most Democratic Congressmen. If they vote for it, they alienate small and large business and those who wrote in. If they vote against, they potentially jeopardize the votes of their "silent constituency," but are unlikely to pick up many votes. The way out of the dilemma was simplified for many members because the opposing groups had different expectations of the Member. The general constituency, which presumably favored the legislation, was not watching the Member's vote. Instead, they were responding to other cues such as case work and newsletters. The opposition, on the other hand, was watching the vote. As Ralph Nader has noted, a Congressman feels, "my voting record means nothing in my district. The only thing that means anything is servicing my constituents and making sure that I appear at Rotary Clubs and farm meetings, etc., all over the state. So I have rendered my voting record irrelevant to the businesses. Alright, so it's a beautiful bargain he's got. Takes care of the voters by service politics and personal appearances and he takes care of his business contributors by the vote. And he severed the two from any relationship with one another." 2 While this overstates the point a bit, the fact that constituents and members deal with different cues is significant in terms of the voting decision on OCR.

One of the most striking results of the interviews was the overwhelming tendency of Members in tight districts
who feared electoral challenges from the right (in either the primary or the general election) to oppose OCR. As the following case studies indicate, even when the Member's reelection seems assured, there is tremendous concern that a positive vote on OCR would "give an opponent an issue" or would attract electoral opposition.\(^3\)

**CASE STUDIES**

(1) Patricia Schroeder (D-Colorado): A moderate to liberal Democrat, Pat Schroeder is best known as a member of the three person liberal group on Armed Services. Although she voted for OCR two years ago, her legislative aide reports a great deal of opposition to OCR in the form of letters (200 personal letters--mostly from small businessmen), and direct communication through forums and phone calls. She reports "no significant support" despite receiving 600 nickels and about 100 letters favorable to the legislation over the summer.) She emphasizes that despite Schroeder's usually liberal attitude, Colorado is a conservative state--the first state to enact Sunset legislation. Schroeder was blasted by Nader for her opposition to OCR which she announced in early summer. The Congresswoman is in a district which is generally considered tight. One of the "young democrats" in Colorado, she had been a victim of general voter disenchantment with this group. In 1976, she gained only 54% in a general election against a Republican, despite the fact that the district has stayed Democratic for all but two of the last 26 years.
(1970-1972). Although most observers now feel she is likely to hold her seat, during the period over the summer when she announced her opposition to OCR, her reelection seemed less certain. Issues such as too much military spending have been popular in the district, and have hurt Schroeder in the past. It seems likely that OCR could be defined to fit along the same general pattern.

(2) **Tom Foley (D-Wash.)**: A moderate Democrat, Tom Foley is not widely regarded as being in trouble in his district despite a poor showing last time out. He is currently Chairman of the House Agriculture Committee, and deputy whip for the party. In addition, he has served as head of DSG for two years before being appointed Chairman of Agriculture.

His L.A. reports that the district was "strongly" against OCR. The mail, he notes, was the heaviest of any he has seen in the last year and has run 50 to one against OCR. He indicates that while Foley is not in trouble, he is trying to build up his margin again. The reeducation effort, he says, would be great. He did not accept the compromise because, "it would make his record look wishy-washy--come out against the bill, vote for the compromise, and probably have to vote against the conference report." Given the pressure from the district must indeed have been intense. His L.A. made no mention of substantive objections to the OCR legislation although he did note (in explaining why Foley had voted for the bill in the past) that "two years ago
nobody looked at the bill too closely once it was going to be vetoed...they saw it as pretty much a statement of consumer needs. This time, they were looking more closely."

(3) Tom Steed (D-Oklahoma): Not exactly a liberal, Steed would be the sort of Congressman one might expect to vote against OCR on its merits...except for two facts. He voted for it two years ago and he cosponsored the compromise legislation. So why did this old timer suddenly change his mind?

At first glance, no one would expect Steed to be in any kind of electoral trouble. Two years ago, he beat his Republican opponent by 3 to 1 and ran unopposed in the primary. But time is against Steed. He is 74 years old and hopelessly out of touch with his district. And as luck would have it, he is being challenged by a younger man from the right (a "neo-conservative," according to staff members). While this opponent may not be a major threat, Steed, it seems, is taking the challenge very seriously and is not anxious to give his opponent any free ammunition, particularly since as Chairman of the Appropriations Subcommittee responsible for White House expenditures, he has been accused of being too lax.

The above examples illustrate a few important points. First, it is not the objective reality which solely determines how the Congressman reacts. He does not have to be in real trouble to think he is in trouble.
Second, even members who are not in trouble are reluctant to give up support for legislation like OCR which seems to offer so few benefits for the vote. Winning margains are also very important to Members.

Third, a Member's response is frequently determined by what he sees as sensitivities in particular issue areas within the district. Thus, for Pat Schroeder the fact that government spending has in the past been a major issue in the district makes her particularly sensitive now.

Fourth, the timing of the OCR legislation was particularly bad because it came up while primary opponents were just beginning to declare. Thus, if a member were more liberal than his district, he would be especially careful around this time to avoid attracting opponents.

Fifth, members were unwilling to create a new area of vulnerability for themselves in a symbolically-charged area such as anti-government feeling. They are uncertain about how strong the trend is, but recognize that it has the potential to cross traditional political lines and erode what appeared to be firm support.

It should be noted that a big factor in members' decisions to act on these concerns may have been the relative unimportance of the OCR legislation. As a representative of the Speaker's office noted, "compared to the other legislation they (Members) have been working on this session (OCR) just wasn't all that important...These people have had to cast a lot of unpopular
votes recently...you can't ask them to go against their constituencies every time they step on the floor." In short, members felt they had already had to do a great deal at "reeducating" recently. They did not need yet another issue to do that on, and OCR was unimportant enough to sacrifice.

This raises an important contextual determinant of voting behavior. Many of the Members' offices that I talked with felt a need to "balance" their votes. For example, one office noted, "we voted for CommonSitus so we had to vote against Humphrey-Hawkins." The theory behind this voting behavior is to maintain good relations with all sides. OCR, coming after the passage of Humphrey-Hawkins and a number of other tough votes provided an occasion to "give one to business," or to the more conservative factions in a district. In some cases, this was necessary in order to "neutralize" them, which is to say, discourage them from launching a strong opposition or contributing heavily to an opponent. In other cases, it was to maintain their support or even to gain some support (although this latter possibility seems slim). This same tendency to balance votes is reflected in many Members' attempts to keep all their group ratings around 50%.

There were, however, a number of Members who were under similar political pressures as those in the earlier case-studies but decided to vote in favor of OCR. I interviewed a sample of eight of them in order to determine (1) what sorts of pressures they were under, and (2) why they were able to over-
come these pressures. I also hoped that they would provide some information on the kinds of electoral and special interest pressures which all the Members were under. Of the list, (which was collected from Ralph Nader, Gene Karpinski, and Joe Crapa) six were Republicans and two were Democrats. The reason for the lack of Democrats was because it was difficult to determine which Democrats who voted for the bill were under severe pressure. The following are summaries of some of the interviews.

**Jim Mattox (D-Texas):** Mattox is the first moderate to liberal Congressman from a district which traditionally elected very conservative Democrats and traditional Republicans. A freshman, Mattox did not have to run against an incumbent and still only obtained 55% of the vote in the general election. His district is by no means secure.

Mattox encountered heavy pressure against OCR. His office received a "massive" number of letters opposing the bill from all kinds of groups, and he was heavily lobbied. Despite the fact that he has been associated with the consumer movement before (having taken on the public utilities in Texas over the cost of inter-state natural gas) and generally favored the bill, his aides indicate that he would not have voted for it if it were not for heavy pressure from the leadership.

