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UNFAIR PRACTICES IN THE HOME IMPROVEMENT INDUSTRY AND AMENDMENTS TO THE FTC ACT

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETIETH CONGRESS

SECOND SESSION

ON

S.J. RES. 130

TO AUTHORIZE AND DIRECT THE FEDERAL TRADE COMMISSION TO CONDUCT A COMPREHENSIVE INVESTIGATION OF UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN THE HOME IMPROVEMENT INDUSTRY, TO EXPAND ITS ENFORCEMENT ACTIVITIES IN THIS AREA, AND FOR OTHER PURPOSES

S. 3065

TO AMEND THE FEDERAL TRADE COMMISSION ACT, AS AMENDED, BY PROVIDING FOR TEMPORARY INJUNCTIONS OR RESTRAINING ORDERS FOR CERTAIN VIOLATIONS OF THAT ACT

S. 3066

TO AMEND THE FEDERAL TRADE COMMISSION ACT, AS AMENDED, BY EXPANDING THE JURISDICTION OF THE FEDERAL TRADE COMMISSION, BY PROVIDING FOR TEMPORARY RESTRAINING ORDERS FOR CERTAIN VIOLATIONS OF THAT ACT, AND BY MAKING ANY VIOLATION OF THAT ACT WITH INTENT TO DEFRAUD OR MISLEAD A MISDEMEANOR

MARCH 27, 28, AND 29, 1968

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UNFAIR PRACTICES IN THE HOME IMPROVEMENT INDUSTRY AND AMENDMENTS TO THE FTC ACT

WEDNESDAY, MARCH 27, 1968

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 10:10 a.m., in room 5110, New Senate Office Building, the Honorable Warren G. Magnuson (chairman of the committee) presiding.

Present: Senators Magnuson and Moss.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The committee will come to order.

The chairman wants to state that he called this meeting for 9:30, hoping that we would be able to accommodate witnesses from out of town, but I am having some difficulty getting Senators who are members of the subcommittee here this morning. We waited a while to see if any would show up, but there are several other meetings, and the Senate goes into session again at 11 o'clock on a very important matter, so we will proceed now—we hope with some dispatch—with this matter.

The chairman has a short opening statement which he would like to read. This is a hearing, of course, before the Consumer Subcommittee of the Senate Commerce Committee on three antifraud proposals, Senate Joint Resolution 130, S. 3065, and S. 3066. These three bills complement each other in forming a strong and coherent package which will enable the Federal Trade Commission to move swiftly and effectively against fraudulent operators.

Senate Joint Resolution 130 would authorize the appropriation of $500,000 per year over a 3-year period for a Commission crackdown on home improvement frauds. It would require a comprehensive investigation of practices within the home improvement industry, and it would also authorize a greatly expanded enforcement program in this industry where fraudulent schemes cost consumers an estimated $500 million to $1 billion annually.

S. 3065 is President Johnson's proposed Deceptive Sales Act of 1968. This bill, which was prominently mentioned in the President's consumer message, would amend the FTC Act to enable the Commission, when it believes it is in the public interest to do so, to seek a preliminary injunction against a person who it believes is engaged in an unfair or deceptive act or practice affecting a consumer. S. 3066 would

Staff member assigned to this hearing: William G. Meserve.

supplement the Deceptive Sales Act by broadening the jurisdiction of the FTC to enable it to police unfair or deceptive acts or practices affecting interstate commerce and by enabling the Commission, through the Attorney General, to seek criminal penalties in a U.S. district court against any person who has willfully violated section 5 of the FTC Act with intent to defraud or mislead.

It is especially appropriate that the committee should consider these proposals just as the warmer spring weather begins to arrive, for it is at this time of year in particular that the home improvement swindler begins to descend, locustlike, upon his unsuspecting victims. Phony roofing and chimney repairs, termite extermination—where the swindler occasionally brings his own termites—driveway retopping with used crankcase oil, and model home pitches for various types of siding are only a few of the gimmicks which the swindler is bound to employ to separate the innocent homeowner from his money. In many cases, however, the end result will be tragic, with an elderly couple or low-income family deeply indebted to a finance company, which possesses a lien on their home, for repairs which were badly executed and grossly overpriced.

The committee welcomes the opportunity to hear informative testimony from government and industry witnesses, as well as from private individuals, during these 3 days of hearings. We hope that we shall be able to work together to report out strong and effective legislation as quickly as possible.

Now, before we call our first witness, I would like to have printed in the record the text of Senate Joint Resolution 130 and the remarks which I delivered in introducing it, and the texts of S. 3065, and S. 3066 and the remarks which I delivered in introducing them. After that we shall print in the hearing record the agency comments on the three bills, and a series of articles by Leonard Downie, Jr., and David Jewell, which appeared in the Washington Post last fall.

(The documents follow:)

[S.J. Res. 130, 90th Cong., first sess.]

JOINT RESOLUTION To authorize and direct the Federal Trade Commission to conduct a comprehensive investigation of unfair methods of competition and unfair or deceptive acts or practices in the home improvement industry, to expand its enforcement activities in this area, and for other purposes

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Trade Commission is authorized and directed to—

(a) conduct a full and complete investigation of the purchasing, processing, marketing (including advertising and franchising), pricing, and financing practices of persons, partnerships, and corporations engaged in producing, selling, installing, or financing home improvement products, or services in connection therewith, in commerce (as that term is defined in section 4 of the Federal Trade Commission Act) with a view to determining whether any such practices are in violation of the provisions of the Federal Trade Commission Act, and whether further legislation is needed to protect competitors and consumers adequately from such practices;

(b) transmit to the Congress within one year after the effective date of this joint resolution, a report which shall include a comprehensive statement of (1) the facts and circumstances disclosed by such investigation, (2) the action taken and contemplated by the Commission with respect to violations of law disclosed by such investigation, and (3) such recommendations for further legislation as the Commission may deem appropriate;

(c) undertake a rigorous and expanded enforcement program with respect to any such violations of the Federal Trade Commission Act within the home improvement industry; and

(d) transmit to the Congress within six months after the effective date of this joint resolution, and annually thereafter for three years, a report which shall include a comprehensive statement of (1) the status of these enforcement activities, including a brief description of the action taken and contemplated by the Commission under its enforcement program, and (2) such recommendations for further legislation as the Commission may deem appropriate.

SEC. 2. (a) The Commission is authorized, whenever it has reason to believe—

(1) that any person, partnership, or corporation is engaged in, or is about to engage in, an unfair method of competition in commerce, or an unfair or deceptive act or practice in commerce within the meaning of section 5 of the Federal Trade Commission Act, and in connection with the production, sale, installation, or financing of home improvement products, or the performance of any services in connection therewith, and

(2) that the enjoining thereof, pending the issuance of a complaint by the Commission under section 5, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5, would be to the interest of the public,

to bring suit, by any of its attorneys designated by it for such purpose, in a district court of the United States or in the United States court of any territory, to enjoin such unfair method of competition or such unfair or deceptive act or practice. Upon proper showing a temporary injunction or restraining order shall be granted without bond. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business.

(b) Authorization conferred upon the Commission by this section shall not continue in effect after a date which follows by three years and six months the effective date of this Act. Nothing contained in this subsection shall be effective to abate any proceeding instituted by the Commission during the effective period of this section, or to prevent the enforcement of any injunction or order issued by any court in any such proceeding.

SEC. 3. There is hereby authorized to be appropriated to the Federal Trade Commission the sum of $500,000 each year for three years to carry into effect the provisions of this joint resolution.

SEC. 4. This joint resolution shall take effect on the date on which funds to carry into effect the provisions of this Act first become available to the Federal Trade Commission pursuant to an appropriation Act enacted after the date of enactment of this Act.

(Excerpts from the Congressional Record, Dec. 15, 1967)

Mr. MAGNUSON. Mr. President, I introduce, on behalf of myself, the senior Senator from Indiana [Mr. HARTKE], the senior Senator from Michigan [Mr. HART], and the senior Senator from Maryland [Mr. BREWSTER], for appropriate reference, a joint resolution which will create a special task force within the Federal Trade Commission to combat the rapid growth of home improvement frauds which today has escalated into a national scandal. For until we act, the elderly couple living on a pension and the rural farmer eking out a subsistence wage will continue to struggle under the crushing burden imposed by a home improvement swindle.

Over a year ago, the President's Consumer Advisory Council submitted a report to the President on consumer problems. This report identified home improvement frauds as one of the major areas of consumer exploitation. It estimated consumer losses at $500 million to $1 billion annually.

In late September and early October of this year, Leonard Downie, Jr., and David Jewell wrote an outstanding series of articles on home improvement rackets which appeared in the Washington Post. Again public attention was focused on these pernicious schemes which are directed so viciously against those members of our society who educationally, socially, and financially, are least prepared to resist them and most unable to afford them. Again condemnation of these schemes was universal.

Although the great majority of home contractors in this country are honest, reliable, and reputable businessmen who deserve protection from the many un-

scrupulous charlatans who operate on the fringes of the industry and under the umbrella of its good reputation, too many home improvement companies have fleeced property owners with ruthless, unscrupulous practices, which strip people of their earnings, their investments, and even their homes to pay for small improvements. The products and services these swindlers sell are numerous—siding, storm doors and windows, roofing, wall-to-wall carpets, central vacuum systems, intercoms, fire alarm systems, awnings, gutters, chimney repairs, furnace repairs, driveway repairs, and many more. The methods which these fringe operators employ are many and varied, and are uniformly designed to squeeze the last possible dime out of their frequently poor and gullible victims. Fictitious and inflated prices, "model home" pitches, bogus contests, "special" factory deals or wholesale prices, bait and switch tactics, misleading guarantees, product misrepresentation, distribution of free gifts and samples, and the use of scare tactics are only some of the too commonly used unethical sales techniques. But to understand truly these reprehensible practices, we can look at two, too typical, examples.

In Chicoga, an "engineer" fleeced an elderly man of $9,000 after pouring water into the cracks of the concrete floor in his basement and convincing him that the house was sitting on a cesspool, that water and sewage was collecting under his floor, and that the house could collapse at any time. In Walla Walla, Wash., a woman receiving aid to dependent children and living in a $7,500 home was attracted by an offer of 1,000 square feet of aluminum siding for $299. She ended up purchasing a "permanent" siding for $4,000 and signing a mortgage trust deed to her home.

Consumer credit has become an important and beneficial part of our way of life, but the manner in which the racketeering home improvement operator employs his offer of "easy credit" is a part of the unconscionable scheme by which consumer frauds are perpetrated upon thousands of American consumers. Negotiable obligations securing payment on fraudulent contracts are transferred to finance companies which assert the defense of bona fide holder in due course, thereby stripping the victims of the meritorious defenses which they would have against the fraudulent operator.

The Federal Trade Commission is directed by this joint resolution to make a penetrating 1-year investigation into the deceptive practices employed in the home improvements industry, including a detailed study of the relationship between many of these racketeers and the finance companies and their product suppliers. Simultaneously, the Commission is instructed to expand and intensify, over a 3-year period, its enforcement program in this area. Hopefully, the study will help the Commission to determine the most useful allocation of its limited resources in this massive crackdown on home improvement swindlers. To enable the Commission to accomplish the task assigned to it, the joint resolution would authorize a special appropriation of $500,000 per year for each of the next 3 years.

Because of the extraordinary problems presented by these frauds, the resolution will also authorize the Commission, when it believes it is in the public interest to do so, to seek a preliminary injuction which will curtail the activities of these home improvement racketeers until a final order is issued against them. This authority will exist for the 3½-year life of the special task force. It is designed to be used against those operators who "buy time" to continue their illicit operations by utilizing the many possible dilatory tactics afforded by those customary legal procedures which are designed to insure due process of law to all litigants. Although these procedures are, without question, necessary and proper, the Commission should be authorized to go to a Federal court, with all its safeguards, to seek a preliminary injunction, when the public interest warrants. For only in this manner will the rights of consumers and honest competitors be protected from these illegal practices which are being carried on while an unscrupulous operator delays being placed under a final order by milking out the maximum period of grace afforded by exercising his full procedural rights.

In closing, I earnestly hope that the Congress will act on this resolution as speedily as possible. Millions of consumers need this protection now. I also want to serve notice today that the Commerce Committee will schedule hearings on this resolution early next year.

[S. 3065, 90th Cong., second sess.]

A BILL To amend the Federal Trade Commission Act, as amended, by providing for temporary injunctions or restraining orders for certain violations of that Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Deceptive Sales Act of 1968".

SEC. 2. That section 13(a) of the Federal Trade Commission Act (15 U.S.C. 53(a)) be amended as follows:

"SEC. 13. (a) Whenever the Commission has reason to believe—

"(1) that any person, partnership, or corporation is engaged in, or is about to engage in, the dissemination or the causing of the dissemination of any advertisement in violation of section 12, or any act or practice in commerce within the meaning of section 5 which is unfair or deceptive to the consumer, and

"(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 5, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5, would be to the interest of the public,

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States or in the United States court of any territory, to enjoin such dissemination or the causing of such dissemination or any act or practice in commerce within the meaning of section 5 which is unfair or deceptive to the consumer. Upon proper showing a temporary injunction or restraining order shall be granted without bond. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business."

[S. 3066, 90th Cong., second sess.]

A BILL To amend the Federal Trade Commission Act, as amended, by expanding the jurisdiction of the Federal Trade Commission, by providing for temporary restraining orders for certain violations of that Act, and by making any violation of that Act with intent to defraud or mislead a misdemeanor

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) is amended to read as follows:

"SEC. 5. (a)(1) Unfair methods of competition in commerce or affecting commerce, and unfair or deceptive acts or practices in commerce or affecting commerce are hereby declared unlawful."

Section 13 of the Federal Trade Commission Act (15 U.S.C. 53) is amended as follows—

"SEC. 13. (a) Whenever the Commission has reason to believe—

"(1) that any person, partnership, or corporation is engaged in, or is about to engage in any act or practice in commerce within the meaning of section 5 which is unfair or deceptive to the consumer, and

"(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 5, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5, would be to the interest of the public,

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States or in the United States court of any territory, to enjoin such unfair method of competition or such unfair or deceptive act or practice. Upon proper showing a temporary injunction or restraining order shall be granted without bond. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business."

SEC. 3. Section 14(a) of the Federal Trade Commission Act (15 U.S.C. 54(a)) is amended to read as follows:

"SEC. 14. (a) Any person, partnership, or corporation who violates any provision of section 12(a), if the use of the commodity advertised may be injurious

to health because of results from such use under the conditions prescribed in the advertisement thereof, or under such conditions as are customary or usual, and any person, partnership, or corporation who engaged in any violation of section 5 with intent to defraud or mislead, shall be guility of a misdeameanor, and upon conviction shall be punished by a fine of not more than $5,000 or by imprisonment for not more than six months, or by both such fine and imprisonment; except that if the conviction is for a violation committed after a first conviction of such person, partnership, or corporation, for any violation of such section, punishment shall be a fine of not more than $10,000 or by imprisonment for not more than one year, or by both such fine and imprisonment: *Provided*, That for the purposes of this section meats and meat food products duly inspected, marked, and labeled in accordance with rules and regulations issued under the Meat Inspection Act, and poultry and poultry products duly inspected, marked and labeled in accordance with rules and regulations issued under the Poultry Products Inspection Act, shall be conclusively presumed not injurious to health at the time the same leave official 'establishments.' "

[Excerpt from the Congressional Record, Feb. 29, 1968]

Mr. MAGNUSON. Mr. President, I introduce, by request, for appropriate reference, the Deceptive Sales Act of 1968, an act which would amend section 13 of the Federal Trade Commission Act by empowering the FTC, when it believes it would be in the public interest to do so, to seek a preliminary injunction against any person whom it has reason to believe is engaged in an unfair or receptive act or practice affecting a consumer, in violation of section 5 of the FTC Act.

This is an amendment which is long overdue and is essential to protect the American consumer. Too frequently today persons are engaged in schemes to defraud the public which are clearly in violation of the FTC Act. Yet Commission proceedings are often prolonged, sometimes taking as long as 2 years to resolve, while a respondent ekes out the maximum period of grace afforded by exercising his full procedural rights. During this time, large numbers of additional consumers may be lured into participating in schemes which ultimately will defraud them of hundreds of dollars. There is no excuse for perpetuating this gaping loophole in Commission procedures.

To authorize the Commission to seek to enjoin a respondent whom it believes is violating the act, would enable it to obtain the same type of remedies which are currently available to a court of law. For, at the present time, a court may enjoin a defendant from pursuing a particular course of action, pending final determination of the case, when continuation of that activity might result in irreparable harm to the plaintiff. Similarly, under this bill, issuance of injunction could thwart extensive swindling of consumers, while, on the other hand, a respondent's rights would be adequately protected, for the Commission would be required to seek its injunction in a Federal districts court where a Federal judge would determine if such a temporary remedy is warranted by the facts.

President Johnson, in sending this draft bill to Congress, has spotlighted an extremely important area for congressional action. For no proposal could be more important in enabling the FTC to act speedily and effectively against fly-by-night operators who are currently fleecing the public.

While the committee is considering this important legislation, however, I believe it would also be useful to consider, at the same time, two additional amendments to the FTC Act which have been mentioned as essentail to combat consumer fraud. As a result, I am introducing a bill today, which complements the President's proposal. Not only will it provide the Commission with the authority to seek preliminary injunctions, but it will broaden the Commission's jurisdiction and enable it to find a person who has willfully deceived a consumer, in violation of section 5 of the FTC Act, guilty of a misdemeanor punishable by a fine of not more than $5,000 or by imprisonment of not more than 6 months.

An amendment of this latter nature will serve to deter willful violations of the act, for at the present time, a fraudulent operator frequently sees little harm in being placed under a Commission cease and desist order. As such an order imposes no monetary penalty unless it is subsequently violated, he will merely launch a new scheme, not covered by the original FTC order, and wait for the Commission to catch up with him again. Yet in those cases where the Commission seeks to prosecute an individual under this amendment, his rights will be

adequately protected, for the Commission must present its case in a Federal court where the defendant will be accorded his full procedural rights, including the constitutional right to trial by jury, before he can be found guilty.

Finally, as mentioned earlier, this second bill also contains provisions which would broaden the jurisdiction of the FTC to encompass deceptive acts or practices "affecting interstate commerce" as well as those "in interstate commerce." Although in most cases this broader jurisdiction would not be exercised, there are some instances on record where the Commission has investigated clearly deceptive acts and has found, after developing a complete record, that it is unable to bring suit because a fringe operator is acting entirely within State lines, even though using materials which have moved in interstate commerce. Normally, of course, it would be proper for State authorities to proceed against that individual, but in some cases the State attorney general lacks the statutory authority to do so. While the Commission should work closely with the State officials in fostering strong consumer protection programs within each State, it should also be able to act to protect consumers where effective State legislation does not yet exist.

The Commerce Committee plans to hold early hearings on these bills, and we hope to report legislation out early in this session. We shall attach a great deal of urgency to these proposals, for the American consumer deserves today the added protection which they will afford.

FEDERAL TRADE COMMISSION,
Washington, D.C., March 27, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of December 18, 1967, for the Commission's comments on S.J. Res. 130, 90th Congress, 1st Session, a resolution "To authorize and direct the Federal Trade Commission to conduct a comprehensive investigation of unfair methods of competition and unfair or deceptive acts or practices in the home improvement industry, to expand its enforcement activities in this area, and for other purposes."

The resolution has two authorizations: The first is for the Commission to conduct a complete and full investigation of various phases of the "home improvement sales racket"; it requires the Commission to transmit to Congress within six months after the effective date of the resolution, and annually for three years thereafter, a report of the actions it has taken and contemplated and to make recommendations for further appropriate legislation; it also authorizes an annual appropriation of $500,000 for three years to carry into effect the provisions of the resolution.

The second is for the Commission, when it believes that a party is engaged in, or is about to engage in, an unfair method of competition or an unfair or deceptive act or practice in commerce, which is done "in connection with the production, sale, installation, or financing of home improvement products, or the performance of any services in connection therewith," to bring suit, if the Commission believes this to be in the public interest, in a district court of the United States, to enjoin such an unfair method or act or practice pending the issuance of a complaint by the Commission and until final action has been taken by the Commission or the courts on such a complaint. The district court "upon proper showing" is authorized to grant a temporary injunction or restraining order without bond. However, the authorization to the Commission is not to continue beyond three years and six months following the effective date of the resolution, which is the date on which funds first become available to the Commission under an appropriation act enacted subsequent to enactment of the resolution.

With reference to the authorization for the Commission to conduct an investigation of the home improvement industry, the Chairman of the Commission, under date of November 28, 1967, in further reply to your letter of October 10, 1967, set forth in detail the necessity for such an investigation. We ask the committee to consider this letter, a copy of which is enclosed, as expressing the Commission's reasons for endorsing this first authorization.

The Commission also favors enactment of the second authorization although enactment of S. 3065 in its present form would, under the conditions and to the extent set forth therein, authorize a United States District Court in response to a suit brought by the Commission or any of its attorneys to issue a temporary

injunction or restraining order as to "any act or practice in commerce within the meaning of section 5 which is unfair or deceptive to the consumer."

The passage of S.J. Res. 130 would enable the Commission more effectively to deal with deception in the home improvement area and the injunctive provisions of the resolution would be most useful in its enforcement.

S.J. Res. 130 is broader in coverage than S. 3065 in reaching unfair methods of competition as well as consumer deception, and the additional funds provided for in the resolution could be most effectively used by the Commission in dealing with deceptive practices in this very important area of consumer concern.

The Commission recommends enactment of S.J. Res. 130.

By direction of the Commission.

PAUL RAND DIXON,
Chairman.

N.B.: Time limitation has not permitted securing advice from the Bureau of the Budget as to the relationship of the report to the program of the President.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., January 12, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: By letter of December 18, 1967, you requested our comment on S.J. Res. 130, 90th Congress, entitled: "Joint resolution to authorize and direct the Federal Trade Commission to conduct a comprehensive investigation of unfair methods of competition and unfair or deceptive acts or practices in the home improvement industry, to expand its enforcement activities in this area, and for other purposes."

We have no special information on the advisability of this measure, and therefore offer no comments concerning its merits.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., April 25, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of December 18, 1967, requested the views of the General Services Administration on S.J. Res. 130, 90th Congress, a joint resolution "To authorize and direct the Federal Trade Commission to conduct a comprehensive investigation of unfair methods of competition and unfair or deceptive acts or practices in the home improvement industry, to expand its enforcement activities in this area, and for other purposes."

The proposed joint resolution primarily concerns the Federal Trade Commission, and does not affect the activities or responsibilities of the General Services Administration. Accordingly, we express no opinion on its merits.

The Bureau of the Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to your Committee.

Sincerely yours,

LAWSON B. KNOTT, Jr.,
Administrator.

THE WHITE HOUSE,
Washington, March 27, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN MAGNUSON: It is kindly requested that this letter and the enclosures[1] be placed in the record as supplemental comments to my testimony on S.J. Res. 130, S. 3065, and S. 3066.

[1] See pp. 59 and 79.

The general purposes of these bills are consistent with the Administration's objective of providing additional consumer protection, especially to crack down on unfair practices and sales and provide powers for the Federal Trade Commission to stop unscrupulous practices when discovered. The need for prompt corrective action upon discovery was emphasized by the President in his Consumer Message of February 6, 1968.

S. 3065 would strengthen the Federal Trade Commission Act, as sought by the President, by giving the Commission authority to seek an injunction in a United States court enjoining the dissemination of any advertising in violation of Section 12 of the Federal Trade Commission Act or any act or practice in commerce within the meaning of Section 5 which is unfair or deceptive to the consumer. We believe this temporary injunctive capability for the Federal Trade Commission is necessary to give the consumer full scale protection. The record is full of abuses perpetrated upon consumers during the time final adjudication is being sought. It seems beyond reason that the fraudulent operator should be permitted to continue such practices and defraud countless others while his procedural rights are being protected, and while he, through legal delays and appeals, is able to continue the case in the courts, possibly for years.

We note with favor that S. 3065 does not limit by definition the descriptions and unfair sales practices contemplated under the statute, nor does it place a time limit upon the temporary injunctive power to be allowed the Federal Trade Commission.

While the benefits to accrue from the investigation and reporting of problems on the home improvement industry are recognized, the expansion of the enforcement activities of the Federal Trade Commission should not be limited to this single industry. It would be against the long range interests of consumers to see any protection program, expanded Federal Trade Commission regulatory power terminated by a limiting date, as stipulated in S.J. Res. 130.

We commend the drafters of S.J. Res. 130 for recognizing the need for additional resources for the Federal Trade Commission to carry out the added responsibilities contemplated by these bills, but we are of the view that the purposes of the Joint Resolution can be achieved under S. 3065 if enacted.

We defer to the views of the Federal Trade Commission on the need for a study to identify the problem areas within the home improvement industry, as called for in S.J. Res. 130. However, in such a study, a special emphasis should be given to determining if leading companies specializing in home improvement loans are innocent holders in due course. Absent such a finding of innocence, in our view they should be prohibited from asserting the defenses of a holder in due course. Special attention should be given to determining if sales promotional material is placed in the hands of home improvement racketeers by producers and fabricators which assists them in consummating funds, as well as determining if certain producers and fabricators are operating finance branches which accept immediate transfer of negotiable instruments and who then claim the defense of holder in due course.

S. 3066 would amend the Federal Trade Commission Act by changing the language of Section 5(a) of the Federal Trade Commission Act and additionally make a violation of the Act a misdemeanor. Since these amendments are within the special province of the Federal Trade Commission and the Department of Justice, we defer comment except to point out again that this bill, as well as S.J. Res. 130, has apparently been drawn with the objective of being compatible with the consumer protection program of the President.

The consumer problems which have prompted this legislation are serious, of long standing, and are increasing. The types of sales rackets which the unscrupulous practice today are widely varied, although the approaches and certainly the unfortunate end result for the consumer have much in common. Home improvement and repair sales head the list, but food freezer plans, cooking utensils, encyclopedias, franchise schemes, home study courses, sale of chinchillas as breeding stock, sewing machines and vacuum cleaners are among the most common.

The art of deception in sales includes frequent changes in methods of operation to minimize apprehension. But the standard techniques are fairly common, such as the "model home" sales pitch; "special" factory deals or "wholesale" prices; fictitious and inflated prices from which the consumer is promised a substantial discount; bait and switch tactics; bogus contests; phony bargains often offered by a salesman posing as a "representative of a well-known manufacturer"; misrepresentation of product; misrepresentation of guarantees; misrepresenta-

tions in connection with loan transactions; referral selling; fraudulent misrepresentations of salesmen's promises as against the terms the contract actually specifies; scare tactics; or "spiking the job", the practice in which the contractor performs a token portion of the job, convinces the purhaser that as a result the contract is non-cancelable, then does not finish the job for weeks or months.

Such unscrupulous operators cost consumers millions annually. This cost is not only for the actual outlay for work not performed, or for shoddy materials and workmanship, but for unconscionably high financing charges. Some homeowners have been forced to pay twice because of mechanic's liens due to unpaid bills which fly-by-night contractors have left behind at the lumber yard and other building material suppliers. Moreover, consumers also overpay, for the advertised "bargains" are usually illusory. There often ensues, in the aftermath of their unfortunate transactions, litigation, loss of jobs through wage garnishment, and even foreclosure because of unknowingly executing a second mortgage as security for the home repair financing.

Unfortunately, the usual assignment of the negotiable instrument to a holder in due course nullifies most of the consumer's defenses when he signs a promissory note in payment for his home repairs.

Total loss figures for consumers from all these types of sales rackets have not been compiled, but the National Better Business Bureau report for 1965 showed fraudulent and deceptive practices in the home repair and improvement field alone caused consumer losses estimated at $500 million to $1 billion yearly, or roughly between 4 and 8 percent of the entire business. Each year $7 million is taken from California consumers solely through fraudulent and illegal aluminum siding sales, according to the State's Attorney General. The National Bureau reports that since 1953 home improvement has remained at the top of its "Instances of Service List".

Consumers of all income levels, including those who consider themselves sophisticated in the ways of the marketplace are among the victims of these practices. But more reprehensible is the fact that the elderly, the ignorant, and the poor are the main targets. These are the consumers who can least afford the loss, are less likely to know the legal procedures for recovery, or cannot afford the cost of litigation, and cannot afford to pay off a mortgage on their home or purchase another.

Currently, the home improvement market is approximately $15 billion annually. Presumably reliable sources indicate that alterations and repairs of homes represent approximately 20–25% of the national spending on residential buildings. Bureau of Census reports show 285,000 contractors engaged in the building construction industry, of which 194,000 are special trade contractors. These would be the type firm primarily engaged in home improvement installation. The Federal Trade Commission has quoted an official of a large lending institution estimating that over 50,000 firms are engaged in the sale and installation of residential siding and storm windows.

The Federal Trade Commission also has recently reported that large and small contractors, product suppliers, and financial institutions are all involved to some degree in home improvement deception. In many instances, the contractors are fly-by-night operators with minimal assets, but who gross annual sales in the millions.

Additionally, we are informed, this already large-scale, rapidly growing industry, has been accelerated even further by the recent shortage of mortgage money and the drop in new home constructions.

As a whole, the industry has made a significant contribution to the material well-being of American families, and it is fair to classify most of the industry as reputable. This proposed legislation will not provide undue burdens on ethical firms, which are in the majority. It will, instead, provide protection for ethical firms from present unethical and unfair competition. The added protection will be of major significance for the consumer.

The Bureau of the Budget advises that enactment of S. 3065 is in accord with the President's program.

Sincerely,

BETTY FURNESS,
Special Assistant to the President
for Consumer Affairs.

DEPARTMENT OF THE AIR FORCE,
Washington, April 1, 1968.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to S.J. Res. 130, 90th Congress, a joint resolution "To authorize and direct the Federal Trade Commission to conduct a comprehensive investigation of unfair methods of competition and unfair or deceptive acts or practices in the home improvement industry, to expand its enforcement activities in this area, and for other purposes." The Department of the Air Force has been designated to express the views of the Department of Defense.

The resolution directs the Federal Trade Commission to conduct a thorough investigation in the practices employed in the home improvement industry, to determine whether such practices are in violation of the provisions of the Federal Trade Commission Act, and to submit a report and recommendations to the Congress within a year as well as other interim reports. The Commission is also directed to intensify its enforcement program with respect to violations of the Federal Trade Commission Act within that industry. The Commission would also be authorized for three years and six months to bring suit to enjoin firms from engaging in unfair practices in connection with the sale, installation or financing of home improvement products or the performance of any service therein.

The Department of the Air Force on behalf of the Department of Defense interposes no objection to the purpose of the resolution, and as to those measures to be pursued by the Federal Trade Commission in attaining the objective, defers to those agencies primarily concerned with the problem.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

ROBERT H. CHARLES,
Assistant Secretary of the Air Force,
(Installations and Logistics).

FEDERAL TRADE COMMISSION,
Washington, D.C., March 27, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of March 5, 1968, requesting a report by the Federal Trade Commission on S. 3065, 90th Congress, 2d Session, a bill "To amend the Federal Trade Commission Act, as amended, by providing for temporary injunctions or restraining orders for certain violations of that Act."

The bill would amend Section 13(a) of the Federal Trade Commission Act so as to grant authority to the Commission, when it has reason to believe that a party is engaged in, or is about to engage in, any act or practice in commerce which is unfair or deceptive to the consumer, to bring suit in a district court of the United States, whenever such action would be in the interest of the public, to temporarily enjoin such an unfair or deceptive act or practice pending the issuance of a complaint by the Commission under Section 5 and until such time as such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission has become final within the meaning of Section 5.

This is the same power which is now given to the Commission by Section 13(a), with reference to the dissemination of false advertisements for food, drugs, therapeutic devices or cosmetics violative of Section 12 of the Act, and it would thus be enlarged to cover unfair or deceptive acts or practices worked upon the consumer respecting other products.

The same power which the Commission now has by virtue of Section 13(a) of the Act, is also granted to it by Section 7(b) of the Wool Products Labeling Act of 1939 (15 U.S.C. 68e), by Section 9(b) of the Fur Products Labeling Act (15 U.S.C. 69g), by Section 6(a) of the Flammable Fabrics Act (15 U.S.C. 1195), and by section 8 of the Textile Fiber Products Identification Act (15 U.S.C. 70f), with reference to violations of certain sections of these Acts. The extension of this power as proposed in S. 3065 would significantly enhance the Commission's enforcement efforts.

The Commission makes every effort to expedite its proceedings. However, our experience has been that considerable time may elapse before an unfair or deceptive act or practice worked upon the consumer may be finally enjoined by issuance of a cease-and-desist order which has been approved by the courts. A study which was made of the time element involved in several recent litigated cases relating to products which would be covered by S. 3065, such as auto engines and shock absorbers, paint, water filtration units, aluminum siding and a swim aid device, showed that approximately three years ensued, on the average, from the date complaint was issued until our order to cease and desist was affirmed by the courts.

