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**Testimony of Nancy A. Cowles
Before the Senate Sub-Committee on Consumer Protection,
Product Safety, Insurance and Data Security, “Consumer Product
Safety and the Recall Process,” October 8, 2015**

Thank you, Chairman Moran, Ranking Member Blumenthal and Subcommittee members for this opportunity to testify before you today regarding the Consumer Product Safety Commission and recall effectiveness.

KID is a nonprofit organization dedicated to protecting children by improving children’s product safety. The organization was founded in 1998 by Linda Ginzel and Boaz Keysar, after the death of their son Danny Keysar in a recalled portable crib at a licensed child care home. A portion of the Consumer Product Safety Improvement Act (CPSIA) is named after Danny. As Danny’s mother said when she testified before a House Subcommittee more than a decade ago, “improved children’s product safety will be Danny’s legacy.”

Today’s hearing is on consumer product safety and the recall process. I will review research conducted by KID on children’s product recalls over the last decade. This research addresses not only the types of products recalled, but also the participation rate and the efforts made by companies to reach consumers. I will address the voluntary recall and corrective action rule proposed by CPSC and product registration. I will also talk about steps we can all take to make recalls more effective.

As I mentioned, a dangerous crib that had been recalled five years before his death killed Danny. He was the fifth child to die in that particular product – the PlaySkool Travel-Lite Crib -- another died a

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few months later. There were fewer than 12,000 of these cribs in circulation. However, the company sold their patent for the deadly rotating side rail to four other companies. One million five hundred thousand portable cribs were made with that deadly design. About 1.2 million of them remain unaccounted for. There have been 19 deaths in total, the most recent we are aware of took place in 2007. The toll of recalled products left in homes and childcare facilities is too high for our families to bear.

From the beginning, KID worked to reach parents with information about recalls. No one in the licensed home where Danny spent his days had heard of the recall – not even the state inspector who visited the facility just days before Danny’s death. Recalled products don’t look dangerous or broken. It isn’t until the rail rotates unexpectedly under the weight of a waking child standing up and collapses around his neck that the flaw becomes apparent – at least to parents and caregivers. So KID began by focusing on how to reach those using the products with the recall news. But new products were recalled all the time. We realized the danger in the crib wasn’t that it was recalled, but that it was unsafe from the day it was made. Therefore, KID spent many years working to improve children’s product safety, making recalls less common.

Stronger standards, port surveillance and testing requirements have reduced recalls and improved safety. We now need to keep strengthening that safety net and address the gap between recalling a product and getting it out of our homes.

KID’s Research on Children’s Product Recalls

In February, KID released ***A Decade of Data: An In-depth Look at 2014 and a Ten-Year Retrospective on Children’s Product Recalls***¹. The report reviews recall

¹ http://www.kidsindanger.org/docs/research/2015_KID_Recall_Report.pdf

data from the US Consumer Product Safety Commission (CPSC) for 2014 as well as previous years. The findings are promising for safety. Children's product recalls were only 25% of the recalls issued by CPSC – down from a high of well over half the recalls. Injuries reported from products prior to recall was the lowest since we started studying recall rates in 2001. Seventy-five children's products were recalled in 2014 – so about 1.5 children's product recalls a week – down from three a week some past years. When we looked at 10 years of data, we saw that when a strong standard is adopted, such as those required by Danny's Law, recalls of that product class decline – keeping us all safer.

However, there were still 17 million individual children's products recalled in 2014. In addition, our research shows most of those are likely to remain in consumer hands without fixing the hazard or replacing it with a safer product.

In addition to looking at the recalls, we looked at what we could see publically about company activity to spread the word to consumers. Because of Illinois law and CPSC urging, most companies now post recalls on their websites. A consumer who was aware of the recall can usually easily find the information on line and participate. However, not many people spend their days scanning child product websites to see if there is a new recall. After direct notification – email, texts, mail or phone calls, social media is the best way to reach directly to consumers.

It is very likely that many followers of companies on Facebook and Twitter have purchased a product from the company – which is why it is a great resource for getting the news out. According to Dana Points, editor-in-chief of Parent's Magazine, 89% of young mothers are on social media. Yet, our research found that for children's products recalled in 2014, 76% of companies had a Facebook account but only 13 (23% of those with an account) used it for posting a recall notice. Forty-nine percent of companies had a Twitter account and 32% of those used it to post a recall notice (12). There is a lot of room for growth here.

