

E. Marla Felcher, Ph.D., Freelance Writer and Lecturer, J.F. Kennedy School of Government, Harvard University, Testimony, "Child Product Safety: Do Current Standards Provide Enough Protection?," October 6, 2004.

Good morning. I'd like to thank the committee for inviting me to participate in this important hearing. I'm going to talk briefly today about how I got into the world of children's product safety, and what I have **not** been able to learn. I'm going to talk today about censorship.

For 20 years, I spent most of my waking hours thinking about and doing marketing. I was a marketing professor at the Kellogg Graduate School of Management in Northwestern University, and I worked in various corporate marketing jobs, at Gillette, Talbots, and as a consultant to Nabisco, M&M Mars, Burlington Industries and Lederle Labs.

Yet, the first I ever heard of recalls was when my friends' son Danny Keysar was killed by a recalled Playskool crib in 1998. I had a Ph.D. in marketing from one of the top business schools in the world, and I had an M.B.A. I knew a lot about how to get products into homes, through creative advertising, sales and distribution techniques, but I had never, in twenty years, thought about how to get those products out of homes when they proved to be dangerous. This is not what marketers do. They decide what color and how plush to make a car seat or carrier cushion, whether it will be sold in Babies "R" Us or Wal-Mart and how much it will cost. Decisions regarding product recalls fall to corporate lawyers. It is CPSC's job to look out for our children's interests, while the lawyers are looking out for corporate financial interests. Yet, the agency does not have the tools, and lately it seems, the motivation, to carry out their Congressional mandate.

There are more dangerous and defective children's products on the market today than there were ten years ago, and the problem is likely to get worse. Why? There are three reasons: First, the demand for children's products is at an all-time high and projected to increase. Second: Manufacturers are under enormous pressure from retailers like Wal-Mart to keep their prices low, providing a sometimes hard-to-resist temptation to scrimp on safety features. Third: Manufacturers have gotten very savvy at keeping negative information about their products away from the public. It's no accident that when a child is injured or killed by a product, *most* people don't hear about it. This is not, as some manufacturers would like us to believe, because parents are stupid or lazy, or don't do their research. It's because protective orders and secret settlements have become the norm in the courts, and because manufacturers have the power to gag CPSC regulators from telling the public all that they know about a dangerous product. I'd like to spend what remains of my time here today discussing how they do this.

There is a statute in the Consumer Product Safety Act, called 6(b), which prohibits CPSC from telling anyone – a *Consumer Reports* researcher, a mother or daycare provider -- whether a specific product is dangerous or safe, unless the manufacturer gives the agency permission to do so. If a company doesn't want the public to know a brand's safety record, CPSC is required to keep the secret. While it may be in a consumer's best interest to know that almost two-hundred babies were injured in a Cosco infant swing or more than four-hundred injured in the company's stationary entertainer, it is not in Cosco's best interest for the public to know this. Yet, manufacturers and CPSC routinely rely on 6(b) to keep life-and-death safety information out of the public eye.

What effect does CPSC's 6(b) policy have on child safety? In 1998 I started research on what eventually became a couple of magazine articles and a book on baby product safety. In 2000, after I had been working on the project for more than a year, and subsequently knew more than most people know about children's products, my sister had a baby, Liam. My family deemed me Liam's purchasing agent – it was my job to choose the safest high chair and stroller and crib and carrier and all of the other stuff parents buy. But you know what? I had no idea which brands to buy. The secrecy imposed on CPSC by the 6(b) statute kept me in the dark, just as it keeps millions of other families in the dark each day. I could tell my sister which products had been recalled, but I could not tell her which products currently on the shelf at Babies "R" Us would be recalled the day after I bought it. Lacking reliable safety information, I fell back on the old price-quality relationship, deciding that the more expensive products would be the safest. I bought Liam a Peg Perego high chair that cost \$180. A few weeks later it was indeed recalled – after 51 children had been entrapped by their heads or arms. Nothing more than sheer luck prevented Liam from being one of those children.

Manufacturers and the CPSC will tell you that they warn consumers about dangerous products each time they issue a recall press release. But what they don't tell you is how these press releases get written. Every word that goes out to the public is negotiated in highly secretive meetings between CPSC staff and the manufacturers' lawyers. The president of Baby Bjorn once gave me insight into what goes on in these meetings, when he confessed that it is the manufacturer's goal to play down the hazard in the press release. They don't want parents to be alarmed. A member of CPSC's recall staff once told me that many companies balk at even using the word *recall* in the recall press release, because they fear that parents will think the product must be returned. It's no wonder that, when it comes to recalls, so many parents are confused.

In a few weeks I am going to China with my sister, where she is going to adopt an 18-month old baby girl. It's been more than six years since my friends' son Danny was killed by a recalled portable crib. My nephew Liam is almost five years old. After all of this time has passed, I *still* don't know which high chair or stroller or crib to buy for my new niece. This is the legacy of 6(b).