Mattox is currently head of the 95th Caucus and aspires to be in leadership. He is naturally talented as a political
organizer and has been active in getting members of the 95th ready for the upcoming election. According to his staffer, "the leadership made it clear that the vote was important." Voting with leadership when most of your colleagues vote against is certainly the kind of behavior that will win Mattox some gold stars. But his staffer warns, "The vote is going to hurt us...I don't think it will cost us the election, but it will hurt...We were hoping it wouldn't come up."

**Wyche Fowler (D-Georgia):** Fowler was the only member of the Georgia delegation to vote for OCR. His district adjoins the district of Elliot Levitas, a member of Government Operations, and OCR's most bitter foe. He was elected in a special ballot to fill the seat vacated by Andrew Young when he joined the Carter administration, and enjoys at best a shaky plurality because the rules of the election required all candidates to compete as a pack. He, like Young, is fairly liberal, but he did not enjoy the support of blacks during the election.

Not surprisingly, Fowler encountered heavy pressure from all the usual sources. Nevertheless, he decided to vote for the bill because "We thought it had been sufficiently weakened." He felt confident that he could reeducate most of those who had written in opposition to the bill. Those that he couldn't, the affluent whites who live in the suburbs, were not part of his winning coalition and were not likely to become part of it. The fact that this district is in central
Atlanta, is comprised of 44% blacks, and has generally backed liberal stands in the past, was undoubtably a major factor in Fowler's ability to stand up to pressure.

William S. Cohen (R-Maine): Best known as a Republican member of the House Judiciary Committee who voted in favor of impeaching Richard Nixon, William Cohen has a state-wide reputation and has won his last two times out by almost three to one margins. This time, he is running for Governor. Like most other Republicans, he encountered heavy pressure to vote against OCR. But Maine has no large business, and though small business lobbied hard, it was relatively simple for Cohen to explain to small business that OCR would not effect them, and might even help. His aide notes, "Most people hadn't read the bill. When we showed it to them, most people understood the vote."

Equally important, as one aide noted, was the fact that "business had no place to go." Maine is an odd state in that both its Governor and its two Senators are Democrats, and both its Congressmen are Republicans. This came about because of a redistricting plan that split the Democratic core of the state in half. Statewide, Maine is evenly split between Democrats and Republicans (Carter and Ford each got exactly 50% of the vote there in 1976)...and Cohen's opponent is a Democrat who is a long-time supporter of OCR. Thus, in addition to having no fear of losing supporters, Cohen managed to remove a potential campaign issue by voting for OCR. His only fear
is that the vote might hurt his campaign contributions, but according to his aide, that is not likely to be a major problem--particularly since the bill failed. His aide notes, "He went into the vote waiving. . . . The fact that the bill failed made the vote easier."

Cohen is a moderate, and has voted for OCR in the past. His aide indicates that although he encountered some direct pressure from other House Republicans, "they did not expect much from him."

Carl Purcell (R-Michigan): If there is one member of Congress who deserves pity because of his district, it is Carl Purcell. Purcell's district, which includes the University of Michigan and a number of Detroit suburbs, is an even split of liberal Democrats and moderate to conservative Republicans. As a result, since its creation in 1972, the elections in this district have been extremely close. Purcell, a freshman, was elected in 1976 by only 348 votes.

Purcell's strategy to deal with the district is about what one might expect: he votes a middle line, spends enormous amounts of time in the district, and devotes an extraordinary amount of resources to communicating with the district. Last year, he voted for Common-Situs Picketing, but he voted against Humphrey-Hawkins this year. Because of his Common-Situs vote, his staff indicates that most hard core Republicans have already turned against him. More moderate Republicans have already forgotten the vote. The fact that Purcell has
no opponent in the Republic primary indicates that his logic was probably correct.

Purcell's principal thrust has been to try to "neutralize" the forces operating in the district through extensive contact politics. His A.A. is back in the district working with community groups. He sends frequent mailings, and responds to mailings with initial responses, follow-ups and even second follow-ups in some cases. He was pressured heavily by all sides on OCR. His office received 1000 nickels from PURG groups at the University of Michigan, volumes of letters from businessmen and automakers, and direct contacting by the AFL-CIO and the Boilermakers unions.

Purcell's vote can be attributed to two factors. First, as his L.A. notes, the PURG groups were active in campaigning for and watching the legislation. Thus instead of the typical situation where business is the attentive constituent, this time pro-OCR constituents were more attentive. Because Purcell is actively trying to befriend the PURG group and labor, this vote was particularly important. He had little to fear from the right since the Common-Situs bill would have lost him all the votes and money he was likely to lose. He had a great deal to gain by befriending labor and PURG.

Second, Purcell is only a freshman, and according to his L.A., he usually follows Paul McCloskey's votes. McCloskey backed the compromise and apparently influenced Purcell to go along.
From the above case studies, we can isolate a set of political determinants of voting behavior which is consistent with our hypothesis that Congressmen's voting behavior can be explained by the reelection motive. Among those who fulfill our criteria of having tight districts but who have voted for OCR, one of the following factors seems to have had an impact:

(1) a recognition that those who would be alienated were not part of the candidate's original or potential winning coalition, or

(2) a challenge from the left or by a supporter of OCR, hence the Congressman is not in jeopardy of losing his winning coalition, or

(3) more or closer observation from needed or desired votes on the left, or

(4) a district in which the anti-government issue is unlikely to be salient.

Frequently, more than one of these factors occurred within a single district. Beyond these, a general predisposition to favor the bill seems to enhance the likelihood of a positive vote, although it alone is not a sufficient condition to vote for the legislation.

We found one exception to this pattern: Jim Mattox. He was the only member contacted who chose the House influence goal over the reelection goal. I have attempted to show what personality characteristics are responsible for this
choice. It is important to note that even here, Mattox does not think the choice will cost him the election, it will simply cost his support. This raises the proposition that Members choose the reelection goal first, and the general support goal second. They are willing to sacrifice some general support for other goals if the other goals are sufficiently important, but are unwilling to endanger the reelection goal under any circumstances. (Given leadership's preference for Members in solid districts, this strategy may ultimately be self-defeating.) It also seems likely that less astute politicians—like many of Mattox's colleagues in the 95th class—are unable to separate the general support goal and reelection goal as accurately as Mattox, and thus tend to be more prudent.

Current Congressional studies fail to refine the distinction between reelection and general support goals adequately. Fenno and Mayhew, of course, refer only to reelection goals. Kingdon attempts to refine this framework by changing reelection to "district support" but they are not the same. Members, as we have seen, are sometimes willing to give up some general support if another goal becomes very salient. They are almost never willing to give up the reelection goal. With further research, we might expect to gain some insight into the question of when Members are willing to give up some general support by looking at (1) the individual Member's ability to separate general support from reelection support and (2) Members' concerns about their reelection margins.
Given the hypothesis that reelection and general support motives were the primary determinents of Congressmen's voting behavior, I was particularly interested in explaining why the sophomore class, which presumably contains a large number of marginal districts, with challenges from the right, voted more than two to one for OCR while half of the freshman class, which has fewer marginal districts, voted against OCR. Interviews with Joe Crapa, Sue Hanible, Peter Barash, a few freshman offices, and a number of other observers, turned up the following points.

First, while the sophomore class has a number of objectively more vulnerable seats, the freshmen feel more vulnerable. They are uncertain of how to use the powers of incumbency, they lack personal constituencies, and their offices tend to be highly disorganized. They are still reacting to problems, and have not learned to take the initiative or to effectively reeducate constituents. They are also less willing to sacrifice general support goals, and are less able to separate general support from reelection support.

Second, they are less adept at evaluating inputs. More experienced and secure Congressmen are more likely to ask, "is x belief really widely held," "is it held by my constituency," or "are these people who voted against me," "are these potential votes or are they so far removed that I will never get their vote," and so on. A less experienced Congressman reacts more quickly to any popularity indicators particularly when informed
opinion runs in only one direction as it did on OCR.