It is desirable, in our view, that some balance be achieved in protecting the rights of those who would sell their goods by unfair and deceptive means and the concomitant right of the consuming public to be free from unfair and deceptive practices. S. 3065 would accomplish this, and, in our opinion, this is a most cogent and persuasive reason for its enactment. The principles which are reflected in this bill were endorsed by the President in his Message "To Protect The Consumer Interest" which was made to the Congress on February 6, 1968. The practices involved ranged from deceptively failing to disclose conditions on supposedly unconditional guarantees to advertising that a swimming aid would render the user unsinkable when in fact he remained quite sinkable. In the latter case the Court of Appeals for the Ninth Circuit noted, in sustaining the Commission's decision, "If a nonswimmer or a poor swimmer, equipped with [the device] should 'swim as far as you please,' as one of the . . . advertisements invited him to do, he might never get back." In almost all of these cases the company whose practices were challenged continued to do substantial business with the public using the practices which were found to be misleading and deceptive. For example, one company continued to sell aluminum siding to homeowners at the rate of $400,000 per year using a variety of deceptive representations including promise of a bonus or commission for the privilege of showing the purchaser's home as a model to other prospective purchasers, but no prospective purchasers would ever be brought around and so no bonus would ever be earned. Another company continued to sell paint at a rate in excess of $12 million per year while representing deceptively that the second can of paint purchased was free with the purchase of each can of paint at the regular price, when in fact the regular price was the price of two cans of paint.

The authority now granted the Commission under section 13(a) of the Act has been upheld by the courts. *Federal Trade Commission* v. *Rhodes Pharmacal Co.*, 191 F. 2d 744 (7th Cir. 1951). (See also *Federal Trade Commission* v. *National Health Aids*, 108 F. Supp. 340 (D. Md. 1952). The reasoning of the court of appeals in upholding the statutory power of the Commission to enjoin the dissemination of false advertising of food, drugs, devices or cosmetics is equally applicable to S. 3065. In the *Rhodes* case the court cited (p. 747) with approval its decision in the case of *International Art Co.* v. *Federal Trade Commission*, 109 F. 2d 393 (7th Cir. 1940), stating that "To protect the purchasing public against deceptive methods and misrepresentations by which purchasers are deceived, is in the public interest."

Also, in the *Rhodes* case the court, referring to its decision in *Federal Trade Commission* v. *Thomsen-King & Co.*, 109 F. 2d 516 (7th Cir. 1940), noted that section 13(a) giving the power to seek injunctions was a necessary part of the plan to prevent fraud and fraudulent commerce through fraudulent advertisements, and was written for the purpose of preventing the ineffectuality of proceedings before the Commission due to the offender's collecting the spoils incident to improper practices."

If the consumer through the issuance of temporary injunctions by a district court is to be protected from false advertising of food, drugs, devices or cosmetics, he should with equal force, we think, be so protected from what the Seventh Circuit in the *Thomsen-King* case called "fraudulent commerce" and which S. 3065 calls "deceptive sales."

The bill provides safeguards for the protection of respondents in the requirement that "proper cause be shown." This was spelled out in the *Rhodes* case that the Commission show "a justifiable basis for believing, derived from reasonable inquiry or other credible information, that such a state of facts probably existed as reasonably would lead the Commission to believe that the defendants were engaged in the dissemination of false advertisements of a drug in violation of the Act." If the bill is enacted, this requirement, of course, will be just as applicable to acts or practices unfair or deceptive to the consumer.

The Commission endorses S. 3065.

The Bureau of the Budget advises that enactment of this bill would be in accord with the program of the President.

By direction of the Commission.

Commissioner Elman's views are set forth in the attached separate statement. This statement was presented to the Commission at the close of business on March 26, 1968, and has not been considered by the Commission.[1]

PAUL RAND DIXON, *Chairman.*

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 27, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: By letter of March 4, 1968, you requested our comment on S. 3065, entitled: "A bill to amend the Federal Trade Commission Act, as amended, by providing for temporary injunctions or restraining orders for certain violations of that Act."

We have no special information as to the desirability of this measure and, therefore, make no comments regarding its merits.

Sincerely yours,

FRANK H. WETZEL,
Assistant Comptroller General of the United States.

GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., March 28, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 3065, "To amend the Federal Trade Commission Act, as amended, by providing for temporary injunctions or restraining orders for certain violations of that Act."

In his message of February 6, 1968 on the American consumer setting forth a new program for 1968, the President said:

"I recommend that the Congress enact the Deceptive Sales Act of 1968 to give new powers to the Federal Trade Commission.

"Under this Act, the FTC would be able to obtain Federal court orders to stop fraudulent and deceptive practices immediately while the case is before the Commission or the courts."

S. 3065 incorporates legislation submitted to the Congress on February 8, 1968 by the Federal Trade Commission designed to implement the recommendation of the President.

The Department recommends that the bill be given favorable consideration.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your Committee and that enactment of the proposed legislation would be in accord with the President's program.

Sincerely yours,

FRED B. SMITH,
General Counsel.

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[1] This statement appears on p. 95.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., March 27, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department with respect to S. 3065, a bill "To amend the Federal Trade Commission Act, as amended, by providing for temporary injunctions or restraining orders for certain violations of that Act."

Under section 5 of the Federal Trade Commission Act, unfair methods of competition and unfair or deceptive acts or practices in interstate commerce are declared to be unlawful. The Federal Trade Commission may enforce the Act by issuing a cease and desist order; and in general obtain a court injunction to uphold its order only after an administrative hearing. However, in an unfair or deceptive practice case involving false advertising of food, drugs, devices, or cosmetics, section 13 of the Act authorizes the Commission to obtain a temporary injunction immediately without the necessity for an administrative hearing.

S. 3065 (the Deceptive Sales Act of 1968) would amend the Act to eliminate the requirement for an administrative hearing proior to bringing suit for a temporary injunction for any unfair or deceptive practice under section 5 of the Act.

The Department of Commerce supports the enactment of S. 3065.

The President, in his February 6, 1968 Consumer Message, recommended the enactment of the Deceptive Sales Act of 1968 to "complete the cycle of protection for the consumer in fraud cases—by adding Federal court injunctions to the administrative and criminal processes which now exist."

With the enactment of S. 3065, a temporary injunction would be available if irreparable injury to consumers would result from delay in obtaining immediate cessation of alleged unlawful practices. The relief provided by section 13, as it would be amended, therefore, would be extended to all products covered by the Act and to any unfair or deceptive practice whether or not by false advertising. We know of no justification for limiting the availability of immediate injunctive relief to cases involving false advertising of food, drugs, devices, or cosmetics.

The Bureau of the Budget advised there would be no objection to the submission of this report and further that enactment of this legislation would be in accord with the program of the President.

Sincerely,

PEDRO R. VAZQUEZ,
General Counsel.

FEDERAL TRADE COMMISSION,
Washington, D.C., March 27, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of March 5, 1968, for the Commission's comments on S. 3066, 90th Congress, 2d Session, a bill "To amend the Federal Trade Commission Act, as amended, by expanding the jurisdiction of the Federal Trade Commission, providing for temporary restraining orders for certain violations of that Act, and making any violation of that Act with intent to defraud or mislead a misdemeanor."

The bill first would amend section 5(a)(1) of the Federal Trade Commission Act (hereinafter referred to as the "Act") (15 U.S.C. 45(a)(1)), so as to make unfair methods of competition and unfair or deceptive acts or practices "affecting commerce" unlawful.

It also would amend section 13(a) of the Act (15 U.S.C. 53(a)) so as to enable the Commission, whenever it believes such action to be in the interest of the public, and the other requirements of the subsection are met, to bring suit in a district court of the United States to seek a temporary injunction or restraining order against any party engaged in, or about to engage in, "any act or practice in commerce within the meaning of section 5 which is unfair or deceptive to the consumer."

Further, it would amend section 14(a) of the Act (15 U.S.C. 54(a)) so that any party "engaged in any violation of section 5 with intent to defraud or mislead, shall be guilty of a misdemeanor."

As we interpret the bill, it goes farther than S. 3065, which is limited to acts or practices "in commerce" within the meaning of section 5, and which does not have the criminal provisions provided by the proposed amendment to section 14(a) of the Act.

The Commission has recommended to your committee in separate reports enactment of S. 3065 and S.J. Res. 130. S. 3065, the "Deceptive Sales Act of 1968", seeks to increase the effectiveness of the Commission's enforcement of section 5 in the interest of consumers. It also empowers the Commission to seek injunctions.

S.J. Res. 130 seeks to grant special money authorization to the Federal Trade Commission and to empower it to seek injunctions in order more effectively to deal with the home improvement racket.

Apparently, the purpose of S. 3066 is to broaden the jurisdiction of the Federal Trade Commission so that it can more effectively give protection to the public. However, there are some observations we believe we should make concerning this proposed legislation.

We would point out that the bill would only authorize the granting, under the conditions set forth therein, of a temporary injunction or restraining order by a district court, where a party is engaging in, or is about to engage in, an act or practice in commerce within the meaning of section 5, "which is unfair or deceptive to the consumer". The proposed amendment to section 14(a) would make it a misdemeanor for anyone to engage in a violation of "section 5 with intent to defraud or mislead." That is, there is no limitation in this amendment to section 14(a) that the violation of section 5 must be based on an act or practice "which is unfair or deceptive to the consumer." This appears to be an inconsistency.

Another apparent inconsistency, we believe, is that whereas the bill would amend section 5(a) to include unfair methods of competition and unfair or deceptive acts or practices "affecting commerce," section 13(a) remains limited to acts or practices "in commerce" within the meaning of section 5.

These apparent inconsistencies, we are certain, could be corrected very easily by appropriate amendments to the bill.

The decision of the Supreme Court in *Federal Trade Commission* v. *Bunte Brothers, Inc.*, 312 U.S. 349 (1941), strictly construed the statutory requirement that the Commission's jurisdiction is limited to acts or practices "in commerce", The Commission favors having its jurisdiction extended to acts or practices "affecting commerce."

In regard to the proposed amendment of section 14(a) the Commission has reservations about including criminal provisions in legislation of this type at the present time. We are especially concerned that by endorsing S. 3066 we might possibly detract from the force of our recommendations for the enactment of S. 3065 and S.J. Res. 130. We think it is much more important at this time that S. 3065 and S.J. Res. 130 be enacted into law.

By direction of the Commission

PAUL RAND DIXON, *Chairman.*

N.B.—Time limitation has not permitted securing advice from the Bureau of the Budget as to the relationship of the report to the program of the President.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 21, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: By letter of March 4, 1968, you requested our comments on S. 3066, 90th Congress, entitled: "A BILL To amend the Federal Trade Commission Act, as amended, by expanding the jurisdiction of the Federal Trade Commission, by providing for temporary restraining orders for certain violations fo that Act, and by making any violation of that Act with intent to defraud or mislead a misdemeanor."

We have no special information as to the desirability of this measure and, therefore, make no comments regarding its merits.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General
of the United States.

GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., March 28, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 3066, "To amend the Federal Trade Commission Act, as amended, by expanding the jurisdiction of the Federal Trade Commission by providing for temporary restraining orders for certain violations of that Act, and by making any violation of that Act with intent to defraud or mislead a misdemeanor."

Among other things, S. 3066 would amend section 13 of the Federal Trade Commission Act to authorize the Commission to bring suit to enjoin any unfair or deceptive act or practice. This provision is similar to S. 3065 which incorporates legislation submitted by the Federal Trade Commission to implement a recommendation contained in the February 6 consumer message of the President. Injunctions authorized under S. 3065 would also apply to certain advertisements.

The Department recommends that S. 3065 receive favorable consideration in lieu of the injunction provisions of S. 3066. The Department has no comment to make with regard to the other provisions of S. 3066.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your Committee and that enactment of S. 3065 would be in accord with the President's program.

Sincerely yours,

FRED B. SMITH,
General Counsel.

[Washington Post, Sept. 30, 1967]

HOMEOWNERS LOSE MILLIONS IN MORTGAGE SCHEMES HERE—100 SUITS STIR PROBE BY FOUR U.S. AGENCIES

(By Leonard Downie Jr. and David A. Jewell)

Hundreds of low-income Negro homeowners in Washington are complaining that they are being bilked in second mortgage schemes that Federal authorities say net more than $1 million a year.

In more than 100 suits filed in General Sessions and U.S. District Court here, homeowners allege that these morgages (deeds of trust) were obtained by a dozen home improvement businesses here through high-pressure salesmanship, fraud and, in many cases, false notarization. Two officers of one company have already been indicted for forging signatures of eight homeowners on deeds of trust.

SOLD AT DISCOUNT

A four-month investigation by a team of reporters from The Washington Post revealed that some second mortgages obtained here have been sold at a discount to a national credit firm. This company is also involved heavily in second mortgage business in Philadelphia, Boston, Cincinnati, Columbus, Texas, Indiana and New Jersey.

The home improvement companies who obtained the mortgages—and the creditors who bought and are now collecting on them—are being investigated by United States Postal Inspectors, the Federal Housing Authority, the Federal Trade Commission and the Department of Justice.

The second mortgage practices have been going on since 1962, and many millions of dollars are involved.

INDICTMENTS EXPECTED

In the wake of this newspaper's investigation, U.S. Attorney David G. Bress said he expected indictments in the cases here within two weeks.

In case after case in Washington, homeowners are being forced to pay exorbitantly or lose their homes.

Two elderly blind women who are paying $7500 plus interest say all they received was a black-and-white portable television set and installation of a small gas heater and a rusting radiator, worth a few hundred dollars.

A retired couple in their 70s told reporters they ended up with $15,000 in mortgages after having $7,500 in old mortgages paid off and an "American Towne-

house Front" installed, which consisted mostly of aluminum siding on the upper part of the house front, paint on the rest, and a new front door.

A 67-year-old charwoman has two mortgages on her home totaling $9,000 as a result of two cash loans she received that totaled $5,000.

TEN LOSE HOMES

At least ten families facing similar debts have lost their homes through foreclosures here in the past two years. Scores more are fighting in court to save their houses.

Many other homeowners who signed contracts for home improvements with any of a dozen local firms did not know—until contacted by reporters from The Washington Post—that their signatures were also on mortgages on their homes filed with the D.C. Government.

When questioned by reporters, these nearly 100 homeowners—selected at random from District real estate records—voiced nearly identical complaints as those found in the court suits.

The United States Attorney's office here first began receiving complaints about some of these firms more than two years ago. Two isolated indictments—charging the officers of one firm with forgery and the notary public for another with false notarization—were handed down early this year.

[The practices complained of do not affect most of the several hundred home improvement contractors licensed to do business in the District. These contractors are reputable businessmen whose work is financed conventionally through normal commercial channels.]

On March 30, Federal investigators sent United States Attorney Bress a lengthy report on the activities of one firm.

The report also contained a strong indication that there were many other firms in the District engaged in similar schemes.

FRAUD SQUAD SET UP

In July, after The Washington Post investigation began at the courthouse, Bress decided to set up a special fraud squad in his office to work on the case "because of the voluminous nature of the investigation."

Bress said this week that the fraud charges are "not the crimes of violence that I am now primarily interested in, of course, but it is the kind of illegal conduct we will look into."

Named in many court suits as offenders are Custom House Construction Co., Monarch Construction Co., United Mortgage Co. (trading as Bankers Mortgage Co.) and United Home Enterprises Corporation.

A majority of the financial paper from these firms involved in litigation here has been sold the Atlas Credit Corp., of Philadelphia, a giant credit firm listed on the New York Stock Exchange, which was recently renamed Sunasco, Inc., as the result of a merger. Sunasco lists assets of $400 million.

The pattern was this:

The home improvement firm would sell the paper at a discount to a local Atlas broker. He in turn would sell it at a discount to Atlas in Philadelphia which would then turn it over to a wholly owned subsidiary company to make collections.

Two Federal agencies (the Federal Trade Commission and the Department of Justice) are looking into Atlas' activities in a number of cities, including Washington.

Suits have been filed against four other local firms which also allegedly originated or passed on debt paper to Atlas during the past two years. Some other firms that have sold such paper to Atlas have gone out of business during that time. In some cases their officers have helped start other firms that have also dealt with Atlas.

NOTARY SUIT CITED

First public attention to these schemes came last year when one notary public from Maryland pleaded guilty in U.S. District Court here to falsely notarizing two D.C. mortgages in favor of Custom House Construction Co.

Deeds attested by the notary, Louise Beane, are involved in five suits filed by homeowners against Custom House. The suits say that no notary public was present when they signed, as the law requires.

One lawyer representing eight homeowners filed damage suits claiming a "money lending scheme" involving Atlas Credit Corp. of Philadelphia and Bankers Mortgage Co. of 722 11th st. nw.

That lawyer, like many others who pressed their charges of fraud vigorously, won settlement exceptionally favorable to his clients.

Government investigators say that much of the financial paper generated by Custom House was sold for more than a 40 per cent discount, and some of it has been discounted by as much as 60 per cent.

CANVASS BY PHONE

Here is how some of the home improvement companies have worked:

They canvassed low-income Negro neighborhoods, generally by phone, seeking people interested in anything from home improvements to television sets, air conditioning or carpeting.

The telephone canvassing is usually done by women who use real estate directories and cross-indexes listing phone numbers by street address. One company called 6000 homes in 28 months.

A visit by a salesman usually occurs, complete with sales talk, and the quotation of a low price. The suits claim that some fast shuffling of papers to be signed follows.

If the homeowner is buying a product, it is delivered quickly. In the case of home improvements, work begins promptly. Weeks later, a payment book arrives in the mail from a finance firm the homeowner has never heard of.

PAYMENTS SOAR

If the homeowner bothers to multiply the monthly payments by the number of months he must pay, in some cases he may find the principal owed is anywhere from double to four times the amount he thought he had signed up for.

If he protests, he discovers that not only has he signed a note for this amount, but that he also has signed a deed to his home, and that there is not much he can do about it.

The holder of the deed (the firm that sent the payment book) has bought the note and mortgage and thus can claim that it is a "holder in due course." The law presumes that a holder in due course is entitled to his money, since he has paid for the paper "in good faith." He is merely the financier, and quality of work, for instance, is not his problem. The original salesmen, in effect, wash their hands of the affair.

DEBTS "CONSOLIDATED"

In some cases, a homeowner protests he can't afford whatever it is the salesman is selling because he already is heavily in debt.

At that point he is told he will be "helped" by debt consolidation.

The salesman arranges for him to get a loan to pay off all his old debts and also cover the cost of work to be done or an item purchased.

He is then told that the new monthly payment will be less than the combination of all the previous monthly payments on the other debts.

Sometimes, a few hundred extra dollars is added to the note for the homeowner to use as he pleases.

After the deal is signed, the homeowner sometimes finds the debts are not paid off and he winds up with a large new debt plus some of his old ones.

LOSS OF HOMES LIKELY

Scores of homeowners are in danger of losing their homes over the next few years because of a clause in the contracts relating to the method of financing involved.

It is called balloon payment and works like this:

Say a note is signed which, including interest and finance charges, totals $7000 to be repaid in five years.

The payments are $50 a month. Sixty months times $50 equals $3000.

This leaves $4000 yet to be paid. The clause in the fine print says that the full note is due and payable on the same day as the final payment.

In other words, if the victim cannot come up with the extra $4000 on month number 60 he can lose his home.

PRESSURE ON LOANS

Balloon payments are an accepted part of many bank mortgage loans. Most borrowers understand how balloon payments work, though, and assume they would be in a position to refinance their notes when they fall due. In the cases involved here, the homeowners often do not understand the meaning of the balloon payment arrangement.

In some cases, in which banks make loans insured by the Federal Housing Authority to customers of home improvement firms, the homeowner is pressured into signing a certificate that the work has been completed long before the work is done. The FHA warns homeowners against signing before completion.

The reason the firms press for the signatures is that banks will release loan money to the firms only after a signed certificate is presented.

BANKS HELD NEGLIGENT

Another factor working for the home improvement firms has been the apparent failure of some banks to investigate thoroughly the firms they regularly do business with.

According to FHA regulations, this investigation should find if the home improvement firm is "reliable, financially responsible and qualified to perform satisfactorily the work to be financed."

Thus the FHA is now investigating some of the local home improvement firms, as are the postal inspectors. The post office is involved because some of the firms advertised in newspapers that travel through the mail.

In 1961, the District Commissioners drew up regulations requiring local home improvement firms to register at the Distict Building and, when registered, to keep their sales practices within detailed guidelines.

The regulations have a loophole, though, according to an official of the District's Department of Licenses and Inspections. The rules say that firms do not need licenses if they do not collect their money until jobs are completed—precisely what some of these firms are doing: getting money after completion certificates are signed.

Several of the firms have registered anyway, but none has been prosecuted for violating the regulations.

A Woman's Costly Bargain

One homeowner who signed up for more than she bargained for is Lucy Kinard, above. Mrs. Kinard is blind, and lives with her 76-year-old mother, Mary Williams, who is partially blind, at 1103 5th st. nw. She says that she and her mother bought a portable television set for her nephew and had a gas hot water heater and a radiator installed. The total cost, she thought, was $900, so she and her mother made their marks on a contract for that amount.

Soon afterward, Mrs. Kinard says, a man called her to tell her he had bought a note and a deed of trust against their home for $7500, plus 7 per cent interest. She told the man she hadn't signed for that much and couldn't afford to pay. Then, she says, the noteholder came to the house and threatened to foreclose on the mortgage.

Unable to afford a lawyer, Mrs. Kinard, who is 56, and her mother, are now paying $50 a month on the note, in addition to payments on a first mortgage. They have now made 15 payments on the note, but still owe $7402.34 on the principal. The note was discounted, by the way, and the noteholder's price for it was $3494.

[From the Washington Post, Oct. 1, 1967]

Firm Duped Them, Say Residents—A Current Washington Ghetto Synonym for "You've Been Had" Is "You've Been Monarched"

(By Leonard Downie Jr. and David A. Jewell)

The genesis of the term goes back to 1963, when the Monarch Construction Company began its massive canvassing here of low- and middle-class homeowners, selling private "urban renewal": the "American Townehouse Front," other home improvements, debt consolidation, the works.

By the beginning of last year—after Monarch disbanded and its president, Nathan H. Cohen, left town—Monarch had sold contracts to hundreds of Washington homeowners and grossed $2.5 million, according to one estimate.

Cohen said yesterday he would not answer any questions about Monarch operations, whether the company was still in business, or about court suits alleging fraud.

He was reach in Baltimore where he and his mother, who was also a Monarch officer, operate the Baltimore Business School, 303 E. Fayette st., a computer training school.

In more than 25 civil suits in General Sessions and U.S. District Courts here, homeowners have charged that Monarch used high-pressure salesmanship and fraud to get their signatures on contracts and home mortgages.

Monarch's Townehouse Front usually is a combination of white aluminum siding, black aluminum shutters, new windows and door, carriage lamps and trim put on the front of a row house. It can look handsome from a distance, but some owners have complained that the work is shoddy and deteriorating.

Interviews with dozens of Monarch customers draw similar complaints: the Monarch salesman mentioned something about urban renewal and being forced to make improvements; the Townehouse Front looked so nice in the photographs; there were apparent endorsements of Monarch by Negro leaders and Congressmen; there was so much shuffling and signing of papers; finally, there was the debt—often thousands of dollars more than the price they remembered quoted or the worth of the job. Almost always, the note was secured by a deed of trust.

In a civil suit in the Court of General Sessions, Judge Catherine B. Kelly found that Monarch was guilty of using "fraudulent representation" to procure the signature of Alberta K. Smith, 778 Irving st. nw., on a home improvement contract.

Mrs. Smith testified that the Monarch salesman said he was a "representative of urban renewal," that her home "would not be torn down" if she signed the contract and that "urban renewal" would pay $2000 of its cost.

When she called the Redevelopment Land Agency the next day, she testified, she was told it had no connection with Monarch. Mrs. Smith called Monarch immediately and ordered the firm not to do any work.

Monarch sued her for the contract price of $4500. Judge Kelly in July, 1966, awarded Mrs. Smith $1525 punitive damages instead. She has not been able to collect.

Monarch might be termed the "granddaddy" of the nearly dozen firms here that have engaged in second mortgage schemes. A number of companies are under investigation by four Federal agencies and by the U.S. Attorney's office.

Usually, Monarch got the customer's signature on a mortgage to his home, too. Several homeowners complained in the court suits and interviews with reporters that they did not know they were signing mortgages, that no notary public was present, or that the amount of the debt was not the same or did not cover all the work as they had been told.

When Monarch obtained mortgage loans insured by the Federal Housing Administration through a reputable bank, the amount was usually $3500 total cost for the job plus $837 financing charges.

MAXIMUM ALLOWED

The final $4337 amount on the mortgage is the maximum allowed by the FHA under its Title I home improvement program. Usually the customer received the American Townhouse Front which, court suits show cost Monarch about $1500.

The FHA allows 15 per cent overhead and 40 per cent profit. This would total about $2500 for a Townhouse Front. Monarch usually charged about $3500, plus interest.

Like the customers of nearly a dozen other home improvement firms investigated by reporters from The Washington Post in the past four months, the homeowners who were "Monarched" must pay or lose their homes.

At least three homeowners have lost their homes after signing Monarch contracts. At least six more are in court trying to stave off foreclosures.

Clarence and Georgia Winters, who live in a modest row house at 1102 Park st. ne., are trying to fight that inevitable fate.

Winters, 61, has worked as a skilled laborer for a Washington construction firm for 20 years. His wife, who is 54, has worked for the past seven years as a cook for Sen. Stuart Symington (D-Mo.).

GOOD CREDIT RECORD

In buying furniture, appliances and cars on time over the years, the Winterses have maintained a good credit record. During the 16 years they lived in the house on Park Street, they whittled the first trust on their home down to less than $1000. That is, until Monarch came along in December, 1964.

What happened since to the Winterses is recounted by them under oath in separate depositions filed in their suit in the U.S. District Court:

A woman had called Mrs. Winters talking about improvements to be made in her neighborhood. It was not until two men came to her house a few days later that she knew the call came from Monarch. (Monarch, is believed to have called 6000 homeowners while it was in business.)

The salesmen "were so friendly and nice" and showed them photographs of other Negro homeowners, some prominent Washington Negroes and homes "improved" with an American Townhouse Front.

"They said that Roy Wilkins sent them there," Mrs. Winters attested.

One salesman "said he was going to do the whole entire front, and he was going to remove the windows and give us new windows, and build a brick wall all around the front, and a cement porch, and the aluminum siding."

The Winterses said their kitchen was what really needed work. The salesman told them that the kitchen work would be included, too, and the whole job would be $2000 cheaper than usual "by letting him write it up in December."

The Winters family says the prices quoted that night and on other nights by Monarch salesmen varied from $2500 to $4000. They said they signed one set of contracts the first night, which were taken away from them and replaced by others when the salesmen came back later.

Then, one night three months later, the salesmen came to the Winters home again and asked the couple to sign the top page of a "big pad" of documents.

In their depositions, the Winters couple states further that one of the men identified himself as Nathan Cohen and explained that the other papers were copies of the top page.

"It is just as much for your benefit as it is for mine," Mrs. Winters says Cohen told her as they sat at the dining room table. "We have to get some more copies."

When Winters asked why so many copies were necessary, a man who had accompanied Cohen told Winters to "calm down, you're getting all upset." He took Winters into another room to look at the Winters' furniture. The man told him that some of it appeared to be "antiques."

Cohen placed the thick pad in front of Mrs. Winters and told her to "press hard, press real hard," according to her deposition. When Winters came back into the room, he saw his wife's signature and signed himself.

It was only later, the Winterses said, when they got a payment book from Citizens Building and Loan Association of Silver Spring, that they discovered their signatures were on a mortgage (deed of trust) on their home for $4337 and on a completion certificate for the work.

As work progressed on their home, the Winterses found several things that displeased them: cement splashed on the front door, rags and other refuse left on the front lawn, sticky windows, a loose lamp.

Winters, who worked as a carpenter's helper on his construction job, was particularly upset by "the rough job" a workman was doing in his kitchen: such as wooden panels installed upside down, with wide gaps between them.

REFUSED TO PAY

He stopped Monarch's carpenter from doing anything further on the kitchen and began calling Monarch to complain. The Winters said they never got a satisfactory answer to their complaints and, when they received the payment book from the bank, called to say they would not pay until the job was finished right.

That was when they found the Citizens Building and Loan had already paid Monarch its $3500 out of the $4337 loan insured by the Federal Housing Authority. The bank said Monarch had presented a signed completion certificate required by the FHA.

The Winterses insist they never signed a completion certificate, since the work was never finished. The completion certificate the bank's attorney has introduced into the court record has no date on it, in violation of FHA regulations.

The bank has introduced into the suit the mortgage it holds to secure the Winters loan. It bears a different date than the mortgage recorded with the District Recorder of Deeds.

Complaints about Monarch first surfaced in the autumn of 1964, after it had been in business for a little more than a year.

In a story published in The Washington Post on Nov. 1, 1964, several owners of homes on unrestored fringes of Capitol Hill complained about Monarch's sales tactics. One woman had already filed suit in U.S. District Court, charging Monarch with "trickery" and "false pretenses."

The homeowners said that Monarch's telephone solicitation, sprinkled heavily with references to "urban renewal" and "talking to you about schedules for your property and your street," led them to believe the Government was somehow behind it.

NO MONOPOLY

Cohen told a reporter then that "we don't think the Government has a monopoly on the words." He said then: "Our program is to rehabilitate a large part of Washington over a period of ten years. If we'd remodel the insides of houses nobody'd see them, while on the outside you can see the change right away."

At the same time, the Capitol Hill Restoration Society, complained about Monarch to Government agencies. Some homeowners and a former Monarch salesman went to talk with prosecutors in the U.S. Attorney's Office about Monarch in 1964.

Yet Monarch's business continued to flourish. In January and February of 1965, it took out full-page newspaper advertisements criticizing Federal urban renewal as "far more urban removal" and boasting its own "private urban renewal program" as having "created $2,149,500 in new first trust loans" and "$300,000 worth of approved Title I FHA loans."

But the FHA was investigating Monarch by then and, on May 11, 1965, placed the firm on its "precautionary measures list."

Notice went out to all banks handling FHA-insured loans that FHA had information "indicating that the subject has not conducted his operations . . . consistent with the purposes and objectives of the FHA Property Improvements Program."

Banks were instructed to deal with Monarch only in cases in which bank officers personally checked the contractors' work and to have completion certificates signed in the presence of bank officers.

Monarch no longer obtained FHA insured loans. Instead, it sold some of its second mortgage notes to Allstate Mortgage Corp., now of 1111 Massachusetts ave. nw. Allstate, in turn, sold some of the mortgages to the Atlas Credit Corporation of Philadelphia (recently renamed Sunasco as a result of mergers). Atlas assigned the notes to its subsidiaries to collect payments from the Washington homeowners.

Monarch also was still able to obtain, from reputable banks, new first mortgage loans not insured by the FHA for its customers. Money from these mortgages was used to pay off the customers' old mortgages and, in some cases, also to pay Monarch for home improvements.

In many of these cases, records indicate that Monarch also obtained the customers' signatures on a new second, and sometimes a third, mortgage. Money from these also went to Monarch for home improvement contracts.

After being involved in more than 50 suits in Washington's courts—more than 25 involving charges of fraud against it—Monarch has suffered one judgment against it and lost four other times on dismissals when it failed to answer questions filed by opposing attorneys.

Monarch and the dozen other firms under investigation are a minority of the home improvement contractors who do business in the city. Most contractors are reputable businessmen who tell customers just what they are getting and how much it will cost.

[From the Washington Post, Oct. 2, 1967]

SUITS HIT MORTGAGE PRACTICES—MISLED ON LOAN TERMS, CLAIM HOMEOWNERS

(By Leonard Downie Jr., and David A. Jewell)

Custom House Construction Co. went into the business of home improvement construction on March 3, 1966, in an office at 7849 Eastern ave., Silver Spring.

Almost six months to the day later, Custom House went out of business, according to its president, Harvey W. Davis.

Records in the D.C. recorder of deeds office show 55 second mortgages worth $250,000 made out to Custom House.

In the past four months, a team of reporters from The Washington Post Interviewed 23 Custom House customers.

All are low-income Negroes, elderly and often widowed, and in each case the price of the job done or products received (such as a paint job or a color television set) was secured by a mortgage on their homes.

DIDN'T KNOW OF MORTGAGE

Four Custom House customers said they had no idea there was a second mortgage on their homes until they were told so by reporters. The other 19 said they first learned of the mortgages from United States postal inspectors, who are investigating Custom House.

At least one customer, Chester Thompson, has lost his home through foreclosure on the second mortgage. Six others—faced with foreclosure—filed court suits charging that their signatures on the mortgages were secured through fraud.

A pattern appeared in the complaints:

- The customers were contacted by Custom House not vice versa.
- The customers said they signed what they thought was a contract but later turned out to be a note and mortgage.
- The customers said there was no notary public present when they signed the "papers" although the mortgages on their homes bore notarization seals.
- All said they received payment books in the mail from companies they had never heard of demanding payment of notes they didn't know they had signed.

The 23 additional Custom House customers interviewed by reporters said the same points apply in their cases.

Custom House is one of nearly a dozen home-improvement firms under investigation by Federal authorities for their second mortgage dealings in Washington. The U.S. attorney's office expects grand jury action within two weeks.