Then, with the perspective a year gives, we looked at the available data on how successful recalls are. You would be surprised how hard this information is to find. We requested, through the Freedom of Information Act, the monthly corrective action reports required for corrective action plans or recalls. First, let me say that we did not get information on 40% of the 2013 children's product recalls. Either manufacturers had not filed the forms, CPSC could not find the files where they should be or companies did not follow up on the FOIA request and KID does not have the budget to sue them to comply. Therefore, our database is 61 Monthly Progress Reports for Corrective Action Plans and Incident Updates.

Products that were with the manufacturer, their distributors or retailers at the time of recall are likely to be accounted for in most cases. But for those with consumers? Only 4% of them were accounted for through this reporting. Some recalls were more successful than others were and some of the forms were completed with mathematically impossible numbers – fixing more products than were made for instance. Nevertheless, even if this number is lower than the actual, it still shows a dismal problem.

KID has done other research in this area. We did focus group research with parents, grandparents and childcare providers. All wanted recall information that was easy to understand and invited action. In particular, they were looking first for a brand and product name with a picture to answer the question – do I have this product? If yes, they want to know specifics they can check – model number, years sold and where it was sold to confirm they have the recalled item and then why it is being recalled and what action is expected. They expect companies to find them to alert them.

In addition, this summer, because of our concern over the millions of recalled products still out in homes and childcare, we began a research project with the Illinois Institute of Technology's Institute of Design. Graduate students in design theory conducted extensive interviews with stakeholders, qualitative research with

parents and literature review on the topic and are building a knowledge base that will be used to create an action plan for all stakeholders to improve recall outcomes. We look forward to updating you on the results of that research later this year.

Voluntary Recall Notices and Corrective Action Plans

In late 2013, the U.S. Consumer Product Safety Commission proposed an interpretive rule to set forth principles and guidelines for the content and form of voluntary recall notices that firms provide as part of corrective action plans under Section 15 of the Consumer Product Safety Act (CPSA). It has not been adopted. The rule is similar to what is required for mandatory recalls in CPSIA. The existing regulations provide for notice to the public of the corrective action that a firm agrees to undertake, but do not provide any guidance regarding the information that should be included in a recall notice issued as part of a corrective action plan agreement.

The proposed rule would set forth the Commission's expectations for voluntary remedial actions and recall notices, bearing in mind that certain elements of product recalls vary and that each notice should be tailored appropriately. The proposed rule also provides that corrective action plans may include compliance program-related requirements when appropriate. In addition, the proposed rule would make the corrective action plan agreed to by CPSC and the recalling party legally binding. KID supports the provisions of this proposed rule and believe it will help to get information out to consumers.

The CPSC's main tool to protect consumers is the corrective action plan or recall. It is through these efforts that unsafe products are identified to the public with the goal of repairing, replacing, or removing them from use to avoid the hazard posed by the product. As our research has shown, the majority of recalled products remain unaccounted for with most of the products presumably still in use. Unlike food recalls, where the product has often been consumed prior to the recall, consumer

products remain in use for years after a recall, as deaths² in a decades-old hope chest that was recalled³ in 1996 illustrate. Or the 2007 death of a little boy in a crib of the same design that killed Danny Keysar in 1998 and was recalled 11 years earlier. More information presented clearly to consumers at the time of the recall, additional ways to deliver recall information, and a legally binding corrective action plan would reduce the number of dangerous products that remain in consumer hands after recall.

It makes sense to establish a set of minimum requirements for voluntary recalls, just as the CPSIA did for mandatory recalls. This would allow the CPSC to use its years of experience in developing corrective action plans to make them more effective. It will eliminate delays that currently occur when details that should not be negotiable take days, weeks, or months to negotiate, and will allow the CPSC and recalling firms to more effectively use new tools such as social media to reach consumers.

KID supports efforts to make corrective action plans legally binding. In fact, I found it surprising to learn that companies routinely sign agreements with a government agency that they are not held responsible for fulfilling. These plans are negotiated and agreed to by the recalling company, but without legally binding language, there is no pressure on recalcitrant companies to comply fully. Just as consumers are subject to binding contracts when they purchase products and services such as credit cards and internet service, companies should be subject to a binding agreement when they agree to a compliance plan regarding a recalled product.

Without meaningful enforcement authority, the CPSC has been limited in the ways that it can remove dangerous products from the market and from use by consumers. Making corrective action plans legally binding allows the CPSC to take action, as

² <http://www.nbcnews.com/health/child-deaths-are-tragic-reminder-products-pose-risk-long-after-2D11939815>.

³ <http://www.cpsc.gov/en/Recalls/1996/CPSC-The-Lane-Furniture-Company-Announce-Recall-for-In-Home-Replacement-of-Locks-on-Cedar-Chests/>

necessary, more promptly and without additional expense, to see that the plan is actually implemented.