Third, the freshmen have a tremendous sense of institutional attachment. They are more oriented toward the status quo. Unlike the 94th caucus, the 95th is not generally composed of mavericks, they do not come out of the consumer movement and they were elected at a time when that sort of orientation would have been less popular than in the post-Watergate era. They instead ran on the anti-government stand that Carter was elected on, and thus found it more imperative to respond to the anti-government symbolic associations that the bill evoked.

Fourth, there is a high percentage of Southerners in the 95th caucus. This group tends to react en mass against big government issues.

And finally, the 95th class does not get along well with the leadership. For the most part, although they came up through the regular Democratic channels, they feel little attachment to leadership, tending instead to vote with their own caucus. The ill-feeling between the 95th and the leadership appears to be mutual.
The New "Independents": Contextual Changes

In their analyses of the OCR vote, many magazines and newspapers referred to a large though ill-defined group of "independent" Democrats as responsible for the failure of OCR and the weakening of leadership. These Democrats are portrayed in numerous articles as "thinking for themselves" and making their own decisions on legislative issues. Another way of approaching this new "independence" may be seen in Fortune Magazine, which notes, "There are more power bases on the Hill than ever before. Everyone has a piece of the rock...There are no permanent friends and no permanent enemies...There are only permanent interests."

There can be little question that Congressmen are more independent than ever before. Congressmen are, on the whole, brighter, better educated, and more likely to do their own thinking. But the above section indicates that independence is not quite what it seems. Members appear to be more independent of leadership--but in a sense they are less independent of the influence of their constituency and powerful private interests. They are less able to act on goals other than or opposed to the reelection goal. Most important, they are less able to act on what may generally be favored by their districts or what they personally believe is important, but rather they are forced to react more to mobilized interests, (referred to hereafter as reactiveness).
As one business lobbyist noted, "We see Congressmen as essentially reactive--they are not capable of doing much without strong input."

This obviously has a tremendous impact on the ability of legislation like OCR to pass Congress since most of its support is passive while most of its opposition is active and vehement. Consider, for example, the following comments by Mark Green: "If they're really independent and willing to take risks, we can do better with them because we know we can make a better case on the merits of the issues. It's when we're dealing with people who are subject to constituency domination or campaign fund pressures that we lose." One committee aide said much the same thing in accusing the freshmen class of being "a bunch of political whores." The need to react not only takes issues away from the merits, but away from general constituencies and towards specific interests.

In short, there had been a very clear breakdown in the ability of leadership to obtain votes, along with the emergence of a group of "independent" Democrats who, in fact, are quite the opposite in many ways. Although they are independent thinkers, they appear to be swayed more easily by powerful outside pressures. They react to the group whose interest is most focused and most related to their reelection motive. The following section will analyze some of the changes in Congress that have brought about this situation, and explain
how these contextual changes interacted with the political pressures faced by Congressmen to produce the failure of OCR.

One of the most publicized aspects of the failure of HR9718 was the leadership's inability to gain a sufficient number of democratic votes to pass the legislation. As Ralph Nader noted, "it used to be that the Majority Leader could go into the well and pick up 20 votes. He just can't do that anymore." Tip O'Neill made his position on OCR abundantly clear to all Members. He addressed a joint meeting of the 94th and 95th caucuses—the first time he has ever specifically requested such a meeting. He made a strong floor speech for OCR—also a rare occurrence. He personally contacted Members, and sent out numerous letters and whip notices relating to OCR. And, of course, he did his best to prevent the bill from failing by pulling it from the calendar in November. As Mark Green notes in an article in The Nation, Tip "had worked intensely compassionately on behalf of the bill....Having thus committed his prestige, the defeat was especially wounding to O'Neill."

This was not the only recent defeat leadership suffered. Common-Situs was defeated, Humphrey-Hawkins was badly diluted, the rule on the campaign Finance bill was defeated, and so on. Indeed, the general impression throughout Washington is that it has been a very bad two years for leadership. At a meeting of Whips the day after the OCR defeat, O'Neill exploded, believing that a continuation of this lack of unity would
lead to collective calamity in November. It seems unlikely that his advice was taken to heart.

The decline of leadership and the increasing "reactiveness" of Congressmen are highly related trends. First, they reinforce each other. The less powerful leadership becomes, the more Congressmen will learn to take other behavioral cues. Similarly, the more Congressmen pay attention to reelection goals and find themselves forced to react to external pressures, the more leadership's ability to gather votes declines. Because of their correlation in this way, they share many causal factors. However, the decline of leadership has a number of causal factors and sub-trends which are peculiar to it. They are listed below with a brief description of each.

(1) The House Obey Reforms: These reforms have weakened the power of the Speaker. Members no longer have to worry about funds to run their offices, computer time, and the like. As one office notes, "The Speaker is no longer the dictator that he was ten years ago."

(2) Pervasive Negativism: Whereas Members used to accept what leadership wanted except when strong factors intervened, the situation is largely reversed now. As one aide noted, "Now when someone tells a Member to vote one way his first reaction is to ask why." The downturn of the economy, a post-60's environment (failure of the War on Poverty, etc.), and a post-Watergate cynicism are undoubtedly related to this negative attitude which seems to pervade both Congress and the country.
There is less of a feeling that Congress can accomplish anything (see New York Times article 3/27/78) and less confidence that legislation is likely to be productive. As one aide noted, "The New Deal notions which Tip represents are under fire." Leadership, and indeed all institutions have been subject to increasing scepticism which has limited their ability to act decisively.

(3) Rejection of authority: Along with increasing negativism, there is rejection of authority, particularly among younger members. Part of this, I suspect, may come from the fact that the role and job of the Congressman has grown so enormously. Although individual Members do not have any greater objective power than they did, they make many more individual decisions. Thus a freshman no longer feels as though he is utterly powerless. He makes speeches, is actively involved in committee work and so on. This may also relate to the fact that Members are now smarter and younger than they were before. They are less willing to be subdued or to accept their role as it is handed to them.

(4) Younger members in Congress are less strongly affiliated with the party (with the exception of some Members of the 95th who come out of the party). In general, party affiliation is less in vogue. But more important, many of the members come from marginal districts where the support of the party is the last thing they need or want. Clearly, having O'Neill or the Vice-President campaign for a Democratic candidate in
a Republican district is likely to do more harm than good. Thus, these members feel less affiliation with the party to begin with, and feel that one of the major benefits the party has to offer, campaign resources, is of little electoral value to them.

(5) Antipathy for arm-twisting methods: The combination of the above factors seems to have lead to an era of more subtle pressure tactics. In the same way that business would no longer overtly threaten Members with a loss of campaign contribution, the Leadership is less likely, even if it had the leverage over a Member, to use it overtly.

(6) The power of the leadership was not enhanced by what Mark Green terms Carter's non-coattails. Members have little to gain from any association with Carter.

(7) The decline in the importance of Democratic funds for campaigns: While the amount of funds in absolute dollars has not declined, the total amount needed to run a campaign has skyrocketed and thus the input from the party has become a negligible percentage as the percentage from business grows. This has a very direct impact on the powers of the Speaker himself since he, in essence, has the power to distribute these funds.

Thus the Democratic party in Congress has lost much of the glue which held it together. Members enter Congress with a different attitude. They reject authority, they are more cynical, and they do not associate themselves as closely
with party policies (with the exception of some members of the 95th). Perhaps more important though, the party is less capable of enhancing their reelection goals. Their money is insufficient, the value of symbolic association with the party is, at best, non-existent, and the figure at the top is in trouble.