The vast majority of home-improvement firms in Washington enjoy good reputations.

PRICE ABOVE APPRAISALS

Sources said that on professional appraiser who dealt with Custom House said that when he had done appraisals for Custom House the firm automatically increased its prices well above the appraisals.

Suits in court indicate that Custom House would then quote prices to the customers but give them contracts to sign, the face values of which would be double the quoted prices.

In two court suits, customers have claimed notes and mortgages were filed against their home for at least double the amounts quoted on the jobs by the Custom House salesman.

The contract in one case tells the story:

One customer had the front of his house painted "for the total sum of $2350." The contract says that the customer agrees "to pay the sum of $2350 upon completion, secured by a note of $5875 plus 8 per cent interest in monthly installments of $58.75."

When reporters asked the customer, an elderly man who cannot work because he is being treated for cancer, why he agreed to pay $5875 for work that cost "the total sum of $2350," the homeowner replied:

"I thought just the monthly payment was $58.75."

USED TELEPHONE SALESGIRLS

Custom House employed a battery of girl telephone solicitors. One of the girls told an investigator about the sales talk:

The girls were given phone numbers of houses in low-income Negro areas selected from a cross-index file.

They were told to hang up if they judged a white person had answered.

Otherwise, they were to find out within 60 seconds if the resident of the house owned or buying the house.

If it was discovered the resident was only renting, they were under orders to terminate the conversation and make another call.

Otherwise, they would try to interest homeowners in anything from a television set to a new roof. If the prospects seemed good, they would then turn the files over to salesmen.

One of Custom House's first jobs was on the home of Albert and Mattie Smalls, at 401 11th st, se.

SMALL FILE SUIT

After being threatened with foreclosure, the Smalls filed suit against Custom House charging "willful, deliberate and malicious fraud."

The Smalls' suit says the salesman told them he could fix up the front of their house for $800.

They thought that would be nice, but lamented that they already had debts of $4900 and didn't feel they could afford it.

The salesman then said he could arrange to get them a loan that would permit them to pay off the $4900 as well as cover the cost of fixing up the house front, according to the suit.

They agreed to this, and signed papers they thought were contracts and loan application forms.

The job was done. They learned later, however, that only $575 worth of outstanding debts were paid off, leaving them with $4397 in old debts plus a mortgage on their home for $500 that they didn't know they signed, the suit says.

The couple paid $1000 on this note until they contacted attorney John J. Carmody Jr., who filed suit. On July 24, 1967, U.S. District Court Judge Joseph C. Waddy issued a temporary restraining order against the present holder of the Smalls' note, prohibiting the holder from making any further collections until the court case is decided.

ACCEPTANCE CORP. NAMED

The Smalls' suit also named as defendant a company called Universal Acceptance Corp., located at 6400 Georgia ave., nw.

According to official D.C. records, a founder, a director and president of Custom House is Harvey W. Davis of 8313 Raymond St., Potomac.

According to these same records, Harvey W. Davis is also secretary, treasurer and a director of Universal Acceptance, with an address at that time of 8804 Lanier dr., Silver Spring.

Davis told a reporter: "I really can't answer your questions I really don't know much about that. I took in a partner who knew the home-improvement business. He did the selling and I did the bookkeeping. I never knew any contracts were fraudulent."

All notes and mortgages generated by Custom House were sold immediately, sometimes within hours, to second parties, known legally as "holders in due course."

The Smalls' case was no exception. Their note was sold to Universal Acceptance. Much of the paper generated by Custom House went to Universal.

The Smalls' suit contains the following allegation:

"Davis conspired with both Custom House and Universal to hatch a scheme whereby Custom House would fraudulently obtain a promissory note, reinforce its right to enforce the terms of the note by fraudulently obtaining a deed of trust (mortgage) against the property, fail to perform the consideration for said note, sell the note to Universal at a fraudulent discount rate, allow Custom House to lapse into insolvency thereby defrauding potential creditors and hide the whole behind the sham shield of the 'holder in due course' defense of Universal."

NOTE DISCOUNT CLAIMED

The suit also alleges that Universal bought the Smalls' $5500 note from Custom House for $2200—at a discount of 60 percent.

Many Custom House notes were sold at discounts ranging from 40 to 60 percent.

The U.S. Court of Appeals here has characterized discounts of 40 per cent or more as "outrageous" and stated that such discounts, if there are also circumstances such as the purchase of notes executed by unknown persons whose credit has not been investigated, constitute a "badge of fraud."

An answer to this suit was filed on behalf of Universal by Bernard T. Levin, a local attorney. The answer denied all allegations of fraud and maintained that Universal had purchased the note in the ordinary course of business.

In its answer, Universal argued that it was merely a "holder in due course," and it also filed a counterclaim against the Smalls for $5119.55 not yet paid on the note, plus attorney's fee.

Custom House Construction Co. has not yet answered the allegations contained in the Smalls' suit.

The signature of the notary public who swore she witnessed the Smalls' signatures' on the $550 mortgage on their home was Louise Beane.

In January of this year, Louise Beane, a licensed notary public in Maryland, was indicted and charged with the false notarization of two mortgages in Washington.

NOTARY PLEADED GUILTY

Mrs. Beane pleaded guilty and received a suspended sentence in U.S. District Court here.

Those two mortgages had been generated by Custom House. Mrs. Beane notarized a total of 27 mortgages generated by Custom House.

In six court suits, homeowners have claimed that they did not know they signed mortgages, that no notary public was present when they signed papers and that they had never seen anyone named Louise Beane, either in their homes or in Maryland. Numerous other homeowners made similar claims to reporters.

Seven Custom House notes were purchased by a District realtor named Leonard Freedman, of 761 17th st. nw., for what investigators say were 40 per cent or greater. Freedman denies the discounts were that large.

One of those mortgages was on the home of an elderly widow, Alberta Kibler, of 1737 D st. se.

After her home was threatened with foreclosure, she filed suit against Custom House and Freedman, charging that her mortgage was secured by fraud through a conspiracy between Custom House and Mrs. Beane.

Her suit alleges that Custom House's dealings with her were "part of a conspiracy in which Louise Beane similarly made many false notarizations for Custom House."

It says that she was quoted a price of $2750 for a new kitchen and discovered a mortgage against her home she didn't know she had signed for $5550.

FIRM DENIES FRAUD

Custom House answered this suit with a denial of fraud and conspiracy and denied that Mrs. Beane was an agent of Custom House.

Freedman answered by saying he was without sufficient knowledge to admit or deny the charges since he was merely a "holder in due course" and he denied any conspiracy existed. He said yesterday that "all I can do is check the District records to see that it's a legitimate mortgage." I dealt with Custom House the same way I dealt with everybody else."

One Custom House customer, Amanda Green, 56, of 829 Sheridan st. nw., bought four air conditioners for what she thought was "a little over $2000" and later learned there was a mortgage on her home for $5800, plus 7 per cent interest.

Her paper was purchased from Custom House by Freedman. He showed her a note bearing her signature that called for payments of $33.50 a month for 60 months.

At this rate Mrs. Green could not have paid off the interest due on the note by the end of the 60 months, much less the principal.

Since by the 60th month she would have only paid $2010, much of it having gone to pay off interest, Mrs. Green stood to lose her home unless she could pay the balance or obtain a new loan for it.

If she refinanced the note for the same schedule of monthly payments, she would not have been able to pay off the principal due in her lifetime, Federal investigators say.

Mrs. Green hired an attorney before making any payments. He hired an appraiser who valued the air conditioners at $974. U.S. postal inspectors had them appraised for $971.

Mrs. Green's attorney reached an agreement with Freedman whereby he wiped off the mortgage on her home in return for a payment of $1000.

LABORER SUES

Frank Harris, of 124 10th st. ne., an illiterate, elderly laborer has filed suit saying he was tricked into signing a $7450 mortgage on his home and received only $500 worth of work in return.

His suit claims he signed certain papers because Jack Shulman, Davis' partner and the salesman in this and many Custom House transactions, promised him that Custom House would pay off two previous mortgages on his home.

On the original two mortgages, he was paying a total of $100 a month, Harris said, in the suit. He also said that he had to pay $80 a month on the new mortgage held by Custom House, plus the same old $100 he had been paying.

He earns $65 a week.

Shulman, of 5300 Westbard ave., Bethesda, and Custom House answered the suit and denied any fraud or wrongdoing.

MENTIONED IN SUITS

Shulman is mentioned in most of the Custom House suits as the salesman involved and by most of the customers contacted by reporters.

Shulman told a reporter that none of the mortgages signed up by him were obtained by fraud.

"You will find they were all legitimately said," said Shulman.

Shulman said that in each instance he was accompanied by a notary public, including those in which Louise Beane's signature appears on the mortgage.

The activities of Custom House, and several other home-improvement contractors, are being looked into by Federal authorities. Most home-improvement contractors are reputable businessmen who tell customers what they are getting and how much it will cost.

Five Custom House mortgages ended up in the hands of Atlas Credit Corp. of Philadelphia, which has been renamed Sunasco, Inc., following a merger. Atlas is now also under investigation by Federal authorities.

Atlas buys second mortgage paper from firms in 40 states and two Canadian provinces.

[From the Washington Post, Oct. 3, 1967]

CITY HIT FOR "SLOWNESS" IN PROBE OF MORTGAGES

(By Leonard Downie, Jr. and David A. Jewell)

The General Improvement Contractors Association of Washington criticized the city government yesterday for being "so slow" to move against the Monarch Construction Co., a home-improvement firm whose second mortgage practices were revealed in The Washington Post.

John H. Haas, executive vice president of the Association, said his group complained to the city about Monarch in mid-1963, when Monarch first started selling its "American Townehouse Front" here.

Haas said a hearing was held at the District Building as a result of his group's complaint, under the aegis of the city's Department of Licenses and Inspections.

Haas said that a L & I spokesman said Monarch's activities would be considered, but that nothing ever happened.

Between that hearing and December, 1965, when Monarch went out of business (and its president, Nathan Cohen, and secretary-treasurer, Thelma Cohen, left the city), Monarch had contacted 6000 homeowners and had written $2.4 million worth of contracts, according to Federal investigators.

Monarch and nearly a dozen other home-improvement firms are being investigated by four different Federal agencies.

Haas said yesterday that the home-improvement firms cited in The Washington Post were "an exception to the rule as far as home-improvement contractors in the District are concerned." He added:

"I can only say now, 'We told you so.' We tried to bring attention to Monarch and these other firms before, but no one listened."

Haas said his Association had also complained to the Federal Housing Authority about Monarch.

The FHA put Monarch on its precautionary measures list on May 11, 1965, 7½ months before Monarch ceased operations.

Sen. Charles H. Percy (R-Ill.) said yesterday that he had written the FHA asking for recommendations on remedial legislation that would assure no repetition of the practices described in the newspaper articles.

Sen. Percy said he was "shocked" at the revelations.

Meanwhile, Corporation Counsel Charles T. Duncan said he was ordering his staff to examine the city's licensing regulations for home-improvement contrac-

tors "to see whether any changes are needed and to take whatever steps may be necessary."

Duncan said that "the regulations are not self-enforcing and we have not received any complaints from citizens since I have been here. Perhaps people aren't aware the regulations exist."

Rep. Wright Patman (D-Tex.), chairman of the House Banking and Currency Committee, said he felt there were "some mighty big people in on" the second mortgage practices occurring here.

He said he intends to confer today with Rep. William B. Widnall (R-N.J.) about how best to conduct an investigation into the situation here. "Things such as this have caused riots," Widnall said.

Widnall called Saturday for a House investigation of the home-improvement firms cited in the articles.

Rep. Leonor K. Sullivan (D-Mo.), chairman of the House Banking Committee's subcommittee on consumer affairs, said the revelations prove her point that the new Consumer Credit Protection Act she is sponsoring needs a clause governing first mortgages.

She said that opponents are attacking a first-mortgage clause on grounds that first mortgages rarely are connected with questionable business practices.

Some of the home-improvement contractors cited in articles have secured new first mortgages on customers' homes, while the customers have claimed they thought they were signing only loan contracts.

Also yesterday, U.S. Attorney David G. Bress said his special fraud squad was undertaking an "intensive investigation" into the second-mortgage field here.

He said again that he expected that his office would make presentments to a grand jury within two weeks.

Bress' fraud squad, however, consists only of Assistant U.S. Attorney Seymour Glanzer, and Glanzer reportedly was not detached from his regular duties for the investigation until yesterday, after articles had appeared about the practices.

Glanzer is being assisted by John Risher, an attorney lent for the purpose from the Department of Justice.

Sen. Joseph D. Tydings (D-Md.) has been working up a bill on consumer protection, and the bill is expected to be submitted shortly. There was some speculation yesterday that he may try to hold hearings this month about the disclosures on second-mortgage practices.

[From the Washington Post, Oct. 4, 1967]

INTERCOM BUYERS EXPECTED PRIZES, BUT GOT MORTGAGES

(By Leonard Downie Jr. and David A. Jewell)

"The salesman made it seem so nice," one housewife remembered. "It looked as though we could cut the total price way down—maybe even make a profit."

She did not make a profit. Instead, she is paying more than she expected for a very special kind of status symbol—a home intercom system. And she had a second mortgage on her home that she never knew she signed.

She is one of scores of customers of six local firms who sold intercoms and water softeners during the past five years and whose sales practices are now under investigation by Federal authorities.

There are many reputable electrical firms in Washington that sell such equipment without questionable sales methods and without obtaining second mortgages to secure payment of the sales price.

The salesmen of the six firms under investigation went door-to-door in ghetto and other inner-city neighborhoods where the intercoms and water softeners are surprisingly big sellers.

The six firms used "chain referral" sales schemes in which salesmen offered homeowners a chance to get large amounts of their money back by referring new customers to the firm.

Their customers have complained, in court suits and interviews with reporters of The Washington Post, that they did not get much or any money back and that they wound up with second mortgages on their homes—mortgages they didn't know they had signed.

The six firms are among a dozen under investigation by local and Federal authorities for their second-mortgage practices.

Reporters went through real estate records and called homeowner after homeowner listed as having $1389 second mortgages on their homes. Time after time, it turned out that the homeowner was a customer of one of the firms, Allied Enterprizes Inc.

Many said they had not known that the mortgages existed. Those who did know about them said they had not found out until they were contacted by police or Federal investigators, or called the finance company that was collecting their payments.

The homeowners all told the same story:

An Allied salesman came to their home to tell them about the intercom system—complete with am-fm radio, and burglar and fire "panic" alarms.

The $1389 price seemed high to the homeowner. (One electrical contractor told reporters that a maximum for this type of job would be $600, with financing charges.)

PROMISED PRIZES

But the Allied salesman told them they could get money back in "prizes" for referring friends to Allied as customers, according to the homeowners.

The homeowner was told he would become an "equipment-owning representative" and receive $100 for each person referred who bought an intercom. And he could receive up to $1000 in additional prizes for making 45 "qualified demonstrations" of his intercom system to prospective customers.

But a Federal Trade Commission examiner found earlier this year that "few, if any" of Allied's customers received "enough referral commissions to obtain their intercom at little or no cost."

Allied's salesmen made "false, misleading and deceptive" statements to customers that the intercom was "being sold at a reduced price as an introductory or advertising plan," the FTC examiner ruled.

And, he added, Allied's salesmen, "for the purpose of inducing the sale" of its product, failed to inform customers that they were signing a second mortgage on their home.

The FTC examiner ordered Allied, and its president, William R. Marion Sr., to "cease and desist" from using chain-referral selling schemes or any "false, misleading or deceptive" statements in trying to get names of more prospective customers.

WENT OUT OF BUSINESS

At about this time, when the FTC order was issued last January, Allied went out of business. It left behind more than 200 homeowners with nearly $300,000 worth of second mortgages, according to District real estate records.

Five homeowners have brought suit against Allied in U.S. District Court charging that the firm defrauded them through misleading chain referral sales schemes, and obtained their signatures on second mortgages without their knowledge.

Marion, who lives at 211 Dorset rd., Laurel, Md., said last night the suit against him "is nothing but paper. They know I didn't do anything wrong."

He said he did not know what his salesmen told his customers but they were periodically told at sales meetings not to misrepresent the referral program. "But lying is a salesman's business," he said. "You know that. I know what they do.

"These people (his customers) were trying to get something for nothing."

He said that each deal he made was consummated by Samuel C. Cratch Jr., Marion's public relations director, so there would not be any misrepresentation.

He said that after a customer's credit was approved Cratch would call on the customer at his home, accompanied by a notary public, so the signatures could be witnessed. In each case, he said, the customer was made aware that he was signing a second mortgage on his home and the signature on the mortgage was notarized on the spot.

$30,000 IN PRIZES

Marion said while he was in the intercom business he paid out about $30,000 in referral prizes. He said the highest was $600 to Josephine Hill of the Deanwood area and "lots got two, three and four hundred dollars."

He added that most of the customers did not give his firm genuine referrals.

Marion called the FTC action against him "meddling."

One homeowner who has filed suit against Allied, Lugenure Talbert, of 1224 Farraday pl. ne., said in her suit that Cratch persuaded her to buy an intercom after he had explained the sales referral plan.

After the intercom was installed, she said, Cratch returned with more papers to sign. "You signed the contract improperly," Mrs. Talbert quoted Cratch in her court complaint. She signed again.

She said she did not realize that she must have signed a mortgage at that time until she got a letter from the Atlas Credit Corp. in Philadelphia informing her that it had bought her note, secured by a second mortgage. Her note was for $1,389, the price of the intercom plus financing charges.

Cratch, in his answer to Mrs. Talbert's complaint, denied any wrongdoing. Atlas answered that it bought the note without knowledge of any fraud. Allied has not yet answered the suit.

Mrs. Talbert also charged that no notary public was present when she signed the papers in her home. The other four homeowners who sued Allied also said that they never appeared before a notary public during their dealings with Allied.

Yet in all five cases, the name and seal of the same notary public in Prince George's County, Md., appears on second mortgage in favor of Allied filed in the D.C. Recorder of Deeds office.

Several Allied customers interviewed by reporters said they would not have bought the intercoms if they had realized they were signing second mortgages to secure the notes for them. They also said they would have rejected the deal if they had known they wouldn't get any referral "prizes."

FEW GOT PRIZES

Only a few of the Allied customers interviewed said they got any money back from Allied at all. No one interviewed said they received more than $100.

Allied broke down its $1,389 price for the intercom into $992 for the equipment and installation and $397 financing charges. The system included the intercom master panel with an am-fm radio, six speakers and fire and burglar alarm devices.

The same brand of intercom system was sold by yet another firm operating here until late last year. This firm was called United Home Enterprises Corp., which also sold water softeners. United did at least $120,000 worth of business here in two years, real estate records show.

In February, two of its officers, Robert M. Cederloff and Adrian J. Barba, were indicted by a U.S. grand jury, which charged them with forging the names of eight Washington homeowners on eight mortgages in favor of United Home Enterprises. Their case is still pending and they are free in custody of their counsel.

Three of the homeowners named as complaning witnesses in the criminal case have filed suit against United Home Enterprises, claiming that their signatures were obtained on second mortgages by "fraud, trick and device" or by forgery.

They charge that they were talked into buying intercoms or water softeners at prices "in excess of the fair value of the equipment," again through the device of being offered money "prizes" for customer referrals.

In all three cases, the homeowners also charged that they never appeared before a notary public while signing papers for the United salesman.

In two cases, the seal and signature of a Prince George's County notary appears on the mortgage filed with the D.C. Recorder of Deeds. In the third case, the notarization is by a D.C. notary public.

NOTARIZATION DISPUTED

Other United Home Enterprises customers whose mortgage signatures were notarized by these two notaries told reporters that they never appeared before a notary public.

Cederloff said he told all the homeowners that they were signing "a second trust," although he added that he did not explain what it meant. "If you are a property owner, you should know what that means," Cederloff said.

When asked about the use of a chain referral sales method that homeowners have claimed is fraudulent, Cederloff said that "my firm is not being accused of this in the indictments."

Cederloff said the firm stopped doing business last year. "I don't feel that I misrepresented anything to the people," he says.

Besides Allied and United, at least four other firms have sold intercoms or water softeners to Washington homeowners using the chain referral sales method and obtaining signatures unknowingly in second mortgages, according to homeowners' court complaints.

According to court suits, interviews with homeowners, and information in the D.C. Recorder of Deeds office, the majority of the notes and mortgages generated by Allied Enterprises and United Home Enterprises was bought by the Atlas Credit Corporation of Philadelphia (since merged into Sunasco, Inc.), through a Washington mortgage broker.

Atlas is named as a defendant in seven of the eight court suits by homeowners against the two intercom firms. In each case, Atlas answered by saying that it bought the notes as a third party "without knowledge of any fraud" in the obtaining of the notes.

The law generally presumes that the third party—the "holder in due course"—has bought the note in good faith and has the right to collect on the note it paid for.

[From the Washington Post, Oct. 5, 1967]

SUITS CHARGE BROTHERS WITH TRUST ABUSES

(By Leonard Downie Jr. and David A. Jewell)

Copies of the card reproduced above are now being mailed to low- and middle-income homeowners in Southeast Washington. They have already blanketed much of the rest of the inner city.

Continental Contracting was incorporated on Dec. 13, 1965, by three brothers: Charles W., John E. and Robert E. Morgan. They all live in Potomac.

The Morgan brothers are all involved in either home improvements or the generating and selling of second mortgages in Washington.

One suit filed in District court named all three brothers in charging fraud, usury and unlawful money lending.

That suit, by Alice C. Moon, of 226 Ascot pl. ne., which is still pending, said that the ties between Continental and another firm, Bankers Mortgage Co., 722 11th st. nw., had been intentionally concealed.

MORTGAGES SOLD

Bankers Mortgage is headed by Charles Morgan and generates second mortgages which are, in turn, passed on to the Atlas Credit Corp. of Philadelphia.

Yet another firm, Allstate Credit Corp. headed by John E. Morgan, sells second mortgages generated by home-improvement firms, including Continental, to Atlas, too.

(Allstate Credit Corp. is not connected in any way with the Allstate trade name used by Sears Roebuck & Co.)

John Morgan, dressed in a gray silk suit and wearing pointed, Italian shoes, leaned over his mahogany desk and said expansively to a reporter:

"We used to broker three-fourths of the home-improvement paper (second mortgages) in this town."

John Morgan and Allstate have been named as codefendants in several suits filed by Washington homeowners who claim that they were fraudulently induced into second mortgages by home-improvement companies.

John Morgan told reporters he never bought a second mortgage without making sure the homeowner knew exactly what he was getting into.

SAFEGUARDS SHOWN

He explained that he had an elaborate set of precautions to ensure that homeowners would not be cheated.

He showed reporters contracts and mortgage deeds with large print and warnings urging customers to read carefully what they were signing.

He said he supplied these forms to home-improvement companies for them to give the homeowner—to make doubly sure there would be no misunderstanding.

He said he started doing this a couple of years ago when he learned that "certain disreputable" dealers were getting into what he called "a bit of trouble."

"I've been around the home-improvement business for a long time," said John Morgan. "It's a sloppily run business."

He said he also tried to protect homeowners by a "checkout system," whereby his firm contacted each homeowner before buying a mortgage and questioned them closely to make sure they understood the terms of the transaction.

"As a matter of fact," said Morgan, "I want you to see for yourself."

With that, he pulled two folders at random from a file cabinet and insisted the reporters contact the homeowners to see if they knew what they were signing.

"Go ahead," said Morgan. "Ask them whether or not we phoned and asked all these questions before we bought the mortgages and you'll see."

The reporters did.

The first folder was that of Mrs. Charles Brooks, of 1826 Ontario st. nw., who had signed a $1207 note.

"No one called us from Allstate," said Mrs. Brooks. "No one called us from anywhere asking those questions."

The next folder was that of Geneva Brooks, of 1663 Montell st. ne., a widow who had signed a $1485 note.

"The only call I got was to say I was behind two payments," she said.

Both women had bought intercoms from Allied Enterprizes, Inc., whose activities were discussed in yesterday's editions of The Washington Post.

Both said they were unaware they had signed mortgages when buying their intercoms until so notified by Atlas Credit Corp. of Philadelphia saying that Atlas had bought the mortgages and was demanding payments.

John Morgan said that he bought a lot of paper from Allied, "about 150 (mortgages) over the last couple of years I guess."

He also said he bought paper from United Home Enterprises Inc. and Monarch Construction Co. and Custom House Construction Co.

All the above named companies are under investigation by local and Federal authorities for their second-mortgage practices.

So, for that matter, are Allstate, Continental Contracting Co. and another firm incorporated by the Morgan brothers.

On June 18, 1961, John Morgan pleaded guilty in the Court of General Sessions to charges that he violated the District Real Estate regulations on paying commissions to unlicensed salesmen. He was given a fine of $300, which was then suspended.

On June 15, 1962, he pleaded guilty in U.S. District Court to making fraudulent statement to get FHA insurance on home-improvement loans. On Aug. 3, John Morgan was fined $1000. At that time, his lawyer, Harold Rogers, told U.S. District Court Judge Edward M. Curran:

"I have known this man for the last 14 years. No matter what happens in the future I will continue our association socially and professionally. He is out of the business and will not get involved in this business again."

John Morgan told reporters that he is indeed no longer engaged in home-improvement work. District regulations deny home-improvement licenses to anyone convicted of any "offense, involving fraudulent conduct, arising out of or based on a home-improvement contract."

He was one of three incorporators of Continental Contracting Co. in 1965, but he told reporters that he "never really had any financial part of Continental" and just represented it as an attorney.

Continental generates a great deal of second mortgage paper here, most of which is sold to John Morgan's firm, Allstate, according to his brother, Charles Morgan, who is president of Continental.

After the 1962 conviction, John Morgan also lost his real estate broker's license. The D.C. Code says that anyone who negotiates a loan for a deed of trust (mortgage) is involved in the business of real estate brokering.

Before his conviction, John Morgan says, he brokered loans in a company called Bankers Mortgage. After the conviction, he sold the company to his brother Charles, who now operates the company as United Mortgage Co., trading as Bankers Mortgage Co. Bankers operates out of 722 11th st. nw., the same address as Continental Contracting.

As president of Bankers now, Charles Morgan secures second mortgages on homes.

Fifteen suits filed in Washington courts by homeowners here charge that, in dealing with Bankers, they obtained far less money in cash loans than the amounts on the mortgages they signed to secure them.

Two years ago, in a speech attacking mortgage practices, Rep. John Dowdy (D-Tex.) explained on the floor of the House of Representatives how loans are made on second mortgages in Washington.

"The going rate" for discounting second mortgages here seems to be 50 per cent, Dowdy said. Thus, he continued, a homeowner who wants to borrow $1000 must sign a note and mortgage on his home for $2000 plus 8 per cent interest.

The U.S. Court of Appeals here has characterized discounts of 40 per cent or more as "outrageous" and stated that such discounts, if there are also circum-

stances such as the purchase of notes executed by unknown persons whose credit has not been investigated, constitute a "badge of fraud."

The 15 suits filed against Bankers Mortgage, of which Charles Morgan is president, all charge that fraud was used in obtaining the homeowners' signatures on second mortgages and that Bankers Mortgage—along with Atlas Credit Corp. of Philadelphia, the firm that in turn bought the notes from Bankers—were lending money at more than the legal interest rate.

In each suit, the homeowners claimed they received cash loans from Bankers Mortgage. Morgan denies this, as well as the fraud charges.

Some suits claimed that Charles Morgan himself gave them the money. One homeowner has photostatic copies of checks she received signed by Charles W. Morgan.

Charles Morgan acknowledged to a reporter that he signed the checks, but he insisted that his company never made a loan to anyone. He repeated that he was only a mortgage broker and said that the homeowners suing him apparently do not understand how a mortgage broker works.

He explained it this way:

"The customer comes to me and says she wants a loan. I can't lend her the money myself because I don't have it. But I shop around to see if I can find someone who will.

"Before I can do this, I need a note and mortgage signed by the prospective borrower and notarized.

"Therefore I have them sign the necessary papers for, say, $3000 and I sell it somewhere for $2200, deduct $200 for expenses and give them $2000," said Morgan.

He explained that the borrower always gets a check signed by him because he takes the money from the eventual purchaser of the note and puts in his bank account. Then he issues his own check to the borrower—"a mere formality," he says.

Atlas Credit, which eventually held the notes involved in the suits, said in answers filed in court that it did not make the loans either. It said that it merely bought the notes from Morgan and was a "holder in due course."

All the homeowners involved said they borrowed money, but none of the companies involved in the suits admit that they lent them money.

Four suits filed against Charles Morgan's firm, Bankers Mortgage, and Atlas Credit in 1966, charge that the two companies were engaged in a "money-lending scheme" in the District—generating and collecting "usurious" notes for which borrowers received far less money than they had signed to repay.

One of the cases involved Michael and Frances Wintermyer, of 1013 Lynn st., Vienna, Va., who claimed in a suit that they received only $2200 cash after signing a note and mortgage for $3960.

The suit claimed that the difference between what they signed for and what they received constituted interest that, when calculated, was usurious.

In issuing a temporary restraining order stopping Atlas and United from collecting further payments from the Wintermyers or foreclosing on their home, U.S. District Court Judge Oliver Gasch made the following "findings of fact":

"That the plaintiffs made a prima facie showing of a likelihood of success in their suit by demonstrating that the note executed in question had interest far in excess of that allowed by law and further that the defendants were not registered as money lenders pursuant to the law."

This and the other three suits were then settled out of court with terms very favorable to the homeowners, including the release of the mortgages on their homes and a refund of some of their payments.

Charles Morgan said yesterday that neither he nor his firm had paid any part of the settlements reached in those cases.

[From the Washington Post, Oct. 6, 1967]

LARGE FIRM BANKROLLS TRUST DEALS

(By Leonard Downie, Jr., and David A. Jewell)

"The important thing to remember," the Federal investigator told a reporter, "is that this reaches all the way to the big guys behind the marble steps."

He was talking about Federal and local investigations of a dozen home-improvement and mortgage firms here.

Washington homeowners have charged in 100 court suits and scores of interviews with reporters that these firms bilked them into signing second mortgages on their homes. The articles in The Washington Post about these practices have already drawn more than 100 telephone calls from homeowners with similar complaints.

"The big guys behind the marble steps" are the finance companies and savings institutions that now hold and are collecting on second mortgages obtained by home-improvement and mortgage firms here.

The investigator was not accusing these financial institutions of breaking any laws.

But, he said, they provided the ready source of money without which the firms under investigation here "could never have stayed in business for a day."

A company that now holds many of the notes generated by the dozen firms under investigation here is Atlas Financial Corp. of Philadelphia, which is a wholly owned subsidiary of Sunasco, Inc., another Pennsylvania corporation. Atlas Financial's predecessor was Atlas Credit Corp., which in April, 1966, was merged into Sunasco.

Sunasco's stock is traded on the New York Stock Exchange. Its common stock closed yesterday at 11¼; its preferred stock closed at 17¾.

In documents filed with the Securities and Exchange Commission in 1966, Sunasco said it believed its wholly owned subsidiary, Atlas Financial, "to be one of the largest finance companies specializing in the financing of home and property improvements."

The documents said Atlas buys its notes "principally from dealers and contractors who have acquired them" in the business of making home improvements. "Income is principally derived from finance charges and the discounting of installment obligations" secured by first and second mortgages and other property liens.

Some suits filed by Washington homeowners charged that Atlas and certain local home-improvement and mortgage firms were involved in a conspiracy to lend money without a license, charging rates of interest much higher than allowed by law under the guise of financing charges or large discounts.

Atlas has bought notes and second mortgages generated by Washington home-improvement firms through the Allstate Credit Corp. of 1111 Massachusetts ave. nw. Allstate was incorporated by three brothers, John, Charles and Robert Morgan.

SHARE IS LARGE

John Morgan, Allstate's president, has told reporters that the firm used to buy "three fourths of the home-improvement paper (notes) in town . . . much of which was sold to Atlas."

According to suits here, Atlas also has bought second-mortgage notes securing cash loans to Washington homeowners brokered by the United Mortgage Co., doing business as Bankers Mortgage at 722 11th st. nw. Bankers Mortgage's president, Charles Morgan, said he had not sold much paper to Atlas in the last couple of years.

Washington homeowners whose mortgage notes are now held by Atlas make their payments to one of Atlas's wholly owned subsidiaries, of which there are 23.