CPSC's has preferred remedies -- refunds, replacements or repairs. The proposed rule would require companies that propose different remedies to show that those other remedies will be equally successful. We believe only refunds or replacements should be options in corrective action plans involving products that have caused death or severe injury. Leaving it in consumers' hands to repair a faulty, deadly product can often lead to delayed or poor repairs and additional injuries, as we saw with immobilization kits for drop-side cribs. In addition, the CPSC's sanctioned repairs should not leave consumers with products that don't comply with current safety standards. Such products could pose risks to consumers. In those instances, replacement or refund is a more appropriate remedy.

Too often, a lack of internal controls or systems leads to a potentially unsafe product that must be recalled. By announcing the recall without fixing the problem that led to it, additional problems with other products may follow. Especially in cases of repeat offenders, for those companies with multiple recalls, we support the implementation of an effective compliance program in the corrective action plan.

KID supports the Voluntary Recall Notice Principles, which echo Section 16 CFR 1115.26 for mandatory recalls. In particular, we support web page posting – viewable when first landing on the page and additional means such as social media. We would also recommend that the CPSC consider broadening its own use of social media to convey recall notices. Consumers trust and respect the CPSC, and its notice postings on Twitter are usually shared widely. Similar action on Facebook and other social media sites would increase the likelihood a consumer will learn of a recall and take action. Such social media use to improve consumer awareness of safety recalls is not, in our view, in any way legally limited by Section 6(b) of the CPSA, since it includes only publically available information. CPSC can put additional controls on its

Facebook page, as many nonprofits and other entities do, to restrict postings from others there.

The proposed changes also covered the actual recall notice. These notices should be written and disseminated in such a way that consumers will be motivated to take action and that other entities such as the media, nonprofit organizations, retailers and local community officials will be motivated to share in the dissemination of the information. These changes will enhance the ability of consumers to quickly and effectively gather pertinent information from recall notices to ascertain: whether they have the product in question; what the safety risk is; how severe the risk is; and what they should do. In 2013, KID conducted focus group research with parents, childcare providers, and grandparents. The research showed that being able to make these determinations quickly is an important factor in how likely someone is to take the information seriously and take actions to remove the product from their home.

KID strongly supports the proposed rule and guidelines. These actions will strengthen recall effectiveness and will enable the use of additional resources to communicate the vital safety information in recall notices to the consumers using the products.

Product Registration for Juvenile Products

The CPSIA also requires that infant and toddler durable products, such as cribs, strollers and high chairs, include a product registration card in their packaging and provide an opportunity to register online. This gives manufacturers the information necessary to directly contact consumers in the event of a recall or other product safety issue. Too many consumers never hear about a recall of a product that they have in their home and as a result continue to use recalled products. Today, most manufacturers have both online registration sites and include the cards. KID has evaluated 157 manufacturer web sites and found that almost all have online sites that consumers can use to register infant durable products. What we need now is some

reporting on how this is working. What percentage of products are registered? Does it improve recall participation? What is being done to encourage consumers to participate? Companies should be encouraged to share results so CPSC and others can work to make the system stronger. Again, from her testimony in 2004, Linda Ginzler stated that she firmly believes that her beloved son Danny would be alive today if the Playskool Travel Lite had come with this simple registration card.

Conclusion:

CPSC is a very different agency from the 1998 agency that struggled to get the word out on recalls using limited tools and funds. CPSC staff uses all the tools at their disposal to work with companies and consumer groups to get dangerous products off store shelves, off online sites and out of our homes and childcare. However, with abysmal recall participation rates, more must be done.

It is not enough to do a recall if the product remains in homes and in use. We do not stop looking for mines in a minefield because no one has stepped on it yet. We keep looking to avoid that next mine going off. The same should be true of recalls. We need to set goals for successful recalls and require additional action if the number reached stay below that goal.

Sometimes a little sunshine helps move progress along. What if Congress requested an annual report from CPSC of those same monthly report numbers KID uses in our report? We believe the light that sheds on recalls would improve the record keeping and the recall efforts. CPSC has the information – it is a low cost effort to help ensure once companies have recalled a product it does not remain in use.

We believe the best way to reach owners of recalled products is to do direct notification, assisted by product registration, social media and reverse marketing in cases where it is warranted. These companies know exactly how to reach consumers to sell products. They should use those same methods to reach consumers to remove

dangerous products from their homes. A recall announcement should not be the end of the responsibility of the company.

We can all do our part to educate parents and caregivers on recalls and the importance to stay informed and take action. However, the CPSC and companies must take the first steps to improve the chances a consumer will learn of a recall on their product and will be willing to take action.