In addition, it seems likely that Members are simply less interested in obtaining House influence. First, there may be some question as to whether House influence, in the old sense of the word, really exists anymore. As we noted, the powers of the Speaker have decreased. Leadership has become almost a club for super-organizers. Second, there may be a perception that House influence is no longer obtained by going along with leadership. Third, in accordance with Fenno's "Congressmen and their Constituencies," Members may recognize the extent to which House influence detracts from the Member's electability. Fourth, as I noted above, Members feel that they are more important as individuals now that their roles have expanded. This may lessen the desire to get involved in other responsibilities. And finally, Members are younger, brighter, and more ambitious. They may be less anxious to stay in the House and more interested in seeking higher office.

Under these circumstances, it should not be surprising that Tip's call to arms has gone unheeded. But the party has been further weakened by what I have described as an increased concern with reelection goals. As we have seen with OCR,
reelection goals and House influence--party unity goals are often directly at odds. Peter Barash notes, "Sometimes you have to bleed a little to vote with the party." But Members seem increasingly concerned that voting with the party will be truly damaging. And, as I mentioned earlier, they are less willing to forfeit their previous election margins to vote with the party.

In part, this may stem from Members' perceptions that they are more vulnerable. Because of Watergate and the Carter election, there are a lot of normally Republican seats held by Democrats. These Democrats must continue to appeal to voters who are either marginal Democrats or Republicans while trying to preserve Democratic support. Many members noted that the way they accomplish this is to split their votes and try to keep all their ratings about even. The Carter popularity slide, combined with an off-year election makes these Members still more prudent.

The large number of younger Members undoubtably plays into this also. As we noted earlier, these Members may be less certain about where general support ends and reelection support begins. They are cautious politicians also because they do not know just how able they will be to use the tool of incumbency to "reeducate" their constituents and because they have a very small personal constituency.

These fears are also reflected in younger Members' concerns that they do not have grass-roots support. For the
most part, they have been elected through the use of media, direct mail, and other non-contact methods. As a result, they fear that a single voting decision could produce a wave of criticism in the media that could severely weaken their support. It is easy to see how such a fear would coincide directly with business techniques of using mass-media and newspapers in the attack on OCR.

There is some question concerning the rationality of these fears. Numerous voting studies indicate that constituents do not react to Congressmen's voting behavior and choose other cues on which to base their votes (see for example, Campbell, et. al., *The American Voter*, Verba and Nie, *Participation in America*, and Sullivan and O'Connor, "Electoral Choice and Popular Control of Public Policy: The 1966 House Elections," in *The American Political Science Review*, Volume 66, 12/72). On the other hand, V.O. Key's classic study, *The Responsible Electorate*, and other more recent studies give us some reason to suspect that there are outer constraints beyond which a Member must not stray. Given the salience of the anti-government issue, and the importance attached to it in the media, it is conceivable (though unlikely) that an "incorrect" vote on OCR could be beyond these constraints and that the media's attention to the issue could erode even a strong political majority almost overnight.

The nature of the OCR issue also enhanced Members' perceived vulnerability. The anti-government issue was
spreading rapidly, and was widely associated with OCR. Even generally liberal newspapers were editorializing against OCR. Once an exclusively Republican and southern Democratic issue, anti-government sentiments seemed to be catching on among more liberal and moderate voters. This undoubtably made it more difficult for Members to determine exactly how deep OCR opposition ran, and less willing to try to separate general support from reelection support. Given a lack of input favoring the bill, and the fact that the bill was not seen as all that important, they were still less willing to take that chance.

Not surprisingly, Members vary widely on the degree of vulnerability they are willing to accept. Some are more willing to give up general support than others in exchange for other goals. Some are simply more astute than others and realize where the line between general support and necessary reelection support lies. And others, in an attempt to ward off potential challenges or avoid handing an opponent a potentially dangerous issue, have little tolerance for any vulnerability in certain issue areas.

This raises the question of where the two trends we discussed earlier--an increasing sensitivity to reelection goals and increased "reactiveness"--differ. Increasing sensitivity to the reelection goal implies a serious objective concern with the loss of an election. Reactiveness, on the other hand, stems less out of fear of defeat than an interest
in neutralizing or appeasing powerful pressures--an attempt to ward off potential vulnerability. I suspect that in many cases, concern with general support goals and margins of victory come under this heading, (e.g., a strong electoral margin will generally discourage serious candidates from challenging the Member two years later).

We see many example of "reactiveness" in this study. Particularly in marginal districts, Members seem to devote their time to neutralizing forces within their districts. They make conscious efforts to keep all their group ratings about even. They deny their associations with the party. And, in the case of OCR, they concentrate on taking issues away from opponents. This, I suspect, is one reason why many Democrats have usurped the anti-government issue from Republicans. Ultimately, of course, reactivism relates back to reelection motives since neutralizing potential threats is one way of applying this concern. But it is important to see reactivism separately because it frequently explains behavior that cannot be understood by applying pure reelection motive (e.g., cases where Members are not objectively threatened.)

In addition to the increasing perceived vulnerability of Congressmen and the decline of party unity, the major force behind Members' increasing reactivist tendencies is a sense of being placed under greater pressures than ever before. To some extent, this increased feeling of pressure stems from having a Democratic President in the White House. Under Nixon
and Ford, business virtually abandoned Congress in favor of lobbying the President, where their luck was understandably better. Fortune notes, "When Carter and a Democratic Congress come to power—a populist President and a spend-thrift majority on the Hill—business saw, or thought it saw, both its profits and its values swirling down the drain. To avert such disasters, business has poured money and resources into Washington on an unprecedented scale." (p. 34). And most of these resources have been directed at Congress where because of Congressmen's short terms, well-defined constituencies and lack of public financing, business has been able to get a more sympathetic ear.

In Chapter II, I discussed some aspects of business's growth of power in Congress. In particular, I noted the Growth of PAC's, the proliferation of private lobbies, the renewed organizing powers of the Chamber of Commerce, and perhaps most important, business's ability to mobilize grassroots support. All of these vastly increase the pressures which members must face in making decisions. The following quote from the New York Times's recent series on Changes in Congress illustrates the point: "Some Administration officials and Members of Congress believe they are standing in the middle of a great free-for-all effort to exercise political leverage on the Federal Government. There have always been lobbying pressures; the difference now is that there are many more activists sounding off on more issues."
"At the same time," the Times continues, "the number and diversity of groups putting money into political campaigns has expanded, with much of their funds coming from one-time contributors to the parties."^8

Pressure from the district itself is also greater than before. Press coverage of Congressional decisions has improved. Members fly back to their districts more often and listen to constituents. Their greater ability to service constituents using computers, etc., puts constituents closer to the ear of members. In sum, the member is now more than ever aware of what is being said about him in the district and more susceptible to expressed opinion.

More than just from increased pressure, Members' reactivity also seems to come also from their rapidly increasing workload. The Times notes, "The Growth of the Congressional workload can be measured by a few facts. About 100 recorded votes were taken in each session 15 years ago, as against 706 last year. In an eleven hour day, a Congressional Committee reported last year, the average Member has only 11 minutes free to him. For more than one third of that day, the Representative is scheduled to be at least two places at once."^9 There is no time to drum up support for a proposal when it comes spontaneously, no time to carry out "reeducation" programs, and rarely even an opportunity to develop sources of district opinion beyond those which come directly to him. This is particularly true for members who are in tight reelection
races, but it is just as true for very secure members who have time consuming Committee assignments. 10

Finally, perhaps there is what Ralph Nader terms, "A lack of political imagination" among House members. It seems likely that given the amount of misinformation about OCR that circulated in the constituencies, an imaginative House member could have turned the issue around and severed it from its symbolic attachment with the anti-government issue. Clearly, there was enough residual bad feeling toward business in the constituencies that could have been symbolically tapped if the Member chose to take a strong stand. The Nader organization even provided Members with the rhetoric in a neat, coherent package. In short, members took the easy way out.