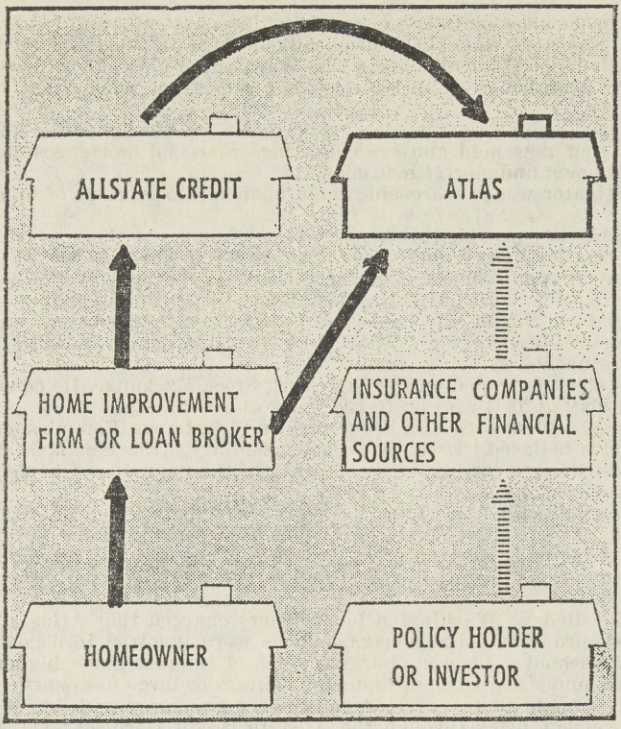
Sunasco's chairman of the board, Jack L. Wolgin of Philadelphia, has told reporters that "we're not in the second mortgage business."

UNAWARE OF DETAILS

When asked by The Washington Post to comment on charges made by homeowners here in court suits that Atlas had bought notes obtained through fraud, Wolgin said, "I don't know anything about the details" of Atlas Financial's operation.

He said he "used to have something to do with the operation" of the Atlas branch of Sunasco.

According to records on file with the SEC here Wolgin was president and chairman of the board of directors of Atlas until last year's merger on April 30.



Oct. 6, 1967 By Harold Hoover—The Washington Post

ROUTE—The chart shows how a second mortgage often is generated and financed. The homeowner's note goes to the home-improvement firm, thence to Allstate Credit here and finally to Atlas Financial of Philadelphia. In the case of loan brokers, the note goes directly to Atlas. Atlas, meanhwile, is financed by stockholders' investments and by loans from insurance companies, which are in turn financed by stockholders' investments and by policyholders' premiums.

Wolgin told a reporter, "I don't have anything to do with the operation of Atlas now."

OPERATION IS LARGE

Atlas's parent, Sunasco, had assets of well over $300 million in 1966. Its gross revenue last year exceeded $60 million.

Its 67 subsidiaries in 19 states, Canada, Mexico and the Bahamas also finance first mortgages on homes, produce gas and oil, and build homes in planned communities near major cities in California. Its prospectus says that Sunasco is developing 25,000 acres.

In recent years, Atlas has borrowed millions of dollars to finance its business operations from such insurance companies as Equitable Life, Aetna Life, Connecticut General and Paul Revere Life.

Spokesmen for these companies told reporters yesterday that the loans were made in the normal course of their investment business. Clinton Reynolds of Paul Revere Life's investment department said that Sunasco's second-mortgage subsidiary, Atlas, "is a nationally known company in the home-improvement financing field."

BROTHERS HAVE POSTS

While Jack L. Wolgin is listed as Sunasco's board chairman, the latest records filed with the SEC (1966) list his brother, Sidney Wolgin, as a director of Sunasco and president of Atlas Financial Corp. Another Wolgin brother, Norman, is listed as a director of Sunasco and as senior vice president of Atlas.

Jack and Norman Wolgin are listed as members of Sunasco's executive committee, along with Milton A. Sterling, president of Sunasco, and J. D. Sterling and Sylvan M. Cohen, Sunasco directors.

Jack Wolgin, who is now 50, told a reporter earlier this year that he started Atlas Credit (the predecessor of Atlas Financial) with his father and two brothers on an investment of $227,000.

"That was pretty much the money I was able to make in land speculation" up to then, Wolgin said.

REPUTATION GAINED

As Atlas credit grew into a multimillion-dollar financial giant, Wolgin earned an international reputation in the consumer credit field. He was invited by the Japanese government to assist financiers there in establishing American-style consumer credit.

Philadelphia District Attorney Arlen Specter, who is running for mayor against incumbent James H. L. Tate has said publicly that Jack Wolgin is an important financial supporter of Tate.

According to SEC documents filed by Sunasco in 1966, Atlas Financial now acquires $50 million worth of homeowner's mortgage notes each year. These documents also state that over 90 per cent of them are for amounts under $15,000—with the average amount $2600.

"Atlas Financial makes an extensive investigation" of the homeowners' credit and property before buying the notes, Sunasco told the SEC. "In most instances," its prospectus states, the homeowners "are contacted and questioned to ascertain that they understand the payment provisions and acknowledge the validity of their obligations."

DISPUTE BY HOMEOWNERS

Washington homeowners, in court suits and interviews with reporters, have complained that the first they learned of Atlas' buying their home improvement note was when they received a payment book from Atlas in the mail.

Many of them said in suits that they did not know they had signed second mortgages on their homes. Others said they learned of their second mortgages when told by reporters or Federal investigators, who found the mortgages noted in D.C. real estate records.

Several named Atlas as co-defendant in suits filed to stop foreclosure on their homes. The suits asked the courts to cancel the mortgages and claimed that the mortgages were fraudulently secured by home improvement contractors.

Atlas answered these suits by saying it is merely a third party buyer of the notes and had no knowledge of any alleged fraud.

Many of these suits have been settled on terms very favorable to the homeowners, with Atlas releasing or reducing the amount of the second mortgage it held. Many others are pending.

BANK LOANS OBTAINED

At least one of the local home-improvement firms now under investigation obtained it financing from local banks, as well as from Atlas. That firm is the Monarch Construction Co., which grossed $2.4 million, according to one estimate, during the 2½ years it operated in the city.

According to suits filed here, Monarch obtained many bank loans for homeowners which were applied for and insured under Title I of the Federal Housing Act.

FHA regulations require that banks making the loans investigate a home-improvement firm before doing business with it. The bank must find that the contractor is "reliable, financially responsible and qualified to perform satisfactorily the work to be financed."

PROCESS EXPLAINED

One financial institution that made several Title I loans to homeowners through Monarch after the firm began business in 1953 was Citizens Building and Loan Association of Silver Spring.

Virginia Boyd, who took over as manager of the Citizens home-improvement loan department after it stopped doing business with Monarch, explained to reporters what its relationship to Monarch was.

When Monarch's president, Nathan Cohen, first went to Citizens for loans, Mrs. Boyd said, the bank had Cohen fill out the required application. A check by the bank officers showed that Monarch was a new firm and that its officers had good credit records, Mrs. Boyd said.

She explained how Title I loans were thereafter made through Monarch: A Monarch representative would telephone the bank that a homeowner buying work by Monarch wanted a loan. The bank would check the homeowner's credit "through one of the credit companies."

If the customer's credit was good—"if the loan would be collectable"—the bank's officers would approve the loan, Mrs. Boyd said. The contractor was paid his money when a signed completion certificate was presented to the bank.

LOANS STOPPED

Citizens continued to do business with Monarch until the home-improvement firm was placed on the FHA's precautionary measures list in May, 1965.

Long before that, beginning in the autumn of 1964, complaints by Monarch customers about its mortgage practices, and advertising and selling methods reached the U.S. attorney's office, the Better Business Bureau, the courts through civil suits and the public through newspaper articles.

Mrs. Boyd said that she could not tell reporters whether Citizens received complaints about Monarch during this period.

"Citizens got caught in the middle of this thing" with Monarch, Mrs. Boyd said.

SAFEGUARDS DISCUSSED

When asked if she thought the bank had a responsibility to contact each homeowner personally and check the circumstances of his dealings with a contractor before making a loan, Mrs. Boyd said that would not be "feasible when we make 300 to 400 loans of this type each month."

"Buyer beware," Mrs. Boyd added. "We are not a social agency. We are in the business of making money and we try to take every reasonable precaution."

Monarch dealt frequently with another local financial institution, Jefferson Federal Savings and Loan Association of 1632 K st. nw., which does not make second-mortgage loans.

In addition to working on the customers' homes Monarch offered to consolidate the old mortgages on the homes of many customers into new first-mortgage loans from Jefferson.

ON OTHER MORTGAGES

Part of the money from some of these new first mortgages went to Monarch, records show. In many cases, Monarch also obtained the homeowners signatures on new second, and sometimes third, mortgages, placed with banks and finance companies other than Jefferson. And, the records show, money from these went to Monarch, too.

Homeowners have complained in suits and to reporters that the Monarch salesmen promised that their new monthly payments would be a certain amount, but when they received their payment books, they said, they found that they were obligated to pay much more each month than they expected.

The homeowners told reporters that they also found when they went to the office of a title company to sign settlement sheets for the Monarch refinancing that $1000 or more of the new first mortgage was allotted to various commissions, a "loan-placement fee" and other costs they claim they had not been told about.

When asked about the refinancing that Jefferson did at the request of Monarch, its executive vice president, James W. Clark, told a reporter that his company regularly deals in refinanced first mortgages "with the consent of the borrower."

Clark said Jefferson's "essential dealings were with Monarch representatives" and the customer's consent often consisted of his signature on an application sent to the bank by Monarch.

COMPLAINTS RECEIVED

When asked if his company had received complaints about Monarch or the circumstances of the refinanced mortgage, Clark said that "we have had to intercede on behalf of the borrower to see that some things are done" by Monarch.

He said his company received copies of the settlement sheets for the loans. But he added that it did not have any responsibility to explain to the homeowner the "closing costs" listed on the sheet or why they were necessary.

Clark said he was not aware that homeowners were signing other mortgages at the same time they obtained refinancing from Jefferson.

Since Jefferson does not make second-mortgage loans, it was never informed that Monarch had been placed on the FHA precautionary measures list in May, 1965, Clark said.

Jefferson continued dong business with Monarch until the end of 1965 (shortly before Monarch went out of business). "I would rather not go into the details of why we ended our relationship with Monarch," Clark said.

Homeowner's Plight

This is what can happen to a homeowner, as revealed in suits filed here:

He has some work done on his home or borrows some money. He winds up with a second mortgage for an amount much higher than he thought he owed. Often, he never knew he had even signed a mortgage.

He refuses to pay the home-improvement firm or mortgage broker that dealt with him. But he finds that this firm no longer holds the mortgage on his home.

Someone else—a finance company or a bank or a savings and loan institution—now holds the note and mortgage. The homeowner is told to pay or lose his home through foreclosure.

The homeowner goes to court to prevent foreclosure and charges that the mortgage was obtained through fraud. The finance company or bank says it is merely a third party that bought the note innocently—a "holder in due course"—who knows nothing about the alleged fraud.

And the law, up to now, has generally protected the "holder in due course"—presuming he bought the note in good faith and is entitled to collect his money.

[From the Washington Post, Oct. 7, 1967]

FORECLOSURE OFTEN SWIFT PROCESS HERE

(By Leonard Downie, Jr., and David A. Jewell)

Norwood Thompson left home to go to work one morning and when he got back later that day he no longer owned his home.

Thompson has spent the last two years in court trying to win back title to the house. He is one of at least 10 Washingtonians who lost their houses through foreclosures or second mortgages obtained by a dozen home improvement and mortgage firms now under Federal investigation.

Some of the home owners like Thompson now are in court charging that their signatures were secured on the mortgages by fraud.

Under District law, they had no automatic right to a day in court before they lost their homes. In fact, there is no requirement that they even be personally notified when a foreclosure sale is scheduled.

In many other states, in effect, a home foreclosure cannot take place until a court hearing is made available to the homeowner and the foreclosure sale is approved by the court as just and proper.

Thompson, of 320 V st. ne., was a customer of Monarch Construction Co., one of the home improvement firms under investigation by Federal authorities. According to the suit, Monarch got Thompson a loan from Citizens Building and Loan Association of Silver Spring to cover the price of the work. It also got Thompson's signature on a second mortgage securing the loan.

According to a deposition Thompson made in his court suit, Monarch was doing the home improvement work slowly and differently from what was slated in the contract. Nonetheless, Thompson said in the deposition, he was talked into signing a completion certificate, which the Monarch representative promised to keep until the work was done.

Later, Thompson said, he discovered that Monarch took the completion certificate to Citizens and collected its money, even though the work was still not finished. Citizens then asked Thompson to begin paying on the loan.

Thompson said he refused to pay until the work was done. Then, he said, he got a letter from a Citizens' official that mentioned "something about he was going to foreclose my house." According to his deposition, Thompson then offered to make the payments—a statement disputed by the bank in its answer to the suit. Thompson had thought that the matter was settled.

He said he received no notice about a foreclosure auction until the day it took place. Thompson was at work in Rockville when a notice (not required by law) from the auctioneer, Thomas Owen and Sons reached his 10-year-old daughter at home.

By the time he got back home, Thompson said his house had been sold.

Thompson's second mortgage—like virtually all those in the District—is made out to two trustees who actually hold legal title to the property until the loan is paid. (Thus, the normal legal term for mortgage here is "deed of trust.")

If the home owner fails to make just one monthly payment to whomever lends the money (or whomever later buys the mortgage and is then owed the money), the trustees have power to foreclose automatically on the mortgage.

The home is sold at a public auction to the highest bidder, who must pay off the loan.

Generally, the only notice of the foreclosure is a "legal notice" in a newspaper. Thompson said he never saw this notice, which usually is located in the back of the newspaper.

Thomas J. Owen and Sons, often the auctioneer hired to make the sale, "usually sends some notice," to the home owner although it is not required to do so, an Owen employee said yesterday.

Although the home owner may not always find the foreclosure sale notice in the newspaper, other people sometimes do.

Last year in a civil suit filed by a home owner against a Washington realtor, Earl M. Lapin, U.S. District Court Judge Burnita Matthews found that Lapin had fraudulently used knowledge of an impending foreclosure to his advantage.

According to the findings of fact signed by Judge Matthews, Mr. and Mrs. James Collier of 49 Quincey pl. ne. were facing foreclosure on their home in April, 1963, because they were behind on their mortgage payments.

Judge Matthews found that between the time the legal notice for foreclosure was published and the scheduled date of foreclosure, "the Colliers were approached by Lapin who offered to assist them in preventing" the foreclosure.

Lapin "represented to (the Colliers) that payment to him (Lapin) of $136.50 a month would be necessary in order for him to save their home," the judge found, "and that certain papers must be signed."

The Colliers, Judge Matthews found, believed that the $136.50 covered their old mortgage payment of $111.50 and "an additional $25 per month Mr. Lapin was to retain until he was reimbursed for his expenditures in warding off the threatened foreclosure and until he had received reasonable compensation for his service."

But, the judge found, the Colliers had signed, through "fraud and misrepresentation" by Lapin, a deed giving title to their house to Lapin. Their signature also appeared on an agreement to buy the house back from Lapin for "a substantial amount over and above" the amount of the old mortgage.

Judge Matthews also found that Lapin had obtained the deed and contract from the Colliers "by means of gross fraud." The Judge gave the title to the property back to the Colliers and awarded them $500 plus their court costs.

Subsequent to his business dealings with the Colliers in 1963, Lapin, who was then president of the Empire Realty Service Co., 11 H st. nw., was named as trustee on several mortgages obtained by the Monarch Construction Co., according to District real estate records.

He was named as one of the two trustees on a second mortgage for $3900 that was signed in December, 1963, by Mr. and Mrs. James L. Powell, then of 3310 Brown st. nw. The money was to be paid to Monarch.

On August 12, 1965, Lapin (who had worked as Monarch salesman during 1964, according to court records) and the other trustee foreclosed on the Powell's mortgage.

At the foreclosure auction, the Powell property was sold for a total of $11,366. Just two months later, real estate records show, this property was sold

again—that time for $17,000, according to the record of real estate taxes paid on the sale.

The seller was Empire Realty. And signing the deed on behalf of Empire were Earl M. Lapin and his wife, Illean.

[From the Washington Post, Oct. 8, 1967]

OFFICIALS PLAN ATTACK ON 2D TRUST PRACTICES

(By Leonard Downie, Jr., and David A. Jewell)

Five Congressmen and Gov. Spiro T. Agnew of Maryland are taking steps to attack second mortgage practices revealed in a series of articles published during the past eight days in The Washington Post.

Washington homeowners have complained in scores of court suits and interviews that their signatures were obtained on second mortgages through fraud by a dozen local home improvement and mortgage firms now under Federal investigation.

Many homeowners said they did not even know they had signed second mortgages until told so by reporters who found the deeds listed in District real estate records during a four-month investigation.

Most of these mortgages are now being held by finance companies, banks and savings and loan firms. These institutions got them from the home improvement and mortgage firms and are now collecting the payments from homeowners.

Maryland Gov. Agnew announced yesterday that he asked his attorney general, state bank commissioner and small loans administrator "to undertake immediately an investigation . . . of the extent to which the devises described in (The Washington Post) articles are being practiced in Maryland."

SEEKS INVESTIGATION

Several of the firms under Federal investigation here had offices in suburban Maryland and also did business with homeowners there. Records show some of their officers came here from Baltimore, and some of them recently left Washington to go back there.

In Congress, Sen. Vance Hartke (D-Ind.), a member of the Senate Commerce Committee, called for an investigation by Commerce's Consumer Subcommittee of mortgage practices. His request came in a letter to Commerce Committee Chairman Warren G. Magnuson (D-Wash.).

Magnuson responded by asking the Federal Trade Commission for a report on its knowledge of home improvement and second mortgage practices, a Commerce Committee spokesman said yesterday. That report will then be turned over to the Consumer Subcommittee for investigation, the spokesman added.

Sen. Daniel B. Brewster (D-Md.) said on the floor of the Senate that the disclosures "demonstrates the need" for passage of his "door to door sales act." The bill would give a homeowner who signs a contract through "high pressure salesmanship" a chance to cancel the contract within 25 hours.

TYDINGS BILL EXPECTED

The ranking Republican on the House Banking and Currency Committee, William B. Widnall (N.J.) has already called for Congressional hearings on second mortgage practices here and across the Nation. He promised to seek corrective legislation.

Sen. Joseph D. Tydings (D-Md.) has indicated that he will soon introduce consumer protection legislation for the District.

Prosecutors, other lawyers, Federal investigators and local officials interviewed by The Washington Post have suggested that Congress pass legislation for the District that would:

• Outlaw deceptive sales practices. Salesmen peddling home improvements and just about anything else that can be sold use high pressure tactics, promising all sorts of savings, rebates and other things that never come to pass.

One local firm, Monarch Construction Co., indicated to potential customers that its activities had approval of the Federal government.

Sen. Wayne Morse (D-Ore.) has submitted a bill that would make these practices illegal here, but the bill has lain dormant in the Senate District Committee.

A few states have laws that prohibit deceptive sales practices, and the Federal Trade Commission is empowered to move against deceptive selling—but it can only move against a single firm at a time, and cannot bring criminal charges against violators.

• Give homeowners time to think about a contract.

Sen. Brewster's sales practices bill would give homeowners 24 hours to cancel a contract signed with salesmen who suddenly show up.

The FTC, in one ruling earlier this year, gave customers of one home improvement firm operating in Cincinnati ten days in which to reconsider contracts they had signed.

• Limit finance charges. Washington now has laws limiting interest on loans, but it has no limit on financing charges.

Homeowners in suits here have complained that financing charges have been so high—often doubling the contract price—that, in effect, they amounted to usurious interest.

Michigan is the only state that now has a law that sets maximum financing charges for home improvement contracts.

• Eliminate protections for "holders in due course."

"Holders in due course" are the companies—finance companies, banks, savings and loan firms, and others—that end up with mortgages and notes obtained from homeowners by home improvement firms.

If a homeowner finds out he has been duped, he has to keep paying on his note, because the firm with which he signed the note no longer has it. And the "holder in due course" in turn claims that it is not responsible because it bought the note innocently.

The law generally has protected the "holder in due course." Many leading lawyers here hope and expect that these protections will be eroded, as they were in one recent New Jersey case. In this case, the "holder in due course" regularly bought notes from one sales firm, which had been accused of obtaining its notes fraudulently, and the New Jersey Supreme Court took away the "holder in due course" protection.

• Change the status of mortgages in Washington.

A homeowner here has no right to a court hearing before his mortgage is foreclosed and his home sold. In fact, the homeowner may have no idea that a foreclosure is to take place.

Many states have laws requiring that judges approve foreclosure sales before they can take place.

• Set up a consumer protection office.

This office could administer consumer protection laws, listen to homeowner complaints and prod the Government to move when action is needed.

There are other remedial steps that would not require legislation, according to lawyers handling homeowners' complaints here.

One is that existing Federal and D.C. laws be enforced.

U.S. Attorney David G. Bress began an intensive investigation into the practices of a dozen home improvement firms here in the wake of the four-month investigation by The Washington Post.

U.S. Postal Inspectors and the Federal Trade Commission are also investigating these firms. But Bress's two-month-old "fraud squad" consists of a single assistant U.S. Attorney and another man on loan from the Justice Department. No special U.S. Grand Jury has been called to investigate.

The Federal Trade Commission has only one attorney assigned full-time to check into home improvement firms all across the country.

The city apparently has done little to enforce its regulations on home improvement firms, lawyers say.

City regulations now require home improvement firms to be licensed by the Government. A licensed firm is supposed to follow certain guidelines.

Some firms, however, have not registered and many of the licensed firms appear to be violating the guidelines, without prosecution by the city.

Although city Corporation Counsel Charles T. Duncan has said that citizens have not complained to his office about abuses by these companies, the regulations require the city, on its own initiative, to check compliance with the regulations.

Duncan now says he will review the regulations and their enforcement.

Although both D.C. and Maryland law requires a notary public be present to witness signatures that he attests to, suit after suit have alleged that no notary was present.

If a signature has not been legally notarized, a contract is void.

An attorney for one notary convicted of false notarization here told the court that it was quite common in Washington for notaries to attest to signatures they had not witnessed. Lawyers claim there is almost no supervision of the notaries by the city.

Lawyers also point out that the Federal Housing Administration has been lax in enforcing its own rules, rules that require banks to vouch for the integrity of home improvement dealers that they do business with regularly.

One lawyer goes even further. He told a reporter:

"Everybody in the city of Washington ought to have an opportunity right now to open their mortgages and see what shape they are in.

"The people in the ghetto, who have been the most frequent victims of all this, simply cannot have confidence in the law when it does not stand by them."

Plans for Reform

Here is what legal experts say must be done to erase second mortgage practices revealed by The Washington Post:

Pass new laws for the District to—

- Outlaw deceptive retail sales practices.
- Give homeowners time to think over and, if they wish, cancel contracts obtained through high pressure salesmanship.
- Limit the amount of financing charges that can be added onto sales contracts.
- Eliminate legal protections for "holders in due course" of notes and mortgages obtained through fraud.
- Change the status of mortgages here to give homeowners a hearing in court before they lose their homes through foreclosure.

Enforce existing laws that—

- Prohibit the use of fraud or forgery in the signing of contracts and mortgages.
- Require notaries public to witness personally signatures they attest to on documents.
- Make home improvement firms register with the city and follow certain guidelines in doing business.
- Require banks making FHA home improvement loans to investigate firms through which they make the loans.

The CHAIRMAN. Our first witness is the distinguished attorney general from my home State of Washington who has been active in the consumer field for a long, long time. In fact, he has taken some real leadership in this area in the State of Washington—leadership which has received national attention and has caused a number of other States to contact both him and me to find out what we have been doing so that they might proceed in the same manner.

There are too few States in the Union which have any laws or any administrative officials who are concerned or are aware of these practices, and the States of Washington stands out in my opinion—and not merely because it is my home State—as one which has taken a leading role in tackling this problem at its source and following through with strong enforcement. I say there are too few States that do this.

I have been informed that there are only three or four States in the Union which do the kind of job we are doing, but even they came in after we started.

Because he has to catch an airplane back home around noon, we will hear first from the attorney general of the State of Washington. Glad to have you with us.

STATEMENT OF JOHN J. O'CONNELL, ATTORNEY GENERAL, STATE OF WASHINGTON, OLYMPIA, WASH.; ACCOMPANIED BY DONALD L. NAVONI, ASSISTANT ATTORNEY GENERAL, CHIEF, CONSUMER PROTECTION DIVISION, STATE OF WASHINGTON

Mr. O'CONNELL. Thank you very much, Mr. Chairman.

With me is Assistant Attorney General Donald Navoni, who is chief of our consumer protection division of the attorney general's office in the State of Washington.

The CHAIRMAN. Mr. Navoni, as I understand it, has been assigned to this particular work and he has devoted himself to that?

Mr. O'CONNELL. That is correct. We are both very privileged and honored to be appearing before you this morning, recognizing the extensive and important work that this committee has done and will do in the general field of consumer protection.

I am going to direct my remarks in three general areas this morning. First, a general description of home improvement frauds, emphasizing special schemes that are prevalent in the State of Washington and throughout the country; second, our enforcement experience in the State of Washington and what kind of State legislation we have; and, third, the needs for Federal action in the area of home improvement frauds.

When we started our consumer protection division——

The CHAIRMAN. I might say—I did in the opening statement, but I will repeat it—we consider these three bills as sort of a package. Each complements the other.

Mr. O'CONNELL. When we started consumer protection under the attorney general back in 1961, frauds and misrepresentations and deceptions in the home improvement industry field were one of the major causes for our interest. We made a survey statewide and concluded that fraudulent activities and schemes in the home improvement field were extensive and were costing our consumer citizens a considerable amount of money.

I believe, complementing your remarks, Senator, we had the almost wholehearted cooperation of legitimate business in our State for our legislation. We found that legitimate business throughout the State was interested in obtaining legislative remedies for problems that they could not clean out of their industries themselves. Since 1961, economically pernicious schemes in the home improvement industry field have come under our attention and investigation and we have brought litigation against many of them and they range from the "suede shoe boys" selling aluminum siding out of their air-conditioned Cadillacs to the less sophisticated fly-by-night roofing repairman, with only a pickup truck, a ladder, and a tar bucket for assets.

Let's take a quick look at some of the schemes. First, remodeling contractors. We have a substantial number of firms operating principally out of our largest city, Seattle, which engage in various remodeling projects. They call themselves contractors, but these firms perform no labor or provide no materials. All work is subcontracted to various specialty contractors like plumbers, electricians, masoners, carpenters, and the like. These firms advertise extensively through all of the advertising media. They use terms like "oldest" and "largest" and "most reputable," and they leave the impression that the homeown-

er will be dealing directly with this particular firm, the ABC Co., for example. This is only so when it comes to paying his money. When he attempts to obtain performance of his work he discovers to his amazement that he is dealing separately with all of the subcontractors and he doesn't deal directly with the firm he originally contracted with financially in the first instance. A number of these have gone bankrupt in recent years.

They leave their customers to pay double for the work that was done because, of course, the labor, the workers, and the material men have filed liens against the property and the property owners are required to pay double for what was probably poor workmanship in the first instance. But the great majority of complaints we have against these particular remodeling companies are on the basis of shoddy and substandard work in exchange for an exorbitant price. The representatives of these firms are generally door-to-door salesman, and they are accomplished and skillful salesmen. They make many representations. They say the contract is merely an estimate or it isn't binding until something occurs. They wear down the sales resistance in the time-honored fashion. They make oral statements to alleviate any doubt that the homeowner may have, but these oral statements are very seldom, if ever, contained in the eventual written contract.

They offer no opportunity to get a competitive bid or for the homeowner to investigate the firm's reputation. They often say that what they are offering the homeowner is a one-time offer, and they give a special discount and the homeowner had better grab their opportunity right now or it will vanish forever. They don't care whether the homeowner goes through with the contract because generally in the contract there is a liquidated damages provision which runs from 25 to 50 percent of the amount of the original contract which, of course, is payable if the homeowner refuses to follow through on the contract which he signs. Because of this liquidated damages provision, even when the homeowner finds out the price he is paying is exorbitant, he doesn't cancel or try to get out of the contract because he feels he is stuck anyway.

We generally get these cases when everything is done and when something shows up that was ineffectively or incorrectly done and the homeowner is trying to get some satisfaction from the principal contractor, but he never does because he is shuffled off onto the subcontractor.

A particularly vicious home improvement fraud comes from some firms that are engaged in the business of installing various types of siding. This siding is generally aluminum, asbestos, or vinyl. The whole idea is to convince the homeowner that he is getting a very special deal when in fact he is paying an exorbitant price for the product and exorbitant service charge. The same men involved in this type of work use an extensive variety of tricks to sell their product. They might represent themselves, for example, as advertising field men and they are attempting to line up model homes and that yours is going to be a model home. They have been known to say, as we pointed out, that your home will be used as a before-and-after presentation—for example, on the Johnny Carson show.

An almost sure-fire technique of closing one of these transactions for a siding sale is to tell the prospect that the vice president of the nationally known and impeccably reputed firm which manufactures the

siding just happens to be sitting outside in a Cadillac, or the vice president comes in and generally clinches the sale by adding a little extra promise, offering a year's supply of aluminum foil or offering the homeowner $500 in cash, which of course is built into the contract and is paid off over the years at the high interest rate; the $500 in cash to pay off his current bills. This one is a sure-fire one, and I have run into cases where they take five $100 bills, and if the homeowner is religiously oriented they will put them in the homeowner's Bible, they will put their hands on the Bible, they will make sworn statements to each other and this clinches the sale.

The siding itself is represented to be absolutely maintenance free and backed by a 25-year or even "lifetime" guarantee. The prospect is told that the regular price of the product, once it's put on the market, will be twice the price of this introductory advertising offer. Prospects or leads are often obtained by bait advertising quoting "$299 for 1,000 square feet." The salesman disparages the bait-advertised product after the contract is signed by reminding the homeowner that it is necessary to "wax the siding at an annual cost of $275." He then switches the buyer to the siding at $2,950 per 1,000 square feet on the introductory offer "which never needs waxing" and is "impervious to the elements."

Easy payment terms are always available. Usually these siding contracts run about 7 years. The service charge on these contracts generally exceeds the selling price due to the high rates pertaining to the industry.

Despite making a great deal of money out of these transactions, some firms aren't satisfied until they get a second mortgage or a trust deed. These are generally done secretly without the homeowner knowing he is signing such a document. They are notarized as a general rule outside the presence of the buyer, and they are filed the next day without the homeowner's knowledge. A favorite trick in the siding industry, and again I want to point out I am referring to just special types of firms, is what they call "spiking the job." An arrangement is made with the homeowner, the contract is signed; the next day a workman will be out and he will tear off a good chunk of the existing siding and make a short start at installing some of the new siding; then, he will leave the job. If the homeowner gets remorseful and wants to get out of it and he looks at the side of the house that is torn off, any thoughts that he might have of withdrawing from the deal vanish when he sees that the contractor has already started. Many times it is several weeks before any further work is done on the home.

Two or three years go by and the siding fades or peels. The buyer tries to get someone to honor the "lifetime" guarantee—but in vain, because it is so conditioned and restricted as to be worthless.

He may eventually get the contract paid off and attempt to sell the house. He discovers that there is a cloud on his title in the form of an unsatisfied mortgage. He often has to bring a quit-title action to get it removed.

And, of course, if he defaults in his payments, the seller or his assignee is quick to either accelerate the contract or start foreclosure.

Another type is the roofing and chimney repair, and the termite-extermination people. These people are different. They deal only on a cash basis. The price for their product or their services is pretty much

what the traffic will bear. They try to find out how much cash the homeowner has available and, of course, they generally deal with elderly people, usually widows. The homeowner is approached on the basis that the roof on her house or her chimney needs fixing. Of course, they will go on top of the roof and it is not uncommon for them to loosen a brick themselves, bring it down and show it to the property owner.

The termite-exterminating folks will come into the basement of your home and come up with a bunch of termites that they have brought with them.

The CHAIRMAN. Are they bedbugs?

Mr. O'CONNELL. No; they are real termites, Senator. They spare nothing. Of course, anybody whose house is about to be destroyed by termites immediately is alarmed. The money that they will pay to have these eliminated, which of course doesn't really exist, would be substantial.

Home improvement specialty sales is another different aspect of home improvement fraud. These people advertise a wide range of home repair service, but they are really not interested in making the home repair at all. They generally have a specialty sale that they want to make in the form of aluminum windows or storm doors or kitchen nooks, patio covers, and the like. If the salesman finds out that the homeowner doesn't want to buy his particular specialty product, he generally prices himself out of the repair market, but if the homeowner sounds interested, then an agreement is made; the homeowner is led to believe that the product is being thrown in for just a small increase in price, and he subsequently finds out that the repair work done is little more than a patch job. It doesn't work out. He finds that he is paying for several years for a product that he didn't want, he didn't need, and he probably couldn't afford.

As I pointed out, of interest to us is the nature of the victims of these particular schemes. The unscrupulous home repair firms generally seek out elderly persons, as I indicated. These people are frequently not able to evaluate realistically either the need for the repair of their home or the reasonableness of a price charged. In many cases they are alone in the world and they want to keep the roof over their heads. They want to keep their own house. So this is particularly vicious insofar as the victims in these home repair matters are concerned.

The siding salesman, the specialty product firms, they seem to concentrate on areas of low-priced housing, in areas frequently of rural nature. These victims are generally people of fairly low income who are unable to finance the purchase of a larger or a nicer home.

The victim is generally persuaded that he can build up the equity in his home by effectuating a particular repair of one kind or another, and this generally doesn't turn out. The equity is not increased at all in conformity with the amount the homeowner pays for the repair made to his property.

When the economy and the money market are tight, remodeling contractors are at their busiest. Homeowners generally would prefer to purchase new housing to accommodate a growing family or changing needs, but it is unavailable, and the best alternative is remodeling their present home.