Whatever the reason, there can be little question that members now see themselves much more as independent operators than ever before. They are no longer known as "the Democrat" or "the Republican." Because of their new means of communications with their district, they are much better known...more watched. They make their own decisions, they do not vote for a bill just because they were told to by leadership. They use their staffs, they call CRS, they call "consultants" from business. And they receive input from various lobbying groups. But they pay a high price for this independence. Lobbying groups are becoming increasingly adept at using grass-roots methods as the Democratic party loses its effi
as an organizing symbol. The lobbying groups know how to define the issues, and they have access to the media. The pressure is mounting as the techniques get more sophisticated and more lobbies develop. And now, with leadership weaker, it seems to be getting harder for Congress to pass any substantive legislation. Each "independent" Member is left to decide between his competing interests on his own. And in this situation, it is the group that can prove it has the support that carries the most weight. In essence, vehemance and resources become infinitely more important, and the Members' third goal, good public policy, gets the back burner again.
CONCLUSION
In the introduction, it was noted that OCR did not fail because of any single cause. Rather, its failure can be attributed to a variety of causal factors: some contextual, some having to do with the issue itself, and some relating to the actions taken by the various players in the drama. The fact that these causal factors tend to react upon each other and overlie one another makes the task of presenting an organized framework of causal elements all the more difficult. Nevertheless, it is possible to present some notion of how the various causes relate to each other. The diagram below represents such an attempt:
This paper has isolated factors at each point in the above diagram which have effected the Members' votes, and ultimately, the fate of OCR. At point one, the substantive arguments are developed. For the most part, these arguments did not go directly to Members (dotted line) but rather, were interpreted by the press, lobbying groups, and so on. These groups acted by arguing directly to Members, and by attaching symbolic labels to the bill. At this task, the business lobby succeeded remarkably and the Nader lobby failed. Rather than being a bill for the consumer, OCR became the "big government" bill — a bureaucratic monster. Some Members may tap into public opinion at this point, or they may wait for the definition to be reacted to by their constituents through letters, indirect contacts, and so on.

Chapter III has discussed the importance of constraining factors — most of which are contextual. Here, the Member considers both political factors such as an opponent on the right, a tight district, and so on; and institutional factors such as the importance of going along with Leadership or the President, the importance of House influence, etcetera. As we noted, political factors generally overran institutional in this case. All other factors are filtered through these (and in the case of political factors, other factors help to determine them), and the weight of earlier factors is largely determined by them.

From here, the Member's own predispositions come in. These dispositions include not only his attitudes toward the bill but his attitudes toward the inputs provided by constraining factors. For one Member, a call from Leadership is a strong constraining factor,
for another it is meaningless. Similarly, some Members (though remarkably few) may decide to discount political factors because of the importance of the bill. Predisposition can also be effected by factors such as momentum of the legislation (Ch.I).

OCR failed because of elements at each step of the diagram. At stage one, OCR had a few substantive problems. It created a bureaucracy at a time of tremendous opposition to big government. It also lacked the characteristics that would have aided Nader's attempt to symbolically align it with the interests of consumers. And it came on the wave of a few trends within Congress — eg. guilt about failure to oversee and the feeling that the need for the agency was alleviated by having a Democrat in office — that dampened enthusiasm for the measure. It also suffered from a variety of other "faults" which were responsible for the business lobby taking such an active stand against the bill.

At the second level, there was the rising power of the business lobby and the waning Nader lobby. Business has sprouted the capability of generating "grass-roots" support which increases both its influence on Congressmen through point four, and its influence through direct contacting. Its direct contacting influence is also enhanced by growing PAC's, more individual lobbies in Washington, and the involvement of top business execs in lobbying. Its indirect contacting has been aided by the resurrection of the Chamber of Commerce. And perhaps most important, its ability to redefine issues successfully has been enhanced by its connections with the press and, in the case of OCR, by the nature of the symbolic redefinition itself.
The redefinition was aided by the press, media, and a number of important personalities. Particularly significant were the Washington Post editorial, the Readers Digest article, the Jaworski letter, and coverage by the press of Members' early explanations of their opposition to OCR.

At the third stage were the symbolic associations themselves. These could not be invented but rather, had to be hooked into. Business was "lucky" in that the anti-government theme had grown so strikingly, aided by the Carter campaign. They were also "lucky" that some of the themes Nader attempted to hook into were fading, and Nader was unable to successfully link OCR with the still-viable "Consumer-Products-Safety" theme because of the nature of the legislation itself. Some Members picked up these themes directly from the districts — others waited to receive mail and contacting.

All of these factors fed into two sets of constraining factors and were interpreted through them. On the political side, Members frequently felt that the trends were substantial, and wished to avoid testing their depth. They made decisions regarding the political wisdom of a pro- or anti-OCR vote based on a variety of factors connected to the reelection motive. If the anti-government trends seemed potent among their reelection constituency, if they were likely to be an electoral issue or create an area of vulnerability, or if they were being closely watched from the right, then a vote against seemed likely. If the input they received seemed unrelated to the Member's original or potential reelection constituency or the anti-government issue was unpopular in the district, or they were being more closely watched from the left, then Members felt free
to consider other factors. The importance of political constraining factors has increased considerably in recent years due to what was termed an increasing emphasis on reelection goals and "reactiveness". These trends are caused, it was hypothesized, by increasing perceived electoral vulnerability and increased external pressures on Members.

Balancing this upturn in the importance of political constraining factors was a down-turn in the importance of what have been termed "institutional" factors. Leadership and party unity have declined markedly, and the President has had little influence. As a result, factors which might have constrained an anti-OCR vote failed to operate effectively except in a few cases.

These factors fed into the predispositions of individual Members. We noted that those who personally were more predisposed to the bill would be more likely to find latitude in political constraints. More conservative Members tended to react almost automatically against the bill. Members who were in Congress longer tended to analyze their reelection constituency better. Members who were particularly interested in being in leadership gave more weight to institutional factors, and so on.

If we were to try to answer the question, "What changed" succinctly, we might say that OCR failed because of the following combination of trends: (1) Nader is weaker and business is stronger, (2) the age of righteous indignation has given way to an age of anti-bureaucratic rhetoric, and (3) Congress, through a variety of political and institutional changes, has given these changes a chance to take hold. This combination of events has great significance in terms of
the future behavior of Congress.

First, it means that it is getting harder to pass legislation. Because there are many aspects of any one piece of legislation to attack, the chances of opposing legislation have always been greater than supporting it. Added to this is a breed of Congressional paralysis brought about by the increased perceived vulnerability and increased pressure compounded by strong anti-government attitudes in the population.

The weakening of leadership of course, makes this problem still worse. Without leadership, the variety of new pressures facing Members pull them in widely divergent directions and there is no force to bring about compromise or consensus. In addition to the OCR legislation, the failure of the rule on campaign financing is a good example of this increasing dilemma.

The ultimate result of these trends is that Congress, and indeed, the Nation is getting more conservative. Congress is less able to pass legislation which will disturb vested interests or bring about major reforms. It is less able to create new programs for economic or social improvements. It is more likely to dilute what little legislation is allowed to go through. This trend favors currently established interests like business, whose major interest is in preventing new legislation rather than in gaining new, more favorable legislation. It works against the interests of the currently unmobilized, who lack the resources and organization to gain input to Congress in the forceful ways that business has developed. It is particularly ironic that OCR, a bill to represent unrepresented interests, died because the Congressional process itself was so closed to those interests.
The hope for turning around these trends lies in a combination of events. First, an abatement of the current anti-government attitude. This seems likely to develop as Congress becomes less and less responsive and obvious social and economic problems go unattended. Second, the resurrection of some form of central leadership within Congress or directed at Congress from the outside (hopefully the former). This seems likely to develop only if Members recognize this need, and are able to get out from under direct pressures long enough to put such leadership together. And finally, the evolution of a Citizen's Lobby (in the true sense of the term) which is capable of matching the tools of business, particularly at the grass-roots level. Given that individuals' primary identifications of themselves are usually more parochial, and their identification as "a citizen" is far down the list, the development of such a force will be, at best, difficult. As George Condemus noted, "Business has done a terrific job organizing an effective lobby. What remains to be seen is whether effective techniques can be developed to fight them."

This is what Nader and Common Cause are just beginning to attempt in going to the "grass-roots". Given the current political environment, success may still be a long way off.


Chapter I Notes


8. Ibid.

9. Ibid.

10. Ibid.

11. Ibid.

12. Message from The President of the United States transmitting Proposals to Increase the Consumer's Voice in the Government, 6 April 1977 in House Report, p. 27.


14. Original source -- see Appendix.

15. Chuck Fager, "Why Nader is Mad at Schroeder and Congress," Straight Creek Journal, 12 January 1978 (referred to henceforth as SCJ.)

16. This subject will be explored in greater depth later in the paper.

18. Letter from Bert Lance to Honorable Thomas P. O'Neill, Speaker of the House of Representatives transmitting proposals for consolidation of existing consumer agencies, 1 August 1977 in White House Press Release of same date.

19. Fortune Magazine, 27 March 1978, p. 56. The comment is quoted anonymously in Fortune but credit for it was taken by one of the business representatives interviewed.

20. Mark Green, "Why the Consumer Bill Went Down," The Nation, 25 February 1978, pp. 198-201. This article was very influential in my thoughts regarding OCR, and has had an impact throughout the paper.

Chapter II Notes


11. One problem to watch for here is that I was asking for reasons for voting behavior beyond what I had already heard. Thus many aides may have felt compelled to dredge up deeper reasons.

12. This is not to be confused with the direct-mail network put together by Robert Vigione. This network sends solicitations to members of right-wing organizations asking for contributions in exchange for the issuing of "canned" letters to Congressmen (See Appendix).

13. A business representative detail an attempt to approach The Post and indicates that it was rejected.

15. This comment was quoted by six different sources. Clearly, it is out on the House gossip line, thus its accuracy is questionable.

16. I suspect this is a vastly understated figure. The two sources I am using (*Dunn's Review* and *Fortune*) disagree substantially on all figures including 1975 contributors of individual PACs.


21. Sentry Insurance Poll, p. 44.


25. It should be noted that because of this problem, Mader has decided to take a more active role in politics. As Mark Green notes, "We've found that it isn't enough for us to be right on the merits of an issue here in Washington. To get Congress to act, especially when a vote is going to be close we have to have pressure coming in from district." (*SCJ*, p. 1.)


Chapter III Notes

1. This paper relies heavily on the ideas of the following works: Richard Fenno, Congressmen in Committees, Boston: Little, Brown, 1973; Lewis Froman, Congressmen and Their Constituencies, Chicago: Rand-McNally, 1963;


3. The following case studies rely heavily on information from the Almanac of American Politics for information about the Member's standing in his district. In the interviews, I attempted to frame questions which reflected knowledge about the districts, and obtained feedback on the accuracy of the Almanac articles.


7. Ibid., p. 199.


10. See Fenno,
APPENDIX I: THE INTERVIEWS

In all, more than 35 interviews were conducted over a four week period. The method of contacting varied based on the position of the person to be interviewed and the time available. Generally, I called the respondent and attempted to set up an appointment to see him/her. In Congressional offices where I did not know the name of the L.A. who handled the legislation, I called and asked the receptionist for the name of the L.A. and then either asked to speak with him or called back asking for him/her by name.

Only one person contacted refused to be interviewed, and all but three agreed to a face to face interview. (Those three were all minor characters who simply felt that they could explain their vote over the phone). See the introduction for a more complete explanation of sample selection, interview duration, and interview format.

In all cases, I prefaced the interviews by explaining that nothing the respondent said would be attributed to him/her. Those few times in the text where quotes are attributed stem from interviews in which the respondent explicitly indicated that his/her comments could be used. There were two cases in which the respondent did not wish to have his name included in any part of the paper, hence the following list of interviews does not contain their names.

In order to further ease the minds of those I interviewed, I attempted to take only minimal notes during the interview—usually jotting down five or six phrases in the course of a one hour interview. After each interview, I spent about an hour reconstructing the conversation and putting together notes. As a result, many of the quotes included here may not be worded exactly as the respondent stated it, although they are all accurate in general content.
## Interviews

<table>
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<tr>
<th>House Members</th>
<th>Staffer interviewed</th>
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<td>Schroeder</td>
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<td>Wirth</td>
<td>David Leach</td>
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<td>Mccloskey</td>
<td>Heather Peterson</td>
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<td>Foley</td>
<td>George Condemus</td>
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<td>Jacobs</td>
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<td>Giamo</td>
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<td>Mattox</td>
<td>Carolyn Blades</td>
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<td>W. Cohen</td>
<td>Susan Collins</td>
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<td>Carl Purcell</td>
<td>Diane Drago</td>
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<td>Chalmers Wylie</td>
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<td>Neal</td>
<td>Michael Ryerson</td>
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<td>Jim Logan</td>
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<td>Rose</td>
<td>Rick Castens</td>
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<td>Volkmer</td>
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<td>Pritchard</td>
<td>Herb Stone</td>
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<td>Rosenthal</td>
<td>Peter Barash</td>
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<td>Solarz</td>
<td>himself and staff</td>
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<td>Fish</td>
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**Business Lobby**
- Jack Mills (Tobacco Institute)
- Emett Hines (Armstrong Cork; C'man Consumer Issues Working Group)
- Mark Schultz (Chamber of Commerce)
- (two additional who wanted their names withheld)

**Other Participants**
- Ed Davis (Haverford Grad. and DSG employee responsible for OCR)
- Susan Hanible (Staff chief of 94th Caucus)
- Joan (Staff chief of 95th Caucus)
- Miss Larson (Speaker's office)
- Joe Crapa (former head of 94th Caucus)
- Mary Kirchner (Peterson's office)
- Gene Karpinski (Chief Staff Attorney for Public Citizen Congress Watch)
The Format

As I noted in the introduction, the format of the interviews was loose. Rather than asking specific questions, I attempted to guide the conversation into areas of interest. This was particularly important because I was unsure of what sets of factors had the most impact on a Member's vote, or what elements a given lobbying group found most important. Since most of those interviewed tended to be naturally cautious at the beginning of the interview, letting the conversation carry the interview was particularly important. During the conversations, I often used bits of information gained in earlier interviews to guide the conversation to the level I desired.

I did, however, go into each interview with a very broad, but nonetheless well defined set of topic areas I wished to explore. Included below are some of the questioning guides I used.

Questions for Business Lobbyists:

1. Overall impression of how bill was killed
2. Role of grass-roots organizing
3. Slogan of anti-gov't---why so popular? Helped?
4. Why more successful than nickel campaign?
5. Compare to lobbying against labor
6. Types of Congressmen considered swing votes?
7. How determine swing votes?
8. Election year helpful?
9. Impact of:
a. House reorganization
b. Carter
c. timing--pick up votes back in district? Get C'man at home?
d. timing--Members owed business one?
10. strategy--House v. Senate
11. most effective methods?
12. division of labor between NAM, Roundtable, Chamber, etc.
13. strategy re: compromise
14. structure of district mobilization
15. business stronger in Congress?
16. changes in Congress helpful? which ones?
Barash and Karbinski:

1. How redefined away from truth?
2. Impact of freshmen, "independents," marginals, etc. Other cleavages?
3. Backing of President—was it useful? why?
4. Impact of Nader—Nickel campaign—is he slipping?
5. Why back on calender? Who wanted it up?
6. The "new anarchism"—Impact (Anti-gov't feeling)
7. Tip's problems—how effective—how divisive for leadership?
8. Committee action
9. What did it look like in Senate?
10. House reforms
11. How close really? November?
12. Which groups of C'men did you lose?
13. Election year—impact?
14. Timing—November—February—time to give one to business?
15. Floor strategy
16. Business more powerful?