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In many, many cases, of course, the homeowner loses what equity he has in his medium- or low-priced home.

In Washington State in 1960 we evaluated the impact of the deception on our consumers. It went through our legislature in 1961 and we received the benefit of certain State statutes. The first was the Registration of Contractors Act requiring all contractors to be licensed with a prerequisite $2,000 surety bond to cover among other things breach of contract claims. Without such a license a contractor cannot lawfully bid or perform any work under a contract, obtain a building permit, remit sales taxes collected, or sue for performance of a contract.

One consumer protection act passed in 1961 was patterned in good part after the Federal Trade Commission Act and made any unfair or deceptive act or practice or unfair method of competition in trade or commerce unlawful.

We avoided criminal penalties because we felt the criminal law was too ponderous, too onerous, too slow, and gave ourselves only civil authority.

The enforcement of this act comes under the attorney general in the State of Washington.

We have authority to seek an injunction which can involve a $25,000 civil penalty for violation against any firm violating the statute. This authority has been exercised in many cases involving siding contractors and home repair firms.

We also have a means of obtaining voluntary compliance which we call assurance of discontinuance. We will go to the ABC Co. which we feel is practicing deception or fraud in the home improvement field and they will agree to stop doing what they are doing although they don't have to admit that they are violating the law. We will file this in the superior court and it is made a part of the formal record.

Then, if the ABC Co. is caught doing something in violation of this assurance, the penalties, fines, and otherwise that the Consumer Protection Act provides for will come into effect.

We have found this to be extremely valuable because most of these companies don't argue very much once they are caught. We find this is a quick and effective and speedy way of eliminating trouble in the home improvement field.

The CHAIRMAN. So that we will understand this, they are first caught doing something?

Mr. O'CONNELL. We have got, say, 15 complaints against the company. Then we will call in the representatives of the company, and we will discuss the matter with them. Rather than file a suit which we might have difficulty proving, we will get them to agree to discontinue these certain practices, although they don't admit they ever did them. Then this assurance of discontinuance is filed in our superior court records.

Then, if they are caught, we don't have to prove it any more. Automatically the fines and penalties contained in our Consumer Protection Act take effect.

We have found the assurance to be an extremely valuable tool, and we use the assurance of discontinuance more than anything else.

The CHAIRMAN. What if they don't want to come in? Then what happens?

Mr. O'CONNELL. Then we sue them.

The CHAIRMAN. Then you go ahead?

Mr. O'CONNELL. Then we go ahead and sue them and seek an injunction in the usual fashion.

The CHAIRMAN. Do you differentiate between a willful act and just a common practice that they believe doesn't violate any law? That is where you have your difficulty in proof, isn't it?

Mr. O'CONNELL. Right. We don't have to prove intent under the law, Senator, so it doesn't make any difference whether what these folks are doing is willful or not willful.

The CHAIRMAN. The staff asked this question: Would criminal penalties for the willful violators, to complement the existing civil penalties, help deter some fraudulent operators from launching their schemes?

Mr. O'CONNELL. I don't think there would be any doubt about that.

The CHAIRMAN. An ounce of prevention.

Mr. O'CONNELL. I don't think there would be any doubt about that, Senator. Of course, we have the standard fraud criminal statute in our State, but they aren't aimed specifically at this type of activity.

As I pointed out, the burden of proof in criminal cases is extremely high compared to what is required in civil cases. But there is no question that a specific set of criminal statutes aimed at this problem would be of great help.

The CHAIRMAN. But the procedure for obtaining the assurance of discontinuance is set out in the act?

Mr. O'CONNELL. Right.

The CHAIRMAN. They give you authority in the act to do this?

Mr. O'CONNELL. Right.

The CHAIRMAN. But there would have to be some authority stemming from somewhere for you to be able to ask these people to come in?

Mr. O'CONNELL. That assurance-of-discontinuance procedure I described is built right into our consumer protection statute.

The CHAIRMAN. The committee may want to take a look at that. It may be a model to be taken under consideration for a Federal act.

Mr. O'CONNELL. It is not a bad idea. We have found this to be exeremely successful, and we take personal pride in it because we felt it was a unique approach on our part to this problem.

We have a Retail Installment Act which we passed originally in 1963, and we amended it in 1967. This act makes the attorney general the enforcer. The act requires disclosure of all charges which must be itemized in mandatory sequence, delivery of a copy of the contract to the buyer, a requirement that all essential terms and conditions of the agreement be combined in one document, and a limit of 18 percent per annum on service charge and a disclosure of true annual rate.

It also has contained in it a disclosure of the buyer's right to cancel or to cool off under certain circumstances.

The CHAIRMAN. We are engaged right now in another hearing on another piece of legislation, and one section has given us some trouble as to the time for the cooling-off period. What does the State act have?

Mr. O'CONNELL. Twenty-four hours.

The CHAIRMAN. Twenty-four hours is the time in the State act?

Mr. O'CONNELL. Twenty-four hours is what we have built into this statute.

This Retail Installment Disclosure Act was extremely valuable in that it almost overnight made uniform and standard retail installment contracts in our State. Prior to the passing of this act they ran off in a million different directions, each store or business had its own peculiar type of installment contract. The result of this act was to make standard and uniform a certain type of installment sales contract, and any person with a modicum of intelligence we feel, when executing one of these contracts, can know exactly what kind of a transaction he is getting into.

It provides, of course, no small print. All type has to be the same size.

The CHAIRMAN. Does the so-called cooling-off section have any exemptions as to the amount of purchase?

Mr. O'CONNELL. No; it has no exemptions generally, as to the amount of purchase. Generally the cooling-off section will apply when the contract is entered into at a place other than the place of business of the seller. It is aimed at getting the door-to-door salesman.

Mrs. Brown will enter into a contract which is binding. Mr. Brown comes home after work and he says: "We can't afford this." They have twenty-four hours to call up and say: "We don't want to follow through with this particular contract."

The CHAIRMAN. Or by mail?

Mr. O'CONNELL. Right.

The CHAIRMAN. But there is no exemption as to the amount of sale? For instance, in the proposal we have immediately before this committee we have a $25 limitation. There has been some suggestion we make it $50 or $75. But your State act has no exemption?

Mr. O'CONNELL. We have no exemption at all insofar as the amount of money is concerned.

We have, of course, our share of county and municipal building codes, and they play some part in regulating the home improvement industry, but, due to difficulty of enforcement and limited application to many types of home improvement frauds, their role has been of perhaps somewhat less effect.

In general we find that the effectiveness of our enforcement experience in our State has exceeded our expectations. Many of the abuses that were prevalent in the home improvement industry in our State have been eliminated.

We have directed our enforcement efforts at the most flagrant and fraudulent violators on a firm-by-firm basis. Most of the firms have either gone out of the State or have brought themselves into conformity with the State law.

The CHAIRMAN. I might say I know of one case where the fellow sitting in the car was not the vice president, he was the local building inspector. He actually wasn't, but he was introduced as the building inspector.

Mr. O'CONNELL. Oh, yes. We will run into those where they represent themselves as firemen, and they go down and check the furnace in the basement. They might take a screwdriver or something and run a streak inside the furnace. Then they will bring the man or the lady down and they will see a cracked heat exchange—that is very bad. "I am the furnace inspector"—and before you know it you have signed up for a new furnace that you don't need at all.

We had one case involving an aluminum siding firm. They used the standard siding pitch sale, and in addition fraudulently obtained second mortgages and trustees. We got an injunction against this firm under a $25,000 civil penalty for subsequent violations. We got satisfaction and remission of every mortgage or trust deed that had been fraudulently obtained, and we were able to cancel over $100,000 in contract obligations.

This is just one case.

In the area of need for Federal action, much of what I have said is necessarily limited to what we found out within our State, but we think there is a real need for a thorough nationwide investigation of this industry.

In many ways this business is interstate in character even despite the fact that contracts are signed and wholly performed within the boundary of one State. We suspect that much of the ready financing available to the less reputable firms in the industry is provided either directly or indirectly by large national fabricators or suppliers of building products, and that the local sales outlets are closely tied to these national concerns.

The findings of a nationwide investigation of this industry could serve several purposes. First and foremost, of course, it would be to advise the Congress of areas where Federal legislation or regulation is needed. Second, such an investigation would be of substantial aid to the State legislatures and agencies in their efforts to alleviate the problems in the industry at the local level. And, third, the information provided by such a study could be of considerable aid to the enforcement arms of State and local government in the course of investigation and litigation involving particular firms.

Therefore, I join with the Federal Trade Commission in urging this committee to authorize such a study in the immediate future.

With the imminent squeeze in the mortgage money market, and the very probable decline in new housing, the home improvement industry will be experiencing a sharp increase in demand, attracting inexperienced and unscrupulous contractors to the industry.

We think the need for effective regulation is critical and that rapid and meaningful steps should be taken by the Federal Government to insure that the homeowners of the United States are not victimized by the few members of the home improvement industry who will be tempted to take advantage of the situation.

We are very grateful to the committee for our opportunity to appear and to state our case. We want to commend this committee for its continuing efforts on behalf of consumer protection. It is a matter of great concern and interest to us in our State, and we are very delighted to see the important steps taken by the Federal Congress in the general area of consumer protection.

The CHAIRMAN. We thank you for coming this long distance and giving us the benefit of your experience in this field in the State, and to point out what States can do in the passage of laws to handle these matters within the State.

Your statement was quite complete, but there are two or three things I would like to clear up for the record, and get the benefit of your advice on.

There has been some suggestion that, in the truth-in-lending bills and in other bills of this type, we have a limitation on the amount of service charge. You say that your State has 18 percent. Can you tell us how they arrived at that figure—18 instead of, say, 15 or 20?

Mr. O'CONNELL. Eighteen percent, Senator, was generally the figure used by the large merchandising firms on their revolving contracts, like Sears, Roebuck or the other large——

The CHAIRMAN. These are credit contracts?

Mr. O'CONNELL. Right. Most people felt this was a going price in the industry and in the merchandising field, and in the field of sale of personal property, and that 18 percent was a good figure to fix on.

The CHAIRMAN. It was a reasonable rate, and you took a figure based on your experience in dealing with the so-called legitimate concerns that are charging 18 percent?

Mr. O'CONNELL. That is correct.

The CHAIRMAN. Was there any testimony, or do you have any information, as to when the service charge starts? Is it when you sign the contract?

Mr. O'CONNELL. Whatever they agree upon, Senator, in the contract, but as a rule it would start when the contract is executed and commences.

The CHAIRMAN. We have run into a problem here when the purchaser goes in and makes a purchase of an item, and it is an item on the sales floor. They don't buy that. The furniture or the appliance is to be delivered later; sometimes it will be 5 or 6 weeks later. But still they start the service charge the minute the customer signs the contract, before they deliver the merchandise and before anyone has had a chance to look at it and see whether this is what they bought and whether it is satisfactory. I consider that a contract is not complete until the merchandise is delivered and accepted by the customer as satisfactory.

Mr. O'CONNELL. Of course, there is nothing to prevent two people agreeing to carry out a contract in a certain way. We have run into no problem in this field. Generally, if I buy a television set, I am going to pay for it in 18 months.

Maybe I don't get the television set for 6 weeks, and the contract starts running and my 18-month period starts running, so I look over the contract in its entirety; say, its year-and-a-half period. When I get delivery of the product I should know that and it should be agreed upon.

The CHAIRMAN. I would think if it is a one-shot credit deal on, say, a house full of furniture, people ought to be able to look at the contract and say, "I am not going to pay any service charge until I see the furniture delivered and I determine if it is satisfactory." Then the contract is completed and then the service charge starts to run.

Mr. O'CONNELL. Of course, in the concept of service charge in installment contracts, Senator, we include interest on the principal. So that 18-percent figure is everything, exclusive of filing charges, for example, recording of the documents and certain fixed charges that are set by statute for the filing of documents, but in that 18-percent figure is everything, including interest. That is what we call the service charge.

The CHAIRMAN. Then I suppose there are many cases where there is a running credit account?

Mr. O'CONNELL. Yes; particularly in large companies like Sears, Roebuck. They will run all the time.

The CHAIRMAN. They keep adding to it all the time?

Mr. O'CONNELL. And they keep adding to it.

The CHAIRMAN. What we find, particularly nationwide in the poor areas, is that they pay the service charge for maybe 2 months before they get the merchandise. The purchase product isn't quite what they ordered, and even if they sent it back and canceled the contract, they still would have paid a service charge.

Mr. O'CONNELL. This has not been a problem in our State.

The CHAIRMAN. You state that Consumer Protection Act was the first act of its type in the United States, and that it resulted from the recommendations of he consumer advisory council.

Was the consumer advisory council a statewide organization?

Mr. O'CONNELL. In our State?

The CHAIRMAN. Yes.

Mr. O'CONNELL. This was just a group of people I put together, ad hoc, so to speak; asked them to serve on a statewide advisory council in the area of consumer affairs. My recollection is we had about 35 people. We divided them into I think four or five committees, and each one of these little task forces made studies into certain areas of fraud and deception. One of them I am sure was in the home improvement field.

Then they made a report of what they had found in our State, and we published the report. I then took it to our State legislature and asked for legislation. It was just pulling ourselves up by our own bootstraps, so to speak.

The CHAIRMAN. And that advisory council was appointed way back in 1960 to begin this work?

Mr. O'CONNELL. Yes.

The CHAIRMAN. Would you consider Senate Joint Resolution 130, which authorizes the Federal Trade Commission to look into this matter and make recommendations, to be similar to the Advisory Council you had?

Mr. O'CONNELL. Yes, I would, Mr. Chairman.

The CHAIRMAN. Because that Agency has had vast experience.

Mr. O'CONNELL. We work very closely with the representatives of the Federal Trade Commission in our area. Our interests are generally the same, and we record with great satisfaction that we work very closely together.

The CHAIRMAN. Are some of the fraudulent contractors operating across State lines able to ignore the State licensing provision?

Mr. O'CONNELL. This act, Senator, has been difficult to enforce. The Contractors Registration Act does not give the attorney general's office any responsibility in the enforcement. The penalty for not abiding by the Contractors Registration Act is criminal, it is a misdemeanor, and we have no jurisdiction in criminal matters. The Contractors Registration Act then is administered by the department of licenses, and there are many small contractors still in our State that are still not registered.

There are those who say that the Contractors Registration Act was unfair, such as a man who himself is his whole contracting firm, that the surety bond is almost impossible to obtain, $2,000. Of course, in thereof they could have put up $2,000 in cash.

The Contractors Registration Act has not as yet worked out as well as was originally hoped.

The CHAIRMAN. Then, of course, they can come into the State and get out fast, and you have no way of extraditing them back to Washington under the present law?

Mr. O'CONNELL. That is right.

The CHAIRMAN. I think you said that you thought these particular Federal proposals would complement the program you have been carrying on.

Mr. O'CONNELL. I don't think there is any question about that, Senator. There are many States——

The CHAIRMAN. It might be in the field where they operate interstate.

Mr. O'CONNELL. That is right. We don't feel very happy about driving some unscrupulous operators out of our State and then find them 3 months later doing the same thing in some other State which might not have the type of legislation we have to combat them.

The CHAIRMAN. Based on your experience in the State of Washington in the home improvement field, are the frauds concentrated largely in the areas of low-priced housing and lower income groups?

Mr. O'CONNELL. Without a doubt.

The CHAIRMAN. I think that is true all over, and I just want the record to show that that applies in our State, too.

Mr. O'CONNELL. I think this is what makes the problem critical and necessary that some solution be found. But the lower income people, the poorer people, the people who need help most and can least afford to make a bad mistake in judgment, are the ones who too often get burned.

The CHAIRMAN. One other matter that you brought up.

Most people have no realization whatsoever of the web they get into in the beginning—the chain of events that occur—but the net result is that the homeowner is tied up legally so that, No. 1, he can't sell his home; No. 2, he can't use his equity for credit; and No. 3, long after that fellow has been there and sold him something he is still all tied up in legal matters.

Mr. O'CONNELL. That is right. Then, too often, compounding it, the product he bought is no good.

The CHAIRMAN. We thank you very much.

Don, do you have anything you want to add to this?

Mr. NAVONI. Just one word, Senator Magnuson.

We would be wholeheartedly in support of a ceiling on service charges federally. We have noticed in our experience in Washington State that many unscrupulous promoters are charging routinely at the rate of 35 percent in terms of simple annual interest. This is no longer a problem under the Washington State truth-in-lending law, because we do have a ceiling. However, I know it is a problem in Idaho, Montana, and California, and many of the Southwestern States. So we would urge some kind of ceiling.

Also, in those other States which do not have a full-disclosure law which requires itemization of every item of the bargain—and this

is a national problem—many unscrupulous firms are using a very clever device to illustrate their charges. They have a little block set forth in the contract with bold typewritten lettering—"Total cash price," say, $2,500—and below the total cash price will appear in multiplication figures: 74 months times $65. The average homeowner unless he is facile with mental arithmetic won't realize he might be spending another $2,000 over the total cash price. In other words, the $2,000 is completely hidden in the contract.

I know this has been a problem in Washington State before our truth-in-lending law, and we know from constant contact with other attorneys general in other States that it is a serious problem nationally.

Some kind of full-disclosure itemization in mandatory sequence of every item in the bargain would be very helpful.

The CHAIRMAN. Let me ask one other thing.

There is another problem where the paper is discounted with a financial institution, and that institution, as a holder in due course, divorces itself from any liability for fraud or anything else that may have occurred when the original contract was negotiated. Is that true in our State now, too?

Mr. NAVONI. No, Senator, the problem is partially solved in Washington State because in our truth-in-lending law we have a special clause which makes unlawful any provision in the written contract whereby the buyer would waive any of his defenses against the third party. So it preserves any legal rights he might have against any third party no matter who it might be.

Secondly, close investigation of any of these home improvements frauds might reveal very close connection with finance companies. So, finance companies have full knowledge of the most intimate knowledge of the operation of the transactions, and, therefore, they cannot legally stand as a holder in due course.

The CHAIRMAN. What happens when they peddle the paper in another State? There is a great deal of that. I suppose a lot of people up in our State head south to peddle paper in a certain area south of us.

Mr. NAVONI. There is always that problem, Senator Magnuson. We have found at least the Supreme Court of the State of Washington has held purchasers of commercial paper to a high standard, and have urged them to investigate fully, before making any purchase, all the details of the transaction.

The CHAIRMAN. You have found at home—at least I have in conversation with responsible financial institutions—that they have now decided to make a little investigation themselves before they take the paper.

Mr. O'CONNELL. We had one case, this was home intercom and fire alarms which sold at a very high price of about $1,100 or $1,200 and the cost of installation was $200. They used the referral technique to sell it. You buy this and, each one of your friends you get for us to make a similar deal with, we will knock a hundred dollars off your purchase price.

We had a case in our supreme court which said referral selling of this nature was a lottery contrary to our constitution. Therefore, each of these contracts were invalid and unenforceable. The financial houses to whom the paper had been sold took a bath. Of course, this

case made every financial house in our State aware that they should be extremely careful in picking up paper from houses of this kind.

Mr. NAVONI. That decision has been adopted by the courts of New York, Oregon, and Kentucky.

The CHAIRMAN. We thank you very much for your testimony. I know you have to catch an airplane to get home. I think the committee will derive a great deal of benefit out of your experience in the State of Washington.

Mr. O'CONNELL. May we say our files or any other information we have is available to this committee at your pleasure.

The CHAIRMAN. Because the Chairman of the Federal Trade Commission is here, and they have field offices, can you tell us what cooperation you have with the Federal Trade Commission in our State?

Mr. NAVONI. It has been excellent, Senator Magnuson. There is a field staff in the State of Washington of I think some 11 attorneys, and every one of these people have been of tremendous service to us in making files available during the investigation of some of our cases, and likewise our information in always available to them.

The Federal Trade Commission recently, I think a year and a half or 2 years ago, initiated the Office of Federal-State Cooperation, and they have been of tremendous assistance to us in keeping us informed of all the activities of the United States.

The CHAIRMAN. One other question. This may be a naive one.

I have often wondered why most of the home improvement advertising seems to be in the TV section of the newspaper. Why is that?

Mr. O'CONNELL. I don't know. That is a newspaper-type question, Senator.

The CHAIRMAN. If a Sunday paper has the TV schedule for the following week, nearly every page has home improvement ads.

Mr. O'CONNELL. All I can say from my own personal experience, I know that the TV magazine or TV guide contained in the Sunday newspaper is kept in the house for 7 days and is frequently consulted. It may be because it is a good place to get attention. That would be my guess.

The CHAIRMAN. I notice that they are all there. I made a couple of phone calls at one time—"call a number"—and it was an answering service. I suspected they didn't even have an office. I got an answering service twice.

We thank you very much for coming all this way and giving us the benefit of your experience at home.

I might say, Don, the record will remain open in case you want to add anything to it or elaborate on the attorney general's statement.

(Mr. O'Connell's prepared statement follows:)

PREPARED STATEMENT OF JOHN J. O'CONNELL, ATTORNEY GENERAL OF THE STATE OF WASHINGTON

HOME IMPROVEMENT FRAUDS AND CONSUMER PROTECTION—INTRODUCTION

Mr. Chairman, distinguished members of the Consumer Subcommittee, it is indeed a privilege for me to be here today. I would like to introduce to you Assistant Attorney General, Donald L. Navoni, who is Chief of our Consumer Protection Division in the State of Washington.

I would like to discuss the nature of the problem of home improvement frauds, with emphasis on specific schemes prevalent in Washington and throughout the country. Secondly, I will outline our enforcement experience in Washington State and finally, the need for federal action.

A. Nature of the problem

The Consumer Protection Division of the Attorney General's office has, from its creation in 1961, been actively engaged in investigation and litigation of a wide range of economically pernicious home improvement frauds, *from the "suede shoe boys" selling aluminum siding out of their air-conditioned cadillacs to the less sophisticated fly-by-night roofing repairman, with only a pickup truck, a ladder and a tar bucket for assets.* A review of some of the different schemes encountered by our office may be helpful to the committee.

1. *Remodeling Contractors.*—A number of firms, generally permanently based in the Seattle metropolitan area, engage exclusively in contracting with home owners for various remodeling projects. I use the word "contracting" deliberately, for these firms perform no labor and provide no materials. All work is subcontracted to various specialty contractors doing plumbing, electrical, or masonry work or to out-of-work carpenters. These firms advertise extensively in newspapers, and on radio and television that they are the "oldest" or "largest" or "most reputable" firm in the business. They also indicate, usually by implication, that the home owner will be dealing directly with the firm. This, of course, is true when it comes to paying his money. But when he attempts to obtain performance of the work he discovers that he is dealing separately with the plumber, the electrician, the carpenter and the supplier. Of late several of these remodeling firms have failed, leaving their customers to satisfy labor and materialmen's liens filed against their property by subcontractors after having paid the remodeling contractor in full.

But the great majority of complaints against such firms involve the fact that the home owner quite often receives shoddy and substandard work in exchange for an exorbitant price. The representatives of these firms are accomplished direct (or door to door) salesmen. They do not intend to leave the prospect's home without getting his signature on a contract. They may represent that the contract is merely an estimate, or that it isn't binding until the purchaser's credit is approved, or simply wear down any sales resistance they encounter by meeting any objections or answering any questions with oral statements which, of course, may not appear in the written contract. They offer no opportunity to the home owner to get competitive bids or investigate the firm's reputation. They will often state that the price proposed is a "one time offer" or that they are giving a special discount if the home owner signs now. They don't care whether the home owner subsequently backs out of the deal for their contracts invariably contain a liquidated damages clause providing for payment of from 25%–50% of the contract price as a cancellation penalty. Because of this many buyers don't attempt to cancel even when they discover later that the contract price is exorbitant. Our office usually hears from such victims only after the work is done, but unsatisfactorily, and the contractor refuses to make any corrections, claiming that any fault is to be corrected by the subcontractor.

2. *Siding Sales.*—A particularly vicious home improvement fraud is practiced by some firms in the business of installing various new types of siding. We have seen identical techniques used in sales of aluminum, asbestos and vinyl siding. The whole idea is to convince the home owner that he is getting a very special deal when in fact he is paying an exorbitant price and exorbitant interest or service charges.

The salesmen represent themselves to be "advertising fieldmen" attempting to line up "model homes" to be used in promoting a new wonder siding. They have been known to state that the prospect's home will be shown on the Johnny Carson Show in a before-and-after presentation. One salesman told a prospect that a special telephone would be installed in his home so that whenever someone driving by stopped to admire his new siding he could get on the "hotline" to inform the firm of a hot prospect. An almost sure-fire closing technique used by such salesmen is to tell the prospect that the vice-president of the nationally known and impeccably reputed firm which manufactures the siding is out in the car. The "vice-president" is brought in and he clinches the sale by promising the home owner a year's supply of aluminum foil or $500.00 cash to consolidate his bills or whatever is necessary to overcome sales resistance and make his new "model home owner" happy.

The siding itself is represented to be absolutely maintenance free and backed by a 25 year or even "lifetime" guarantee. The prospect is told that the regular price of the product, once it's put on the market, will be twice the price of this "introductory advertising offer." Prospects or leads are often obtained by bait advertising quoting "$299.00 for 1,000 sq. ft." The salesman disparages the bait

advertised product *after* the contract is signed by reminding the homeowner that it is necessary to "wax the siding at an annual cost of $275.00." He then switches the buyer to the siding at $2,950.00 per 1,000 sq. ft. on the introductory offer "which never needs waxing" and is "impervious to the elements."

Easy payment terms are always available. Most siding contracts in fact run 84 months. The service charge on such contracts often equals or exceeds the selling price, due to the high rates pertaining in the industry.

Despite exacting high financing charges and unconscionable profit, some firms are not satisfied. They require purchasers to sign second mortgages or trust deeds to secure the indebtedness without disclosing the nature of the document. These are then notarized out of the presence of the buyer and filed the next day.

To further insure that the buyer does not back out of the deal the usual procedure in the industry is to send workmen out the next day to "spike the job." This consists of ripping a substantial portion of the present siding off the house immediately, and making a start at installing the new. The job may not be finished for another three or four weeks but in the meantime the buyer's figures he's stuck; the work is underway and it's too late to do much about it.

Two or three years go by and the siding fades or peels. The buyer tries to get someone to honor the "lifetime" guarantee—but in vain, because it is so conditioned and restricted as to be worthless.

He may eventually get the contract paid off and attempt to sell the house. He discovers that there is a cloud on his title in the form of an unsatisfied mortgage. He often has to bring a quiet title action to get it removed.

And, of course, if he defaults in his payments, the seller or his assignee is quick to either accelerate the contract or start foreclosure.

3. *Roofing, Chimney Repair and Termite Extermination.*—A different type of operation entirely pertains among certain roofing, chimney or termite damage repair contractors. They deal only on a cash basis. In fact they try to determine how much cash their victim has before they determine the extent of the "damage" they contract to repair. These operators prey mainly on elderly people, preferably widows, whose homes are obviously not being maintained. The home owner is approached on the basis that her roof is on the verge of leaking or that her chimney is apt to fall and injure someone. Another common approach is to represent that they are "termite inspectors." Invariably the house is infested and substantial work is necessary to prevent its collapse.

Under one guise or another the victim's bank balance is ascertained. If it exceeds a plausible price for the repair of the original alleged damage, more and more "damage" will be discovered until either the bank account is exhausted or the victim gets wise.

4. *Home Improvement Specialty Sales.*—A sort of combination of the siding sales technique and the home repair racket is practiced by some specialty product firms. They advertise a wide range of home repair services. When the salesman comes to the home at the owner's request to estimate the repair job, he brings along his sales kit for whatever he is selling; aluminum windows or storm doors, kitchen nooks, patio covers, etc. He makes much of the seriousness of the repair job and then pitches his product. If the home owner won't bite at the product being pushed the salesman loses interest and prices the repair work out of sight. If the home owner sounds interested a lump sum price for the repairs and the product is agreed upon. The home owner is led to believe that the product is being thrown in just for a small increase in price. He subsequently discovers, however, that the repair work performed is little more than a patch job, often unsuccessful, (his roof or basement still leaks, his foundation is still settling), but that he is paying for several years for a product he probably didn't want or need and can't afford.

5. *Other Aspects of the Problem.*—Another aspect of the problem of home improvement frauds involves the nature of the victims of the particular schemes. As has been pointed out, the unscrupulous home repair firms seek out elderly persons, unable to maintain their own homes. These people are often senile and not capable of evaluating realistically either the need for repair or the reasonableness of the price charged. In many cases they are alone in the world and invariably they want to keep their home rather than impose on relatives or move to a retirement or nursing home. However, once the fraudulent home repair man drains their bank account (often their life savings), they probably are forced to give up their home in order to obtain the necessary cash to live out their lives, not at home and independent but with relatives or in an "old folks home."

The siding salesmen and specialty products firms seem to concentrate on areas of low-priced housing. Their victims are often persons of fairly low income who are unable to finance the purchase of a "nicer" home. The victim is persuaded that he can build the equity in his present home by purchasing the promoter's product. This is simply not true. The siding or aluminum windows or whatever does not add nearly as much to the value of the home as the purchase price of the product. We have seen several instances where the home owner discovers, when he sells his home, that paying off the indebtedness incurred for these products actually wipes out all or a substantial portion of the equity he does have. In most cases the improvements purchased have the result of tying the home owner to the house rather than facilitating his sale of it.

When the economy and money market are tight, remodeling contractors are at their busiest. Home owners generally would prefer to purchase new housing to accommodate a growing family or changing needs in housing, but if it is unavailable the best alternative is remodeling their present house. When the remodeling project turns out unsuccessfully, they too find that they have, on balance, lost equity in their home rather than having gained. Either their savings are depleted or their current income, which could have gone into savings has been devoted to retiring indebtedness not offset by increased equity.

B. Experience at regulation in Washington State

Regulation of the home improvement industry is effected by several statutes in the State of Washington, most of them quite recent. Our Consumer Advisory Council which was appointed in 1960 to recommend legislation in the field of consumer protection devoted primary concern to this area. As a result the legislature passed the Registration of Contractors Act, (RCW 18.27), requiring all contractors to be licensed by the State. A prerequisite of such license is a $2,000.00 surety bond running to the State to cover, among other things, breach of contract claims. Without such a license a contractor cannot lawfully submit a bid or perform any work under contract, obtain a building permit, remit State sales taxes collected, or sue for performance of a contract.

The Consumer Protection Act, (RCW 19.86) the first State act of its type in the United States, also resulted from recommendations of the Consumer Advisory Council. Section 2, patterned after Section 5(a) of the Federal Trade Commission Act, makes any unfair or deceptive act or practice or unfair method of competition in trade or commerce unlawful. The enforcement of the Act is the responsibility of the Attorney General's Consumer Protection Division which is given authority to seek an injunction (involving a $25,000.00 civil penalty for violation) against any firm violating the statute. This authority has been exercised in several cases involving siding contractors and home repair firms. The act also provides a formal means of obtaining voluntary compliance known as an Assurance of Discontinuance. This remedy has been pursued against many siding firms or specialty product contractors and home repair contractors.

The Retail Installment Disclosure Act (RCW 63.14), our Truth in Lending Act, passed in 1963, and amended in 1967, also has application in this area. The Attorney General has authority under this statute to seek the same remedies provided for in the Consumer Protection Act against firms who fail to meet the contract requirements called for by the Act. These include disclosure of all charges, which must be itemized in mandatory sequence; delivery of a copy of the contract to the buyer; a requirement that all essential terms and conditions of the agreement be combined in one document; a limit of 18% on service charge and disclosure of the true annual rate; and disclosure of the buyer's right to cancel ("cooling off period") in certain situations. This statute has proven to be self-executing to a great degree and our enforcement of the act in the home improvement industry has been largely informal and advisory.

The statute also specifically exempts all transactions financed or insured by the Federal Housing Administration from its requirements, which means that a large portion of home improvement contracts are not governed by it.

County and municipal building codes also play a part in regulating the home improvement industry. However, *due to difficulty of enforcement and limited application to many types of home improvement frauds, their role has been of perhaps somewhat less effect.* However, the building departments of the various municipalities have been of great assistance to the Consumer Protection Division in an investigatory and advisory function.

In general, the effectiveness of enforcement experience in the State of Washington has exceeded our fondest expectations. Many of the abuses that were

prevalent in the home improvement industry have been eliminated. Our enforcement efforts have been directed primarily at the most flagrant and fraudulent violators on a firm by firm basis. Most of the firms against which action has been brought have either gone out of business or left the state. Others have brought their operations into conformity with the law.

Perhaps our most successful, certainly the most dramatic enforcement experience, involved an aluminum siding firm chartered in California, headquarters in Portland, Oregon, and operated in 22 Washington counties. This firm utilized the standard siding pitch and in addition fraudulently obtained second mortgages or trust deeds to secure payment of their unconscionable price. Formal action by the Consumer Protection Division resulted in a permanent injunction under a $25,000.00 civil penalty for subsequent violations, satisfaction and release of every mortgage or trust deed fraudulently obtained and the cancellation of over $100,000.00 in contract obligations.

C. Need for Federal action

We recognize that our experience and knowledge of the nature and extent of fraudulent practices in the home improvement industry is necessarily limited to what has happened within the State of Washington. We think there is real need for a thorough nationwide investigation of this industry. We know that in many ways this business is "inter-state" in character despite the fact that contracts are signed and fully performed within the boundaries of one state. We suspect that much of the ready financing available to the less reputable firms in the industry is provided either directly or indirectly by large, national fabricators or suppliers of building products, and that the local sales outlets are closely tied to these national concerns. We also suspect that many small itinerant home repair operations travel extensively around the country, working one area until the "heat" is on and then moving to another. We know of a few which have left Washington after suit was brought by the Attorney General. We received inquiries about the principals of one firm from the Chicago and Detroit police departments and the last we heard, they were in operation in California.

The findings of a nationwide investigation of this industry could serve several purposes. First and foremost, of course, would be to advise the Congress of areas where federal legislation or regulation is needed. Secondly, such an investigation would be of substantial aid to the state legislatures and agencies in their efforts to alleviate the problems in the industry at the local level. Thirdly, the information provided by such a study could be a considerable aid to the enforcement arms of state and local government in the course of investigation and litigation involving particular firms.

Therefore, we join the Federal Trade Commission in urging the committee to authorize such a study in the immediate future. With the imminent squeeze in the mortgage money market and very probable decline in new housing, the home improvement industry will be experiencing a sharp increase in demand, attracting inexperienced and unscrupulous contractors to the industry. The need for effective regulation is critical. Therefore, rapid and meaningful steps should be taken by the federal government to insure that the home owners of the United States are not victimized by the few members of the home improvement industry who will be tempted to take advantage of the situation.

We would like to take this opportunity to commend this committee for its continuing efforts on behalf of consumer protection, and offer the fullest cooperation of our office to the committee in its work.

The CHAIRMAN. Thank you.

Miss Betty Furness, special assistant to the President for Consumer Affairs.

We would be glad to hear from you.

She is accompanied by Mr. Dix, who is the Director for Legislative Affairs in her department.

Glad to have you both here.

STATEMENT OF BETTY FURNESS, SPECIAL ASSISTANT TO THE PRESIDENT FOR CONSUMER AFFAIRS; ACCOMPANIED BY LESLIE V. DIX, DIRECTOR FOR LEGISLATIVE AFFAIRS

Miss FURNESS. Thank you, Mr. Chairman.

The CHAIRMAN. In the beginning, I will put in the record in full the letter that you sent. You can talk about it if you wish, but I thought this ought to go in in detail.[1]

Miss FURNESS. I have prepared testimony here which I would like to read. It is brief and some of it is repetitive, but I think quite a problem is the problem of repetitive that we are discussing today.

Mr. Chairman and members of the committee, I appreciate this opportunity to testify on the consumer problems you are considering today, and to give you my views on the measures that have been proposed to help solve them.

These measures are S. 3065, which the administration and I, too, strongly support, and S. 3066 and Senate Joint Resolution 130, both containing provisions of considerable merit.

With your permission, Mr. Chairman, I would like to place in the record a sectional analysis of these bills. I also have a group of letters here from several States' attorneys general on this subject.

The CHAIRMAN. We would like to have copies of those for the record.

(The letters from the States follow:)

STATE OF NEW YORK,
DEPARTMENT OF LAW,
New York, N. Y., March 25, 1968.

Hon. LESLIE V. DIX,
Director for Legislative Affairs, President's Committee on Consumer Interest, Executive Office of the President, Washington, D.C.

DEAR MR. DIX: Attorney General Lefkowitz is in receipt of your memorandum dated March 13, 1968, and addressed to all State Attorneys General.

We are indeed sorry that we could not provide the information that you requested in advance of the March 22, 1968 deadline, but we only received your memorandum several days ago. I am enclosing a copy of our current Annual Report for the Consumer Frauds and Protection Bureau. I trust that you will find the required information in our report.

Sincerely yours,

LOUIS J. LEFKOWITZ,
Attorney General.
By MORTON J. GETMAN,
Executive Assistant to the Attorney General.

REPORT OF BUREAU OF CONSUMER FRAUDS AND PROTECTION,
DEPARTMENT OF LAW, STATE OF NEW YORK

Louis J. Lefkowitz, *Attorney General*
Samuel A. Hirshowitz, *First Assistant Attorney General*
Barnett Levy, *Assistant Attorney General in Charge*

Legal:
Assistant Attorneys General: Stephen Mindell, Joseph A. Bailey, John P. Baione, Agnes T. Leen, Henry P. Lipscomb, Jr., Mortimer Michael, James Princiotta, Robert J. Reich, B. William Rothberg, Arthur E. Teig.
Senior Attorney: Leonard Lifton.
Accounting: Erwin H. Lyons.
Investigators: Abraham Genen, Nathan Jacobs, Anthony Scerbo.
Spanish, interviewers-interpreters: Ralph Resto, Irving Aguilera.

[1] The letter referred to is included on p. 8, along with the other agency comments on the bills.

Administration: Vera Windle, Alberta Crawford, Edith Gardner, Fay Secht, Nita Margolin, Belle Truman.

New York Law School Student Program: Anthony J. Buffalano, Bruce A. Goldstock, George Hirschhorn, Patricia A. O'Toole, Brian Seery, Helene Schechtman.

"The overall progress we have made in administering and enforcing the consumer protection program in the last ten years has far exceeded our fondest expectation. I say with modesty, New York State has become the leader in the nation in enforcement action and has been the model for other states. The fight against fraud and deception in the sale of consumer goods and services must continue to be pursued vigorously. Law enforcement must be strengthened to counteract the artifices of the modern-day swindler. Adequate powers should be given to combat the widespread discreditable business practices which almost daily shock the public." (Statement by Attorney General Louis J. Lefkowitz before New York State Bar Association Antitrust Law Section January 26, 1967.)

BUREAU OF CONSUMER FRAUDS AND PROTECTION, BARNETT LEVY, ASSISTANT ATTORNEY GENERAL IN CHARGE

The Attorney General has always had the authority and power to protect the consuming public of the State of New York. A case has been discovered as far back as 1820 in which the Attorney General's office gave aid to a member of the public who was caught in an insurance fraud. Attorney General Louis J. Lefkowitz discerned that there was a dire need to protect the consumer against an ever increasing host of gyps, charlatans and confidence men. Realizing that something affirmative had to be done to combat these increasing frauds, the Attorney General in 1957 created within the structure of the Litigation Bureau, the Division of Consumer Frauds and Protection. This Division proved so successful in the war on fraudulent practices that the Attorney General, within a year of its establishment, raised the Division, in 1959, to the status of a full Bureau.

Our experience has shown that the overwhelming majority of business people carry on with integrity and due regard for those with whom they deal. However, a fringe element using every means of trickery and deceit continues to drain millions of dollars each year from the consuming public. Furthermore, this relatively small but active minority of unscrupulous operators does incalculable economic harm to the honest business and serviceman. They drive upwards the cost of living, add inflationary pressures, and undermine the public faith and confidence which is essential to the well-being of the American economy.

The year 1967 brought new and expanded services to the consuming public and the legitimate business community. Statistically ,this year parallels that of 1966, but it is well to note the tremendous amount of increased staff activities in certain categories of business functions, such as frauds in the auto transmissions field; complaints regarding the failure of landlords to return rent security; overreaching and deception by funeral establishments and retailers of tombstones; violations of the retail installment laws; travel industry; sale of hearing aids; magazine and book sales; deceptive and misleading ads and incompetence and fraud in servicing of television sets, automobiles, washing machines, etc. Nothing is more significant to mirror the accomplishments of the Bureau than the thousands of communications received from consumers of all walks of life and from all parts of the country (and elsewhere) who have been assisted by adjustments or cancellations of contracts—the return of money deposited with unscrupulous or grey-area merchants—refunds where guarantees have not been fulfilled—return of rent security—mediation of complaints with legitimate business concerns—as well as letters of gratitude from Federal, State, local and foreign officials who spent many hours with staff members observing the business operations, studying its administration flexibility and conferring on the effectiveness of our consumer protection laws and ideas.

As in the past years the low and middle income groups make up the bulk of consumers who seek our help on a daily basis either by visiting our complaint room or writing to us and though their claims may not be large in the amount of money involved, the loss, nevertheless, in view of their economic level is great. Those consumers with language difficulties find comfort and assistance in being able to discuss their problems with staff members who are bi-lingual.

Governor Nelson A. Rockefeller in his annual message to this Honorable body called for "further strengthening of support for the Attorney General's outstanding leadership in consumer protection." The Governor proposed that such

action include: Mobile consumer protection and education units; further protection for installment purchasers; reglulation of trading stamp companies and a higher minimum earning exemption from garnishment and wage assignments. Though bills seeking to accomplish these suggestions did not fare well, we are again preparing legislation to be submitted to the 1968 Legislature which we trust will receive favorable consideration and bring our hard pressed consumers new protection.

It is well to keep in mind that consumers by definition include us all—the consumer is everyone! That is why the protection of the consumer is protection of the public interest.

Since the formation of the Bureau ten (10) years ago, there has been a constant increase in the number of consumer complaints and inquiries. In 1967 we received more phone and mail activities than in previous years despite the fact that the number of new files opened remained constant with the prior years and approximately 1,700 less people came through our consumer complaint room doors. Persons of all walks of life, rich and poor alike, affluent, disadvantaged and middle income, professional, white collar and blue collar, laborers, welfare recipients, individuals from every state in the union and many visitors from foreign countries sought help, advice and assistance from staff members. Over 13,740 persons visited our complaint room; incoming mail was recorded at 28,255 pieces and telephone activities (no accurate count was possible since there was a change to Centrax) was estimated at 90,000.

We opened 13,602 files and 13,395 were officially closed, leaving a carryover of 3,527 files to be processed. As a result of mediation and court action $764,-486.42 was returned to the public in money, goods and/or services. Costs assessed by the bureau and the courts in the sum of $35,150.00 was turned over to the State Comptroller. This was the highest amount of costs collected since the Bureau was established.

The Bureau has also been assigned the processing of matters referred by the State Department of Agriculture and Markets. Violations occurring in the five counties of New York and within the Counties of Suffolk, Nassau, Westchester, Rockland, Putnam and Sullivan are handled by way of settlement or court action. This year we received 290 cases and closed 309 leaving 115 cases as a carryover to 1968. We collected the sum of $12,178.70 as penalties. To further protect the welfare and health of our residents we instituted four injunctive actions in the Supreme Court of the State of New York and successfully halted certain illegal practices which violated the Agriculture and Markets Laws.

Information coming into the Bureau as well as news media reports indicated that the year 1967 was the year that local governments (City, County, Village, Town) took a long, hard look at the concept of consumer protection at the local level and expended time, energy and staff to set up their own units to service consumer complaints and inquiries. Despite this increased local activity, the bureau continued to receive the major portion of consumer work. A conclusion can be drawn, therefore, that the intensity of consumer frauds and deception in all fields is on the upswing and tens of millions of dollars are being extracted from the pockets of the consuming public in the State of New York.

The Bureau's prime interest is the protection of the consuming public of this State and equally those consumers from all over the United States and world who deal with the business community of our State. We afford this protection through six areas of activity: mediation, education, litigation, legislation, industry and business orientations and governmental, quasi-governmental and non-governmental assistance.

(1) *Mediation.*—Staff members by means of conferences, telephone calls and letters mediate problems between the complaining consumer and the individual, concern, or corporation being complained of. Our most rewarding dialogue with the ethical and legitimate business community occurs in this area. Its willingness to cooperate with us and to appreciate the consumer's problems affords the consumer the opportunity of redress and at the same time maintains the good will of the business establishment. By this process over six million dollars has been returned to the public by way of goods, services or money and over ninety thousand people have visited the Bureau since it opened its doors to the public in 1957. In order to provide the proper climate for this type of activity a consumer complaint section is maintained where any person regardless of status can, without an appointment or bureaucratic red tape, fill out a form complaint and within minutes (depending on the number of others in the complaint room) will be seated at a desk discussing his or her problem with a staff attorney. For those with language difficulties interpreters are on hand.

The development of the complaint room section over the past eight years has been one of the proud accomplishments of the Bureau's personalized service to the consuming public. All visiting officials from other States and countries have loud praise for the activities performed by this section. As yet no other State has developed this type of unique public service in the office of the Attorney General, but the future should see this setup emulated.

The continued use by all people of the services of the Bureau reflects the facts that (1) there has been an increased public awareness of the work and effectiveness of the Bureau in its daily endeavors to protect the consumer as well as the legitimate businessman; (2) the willingness of the ethical and legitimate businessman to cooperate with staff members on mediating consumer problems in areas that are not illegal, unethical or unconscionable per se; (3) there is a constant vigil to ferret out and stop consumer frauds that affect the public health, welfare and safety and the legitimate business community.

Space does not permit the outlining of each and every interesting and significant complaint mediated, but a sampling of these matters and the comments by some of the recipients of our service will illustrate the myriad of problems successfully concluded by the staff. A housewife living in a slum area of Manhattan, gave a $50.00 deposit to secure an apartment in Queens. When she failed to raise the amount needed for security the deal fell through and the rental agent refused to return her money. The firm was contacted and the money refunded. Complaints were received from poor Spanish-speaking residents that they prepaid a defunct moving concern for shipping articles to their families in Puerto Rico. The articles were never shipped and the landlord of the premises threatened to sell them at public auction. By swift action of staff members and with an assist from the Mayor's office over $20,000 worth of articles were returned to their rightful owners.

We received the following letter from a satisfied consumer who had difficulty with a car dealer "They gave me back $1,000 in cash this afternoon. Thank you for your assistance." A 91 year old Queens resident, a former Head of a Music Department of a City High School, complained that a simple call to a home improvement contractor regarding the possible repair to his heating system, ended with him signing a $6,500 home improvement contract for work that was not necessary nor desired. The Bureau's staff was successful in obtaining a cancellation of this contract. A consumer sent a label from a coffee jar to a leading food company and expected to receive in exchange $.50. It was only after we contacted the company that she received this amount with a letter of apology. A Bronxville resident wrote "I would like to take this opportunity to express my sincere appreciation for all you have done for me in helping me get out of the unbelievable situation for which I will never forget." This communication was received when we notified the consumer that an out-of-state correspondence school was agreeable to cancel his tuition fee in the sum of $400. Many complaints coming to the Bureau involved the signing of long term contracts to take photos of children which photographs were overpriced, not supplied, misrepresented, poorly colored, etc., or the company went out of business. By receiving cooperation from industry members practically all complaints were satisfied. An official at Westfield State Farms sought our help when she was cheated out of $382.50 by an Illinois auto broker. We contacted our counter-part, the Consumer Frauds Bureau in the Illinois Attorney General's office and after much correspondence and negotiations a full refund was made. When we obtained a new car for a New York City resident without the payment of "sudden" additional charges, he thanked us for our help and his letter concluded with these words "During the short wait in your office, I had the opportunity to witness others of your staff in action. They were attempting to render services to people who were obviously victimized because they were of an underprivileged class; yet despite even language barriers your people, ever courteous, patient and efficient were an inspiration. You and your staff are to be heartily commended". A letter from Palo Alto, California expressed appreciation for the return of $14.96 which the consumer could not obtain after months of writing to a New York concern when she returned a bug killer that was guaranteed to work, but didn't. The sentiment expressed by the many out-of-state consumers assisted by the Bureau is contained in a letter to the editor of a Maryland newspaper which ended with these words "This prompt action on the part of a state official particularly for a non-voter and out-of-state resident was most commendable."

Potential and actual purchasers of new and used cars were complimentary of our service when we obtained cancellation of contracts, return of deposits, com-

pliance with contractual obligations and making necessary repairs subsequent to delivery of cars. Thousands of dollars worth of food freezer-food plan contracts were cancelled, default judgments were vacated and garnishees were removed when consumers from the disadvantaged, language-barrier areas complained of over-reaching deception, unconscionable prices and unbelievable savings sales-pitches. Staff members were successful in mediating the individual problems where no persistent pattern of fraud could be established. Tenants found the mediation phase of our work beneficial when subsequent to their filed complaints, landlords responded to our request for full return of their rent security. Funeral directors were cooperative in reducing bills and travel agents were receptive to our suggestions for satisfying travelers' complaints.

Suffice to say the tremendous success of mediation of complaints is due in the main to the dedicated, efficient, knowledgable and hard working men and women of the Bureau.

(2) *Education.*—A comprehensive program for the education of the consumer has been carried out in all areas of public and private endeavors. Staff members address students at all levels of our educational system. Our attorneys address P.T.A.'s, professional societies, political groups, trade groups, fraternal, social, charitable and community organizations. In addition, a new film entitled "The Fine Art of Fraud" was produced last year. This film, depicting some common frauds and the work of the Bureau in combatting same, was shown throughout the State at group meetings and at county fairs. Thousands upon thousands of people, accordingly, were made aware of the fraudulent operators and the Bureau's activities.

Another first has been accomplished by the coordination of talents in the State Education Department, the Departments of Commerce, Insurance, Housing, Banking and the Bureau's staff in preparing a text entitled "*Consumer Education-Material for Elective Course*" which will be used in teaching consumer education in the secondary schools in the State of New York. Though this course at the present time is elective, the Attorney General will continue to press to make this a required course of study. The Board of Education of the City of New York is also embarking on a similar program of teaching consumer frauds protection in city public schools and Assistant Attorney General Barnett Levy was designated a member of the panel set-up to assist the Board.

An integral part of the education program is the issuance by the Attorney General of timely warnings over radio and television and through newspapers to the consuming public against seasonal fraudulent practices. For instance, at Thanksgiving time the Attorney General alerted housewives to pay particular attention to labels on turkeys which are required by statute to state the net weight of the stuffing as well as the net weight of the turkey.

Spring, summer, fall and holiday gyp-gimmicks were called to the public's attention, whether it be phony weather proofing of roofs, over-priced and shoddy sidings, unnecessary and high priced chimney and furnace repairs and/or replacements, bait and switch ads regarding swimming pools, the receipt of unordered merchandise, the dangers of dealing with street vendors at holiday time—all of which cause tremendous amounts of monetary losses to the unwary. A special warning was issued to prospective visitors to Canada's "Expo 67" alerting the public to the possibility of inadequate or uninhabitable accommodations; where to check brochures and advertisements for truthfulness. Those in the market for food-home freezer plans were warned that they could be paying higher prices for food, receiving inadequate supplies and paying an exorbitant price for the freezer. Our debt-ridden consumers were warned of the pitfalls in dealing with out-of-state debt poolers. Though New York State has outlawed this type of business practice, several out-of-state concerns were advertising for this business in our disdvantaged areas. These and other public warnings help to alert and educate the consuming public.

To further our educational aspect of the Bureau's work, Attorney General Lefkowitz and staff members appear on television and radio programs where we discuss Consumer Frauds and Protection, topical problems of the day and court matters which were prosecuted by the Bureau. We also lecture to consumer and labor oriented groups. Representatives of these groups then, in turn, teach their own members, who go out into the field and help the individual factory worker or housewife. The Puerto Rican Community Development Project, New York City Labor Council AFL–CIO Community Services Committee, O.E.O. founded agencies such as MEND, HARYOU, Mobilization for Youth, etc. are some of the organizations we visit. Assistant Attorney Stephen Mindell lectured to over two hun-

dred young attorneys at the Practicing Law Institute on "How to Protect Consumer Rights."

Another first was recorded by the Bureau when it was selected to participate with New York Law School in a program of student-professional responsibility entitled "Law School-Society Participation Program". Five second year students spent four hours each week of their fall semester participating in the Bureau's activities.

Our pamphlet entitled "Your A B C's of Careful Buying for Consumers" is still in popular demand by consumers, schools, financial institutions, governmental agencies and retailers.

(3) *Litigation.*—Where the public interest is concerned administrative or court action is instituted against the offending person, business organization or corporation. Where it is necessary to examine books and records, the same are requested by the issuance of a subpoena duces tecum. The basic statutory provisions under which the Bureau operates and receives its jurisdictional powers are as follows:

(*a*) Business Corporation Law, Article 11
(*b*) Executive Law, Article 5, Section 63, subdivision 12 and 15
(*c*) General Business Law, Articles 22–A, 26, 29–B, etc.
(*d*) Personal Property Law, Articles 9 and 10
(*e*) Penal Law
(*f*) Agriculture and Markets Law
(*g*) Uniform Commercial Code
(*h*) CPLR, Article 23 (subpoena)

Our awareness of possible fraud and deception and the expertise of the staff in the field of fraud prevention, are the motivating forces behind the successful termination of the litigation phase of our work whether it be by judicial or administrative decree. The respondents found to be cheats, frauds, blue-suede shoe boys, fast buck operators, false and misleading advertisers or bait and switch sharpies are brought to the bar of justice and stopped from extracting the hard-earned monies from the pockets of our consumers.

Of particular interest was a favorable decision rendered in the Supreme Court, New York County, which sustained the Bureau's right to obtain, by way of a subpoena, the selling price of certain freezers to companies that were under investigation by this office. The respondent manufacturer refused to answer questions with respect to prices on the ground that such information was confidential and a trade secret. (*People* v. *Mann Refrigeration Co., Inc.*, N.Y.L.J., Supreme Court, New York County, Judge Postel, June 1, 1967).

The Bureau's broad subpoena powers were again sustained when a sewing machine company moved to quash or modify a subpoena (issued pursuant to subdivision 12 of Section 63 of the Executive Law) issued for the production of their books and records, financial statements, names of salesmen, etc. The respondents alleged that the document was arbitrary and oppressive, will cause financial loss and hardship, disrupt their business and that their large competitors were allegedly engaged in similar practices. The court found no merit to these claims and held the section constitutional and that proof of actual commission of repeated fraudulent or illegal acts in the transaction of business is not a pre-requisite to the valid issuance of a subpoena under the above section (see 54 Misc. 2d 188).

It is well to note that this was a most productive year for this phase of work. We instituted by court or administrative action (exclusive of Agriculture and Markets cases) 127 cases. We closed by way of injunction, assurance of discontinuance or finding of compliance under Article 22–A of the General Business Law, 104 cases. We carry over into the new year 42 matters. We obtained $35,150 from respondents as statutory costs. Cases of particular interest are briefed at the conclusion of this report.

(4) *Legislation.*—The Attorney General's legislative program will be covered in the report of our Legislative Bureau, but since requests for this Bureau's Annual Report are received from governmental officials of other states, educational institutions, national and local consumer groups, foreign nations and private individuals (over 250 copies of the 1966 Annual Report were sent out) comment should be made of the submission of legislation on the recommendation of the Bureau which was of particular concern to the consumer. Some of the proposed bills were passed, but others did not receive favorable action.

A bill to license and bond travel agents was overwhelmingly supported in the Assembly but died in the Finance Committee of the Senate. The traveling public

is still being harassed by the airport strandings, the deceptive and misleading advertisements, the charging for services not rendered, the sudden closing of business without redress to the travelers, the charging of commissions without the knowledge or approval of the traveler and so forth, still plague the industry and the Attorney General once again has had a bill pre-filed which would require travel agents to be licensed and bonded.

For the first time in State history, a national organization representing home improvement contractors (NERSICA) joined forces with our Bureau and approved a licensing and bonding bill which was introduced late in the 1966 Session. No action was taken on this bill. However, the identical bill was filed for consideration of the 1967 Legislature. Public hearings in New York City and Rochester were held by a sub-committee of the Senate Finance Committee chaired by Senator James Hastings to hear the pros and cons of this bill. Staff members testified before this committee. However, the bill did not survive. Articles appeared in many newspapers exposing the frauds and deception in this industry and supporting this type of legislation. The bill pre-filed for consideration by the 1968 Legislature includes for the first time a requirement that salesmen be licensed. This provision was urged by many of the law enforcement officials and industry members who testified at the public hearings.

Bills to regulate trading stamp companies; to compel landlords to pay interest on security deposited with them by tenants; to compel banks to pay interest on Christmas Club accounts and on mortgage escrow funds were not acted upon by the Legislature. Also, a bill to protect the purchaser of a used automobile by requiring that the total mileage of a vehicle be indicated on the certificate of registration when sold, did not pass. These bills will again be submitted for legislative consideration and approval.

"Almost anyone who possesses a tool kit can set himself up in business as an expert T.V. repairman. The consumer is at the mercy of many unskilled and untrained technicians", the Attorney General stated, when our bill to license T.V. repairmen was introduced for the consideration of this honorable body. Though the bill passed the Assembly, it was not reported out by the Senate. Continued interest in this type of legislation by the Federal Government, the City Council of the City of New York and the Joint Legislative Committee on Consumer Protection may generate the favorable climate needed for our bill which was pre-filed in December of 1967 to become law.

To protect consumers from unnecessary hardship, the Legislature passed a bill sponsored by the Attorney General ending the automatic payment to lawyers by buyers who defaulted on retail installment contracts. In addition, bills to provide new protection for artists in their dealing with art dealers were approved.

The Bureau will, as in the past, study carefully the numerous problems confronting the consumer daily and when areas are found which require legislative action, recommendations will be made to the Attorney General for the drafting of bills to afford the consuming public the needed protection.

(5) *Industry and Business Orientation.*—New, as well as continuing problems, affecting the consumer and the legitimate businessman find their way to the Bureau's offices. Lines of communication between staff members and the legitimate and ethical associations, organizations and trade groups, are always open. These groups work closely with the Bureau in exploring the most feasible methods of combatting new and old gimmicks, deception and fraud. When public hearings are scheduled, members of these groups have given of their time and effort to attend pre-hearing meetings and conferences, obtained expert testimony for us and also testified themselves. All gave us the benefit of their experience and knowledge regarding the problem at hand. Many such conferences were held during this year. For example, hearing aid dealers and manufacturers have come from all over the State and from out of State to meet with us to discuss the effectiveness of the Code of Ethics and explore ways of further protecting the consumer and the legitimate hearing aid dealer.

In another area, Attorney General Lefkowitz held a public hearing on the necessity for legislation regarding "Truth-in-Lending". Business and industry representatives, union officials, city officials, consumers and legislators responded to our invitation to appear and testify. As a result of this hearing, legislation is to be drafted which will advise purchasers of goods or services on time payments the true annual interest rate they will pay.

Meetings were held with travel agency representatives, the officers of the United Pet Dealers Association, sales finance and small loan association officials,

funeral association officers and directors, credit card distributors, magazine subscription sales organizations, home improvement officials and contractors, toy manufacturers, home freezer-food plan owners and association officers, American Collectors Association, New York State Unit representatives and many other reputable individuals desirous of keeping the lines of communication open between government and business.

As the Attorney General has stated on many occasions, the great majority of business people conduct their business with integrity, honesty and fair dealing, and it is only a small fringe element that gives industry an economic black-eye. By causing the elimination of deceptive, fraudulent and illegal practices, the Bureau, in effect, benefits all legitimate businesses. In further aid to the business people of our State, the Bureau maintains a close liaison with the Better Business Bureau. All of this creates a favorable business atmosphere for the operation of business and industry.

(6) *Governmental and Quasi-Governmental Co-ordination.*—Promotion of effective consumer protection by assistance of our staff to Federal, State, local officials as well as to quasi-governmental groups performing Consumer services.

As a result of the world wide recognition of the effective services performed by the Bureau many government officials, including legislators, have conferred, reviewed, observed and adopted the Bureau's administrative operations. They have studied our proposed legislation and consumer laws, our legal successes and the advances made in the educational aspect of our work. For example, the following Attorneys General or members of their staffs have with us this year—Ohio, California, Arizona, Maryland, Vermont, Massachusetts, New Jersey, Kansas, Pennsylvania, Texas, the Canadian Government and representatives of several Canadian Provinces. All of the visiting officials were highly impressed by the operations of the Bureau. The Director of the Consumer Protection Division of Toronto, Canada, Mr. S. D. Turner, wrote, "We do want to express our sincere appreciation to you and your staff for the extremely helpful discussions we had with you in your office last week. You have given us many new ideas to consider with respect to our activities here." From an official in the office of the Director of Investigation and Research of Ottawa, Canada, "I will never be able to describe fully the atmosphere of dedication to service which I encountered in your Bureau." Our office has been a tutoring ground for representatives from several foreign countries including England, Japan and Norway. Officials of the Texas office of Regulatory Loan Commission when requesting an appointment to visit the Bureau wrote in part, "Your office is cited as the nation's outstanding in this area, and we would consider it a privilege to learn from your experience."

In addition, staff members appear before community action groups and legislative hearings to advise of the problems facing the consumer in the market place. We participate as panelists at Bar Association Conferences concerning business-consumer problems and laws, and appear at local government public hearings and conferences regarding the need for creation of consumer protection offices. We also addressed the Committee on Health, Housing and Social Services of the Constitutional convention, speaking in favor of the proposed consumer provision of the Bill of Rights.

Conclusion.—The Bureau wishes to express its gratitude to the many civic, fraternal, political and trade organizations, the Federal Maritime Commission, the Federal Trade Commission, the Civil Aeronautics Board, the Better Business Bureaus, the Police Department of the City of New York, all news media and labor unions for their continued co-operation in assisting the Bureau in its performance of vital public service in the protection of both the consumer and the legitimate businessman.

We give special thanks to the fine and competent reports of the press, radio, television and magazines whose writing brought to the attention of the public the services and activities of the Bureau. We also acknowledge the tribute paid to the Bureau in such recently published books as "The Great Discount Delusion"; "The Vulnerable Americans", and "The Consumer and His Dollars". The staff writers of magazines in the travel, hearing aid, floor covering, funeral, advertising, finance, home improvement industries are to be complimented for their fair and impartial reporting of the activities and views of the Bureau.

The receipt of "thank you" letters from grateful complainants made front page news in New York City's leading evening newspapers. The continued receipt of hundreds of these communications, plus letters from government, quasi-government and non-government people expressing appreciation for our help

and assistance are all indicative of the dedicated, hardworking and efficient staff of men and women connected with the Bureau.

The service and value of the Bureau's work is impossible to measure but is best exemplified by a card received from a Putnam Valley, New York resident dated December 30, 1967 and addressed to Hon. Attorney General Louis Lefkowitz.

"The only fault you have is that you are mortal! What will New York State do when you are gone? I merely mentioned your name and within the past year I was refunded $176 (overcharge) on a housing job; $2 tax on a chassis lubrication job that was never done; a deposit on a dental job of $40 that was unlawfully withheld; $50 for a defective garment. I say your name is magic and a Godsend. I gladly accept your radio invitation to send me a booklet on avoiding frauds. Thank You."

Legal Case—Examples

1. A Harlem furniture store whose clientele was mostly non-English speaking, duped their customers into assigning their bank accounts to the store as security for installment purchases, under the guise that the assignments were routine credit checks. A Consent Injunction against such practices was executed after the Attorney General instituted proceedings in the Supreme Court. The assignments, in addition to being fraudulently obtained, violated The New York State Retail Installment Sales Law which requires that installment contracts contain the entire agreement of the parties with respect to goods and services and the obligation to pay for same.

2. A Florida corporation in full-page advertisements in New York Newspapers, proclaimed that for a $12 membership fee, an individual would receive an 8% dividend refund on the purchase of such goods and services as hotel accommodation, airline tickets, color television, etc. The Attorney General obtained an Assurance of Discontinuance of such advertising including statements that its members are receiving dividends from all of the well-known hotel chains.

3. The Attorney General obtained an injunction order in the Supreme Court against a group of interlocking corporations located on Long Island. All of these companies sold food freezers for three times the price for which a comparable freezer could be purchased and then tacked on exorbitant credit charges. In many instances the purchasers, who could not read or write English were induced to sign contracts for freezers at outrageous prices under the camouflage of a family food plan. The injunction obtained by the Attorney General prohibits, among other things, the claim that the freezers would pay for themselves out of savings on food purchased from the companies, that the freezers are guaranteed for twenty years, that the food suppled is adequate for the purchaser's family or that the food is wholesale.

4. Another food-freezer firm located on Long Island and one of the largest in the State also signed an Assurance of Discontinuance and also paid substantial costs for similar fraudulent practices. This company agreed to inform the consumer that the sale of food is conditioned upon the purchase of a freezer, to explain service charges, to state the fact that the retail installment contract will be sold to a finance company and to advise the customer that he is required to make payments for the freezer even if he discontinues the food purchases.

5. A New York City company in the business of computer "dating" was dissolved by the office of the Attorney General when it was found that about 1,500 customers paid the fee of $6.00 required by the company but never got a date. In fact, the data filed with the company was never even computerized. All of the files of the company were turned over to the Attorney General and were destroyed in view of the personal nature of the information.

6. By advertising charter flights on college bulletin boards, at reduced prices, a Swiss national, obtained almost $40,000 in fees and deposits from college students and teachers in this country. When the Bureau received complaints from subscribers that they had received no confirmations of flights, it investigated and found that the advertiser had no commitments whatsoever from any airlines for the promised charter flights. By acting quickly and obtaining an Assurance of Discontinuance against such fraudulent practices and by demanding and receiving the fees and deposits paid, the Bureau was able to reimburse the subscribers.