Obviously, in both these cases, the respondents did not know about these lists. I did not ask these as questions but watched out for them in conversation. I did start with first question as a way of opening the conversation. A great deal of what I actually obtained from these interviews was not contained in the probe questions.

The questions for House staffers were even looser. Most of the questions represented attempts to tie in district characteristics (which I got from the Almanac of American Politics) with the vote.

Profiles in Courage

2. What makes you different?
3. Standing in district—how did district feel?
4. How are you going to explain vote?
5. Was compromise a factor?
6. Have you publicized vote?
7. Fear of losing contributions? Votes?

Nader Attackees and other finks

1. Problems with Nader? No quids? resentment over going to district? lack of understanding? too stiff?
4. Situation in district?
5. No big gov't? Was this really issue? Why couldn't House put foot down?
6. Member a new "independent"? Relate structure of House?
APPENDIX II:
ASSORTED DOCUMENTS

Congress Watch Nickel Brochure P.1
Congress Watch Examples of OCR Functions P.2
Example of direct-mail solicitation p.3
Initial Target list for Nickel Campaign p.4
Letter from Regulators to Rosenthal P.5
Jaworski Letter P.6
Example of "Canned" Editorials (from Nader) P.7
HR 9718 P.8
HERE ARE SOME SUPPORTERS OF THE CONSUMER AGENCY

President Carter
Ralph Nader
Consumer Federation of America
Common Cause
Friends of the Earth
United Auto Workers
American Association of Retired Persons
National Council of Senior Citizens

HERE'S WHAT YOU CAN DO

The House of Representatives passed similar legislation in 1975 by just nine votes. It may be as close this time when the decisive vote comes soon. Business opponents are spending millions to defeat the agency and to pressure Congress.

Will you spend a nickel? Will you let your representative know you'll applaud a pro-consumer vote, and not forget an anti-consumer vote at election time? You can demonstrate your power by

- writing your Member of Congress (Rep. _____, U.S. Congress, Washington, D.C.) and telling him/her to support H.R. 6805 and no phony substitutes.
- enclosing a mighty nickel,
- getting five friends to send in their nickel letters.

If you want to help more, contact: Congress Watch Nickel Brigade, P.O. Box 14198, Washington, D.C. 20014.

WHAT CAN 5¢ GET YOU?

A Consumer Champion in Washington

Send Congress a Message and Fight Big Business Millions

WHAT CAN 5¢ GET YOU?

A Consumer Champion in Washington

Send Congress a Message and Fight Big Business Millions

PUT ANOTHER NICKEL IN YOUR LOCAL CONGRESSMAN
Big business has thousands of lobbyists in Washington getting what it wants, including higher prices and profits. But who is fighting for the consumer? Congress is now considering legislation to create a consumer advocate in Washington called the Agency for Consumer Protection. It would cost about a nickel per American and represent your concerns about high prices, harmful products and dishonest business practices.

That's why President Carter, Ralph Nader and the Consumer Federation of America think this is the most important consumer bill before Congress. And that's why big business opposes it. They want to maintain their dominant relationship with federal agencies. However, they cannot come out and say that. So they misrepresent the proposed consumer voice.

They call it "another layer of bureaucracy." In fact, the proposed consumer agency will be a bureaucracy-fighter, prodding other agencies to be more efficient and responsive to consumers. If the big business community has a $1.7 billion Commerce Department to subsidize and promote its interest, American consumers deserve at least a $15 million defender, or about the equivalent of one hour of the Pentagon or HEW budget.

Corporate insensitivity cannot hide the very real savings of life and limb and dollars if there were an ACP. A consumer champion in Washington could have challenged:

- the Federal Aviation Administration when it allowed defective cargo doors on DC-10 planes—a failure that permitted the worst air crash in aviation history in 1974 when 346 died in a DC-10;

- the Federal Energy Administration when it permitted house heating oil prices to soar 5¢ to 8¢ a gallon in 1976, costing energy consumers an extra $800 million a year;

- the Food and Drug Administration when it approved the use of DES in "morning-after" birth control pills, despite evidence linking DES to vaginal cancer in the offspring of women consuming it;

- the Consumer Product Safety Commission when it failed to prohibit industry from manufacturing extension cords which burned children when put in their mouths.

Survey after survey shows widespread public support for this legislation. A 1977 Louis Harris poll revealed an overwhelming 63% to 17% majority for it. When he asked the public to rank various institutions according to their "ethics," of eleven institutions listed "Consumer Action Groups" ranked first and "Major Corporations" ranked 10th.

President Jimmy Carter says:

"I'm in favor of the establishment of the Consumer Protection Agency itself to focus the consumer's interest in one agency as much as possible."
EXAMPLES OF WHERE AN AGENCY FOR CONSUMER PROTECTION
COULD SAVE CITIZENS' LIVES AND DOLLARS

*FDA Does Not Warn of Dangers of Vaginal Cancer

The Food and Drug Administration routinely makes decisions affecting the
public health and safety. Most of these decisions are made behind closed doors,
with little or no opportunity for consumer participation. FDA has approved the
use of DES as a "morning-after" birth control pill, despite evidence linking DES
to vaginal cancer in the offspring of women taking DES during pregnancy. FDA does
not require that women be warned of this risk, even though the "morning-after"
 pill is not 100% effective.

*FEA Allows Heating Oil Prices to Skyrocket

In the summer of 1976, the Federal Energy Administration (FEA) removed
price and allocation controls from home heating oil. Despite evidence that
decontrol would cause prices to soar, FEA assured the public that the cost
of heating oil would increase only 2 to 3¢ per gallon. However, after
controls were removed, the price of home heating oil rose by 5 to 8¢ per
gallon, costing energy consumers at least an additional $800 million.

*HEW Permits Waste in Health Care System

Our system of health care tolerates incredible amounts of wasteful costs.
Unnecessary hospitalizations cost about $10 billion every year, and unnecessary
surgeries cost over $4 billion per year. For years HEW, with the power to
reduce substantially some of this waste, did nothing to require second surgical
opinions or other waste-trimming measures, such as pre-admission testing, which
have been shown to be effective in reducing costly overutilization without
sacrificing quality or care.

*Consumer Product Safety Commission Fails to Protect Consumers

Four years ago, industry designed a new extension cord to keep children
from being burned when they put cord receptacles in their mouths. It asked
the CPSC for help in imposing the design on every extension cord sold in
America. The CPSC has taken no action and cords still burn children.

*Cockroaches, Flies and Rodents in Food Processing Plants

The GAO in 1972 found that about 40 percent of food manufacturing plants,
which are regulated by the FDA under the Food and Drug Act, were operating
under conditions that were unsanitary or worse. This report and FDA's own
inspecting records, showing a general decline in food industry sanitation
practices, demonstrate why consumer expectations of clean food are so low.

*ICC Limits Competition of New Truckers

A small number of trucking companies have paid more than $80 million for
federal licenses in the last four years that theoretically they could have
obtained for less than $150,000 in license fees. As a result, consumers and
businessmen are overcharged for what they buy.
*HEW Fails to Enforce Fire Safety Standards for Nursing Homes

About 7,000 skilled nursing homes receive HEW Medicare and Medicaid funds. A GAO audit of 32 of these homes found that 23, or 72%, had one or more deficiencies with respect to fire safety regulations.