7. A transmission repair chain with shops throughout New York City, Long Island, Westchester, New Jersey and Connecticut entered into an Assurance of Discontinuance of fraudulent business practices, including referring customers

to a loan company for borrowing the full cost of repair after advertising "no money down". The company also agreed to itemize all bills and to desist advertising lifetime guarantees to all customers when in fact, some only received guarantees of six months or less.

8. Another case involving widespread fraudulent practices in automotive transmission repairs was concluded after extensive preparation and investigation. In order to be informed adequately as to the mechanical details involved, three members of the staff of the Bureau attended a special course on the dismantling and assembling of automobile transmissions. The investigation revealed that the largest chain of automobile repair shops specializing in transmission repairs grossly overcharged, repaired non-existent damages and replaced parts when none were needed. Also involved in the case was the use of false and misleading advertising in newspapers and on radio and television by a beautiful actress and a sports figure. In addition to signing a consent judgment against the illegal business and advertising practices, the respondents paid $16,000 in costs. While costs are assessed in almost every case involving fraud and illegality, the assessment in this matter was one of the highest ever paid.

9. A Mineola company devised a clever but fraudulent scheme of selling by advertising for "home researchers" as testers of products. Upon payment of a registration fee of $5.00 these researchers were to give their opinion on products sent to them and were to be paid for their opinions. In practice, however, the company, instead of paying for an opinion, solicited the home researchers to purchase the products. An Assurance of Discontinuance was obtained by the Bureau from this company.

10. After investigation and institution of dissolution proceedings against a lumber company and its sole owner, a consent injunction was entered with costs. This company duped hundreds of home owners into signing contracts for home repairs and renovations and obtained substantial deposits for the work, and sometimes payment in full, but never finished the jobs contracted for and in some instances never even started the work Not only did the company and its owner agree to complete all outstanding work but agreed to correct without delay any defective work.

11. In a proceeding instituted against a prominent funeral director, under the recent legislation requiring that the statement of the funeral price shall also set out an itemized list of the services and merchandise, the Supreme Court held that failure of the defendant to so separately state and list the prices involved, violated the statute. This is a very important decision, in that it bolsters the Attorney General's vigorous campaign against abusive funeral practices. In the instant case, the State Funeral Directors Association submitted a memorandum amicus curiae which in effect made the association an intervenor, and which indicates the significance of the interpretation of the statute as made by the court.

12. Upon receiving complaints against a Queens automobile agency, investigators from the Attorney General's office with the cooperation of shoppers from the Better Business Bureau of Metropolitan New York, established a "bait and switch" advertising case against the agency. By advertising "just arrived" cars at bargain prices, the agency attracted customers to its showrooms, admittedly, in order to sell them higher priced models. The company could not show even one sale made at the advertised price. After institution of injunction proceedings in the Supreme Court, an order was obtained enjoining the company from further fraudulant advertising practices.

13. In another case involving fraudulent advertising, a manufacturer and retailer of a so-called electric insect destroyer was enjoined from advertising, falsely as to the effectiveness of the device. As many as 30,000 persons throughout the country were induced to purchase the insect destroyer through a mail order advertisement. Many of these customers never received the device, but they were no better off than those who did, since it was ineffective. In addition to the injunction against false advertising, the defendant was required to make refunds when requested, either for non-delivery or upon return of the device.

14. A men's clothing store located in Brooklyn collected $7.50 from each customer as a credit service charge in violation of the New York Retail Installment Sales Act. The store agreed to refund this illegal charge when it was established that the charge was for absolutely nothing, and it executed an Assurance of Discontinuance against further illegal business practices.

15. Based on a "paper" that simulated a summons in violation of Section 551 of the Penal Law which makes it a misdemeanor to simulate a summons, complaint, writ or court process of any kind a proceeding was instituted against a

New York County collection agency in the Supreme Court for an injunction. A judgment was signed by the Court on the respondent's consent.

16. A television repair firm located at Woodside, Queens was enjoined in the Supreme Court of that county, from over-charging and falsely charging for television repairs. An investigation into the operation of the firm had revealed that it charged for parts not needed and not replaced and in addition the charges were unreasonable in excess of the prevailing values.

17. Another illegal television business practice was brought to a halt by the Attorney General in Supreme Court, New York County. A Brooklyn based television sales company doing business in a low-income neighborhood, sold used, rebuilt, re-conditioned and re-possessed television sets as new and without revealing the used, rebuilt, etc. condition of the sets to the purchasers. In many instances the sets were color television and the prices were very high.

18. A fraudulent franchise operation was nipped at an early stage when it was found that it was advertising that a prominent television performer was connected with its management when this was not the case. The franchise offerer signed an Assurance of Discontinuance of this practice and in addition it agreed to desist from ballooning potential profits as an inducement of sale.

19. In the field of medical quackery, a New York corporation which advertised a miraculous cream from Europe as a muscle builder in twenty days, was enjoined permanently from so advertising and selling the product. Tests revealed that the cream was worthless, of course.

20. A fraudulent advertising promotion campaign for watches was halted by the Attorney General. The promoters falsely advertised the watch to be world-famous and to be made by a company in business since 1848 among other claims, none of which were true.

21. Fraudulent advertising in New York newspapers by a kennel and pet store was the basis of an Assurance of Discontinuance. This New Jersey based kennel and New York store falsely advertised "guaranteed" puppies, money-back and full inoculation when in fact the puppies were not inoculated and no refunds were given. In addition to desisting from such practices, the kennel and store further agreed to desist advertising guarantees unless the advertising contained a full disclosure of the nature of the guarantee.

22. After receiving numerous complaints concerning a telescope sold by a New Rochelle corporation, the Attorney General cause an Assurance of Discontinuance to be signed. This company fradulently claimed its product had "super powers" as well as giving an astronaut's look at the stars. The telescope actually was a simple toy meeting none of the claims.

23. In two Agriculture and Market cases the court awarded as penalties the sum of $4,500.00 and $2,000.00 for violation of the "Kosher Laws" in that the concerns were selling non-Kosher meat as Kosher.

24. A New York State Supreme Court Judge granted our petition for an injunction against a milk company prohibiting it from misbranding their milk containers. The milk concern was distributing milk in containers with the name and address of a company that had nothing to do with its manufacture, packing or distribution. A penalty of $500.00 was also assessed.

25. An Assurance of Discontinuance was obtained against a leading New York State Brewery prohibiting the sale of pint cans of beer with the legend on its label "Giant Half Quart". Costs in the sum of $250.00 were assessed.

MARCH 21, 1968.

Mr. LESLIE V. DIX,
Director for Legislative Affairs,
President's Committee on Consumer Interests,
Executive Office of the President,
Washington, D.C.

DEAR MR. DIX: Pursuant to your letter of March 13, 1968, and in connection with the testimony to be given by Miss Betty Furness of the President's Office, I am enclosing for such use a resume prepared by my office. This resume outlines the scheme of deceptive and fraudulent activities generally carried on by unscrupulous operators in Texas and across States lines into Texas.

Please note the well-developed out-of-state scheme which would be abated by the passage of congressional legislation giving the Federal Trade Commission injunctive powers to stop such fraudulent practices.

All of the schemes mentioned generally in the memorandum have been detected within the State of Texas and are now being prosecuted in the state courts to the

fullest extent under our new Consumer Credit Code, which went into effect September 30, 1967.

We heartily recommend to the Congress legislation to amend the Federal Trade Commission Act by providing for temporary injunctions or restraining orders for certain violations of that Act.

Sincerely yours,

CRAWFORD C. MARTIN,
Attorney General of Texas.

DECEPTIVE PRACTICES IN THE HOME IMPROVEMENT INDUSTRY IN TEXAS

(Prepared by Mark W. White and Thomas W. Mack, Assistant Attorneys General)

It has been the experience of this office that the majority of companies which deal in home improvements are composed of honest, reputable business men. However, there is a segment of this industry which is made up of fly-by-night operators who prey upon the uninformed homeowner. The methods of operation used by the unscrupulous home improvement dealer are generally quite similar; the main distinction being that of size and not of technique. The practitioners of home improvement frauds range from the small, individually owned construction company to the multi-million dollar inter-state corporation.

Undoubtedly every city and town in Texas has been subjected to the home improvement shyster to some extent. The most commonly occurring instance of fraud is perpetrated by the small-time operator, i.e. the individually owned and controlled company mentioned above. The ear-mark of this operation is that, if he advertises at all, it is on a small scale, he seldom has any salesmen other than himself, and he rarely employs more than three or four workmen. Generally he is a resident of the community where he works, but if pressure is applied he willingly moves to less restrictive territory.

The small-time operator like the large corporation must get the homeowner's signature upon several documents before he can realize any profit from the scheme. The homeowner is quoted a usually reasonable *cash price* for the job that is to be done on the home. However, most homeowners are unable to pay cash and then he is informed of the low credit price or *time-sale* price that is available. This is usually stated only as X dollars per month—frequently the homeowner isn't even told for what length of time he must pay. Invariably the X dollars multiplied by the months of the contract is in excess of the cash price which was stated to the homeowner; oftentime the time-price is 50%–100% greater. The term of the indebtedness is anywhere from one to five years.

Once the homeowner's signature is placed on the time-price contract, the home improver, or dealer, as he is known to the lending institution, proceeds to get the homeowner's signature upon a blank note and upon a Mechanics and Materialmans lien. Frequently, only the first signature is acquired and subsequent signatures are merely tracings of the original.

Immediately after the aforementioned papers are completed the dealer assigns or sells the paper to a financing institution. Thus the dealer gets his money and the lender stands in the position of a holder in due course against whom the homeowner has rather limited recourse.

As long as the above technique is employed by local dealers selling to local financing groups the problem of the homeowners are not insurmountable. However, once the homeowner victim becomes ensnared by the large, inter-state corporations which have evolved in the home improvement industry he can no longer protect himself.

The large inter-state operators use the same unscrupulous methods as outlined above; however, the variations are infinite. The inter-state operator, although fewer in number than the local operator, are responsible for a proportionately larger dollar value loss to the consumer. Also the difficulty of apprehension is many times greater than with the small-time operators, due to their familiarity with loopholes within the law. The inter-state operation usually takes on the following appearances. The sales and construction of the home improvement are effectuated by one corporation, which upon the completion of the aforementioned paperwork assigns, or sells, the paper to an out-of-state affiliate.

In some instances the buyer of the paper is actually a sister corporation operating out-of-state and whose only purpose is to purchase home improvement paper generated in other states.

We have also discovered companies which do nothing except purchase home improvement dealer paper. These companies do not maintain corporate affiliates to generate the paper, but do actively solicit the purchase of such paper from anyone who can get the necessary signatures of the homeowner.

Seldom, if ever, do these dealer-lender relationships enter into any formal contractual relationships even with their affiliated corporations. The lender will buy or discount the contract for the *cash price* stated therein and hopes to take his profit from the *time-price* "agreed to by the homeowner", which as stated earlier, ranges anywhere from 50–100% more than the *cash price.*

The likelihood of a handsome profit for the lender is great since the indebtedness is secured by the home of the debtor. As a result, the out-of-state creditor can exert great pressure upon the debtor for payment.

The out-of-state creditor has an additional advantage. The homeowner is frequently unaware of whatever rights the law might provide for his protection and in addition is generally without the financial resources to defend himself.

The home improvement business in Texas is a multi-million dollar industry. Each year as a result of the frauds Texas consumers suffer losses that reach into the millions of dollars. However, the Texas Legislature at the request of Governor John Connally passed the Consumer Credit Code which is designed to alleviate many of the abuses outlined above. This Code went into full effect on January 1, 1968, and provides regulatory authority over installment loans, secondary mortage loans and retail installment sales among others. In addition to penalties that can be exerted by the Consumer Credit Commission and the Attorney General, the code provides for the payment of attorney's fees to the legal representation of the individual consumer.

Also, the code prohibits certain deceptive trade practices in cash as well as credit transactions. The remedy provided is temporary and/or permanent injunctions restraining such practices. These proceedings are brought by the Attorney General in the name of the State upon the request of the Consumer Credit Commission.

The full benefits of our Consumer Credit Code have not been realized as yet; as with any new law no matter how good it may be the benefits can not be achieved immediately. However, with the new legal tools available to both the State and to the individual consumer the home improvement fraud hopefully is on the decrease here in Texas.

COMMONWEALTH OF KENTUCKY,
OFFICE OF THE ATTORNEY GENERAL,
Frankfort, March 20, 1968.

Mr. LESLIE V. DIX,
Director for Legislative Affairs,
President's Committee on Consumer Interests,
Washington, D.C.

DEAR MR. DIX: This is in reply to a memorandum which I received March 18, 1968 asking for my comment concerning the captioned proposed Senate Resolution and proposed amendments to Sections 13 and 14 of the Federal Trade Commission Act.

I have long been keenly interested in consumer protection and am very much aware of the evils which prompted introduction of these measures.

With regards to S.J. Res. 130, introduced in the Senate December 15, 1967 by Senator Magnuson, I strongly favor its adoption.

The extent to which fraudulent and unethical operations by a small segment of the home improvement industry have adversely affected the legitimate business interests of this very important industry never has been fully recognized because of the lack of money and manpower on either the Federal, state or local level to make a "penetrating investigation" into the field.

From what is apparent, however, through complaints received from hundreds upon hundreds of home-owner victims over the country, the money being drained from legitimate business channels is tremendous and the personal misery and family financial distress left in the wake of this marauding minority is distressing.

In Kentucky we have had a number of cases falling into the category being discussed.

In two northern counties a resident of Ohio doing business in Kentucky as an aluminum siding business obtained contracts from five families to put aluminum siding on their homes.

The product was misrepresented. The terms and amounts involved were falsified. The contracts were signed in blank. The work performed was of extremely inferior quality. Several of the "signers" were unable to read or write. Financing was secured by the contractor through an Ohio lending agency who claimed they were "holders in due course."

Fortunately this matter was brought to the attention of the Consumer Protection Division of my office and relief was secured for the victims through extensive negotiations. The contractor discontinued his aluminum siding operations.

In a southwestern county two families entered into siding contracts with an Indiana company based on the "model home" and "consolidate all your loans in one" representations. An Evansville, Indiana, financial institution set up the defense of "innocent purchaser for value." The contractor agreed to cease operations in Kentucky and the finance company materially reduced its loan.

In a matter now pending, a Tennessee salesman sold a siding job to a Kentucky family in a border county under a referral selling scheme. The cost of the job is secured by a mortgage on the couple's home. The paper was purchased by a Philadelphia concern that claims to be a "holder in due course."

Kentucky has a criminal statute making referral selling unlawful. Just before the measure, which was sponsored by the Department of Law, was enacted, the Consumer Protection Division held a meeting of referral sales representatives and the companies normally utilized in financing their sales.

It was found that the greatest deterrent to this type of selling, aside from the prossible criminal prosecution which could be involved after passage of the law, was the refusal by cautious finance companies to handle their paper.

As indicated by Federal Trade Commission Chairman Paul Rand Dixon, any investigation of the problem must include the collateral financing.

Our Consumer Protection Division has had its quota of carpet sales complaints, as well as unethical and fraudulent furnace inspection, repair and sales complaints.

Unethical lightning rod, storm door and window salesmen have counted Kentuckians among their victims.

S. 3065, amending the Federal Trade Commission Act permitting the Commission to seek injunctive action, and S. 3066, amending the FTC Act to make misdemeanors of certain violations committed with intent to defraud or mislead, are both overdue and have my approval and endorsement.

Sincerely yours,

JOHN B. BRECKINRIDGE.

STATE OF KANSAS,
OFFICE OF THE ATTORNEY GENERAL,
Topeka, Kans., March 19, 1968.

Mr. LESLIE V. DIX,
Director for Legislative Affairs,
Presidents Committee on Consumer Interests,
Washington, D.C.

DEAR MR. DIX: Your letter of March 13, 1968, requests that we furnish your office with information concerning problems concerning the home improvement industry with any estimates of consumer losses or special problems as a result of fly-by-night operations across the state lines. It is estimated that Kansas citizens lost at least a million dollars to the unethical dealers in the home improvement industry.

The problem is that the seller of the product or service sells the signed contract to another party, perhaps at discount, without the knowledge of the buyer. The sale usually takes place before the product is delivered or the service rendered or a day or so after the fulfillment of the delivery or service. The customer then has no ear for his complaint. The product could be of lesser quality or quantity and the customer has difficulty contacting the sales agent, while the holder of his note is unsympathetic and under no legal obligation to honor any complaints.

It is noted that "franchise dealerships" is an additional current scheme being foisted on the unsuspecting investors. The investment of one to many thousands of dollars is involved. The offer often involves a claim of no inventory, no time or experience necessary, complete training, etc. The respondent usually ends

up owning a few thousand dollars worth of tooth paste, coin machines, or electronic gadgets. If as a dealer he cannot resell the items within 30 days and reorder, they cancel him out and advertise for another victim.

I hope this information will be of value in your efforts to gain our mutual goal.

Very truly yours,

ROBERT C. LONDERHOLM,
Attorney General.

STATE OF HAWAII,
DEPARTMENT OF THE ATTORNEY GENERAL,
Honolulu, Hawaii, March 21, 1968.

Mr. LESLIE V. DIX,
Director for Legislative Affairs,
Executive Office of the President,
President's Committee on Consumer Interests,
Washington, D.C.

DEAR MR. DIX: This is in response to your letter dated March 13, 1968, requesting information on the home improvement industry in Hawaii.

From the information that we have before us, it appears that the home improvement racket is not yet prevalent in this state. This office is currently investigating the sales practices of a local company engaged in the sale of vinyl siding. A review of the facts and records of the matter indicates that no legal action will be taken against the aforesaid company at this time. In effect, the matter will be kept in abeyance.

As to the legislative proposals before the U.S. Senate Commerce Committee, we should like to go on record in endorsement of the same. We have learned from past experience that fly-by-night operators have transacted business in Hawaii to the detriment of the local consumers. It is our belief that legal action instituted by the Federal Trade Commission will assist state officials in bringing about a swifter and more conclusive result against businesmen operating unlawfully across state lines. Although Hawaii has a "long-arm statute", any action taken by us will be after the damage has already been done. Whereas, the FTC having commenced investigation of certain parties may pursue them across state lines and bring legal action to enjoin any unlawful business activity. The proposal to make any violation of the Federal Trade Commission Act a misdemeanor is sound as it adds further sanction to the statute.

We trust that the above will suffice for your purpose. Please do not hesitate to solicit our assistance on any matter concerning consumer protection.

Very truly yours,

ROY M. KODANI,
Deputy Attorney General.

DEPARTMENT OF JUSTICE,
March 13, 1968.

Mr. LESLIE V. DIX
Director for Legislative Affairs,
President's Committee on Consumer Interests,
Washington, D.C.

DEAR MR. DIX: This office has received your letter of March 13, 1968, in which you ask about the problems within the states concerning the home improvement industry. As far as Iowa goes, I feel that our State Consumer Fraud Division has been able to handle this problem reasonably well. We have given special attention to this particular area and judging from the number of complaints we have had recently, frauds in this industry have decreased in the State of Iowa.

In view of the experience here in Iowa, I would very seriously question whether it is necessary for the Federal Government to enter this field on a large scale.

Of course, it may be that the situation is different in other states. However, I can assure you that if home improvement frauds are brought to our attention we will take the necessary steps to put a stop to them.

Yours very truly,

JULIAN B. GARRETT,
Assistant Attorney General.

STATE OF MICHIGAN,
DEPARTMENT OF ATTORNEY GENERAL,
Lansing, March 21, 1968.

Mr. LESLIE V. DIX,
Director for Legislative Affairs,
President's Committee on Consumer Interests,
Washington, D.C.

DEAR MR. DIX: In response to your request for my reaction to the above proposed legislation, I again remind you that Michigan already has in effect a very broad Home Improvement Act which, with the sponsorship of my office, was enacted by the Michigan legislature in 1965 (Act 332, Public Acts of 1965). Since its enactment, we have seen a marked reduction of disreputable and deceptive practices in the home improvement field, involving such things as aluminum siding, roofing, waterproofing basements, resurfacing driveways, built-in vacuum systems, etc.

My office has consistently used the services of the FTC in combating those who seek to use the state border as the haven for their unscrupulous practices. This help should be sought with caution so that the state attorney general does not find himself acting as a figurehead in the enforcement of the laws of his state.

Though we have not made a close and careful study of the proposed legislation and not had the benefit of the hearings of the committee, it would appear that the general proposals are in accord with the best interests of the consumer. However, any attempt to broaden the jurisdiction of the Commission, including all deceptive acts and practices "affecting interstate commerce" in contrast to those "in interstate commerce," needs a careful study and definitive review.

This would apply not only to Michigan but also, I am sure, to any state which does not have in effect legislation such as our Home Improvement Act or the FTC Act.

I would be interested in receiving the committee's report on the above three bills.

Very truly yours,

FRANK J. KELLY,
Attorney General.

The CHAIRMAN. There seems to be great interest stirring up among the attorneys general.

Miss FURNESS. I think you will find that the concern is all over the country. The letters that we have come from many States and from many sections.

My endorsement of S. 3065 is based on the urgent need to extend the powers of the Federal Trade Commission to stop all deceptive sales practices at the time of discovery. This need for prompt corrective action was emphasized by the President in his consumer message of February 6 in which he made the point that, as the law stands now, an unscrupulous firm can go on cheating people for 2 or 3 years before it can be legally ordered to stop.

This delay is both costly and unwarranted.

We are all familiar with the deceptive sales practices involved and the financial, psychological, and sometimes even physical hardships they can inflict on the consumer.

The rackets cover a wide range of sales. Home improvement and repair sales head the list, but the food freezer plans, cooking utensils, encyclopedias, franchise schemes, home study courses, sewing machines, and vacuum cleaners—even the sale of chinchillas breeding stock— are considered fertile fields by the unscrupulous. Their products may vary, but their methods are the same. They are a fast-talking and fast-moving 1968 version of the "Music Man." And they not only fleece the consumer, they mar the image of the honest businessman who is working hard to make an honest living.

Just to illustrate how abusive these sales practices can be, I would like to talk for a moment about one of the most prevalent, the home improvement and repair racket.

The newspapers and television brought us shocking reports about this particular type of swindle in Washington, D.C. The Washington Post, for example, ran a revealing series last fall on home improvement schemes involving questionable mortgage deals.

Multiply these tragedies by the thousands and you get a pretty grim picture of what is going on all over the country.

The National Better Business Bureau report for 1965 estimates that home improvement and repair frauds cost the consumer $500 million to $1 billion every year, or roughly between 4 and 8 percent of the entire business.

In California alone, the State's attorney general estimated that $7 million a year is taken from consumers just through fraudulent sales of aluminum siding.

Consumers of all income levels, including those who consider themselves sophisticated in the ways of the marketplace, are among the victims. But more reprehensible is the fact that the elderly, the uninformed, the sick, and the poor are the main targets.

These are the people who can least afford the loss, are less likely to know the legal procedures for recovery and couldn't pay the cost of litigation even if they did know. What happens to them after they have been "taken in" by a sales gimmick?

Too often they are at the mercy of the inevitable finance company. Their wages are garnisheed. And, because they unknowingly signed a second mortgage as security for the home repair financing, they even may lose their homes.

In my opinion, Mr. Chairman, these deceptive sales practices constitute a blot upon the entire home improvement industry. As a whole, the industry has made a significant contribution to the material well-being of American families. The majority of the businessmen in it are honest and reputable. But the market is so fast—approximately $15 billion a year—it seems to be a lucrative field for the disreputable.

And the field is growing even more lucrative. There are at least two contributing factors to this.

First, the present statute, which S. 3065 would amend, allows only the ultimate enjoining of fraudulent practices. This is not effective in stopping an unethical firm from operating as usual while a court case is pending.

The *Holland* case, as you know, took years to litigate, and during that time the firm was free to victimize the public.

We understand from the Federal Trade Commission that the time between opening an investigation and obtaining an order for both consent orders and voluntary compliance matters, has been aproximately 1 year. But in the last three litigated cases in the home improvement industry the time lag has been approximately 4 years. In the meantime the unscrupulous operator can continue to fleece the public.

The other contributing factor to the increase in home-improvement frauds is the case of entry into the market. An operator can get started with very little money. And he doesn't have to invest much of that because he finds it easy to get credit. All that he needs is that credit, a crooked scheme or two, and he is in business. And he can

continue to operate with impunity, because the immediate transfer of the victim's note to the finance company makes the company a holder in due course, and the victim is left holding the proverbial bag and a debt he has to pay.

It is as simple as that.

Not so simple, however, are ways to stop him. Present enforcement efforts have proved ineffective. State legislatures and enforcement agencies can't cope with the rising tide of these practices, especially when they cross over State lines.

And the industries have not shown that they can effectively regulate themselves through voluntary industry codes of ethics.

Those are some of the reasons why I believe that the best way to curb these unethical practices is through speedy passage of S. 3065.

While Senate Joint Resolution 130 would give added protection to the consumer, it does not, in my opinion, go far enough because it limits the expansion of the enforcement activities of the Federal Trade Commission to the home-improvement industry.

I also feel that it would be against the long-range interest of consumers to see any protection program or study terminated by a specific date written into law.

However, I do commend the drafters of the joint resolution for recognizing the need for additional resources for the Federal Trade Commission to carry out its added responsibilities.

I also defer to the views of the Federal Trade Commission on the need for a study to identify the problem areas within the home-improvement industry, as called for in the resolution.

However, in such a study special emphasis should be given to determining if some companies specializing in home improvement loans are truly innocent holders in due course. If lack of innocence can be established, I believe they should be prohibited from asserting the defenses of a holder in due course.

In other words, should they not also be put under the same prohibition as the retailer? I wonder if otherwise reputable producers and fabricators have knowingly permitted their sales promotion materials to fall into the hands of the unscrupulous.

I am also troubled by the thought that perhaps certain producers and fabricators are operating finance branches which accept immediate transfer of negotiable paper, and which can then claim defense of holder in due course.

Since the particular amendments in S. 3066 are within the special province of the Federal Trade Commission and the Department of Justice, I will defer comment except to point out that this bill also seems to have been drawn with the objectives of the President's consumer-protection program.

As I said before, Mr. Chairman, it is my belief that the best way to curb unethical sales practices is through passage of S. 3065. The bill would give the Commission authority to seek an injunction in a U.S. court prohibiting the dissemination of any advertising in violation of section 12 of the Federal Trade Commission Act or any act or practice in commerce within the meaning of section 5 which is unfair or deceptive to the consumer.

We need this temporary injunctive capability to give the consumer full protection. The record is full of abuses perpetrated upon consumers during the time final adjudication is being sought.

Also, the bill does not limit the expanded authority of the Federal Trade Commission to deceptive sales practices in the home-improvement industry, so that in that respect, too, the benefits to the consumer will be broader.

This legislation not only will help the consumer in general, it will particularly help the poor, the unsophisticated, and the elderly. If will also provide protection for ethical firms from the unethical and unfair competition that is causing such serious problems.

Thank you for giving me this opportunity to testify.

The CHAIRMAN. Thank you, Miss Furness.

I can't emphasize too strongly your last sentence: That the ethical people in this business should welcome this opportunity to help them clean out those people who give them, directly and indirectly, a bad name.

Miss FURNESS. Right.

The CHAIRMAN. I think that pretty nearly everybody in the country right now is suspicious of home improvement purchases or contracts.

I know, and I know that you know, that there are many legitimate contractors that do a good job. Home improvement is a necessary adjunct in our housing field. Of course, when people go down to the bank—the more sophisticated, or the people who have a credit line—since many banks now have home improvement departments where they make loans for repairs on homes, the bank goes over what they plan to do. Often now, because of the awareness that has been created, they see who the contractor is, and in some cases the banks tell the customer they ought to call the Better Business Bureau and ask about this firm if they don't happen to know it.

This is going to be helpful.

As the attorney general of my State pointed out, that one case in Washington stopped a lot of this holder in due course business with some of the firms. But this legislation is very important to complement the programs in States like Washington, Massachusetts, and Illinois which have some good laws, but there are too few of these States.

Have you found that many of these frauds—I suppose Mr. Dix could tell us this, too—seem to be practiced with more vigor and enthusiasm in States that have weak antifraud laws?

Miss FURNESS. I think this is very true. As we heard this morning, in the State of Washington they have been able to get rid of many of these unscrupulous people, but they go across the State border. That is why I am particularly convinced that we need Federal protection here, because otherwise we have a group of excellent laws that only succeed in chasing people from one State to another.

The CHAIRMAN. Did you find from your communications and contacts with the various attorneys general—maybe Mr. Dix might answer this question—that they seem to think they needed a Federal law to complement what they are trying to do?

Mr. DIX. Yes, sir, Mr. Chairman. I think with one exception all attorneys general that we have received replies from believe that a Federal law is indicated to cover the gap that Betty Furness has just referred to.

The CHAIRMAN. Then I think you will find that they also suggest that even though they have State laws, they need this added protection because so much of it is interstate in nature.

Miss FURNESS. Right.

Mr. DIX. Yes, sir.

The CHAIRMAN. And Federal law would not interfere with what they are trying to do, but it would literally complement what they are trying to do.

Mr. DIX. Fully, sir.

The CHAIRMAN. Now, S. 3065 would give jurisdiction to the Federal Trade Commission to seek these temporary injunctions when they practically know there is a group violating the law. I think that that bill complements the Senate joint resolution.

I appreciate your suggestion that maybe we ought to go further in that bill.

Miss FURNESS. Thank you.

The CHAIRMAN. How does S. 3066 complement S. 3065 in your opinion?

Miss FURNESS. Well, S. 3065 is the bill that my office feels is the most efficient of all. There are some considerations in S. 3066 that I think specifically involve the Federal Trade Commission and the Department of Justice, and I would prefer to defer to the Federal Trade Commission.

I am sure that the chairman——

The CHAIRMAN. As to which one or both or what combination of both would give them the authority they need?

Miss FURNESS. I think that this should be worked out between them.

The CHAIRMAN. Do you feel that the misdemeanor penalties under the Federal Trade Commision Act would help deter some individuals from launching schemes, if they now realize that a first violation of the Federal Trade Commission Act will result in no monetary penalty against them?

Miss FURNESS. It is possible that that would be helpful, sir, but again I would prefer to defer to Chairman Dixon in this.

The CHAIRMAN. Mr. Dixon has had wide experience in what he thinks might be necessary to handle this matter.

Senator Moss, do you have any questions?

Senator Moss. No; I have no questions.

The need for this type of legislation, I think, is very clear. The only area of question in my mind, is how it can be fairly applied.

There is considerable problem, of course, in seeking an injunction where you have a surreptitious or a fraudulent scheme going on and you are trying to nip it before it takes place. Of course the punishment thereafter is good therapy perhaps, but really what we should get at most of all is to try to cut it off in its inception, if possible.

I enjoyed the testimony very much.

Miss FURNESS. Thank you, Senator.

The CHAIRMAN. I might ask the Senator from Utah, since he has had pretty wide experience himself as U.S. district attorney in his State, is the injunction procedure the best way to nip these things in the bud?

Senator Moss. That is the only procedure that I am aware of now. But the problem lies in being able to collect the evidence and move in in time to get the injunction. This is what I assume Mr. Dixon would testify about, the machinery that the Federal Trade Commission will need in order to do this.

The CHAIRMAN. I am glad you mentioned, too, and went into in some detail, on this matter of holder in due course. This is a legal problem, as we all know. But I think a great deal can be done voluntarily by the responsible financing institutions to stop these frauds.

Where the contractor sets up his own financing company, I think the only way you can get at the problem is through an injunction.

Thank you very much.

Miss FURNESS. Thank you, Mr. Chairman.

(The section-by-section analyses referred to by Miss Furness follow:)

SECTION BY SECTION ANALYSIS AND SELECTED COMMENTS ON S.J. RES. 130, "TO AUTHORIZE AND DIRECT THE FEDERAL TRADE COMMISSION TO CONDUCT A COMPREHENSIVE INVESTIGATION OF UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN THE HOME IMPROVEMENT INDUSTRY, TO EXPAND ITS ENFORCEMENT ACTIVITIES IN THIS AREA, AND FOR OTHER PURPOSES"

GENERAL PURPOSE

The general purpose of the Joint Resolution is to authorize and direct the Federal Trade Commission to conduct a comprehensive investigation of unfair methods of competition and unfair or deceptive acts or practices in the home improvement industry, and to expand its enforcement activities in this area.

Comment

The general purpose of S.J. Res. 130 is fully consistent with the Administration's objective of providing additional consumer protection against unfair practices and sales, and of providing new powers for the Federal Trade Commission to stop unscrupulous practices when discovered, as reiterated by the President in his Consumer Message, February 6, 1968.

Section 1(a) would authorize the Federal Trade Commission to conduct an investigation of all aspects of the home improvement industry with a view to determining whether any such practices are in violation of the provisions of the Federal Trade Commission Act, and whether further legislation is needed to protect competitors and consumers adequately from such practices.

Comment

While the benefits to accrue from the investigation and reporting of problems in the home improvement industry are recognized, it is the view of this office that the expansion of the enforcement activities of the Federal Trade Commission should not be limited to this industry, and that it would be against the long range interests of consumers to curtail the enforcement powers after three years.