*CAB Turns Down Cheap Flights to London

CAB has not approved a new trunk carrier since its creation in 1938. In September 1974 CAB rejected an application by Laker Airways, a privately owned British airline, to fly regularly scheduled New York-to-London flights for $125 each way -- a little more than one-third the "economy" fare now charged by Pan-Am, TWA, and other members of the IATA, the International rate-fixing cartel for airlines.

*Defective Heart Pacers and the FDA

A 1975 Report by the Comptroller General found that the FDA did not follow its own procedure in a "life threatening situation" when it failed to investigate the cause of a recall of cardiac pacemakers by manufacturers. The common defect in the pacemakers was a leakage of body fluids through the plastic seal of the pacemaker causing short circuiting and the sudden speeding up or slowing down of the electronic heart pacing. The FDA did not independently establish how many deaths and/or injuries have been caused by this defect. To date, no standard has been issued by the FDA to deal with this problem.

*Interior Department Ignores Gas Producers' Withholding in '77 Winter

This past winter Americans underwent one of the harshest winters in memory, with substantial shortages of natural gas. According to studies by the Federal Power Commission, the Library of Congress Congressional Research Service and the Subcommittee on Oversight and Investigations of the House Commerce Committee, the department of Interior did not exercise its statutory authority to compel holders of federal off-shore natural gas fields to proceed with "due diligence." A study by the House subcommittee recently discovered that in just two fields in the Gulf of Mexico, 1/2 trillion cubic feet of natural gas was available for production. The actual winter shortage was less than 1.5 trillion cubic feet.

*Empty Trucks Cost Billions: ICC

The ICC regulations which require trucks to return empty from delivery, to make mandatory often out of the way stops, and which allow companies to cooperate in rate-setting have been estimated to cost consumers several billion dollars yearly. The trucking industry has little incentive to argue with the ICC because it passes these costs on to consumers, who have no representation in ICC rate-setting.
Dear Representative Smith,

The so-called Consumer Representation bill (formerly consumer protection bill) is again before the House. This is a bill which does not have the support of most Americans. Yet, in an attempt to appease a vocal minority of self-proclaimed consumer advocates, it has become a priority issue.

I am a consumer and I support genuine consumer protection. But, I oppose legislation which would simply duplicate existing local, state and federal consumer protection at great cost to everyone.

The House has the opportunity to provide leadership in calling a halt to the unnecessary growth of bureaucracy by voting no to the consumer representation bill. I urge you to vote against this bill.

Sincerely,
Robert Schwartz
816 Jackman Avenue
Anytown, U.S.A.

MESSAGE FORM
(please type or print)

Check One:

☐ Please send same message as above in my name.

OR

☐ My personal TELEPOST/ACTION-ALERT message is:

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☐ Cash ☐ Personal Check ☐ Money Order for
Make Checks Payable to ACTION-ALERT. $2.00

☐ Charge to my account for Later Billing $3.00

SIGNATURE (must be signed by sender)
NAME: ____________________________
STREET: ____________________________
CITY: ___________________ STATE: ______ ZIP: ______
TELEPHONE: _______________________
BANKAMERICARD: ________________________ My card expires ___________

DELIVER TO: BUILD BOOTH, NAHB CONVENTION CENTER
OR MAIL TO: ACTION ALERT, P.O. BOX 91, MCLEAN, VA. © 1976, 1977 Xonics, Inc.
INITIAL TARGET LIST FOR NICKEL CAMPAIGN

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July 22, 1977

The Honorable Benjamin S. Rosenthal
Chairman, House of Representatives
Commerce, Consumer, and Monetary
Affairs Subcommittee of the
Committee on Government Operations
Rayburn House Office Building,
Room B-377
Washington, D.C. 20515

Dear Mr. Chairman:

It is reassuring to know that some of the opponents of the Agency for Consumer Protection consider President Carter's regulatory appointments so exemplary as to remove any need for an agency for consumer protection.

We think their arguments miss the point. As regulators committed to the fair enforcement of the laws which Congress and the President entrusted to us, we need the benefit of enhanced consumer interest—advocacy so that we can best inform our own decisionmaking. We are decision-makers and interpreters of the law and these functions are performed best when the vigorous and skillfully prepared advocacy of the business interests affected by our decisions is balanced by facts supplied and arguments raised through competent and informed advocacy on behalf of consumer interests.

Each day we are besieged by the pleadings of the special economic interests affected by our decisions. Through oral presentations, submission of pleadings, formal and informal communications, each regulator is presented with a vision of the world as seen through the eyes of business interests. Since our decisions may well affect their livelihoods, it is entirely appropriate that business interests be afforded their day before the regulators.
The truth Business Roundtable wanted more people to know is that setting up still another consumer protection agency in Washington, while it might sound good (who is against consumer protection?) would tend to raise prices, raise taxes, lower employment, and be unfair to three groups of Americans who deserve better: consumers, government workers and taxpayers.

We wrote and drew these releases to convey this information entertainingly through suburban newspapers, and Business Roundtable assigned us to send these releases to 1,000 daily newspapers and 2,800 weeklies.

These releases got over 500 clippings, and the cost of production, mailing and clipping came to $3,860 complete.

If clipping efficiency is 25%, then with these four releases Business Roundtable succeeded in generating over 2,000 newspaper articles on the truth about the proposed legislation.

"Great" Ideas Dept.

Some well-intentioned people have what they think is a "great" idea about how to help consumers.

They want the federal government to establish a consumerism agency that will watch over all other consumer agencies and help regulate the prices, quality and distribution of goods and services around the country. Congress is considering bills to establish this super bureaucracy.

Would this improve things for consumers? "No," say economics experts. The cost of virtually non-stop litigation would increase enormously the expense of running any business, and therefore increase the price of goods to the consumer, while the costs on the government side would raise taxes, as well.

If we impose more money-costing rules on American companies than foreign governments impose on their companies, the prices of our products would tend to rise in relation to the prices of foreign-made products, while the relative number of jobs would tend to fall.

We might find that the "watchdog" supported by our taxes bites the hand that feeds it.

Among the most costly federal government expenditures in any one year on any one regulatory agency was for the Environmental Protection Agency in 1970. American taxpayers contributed $293 million to set it up.

Now Congress is considering bills to create a new consumer agency, designed to watchdog the watch dogs, and preliminary estimates are that it will cost $60 million for the first three years. This idea may be one of the most wasteful that has been proposed in years!
A (Muffled) Voice for Consumers

The bill to create a consumer protection agency is dead for this session of Congress, but the idea lives. Thanks to an intensive lobbying effort by the business community, the House leadership did not bring the issue to a vote. Consumer advocates, however, intend to press their case in the next session, and we wish them well.

From the heat of the rhetoric and the tenuous opposition of some business groups, one might think that the agency, first proposed in 1970, would be the vanguard of socialism. In fact, the bill was quite modest. It would have set up an office to intervene in Federal proceedings—in Interstate Commerce Commission hearings, for example—where consumer interests might otherwise be underrepresented. The office would be granted no rights denied to private groups or business; its influence on established agencies would depend solely on persuasion in open debate. And even that influence would be limited by a $15-million budget and by prohibitions against intervention in proceedings related to labor or agriculture.

The case for the new office is simple. The Federal regulatory commissions and "line" agencies decide policies that affect what consumers buy and how much they must pay. Trade associations and individual firms invest considerable sums to influence those decisions in thousands of complex cases. Consumers, by contrast, depend for representation on a few nonprofit groups and some staff members of the agencies. A separate office for consumer representation could contribute to balance.

A consumer voice within the Federal Government would not significantly alter the way Government influences the marketplace. But it could make for greater fairness in the day-to-day procedures of agencies that administer the economy. We hope Congress gives it a chance.