Section 1(b) would require the Federal Trade Commission to transmit to the Congress within one year after the effective date of this joint resolution, a report which shall include a comprehensive statement of (1) the facts and circumstances disclosed by such investigation; (2) the action taken and contemplated by the Commission with respect to violations of law disclosed by such investigation, and (3) such recommendations for further legislation as the Commission may deem appropriate.

Section 1(c) would require the Federal Trade Commission to undertake a rigorous and expanded enforcement program with respect to violations of the Federal Trade Commission Act by the home improvement industry.

Section 1(d) would require the Federal Trade Commission to transmit to the Congress within 6 months after the effective date and annually for 3 years a report including a comprehensive statement of (1) the status of such enforcement activities, and (2) recommendations for further legislation.

Comment

In general, this office defers to the views of the Federal Trade Commission on the need for a study to identify with precision the problems involved.

However, among the many commonly known practices, we recommend that it be determined if finance companies or other lending agencies specializing in home improvement loans are always innocent holders. Special attention in any study should alse be given to determine if certain sales promotional material

is placed in the hands of home improvement racketeers by producers and fabricators of home improvement products which assists them in consummating frauds, as well as determining if certain producers and fabricators are operating finance branches which accept immediate transfer of negotiable instruments who then claim the defense of holder in due course.

Section 2(a) would authorize the Commission to bring suit, and upon proper showing, to be granted a temporary injunction or restraining order against any person, partnership, or corporation engaged in, or about to engage in, an unfair method of competition in commerce, or an unfair or deceptive act or practice in commerce within the meaning of section 5 of the Federal Trade Commission Act, and in connection with the production, sale, installation, or financing of home improvement products, or the performance of any service in connection therewith.

Comment

We concur in the need for temporary injunctions. The fraudulent operator should not be able to continue his practices on other victims during the course of prolonged litigation.

The consumer is due the right to be protected from illegal practices during the period when the fraudulent operator is able to delay issuance of a final order by his insistence upon full procedural rights. The record of abuses in this area amply supports the need for this new authority.

Section 2(b) would confer the authorization for enjoining upon the Commission for three years and six months from the effective date. Nothing in the subsection shall be effective to abate any proceeding instituted by the Commission during the effective period or to prevent enforcement of any injunction or order issued by any court in any such proceeding.

Comment

To so limit the Commission's power to be granted a temporary injunction or restraining order is to encourage the re-introduction of such fraudulent practices after this time, when the Commission would again be unable to stop the proctices until after possible long delays and appeals. This power granted to the Commission should be permanent.

Section 3 would authorize $500,000 each year for three years to the Federal Trade Commission to carry into effect the provisions of the joint resolution.

Comment

We defer to the Federal Trade Commission as to the amount of funds necessary for such a study and expanded enforcement activities.

Section 4 would provide for the joint resolution to take effect on the date on which funds to carry into effect the provisions first become available to the Federal Trade Commission pursuant to an appropriation Act.

Comment

The view of this office is that legislation to broaden the powers of the Federal Trade Commission to stop fraudulent and misleading practices which affect consumers should be enacted as soon as possible and not be contingent on the authorization of funds.

SECTION BY SECTION ANALYSIS AND SELECTED COMMENTS ON S. 3065, A BILL "TO AMEND THE FEDERAL TRADE COMMISSION ACT, AS AMENDED, BY PROVIDING FOR TEMPORARY INJUNCTIONS OR RESTRAINING ORDERS FOR CERTAIN VIOLATIONS OF THAT ACT

GENERAL PURPOSE

The general purpose of the Act is to amend the Federal Trade Commission Act, as amended, by providing for temporary injunctions or restraining orders for certain violations of that Act.

Section 1 cites the Act as the "Deceptive Sales Act of 1968."

Comment

The general purpose of this Act is consistent with the Administration's objective of providing additional consumer protection through cracking down on unfair practices and sales, and by providing new powers for the Federal Trade Commission to stop unscrupulous practices when they are discovered.

Section 2 would amend section 13(a) of the Federal Trade Commission Act (15 U.S.C. 53(a)) to give the Commission authority to bring suit and to be

granted a temporary injunction or restraining order upon proper showing whenever the Commission has reason to believe that any person, partnership, or corporation is engaged in, or is about to engage in the dissemination or the causing of the dissemination of any advertisement in violation of section 12, or any act or practice in commerce within the meaning of section 5 which is unfair or deceptive to the consumer.

Comment

This office strongly concurs in the amendment contemplated by section 2. The wide and growing range of deceptions and unfair sales practices, amounting to consumer losses in the millions of dollars, indicate the need for this degree of consumer protection.

One of the most widely publicized cases illustrating the long period over which innocent consumers can be victimized before the practice can be effectively stopped under present law is the Holland Furnace Company case. The company did business in 44 States, had 475 branches and sub-branch offices and had gross annual sales totaling at least $30 million. The Federal Trade Commission conducted hearings for nearly two years before a cease and desist order was rendered against Holland in 1958. This was appealed twice to the U.S. Circuit Court of Appeals and once to the U.S. Supreme Court. Meanwhile, the company continued its fraudulent practices.

Consumers in all income levels and those who would consider themselves sophisticated in the ways of the marketplace are victims of such practices, but the elderly, the ignorant and the poor are often sought out as easy prey by the unscrupulous. These are the consumers who can least afford the loss, are less likely to know the legal procedure for trying to recover their loss, or cannot afford the cost of litigation, and cannot afford to pay off a mortgage on their homes, or purchase another.

SECTION BY SECTION ANALYSIS AND SELECTED COMMENTS ON S. 3066, A BILL "TO AMEND THE FEDERAL TRADE COMMISSION ACT, AS AMENDED, BY EXPANDING THE JURISDICTION OF THE FEDERAL TRADE COMMISSION, BY PROVIDING FOR TEMPORARY RESTRAINING ORDERS FOR CERTAIN VIOLATIONS OF THAT ACT, AND BY MAKING ANY VIOLATION OF THAT ACT WITH INTENT TO DEFRAUD OR MISLEAD A MISDEMEANOR"

GENERAL PURPOSE

The general purpose of this bill is to amend the Federal Trade Commission Act, as amended, by expanding the jurisdiction of the Federal Trade Commission, by providing for temporary restraining orders for certain violations of that Act, and by making any violation of that Act with intent to defraud or mislead a misdemeanor.

Comment

The general purpose of S. 3066 is in accord with the consumer objectives of the Administration of providing additional protection against unfair practices and sales. However, for reasons stated elsewhere, this office prefers S. 3065, identified as the Administration position.

Section 1 would amend Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) by making not only unfair methods of competition in commerce but those affecting commerce unlawful and by making not only unfair or deceptive acts or practices in commerce but those affecting commerce unlawful.

Comment

This office is not aware of any jurisdictional problem with respect to actions under the present language of Section 5(a)(1) of the Federal Trade Commission Act but defers to the wishes of the Federal Trade Commission in this connection.

Page 2, Lines 1 to 24, would amend Section 13 of the Federal Trade Commission Act (15 U.S.C. 53) to give the Commission authority to bring suit and to be granted, upon proper showing, a temporary injunction or restraining order whenever the Commission has reason to believe that any person, partnership, or corporation is engaged in, or is about to engage in any act or practice within the meaning of section 5 which is unfair or deceptive to the consumer.

Comment

This portion of S. 3066 is identical with the language contained in S. 3065 and has been supported by this office in its assessment of the latter bill.

Section 3 would amend Section 14(a) of the Federal Trade Commission Act (15 U.S.C. 54(a)) to make any person, partnership, or corporation who engaged

in any violation of section 5 with intent to defraud or mislead guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than $5,000 or by imprisonment for not more than six months, or by both fine and imprisonment; except that if the conviction is for a violation committed after a first conviction of such person, partnership, or corporation for any violation of such section, punishment shall be by a fine of not more than $10,000 or by imprisonment for not more than one year, or by both such fine and imprisonment: provided, that for the purposes of this section meats and meat food products duly inspected, marked, and labeled in accordance with rules and regulations issued under the Meat Inspection Act, and poultry and poultry products duly inspected, marked, and labeled in accordance with rules and regulations issued under the Poultry Products Inspection Act, shall be conclusively presumed not injurious to health at the time the same leave official "establishments."

Comment

This office defers to the Federal Trade Commission and the Department of Justice.

The CHAIRMAN. The Chairman of the Federal Trade Commission, Mr. Dixon.

Mrs. Dana, why don't you come sit up here? You can hear the Chairman better, and I know you both know each other.

STATEMENT OF PAUL RAND DIXON, CHAIRMAN, FEDERAL TRADE COMMISSION, ACCOMPANIED BY JOHN V. BUFFINGTON, ASSISTANT TO THE CHAIRMAN, AND FLETCHER G. COHN, ASSISTANT GENERAL COUNSEL, LEGISLATION

Mr. DIXON. I am very honored to be sitting with Mrs. Dana. She is a great supporter of the consumer.

Mr. Chairman, may I introduce Mr. Buffington, my assistant, and Mr. Cohn here, the Assistant General Counsel in charge of Legislation down at the Commission.

It is always a pleasure for me to appear before your committee and that is doubly true today, in that the current hearings are with reference to what you properly designated in your press release as being on three "antifraud proposals," S. 3065, S. 3066, and Senate Joint Resolution 130. Each of these has as its objective the strengthening of the statutory authority of the Federal Trade Commission in its efforts to protect the public and more specifically "the consumer."

Since you, Mr. Chairman, are the author of all three of these proposals, may I, on behalf of the Commission, express to you our appreciation for your continued sponsorship of legislation of this nature. To my personal knowledge you have been instrumental in the passage of many laws, the enactment of which have resulted in inestimable benefit to the American consumer.

The first proposal is S. 3065, the "Deceptive Sales Act of 1968," the enactment of which the President recommended in his consumer message to Congress on February 6, 1968. Needless to say, the Commission heartily joins in this recommendation.

It would amend section 13(a) of the Federal Trade Commission Act, which I shall hereinafter refer to as the "act," so as to enable the Commission, when the requirements of the section are met and when such action would be in the public interest, to bring suit in a U.S. district court to enjoin or temporarily restrain an act or practice "in commerce" which is unfair or deceptive to the consumer.

The bill would grant to the Commission the same power to seek an injunction or restraining order with reference to such unfair or deceptive acts and practices as the Commission now has, under section 13(a), over the dissemination of false advertisements of food, drugs, therapeutic devices, or cosmetics violative of section 12 of the act.

The authority of the Commission also would be similar to that which the Commission now has under the Wood Products Labeling Act of 1939, the Fur Products Labeling Act, the Flammable Fabrics Act, and the Textile Fiber Products Identification Act. So, it is not a new thought, as you can see.

Under these acts, the Commission has the power, when certain provisions of the acts are being violated or there is a threat to violate them, to go into a U.S. district court and secure a temporary injunction or restraining order in the same manner as it may do under section 13(a) of the act with reference to the false advertisements of food, drugs, therapeutic devices, or cosmetics.

This statutory authority granted to the Commission to secure such temporary injunctions or restraining orders in U.S. district courts has been upheld both with reference to the false advertisements of food, drugs, devices, or cosmetics and as to violations to the labeling acts and the Flammable Fabrics Act.

It is a perfectly logical step for section 13(a) of the act to be amended, as S. 3065 proposes, to enable the Commision to give the consumer the same protection, pending final outcome of a complaint brought by the Commission, from deceptive acts or practices related to products not covered by section 13(a), the labeling acts or the Flammable Fabrics Act.

The Commission makes every effort to expedite its proceedings. However, our experience has been that frequently considerable time will elapse from when the Commission first begins action directed at an unfair or deceptive act or practice to a consumer to when the act or practice can legally be enjoined by a cease-and-desist order which has been approved by the courts.

Mr. Chairman, we proceed as Congress intended for us to proceed under the Constitution and with the fulfillment of full due process, and the time required for this, no matter how you are going to compress it, is going to continue to run.

During the interim, under existing law, it is possible, for example, for the perpetrator of practices involving the use of "bait and switch" tactics, to continue his illegal activities. That is, during this time he may continue advertising services or products at deceptively low prices and then when a prospective purchaser, in response to such advertisements, seeks to purchase products or services, the advertiser disparages them and seeks to switch the purchaser to other, sometimes highly overpriced items or services. Or during the period, an unethical seller can continue misrepresentations of guarantees, such as advertising that he will "unconditionally guarantee" a product when, as a matter of fact, there may be conditions, limitations, and restrictions which actually render the "guarantee" worthless; or there may be continued fraudulent misrepresentations by a salesman in which he makes false promises to a prospective purchaser for the purpose of selling a practically worthless product or having the purchaser enter into a contract which will be disadvantageous to the purchaser. Many other instances

could be mentioned where, under existing law, there may be a continuation, pending the final disposition of a Commission proceeding, of acts or practices which are unfair or deceptive to the consumer.

The CHAIRMAN. For the record, generally speaking when you issue a cease-and-desist order, is there a timelag before it becomes operative, or does the order take effect immediately?

Mr. DIXON. Mr. Chairman, if the Commission decides that the nature of the question before it falls in the classification of we might say fraud or deceit, the type of thing we are addressing ourselves to, we could issue under our rules a complaint and serve it upon the respondent. He would have 30 days within which to answer.

When I came to the Commission we revised all our procedures and policies to speed up to get at the timelag. We are insisting upon a prompt trial at a time and place certain and a continuous trial until all issues are decided, but even though they are decided before a hearing examiner, then, the right of appeal to the Commission applies, and notice of intention to appeal must be exercised within 10 days.

The CHAIRMAN. That is the filing of the appeal?

Mr. DIXON. The filing notice, and 30 days during which to effectuate their appeal and an additional 7 days to answer any reply brief, which must be filed within 30 days after service of the appeal brief. Then, it is set down on our calendar where we hear the final argument, and it is, of course, up to us to pass upon the matter. This may in effect be an affirmance of what was handed down below or a strengthening or a new finding and an order. Then, of course, from that the respondent has a total of 60 days within which he can go to any of our courts of appeal with a petition of appeal.

He is then on the calendar of the court of appeals where he filed this matter. It will come on eventually to be heard and it will either be affirmed, or reversed, or remanded, and still the respondent has the right to petition for certiorari. So, I am describing to you due process.

Now, a person if he has in mind or heart to be a quickie, to be a rascal, to hit and run, as you have been listening to this morning, for instance, from your good friend the Attorney General of the State of Washington——

The CHAIRMAN. That was excellent testimony.

Mr. DIXON. It was excellent testimony.

He knows that time is his ally. It is not inexpensive, he has to get lawyers to go through all these tricks, but time is on his side.

What this bill is aimed at is pending a final decision by the Commission or the courts, upon a proper showing to the court, it is proper to stay and restrain the action right there to where time is not his ally.

The CHAIRMAN. I can't speak for the whole subcommittee, but I think what we would want to do is to be sure we give you this authority so that you can.

Mr. DIXON. As you well know, the granting of a temporary stay order is a very serious matter.

The CHAIRMAN. I know it is.

Mr. DIXON. It is not an easy thing to obtain in a court. You just don't go down and say "I have reason to believe, I want to borrow your power, your Honor, you hang this up while I go try it." He will throw you out on your "duster."

The CHAIRMAN. Federal judges are very cautious about this.

Mr. DIXON. Very cautious.

The CHAIRMAN. All right.

Mr. DIXON. A tabulation made by the Commission's staff regarding recently litigated cases before the Commission involving such products as auto engines, shock absorbers, paint, water filtration units, aluminum siding, swimming devices, et cetera, showed that approximately 3 years on an average ensued between the time of the issuance of the Commission's complaint and the time the Commission's final order to cease and desist was affirmed by the court.

This lapse of time is, in part, the result of the strict compliance by the Commission with the requirements of the Administrative Procedure Act and of the effort made by the Commission to accord to every respondent in all of its cases all of his legal rights. This is what I just referred to.

We think it is wholly unfair to permit those who sell their goods and services to consumers by unfair and deceptive means to continue to do so because of the necessity of protecting their rights when the Commission has no legally practical means, during this continuation, of protecting the rights of the consumer.

S. 3065 would offer the Commission a means, in a proper case, of protecting such rights of the consumer pending the issuance of such an order.

As was stated by the U.S. Court of Appeals for the Seventh Circuit in *Federal Trade Commission* v. *Thomsen-King & Co.*, 109 F. 2d 516, 518:

> Subsection (2) (15 U.S.C. 53(a)(2); 13(a) of the Act) was written for a purpose which was to prevent the ineffectuality of proceedings before the Commission due to the offender's collecting the spoils incident to improper practices and liquidating or dissolving before the Commission can put a stop to its (the offender's) unfair practices.

If, as is now the case, the consumer is protected through the issuance of temporary injunctions from district courts against the false advertising of food, drugs, devices, or cosmetics, then certainly he should have similar protection from what S. 3065 calls "deceptive sales."

Section 13(a), which S. 3065 amends, requires—and this is very important, Mr. Chairman, because I think everybody misunderstands, as I say, you just don't get these things automatically—that before the Commission can secure a temporary injunction or restraining order from a district court, it is required to make a "proper showing." This has been construed by a court of appeals as meaning that what the Commission had "to show was a justifiable basis for believing, derived from reason inquiry or other credible information, that such a state of facts probably existed as reasonably would lead the Commission to believe that the defendants were engaged in dissemination of advertisements of a drug in violation of the act."

Mr. Chairman, that is a pretty hard burden. That means you are ready. That is what it really means.

Federal Trade Commission v. *Rhodes Pharmacal Co.*, 191 F. 2d 744, 747–748 (7th Cir. 1951). While the court in that case upheld the district court's finding that the Commission had made such a showing, in another Commission case, a U.S. court of appeals upheld an order of a district court denying the Commission's petition for a temporary

injunction because of the Commission's failure to make a "proper showing." I cite the *Sterling Drug* case to show you just don't get these automatically. Of course, this requirement will be fully applicable should section 13(a) be amended in the manner provided by S. 3065.

Another proposal is Senate Joint Resolution 130. It contains two authorizations: One, for the Commission to conduct a complete and full investigation of the various phases of the home-improvement sales "racket," for which it provides an appropriation of $500,000 annually for 3 years; and a second which would amend section 13(a) of the act so as to enable the Commission, under the conditions set forth therein, to bring suit in a U.S. district court for a temporary injunction or restraining order against any party who is engaged in, or is about to engage in, an unfair method of competition or an unfair act or practice in commerce within the meaning of section 5 of the act which is connected "with the production, sale, installation, or financing of home improvement products, or the performance of any services in connection therewith."

As to the first authorization, you will recall, Mr. Chairman, under date of November 28, 1967, in reply to a letter from you requesting an outline of the Commission's current program in the area of home improvement fraud, I wrote a letter directed to your inquiry. I shall not attempt to repeat all that was said in that letter, but I will refer to a few salient facts in it for the purpose of showing the necessity for the investigation authorized by Senate Joint Resolution 130.

From information furnished us by a leading trade magazine, it is estimated that the current home improvement market is about $15 billion annually. According to other presumably reliable sources, the alterations and repairs of homes represent from 20 to 25 percent of the national spending on residential building.

The Bureau of Census reported that there are 285,000 contractors engaged in the building construction industry, of which 195,000 are special trade contractors. The latter usually are engaged primarily in the installation of home improvements.

We are certain that the conduct of the great majority of contractors does not warrant any investigation by the Commission. Our investigation will not be directed to these.

We would investigate primarily local retailers or contractors who frequently are "fly-by-night" operators who operate through programs offering phony bargains, easy credit and exaggerated performance claims.

In my letter to you I mentioned a number of the fraudulent sales techniques which they employ and I shall not burden this statement by repeating them. You have heard some from previous witnesses.

Needless to say, these operators employ various types and methods of deceiving trustworthy customers who are not familiar with their tactics.

Also, as pointed out in the letter, while the great majority of the abuses which we outlined are worked against the uneducated, the unsophisticated, the aged, and the poor, no one is immune from the glib salesman or unethical operator who urges the prospecive buyer to sign a contract for an alleged home improvement, with the contract often being printed in small type, difficult to read and made deliberately confusing.

I am aware, Mr. Chairman, and I heartily endorse the previous statements, these kinds of contracts and sales are especially hard upon the poor, the underprivileged, and the aged. This is because, as you well know, they are less able to bear this folly.

The CHAIRMAN. Even if the salesman says we want you now to read carefully the whole contract and the fine print before you sign, they don't understand it.

If they say, what does this line mean, of course the salesman interprets his own contract and he interprets it in a favorable way, but when the day of reckoning comes the legal interpretation of that paragraph or that sentence is entirely different. But he will then say that "I insisted that they read the whole contract and I pointed out every line to them."

Mr. DIXON. "They were 21, and they signed."

When we had our pilot program here in the District of Columbia, we found there were an amazing number of so-called poverty fringe citizens that can't read or write. We have a great country, but there are a lot of people left that can't read and write. I might point out there are many mothers and fathers and old folks alive who live by themselves who are not quite as alert as they used to be. I think they kind of welcome the chance to talk to some of these people.

We at the Commission have attempted with our present resources to investigate such activities and to bring whatever actions we are able, under our existing statutory authority, in an effort to have such illegal activities stopped.

However, due to major manpower commitments of the Commission—and I know Congress must get tired of hearing this—to the packaging and cigarette programs, the District of Columbia consumer protection project, the automobile warranty and softwood lumber inquiries, bait and switch practices in the sale of frozen foods and other programs and many other efforts which the Commission is making in the public interest, we desperately are in need of the additional funds which Senate Joint Resolution 130 will provide.

It is getting very difficult in the face of our budgetary situation to ask for funds, but I must in all honesty say if——

The CHAIRMAN. This is a sales pitch to the chairman of the Appropriations Committee for the Federal Trade appropriations, is it not?

Mr. DIXON. Yes, sir; I was aware of that.

With such funds, the Commission would be able to employ additional personnel to be assigned to attacking the swelling workload of various home improvement "rackets."

The investigation in the home improvement field, which would be made by the Commission if Senate Joint Resolution 130 is enacted into law, would have as its objective the placing of the consumer on an equal footing with the seller by requiring him to provide the consumer with reliable, truthful information, thereby enabling him to make an intelligent evaluation of the products or services offered by the vendor, and thus protecting him from the various deceptive acts and practices outlined in my letter and others of a similar nature.

I would believe, Mr. Chairman, that any broad report would be good information for the Congress to have as it approaches the consumer problems generally.

To again refer to my letter, I pointed out the difficulties of identifying, with any precision, the members of the home improvement industry, and that there is no reliable information available on the actual firms engaged in the home improvement "racket." Therefore, if the funds are made available to the Commission, as provided by Senate ucts involved; (2) size of individual product markets; (3) number, Joint Resolution 130, we would attempt to make a study which would include, with reference to the home improvement industry: (1) prodlocation and size of retail firms and their behavioral patterns; (4) fabricators and suppliers of home improvement products delineating their relationship with individual home improvement retailers; (5) producers of raw materials and their relationship to suppliers and retailers; and (6) financing of home improvements and the relationship between the finance companies and individual retailers.

Also, in the investigation, we would determine what, if any, additional remedial action is needed by Congress, the Federal Trade Commission, other Federal, State, or local agencies and by industry itself.

The Commission favors and earnestly requests the authority which would be granted to it by this first authorization of the resolution.

The second authorization granted by the resolution would enable the Commission to file a petition in a U.S. district court for a temporary injunction or restraining order prohibiting a continuation of the illegal acts and practices related to home improvements, until there is a final disposition of the Commission's complaint by the Commission or the courts. The Commission likewise unequivocally gives its endorsement to this authorization.

The Commission feels that this in no way conflicts with its endorsement of S. 3065.

The CHAIRMAN. Right there, where you are suggesting certain fields at which you might look in this study, how broad do you consider the words "home improvement" to be? Is it merely remodeling or changing the fixtures in the home or would they include some nonfixtures?

Mr. DIXON. I think it would be pretty broad. I think we should make it as broad as we can so that we don't ignore any sizable sector of it.

The CHAIRMAN. I think it should be anything that pertains to the home. The old legal division of fixtures versus nonfixtures was easily ascertained, but in the modern home today, it is getting hard to determine what is a fixture and what isn't a fixture.

Mr. DIXON. It is getting a little more difficult to determine what is personal and what is real.

The CHAIRMAN. I want the bill or the report to give some indication of how broad we want the interpretation of home improvements to be.

Mr. DIXON. We felt that in no way does this section of the Senate Joint Resolution 130 conflict with S. 3065. We see no conflict.

We interpret the resolution as being designed to meet, for a limited time only, a particular situation. It is specifically directed to unfair or deceptive acts or practices within the meaning of section 5 of the Federal Trade Commission Act, which are connected with the selling or financing of home improvement and the services connected therewith.

The CHAIRMAN. Right there, I think we ought to make it crystal clear when we talk about home improvements we are following it right to the end of the line and into the financing, too.

Mr. DIXON. I understand that now.

The CHAIRMAN. That ought to be crystal clear so there is no argument about that.

Mr. DIXON. Your statement now would just about nail that down.

The CHAIRMAN. I am only one member of this committee, and I don't know.

Mr. DIXON. The committee report, if it is reported out, when we go looking for guidance I think we will find it.

I cited in my letter to you the existence of many types of such acts and practices related to home improvements which have been especially harmful to consumers. I believe they require action by the Commission to stop their continuation as expeditiously as possible. The resolution contains a provision limiting the power given the Commission to secure the temporary injunctions or restraining orders to 3½ years. It is our thought that after this period has expired, there would be no need for specific legislative authority directly pertaining to the home improvement "racket," and that the broad authority granted the Commission by S. 3065 should be sufficient to enable the Commission, in a proper case, where it has the required jurisdiction, to protect consumers against unfair or deceptive acts or practices violative of section 5 of the Federal Trade Commission Act, including those connected with home improvements.

The third proposal pending before you is S. 3066, which would, among other things, amend section 5(a)(1) of the Federal Trade Commission Act. Under this proposed amendment the statutory authority of the Commission to deal with unfair methods of competition and unfair acts or practices would be expanded to those affecting commerce. Although the Commission would favor such an extension of its jurisdiction, we do not recommend consideration of this amendment at this time. Such consideration might very well raise objections to any amendment of the act dealing with consumer deception and thus detract from the force of our recommendations for enactment of S. 3065 and Senate Joint Resolution 130.

Mr. Chairman, I want to say many times I have sat before various committees of the Congress and have said the only amendment that I could think of to strengthen the basic act of the Federal Trade Commision was to change the words "in commerce" to "affecting commerce." That is proposed in 3066. But I would predict if you did it, that because of its broad nature you would have extensive hearings because I don't know the general attitude, but as soon as the antitrust bar would read this thing, they would say we don't know if we ought to let those fellows go that far, sir.

Also, if this amendment is passed, it would put the Federal Trade Commission on board straight throughout America without a doubt, without a doubt. You don't need your attorney general of Washington if you pass this. All you have to do is to give me enough people and I will do his job for him.

I have been here for 30 years and I have watched the scheme of legislation and seen that when Congress thought it was necessary to project the Federal arm down on that level they were not hesitant to do it.

I was especially pleased to be here to hear Attorney General O'Connell talk this morning because it has been a pleasure working with him.

I might say in the last 6 or 7 years there seems to be an awakening among the States of this responsibility, and I believe it was the Founding Fathers' dream, that as much of these problems would be dealt with in the State as possible and when they got across the line that then it was the Federal job. Maybe that isn't going to work well enough and maybe the Congress would want to supplement this.

I might say to you that it would make our job a little easier, although more and more it is getting easier to prove someone is in commerce. That is pretty hard not to get in that stream today. Nevertheless, if we had that responsibility, we would need a considerable number of employees to meet it.

I digressed here just to say that, and when I say we at the Commission do not abandon our recommendation, we think it would be better to let this consideration of S. 3065 and Senate Joint Resolution 130 go along without it.

Moreover, with respect to the proposed amendment of section 13(a), as provided in S. 3066, we think the language of S. 3065 is preferable.

There is very little difference in the language, but I think S. 3065 is preferable if you want to choose between the two.

The Commission does not recommend the amendment of section 14(a), as proposed in S. 3066. This is the criminal sanctions section.

Such an amendment, carrying with it additional criminal sanctions, might well lead the courts to more narrowly construe our orders to cease and desist and thus add materially to our enforcement problems.

Let me try to say something about that here, Mr. Chairman.

History teaches us that if you have a civil bill to enforce and you apply criminal sanctions to it where it has been done willfully, that when you go into the constitutional court system, the judge who is hearing that is prone to narrow the civil approach to meet the very narrow approaches of the criminal law, and you may lose the big ball game if you are not careful because what is provided here would be the maximum penalty of $5,000.

If you proceed criminally, if you did it this way, each time you would have to come back and come back and come back. Remember again if you go criminally, the parties are entitled to a jury, and you get whatever the jury decides about the facts, too. I, myself, like the civil approach, and I will tell you why.

If you pass S. 3065, with a proper showing you can temporarily stay where you try. If you get through and you get the permanent injunction, under our procedure if the party then violates that injunction we are entitled—if it hasn't been reviewed by a court, then, we are entitled to petition for civil penalties, $5,000 per day per each violation. That's awfully expensive, a lot more expensive than a $5,000 fine, I want to tell you.

Then, if the party avails himself under the procedure of judicial review and he goes to a U.S. circuit court of appeals, the court takes over, then the commission's order becomes the court's order. If he violates the court's order, you take him in and cite him for contempt.

There is no limitation of what the court can do. They can fine him whatever they wish to fine him, and as in the *Holland Furnace* case, if he is contemptuous enough they can put him in the pokey. That is rather serious.

I rather like the civil approach myself and my commissioners agree.

The CHAIRMAN. I think the attorney general of my State felt that the civil approach was the most effective as far as he was concerned.

However, in your letter of last November [1] there was a suggestion that we actually amend the FTC Act to provide for misdemeanor penalties.

Mr. DIXON. We certainly did that. We did, and we think better of it today. I do.

The CHAIRMAN. That was prior to the introduction of S. 3066. I don't like to use this term but you have reassessed your position.

Mr. DIXON. As Mr. Rayburn said, I am a lot smarter today than I was.

The CHAIRMAN. But 3065 makes the difference in this.

Mr. DIXON. It does.

It is not unusual to put a criminal section in a bill, but reflex teaches me to look back and see what have the courts done, what has been the result of having this. You see, we haven't proceeded too many times under the powers we have in section 13 now and under the Wool Act, the Fur Act and the Flammable Fabrics Act and the Textile Act. But this is a pretty broad approach, and I am quite satisfied.

The CHAIRMAN. It may be that later on we might want to consider criminal penalties for certain willful operators.

Mr. DIXON. That is correct, sir.

The CHAIRMAN. But we have got to take this one step first.

Mr. DIXON. What is willful is a state of mind, and it certainly constitutes the proof or the circumstances that you can put before the hearing officer or the jury.

"What did you have in your mind when you went up to Mrs. Jones and you flimflammed her?"

"Well," he says, "she was a grown woman and, I didn't mean to defraud her, all those terms were exposed, how can you say I was willful?"

If you can't carry that burden, then, you don't belong down there trying to get him locked up or fined. There is a very narrow difference here, and I think that is one of the things that led Congress to pass the Federal Trade Commission Act and pass it in the nature of a civil act rather than a criminal act, because what Congress must have been aiming at is protection in perpetuity of wrong doings, cease and desist, give you one chance.

Of course, we endorse S. 3065 and Senate Joint Resolution 130, and we do for the reasons I have stated in my statement, and orally suggest that you defer S. 3066.

The CHAIRMAN. Another thing, we have to look at laws that now exist. You take some big operations that are in interstate commerce, and present statutes prohibiting conspiracy with the intent to defraud would take care of them, would they not?

Mr. DIXON. There is a general fraud statute on the books now. There are statutes in most of the States for fraud.

The CHAIRMAN. Under conspiracy statutes you can put nearly anything into that net that you want to.

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[1] The letter appears at the conclusion of Chairman Dixon's testimony.

Mr. DIXON. As I say, section 5 says unfair and deceptive acts in commerce are hereby delayed unlawful, and there is nothing more clearly estabilshed than conspiracy as unlawful.

The CHAIRMAN. Of course, conspiracy is the hardest thing to prove.

Mr. DIXON. It is not easy, sir. Sometimes they leave their tracks and sometimes they don't.

The CHAIRMAN. I would like you to put into the record a breakdown of how many lawyers, economists or other people you might anticipate hiring for this program if the Appropriations Committee should give you the $500,000.

Mr. DIXON. We would be very happy to furnish that to you, sir.

(The information referred to follows:)

Our tentative breakdown is 25 professional people, lawyers and economists and 15 supporting personnel, clerical and stenographic, and the like.

The CHAIRMAN. When you consider the size of the industry involved—as you pointed out it may be as large as $15 billion in a given year—that is a pretty small appropriation.

Mr. DIXON. When you consider it at $500,000.

The CHAIRMAN. A comparatively small amount. It is a large amount, but comparatively small.

Mr. DIXON. Every time a consumer spends a dollar and doesn't get full value for it, not only has the consumer been defrauded but the whole system of free enterprise has been defrauded. That dollar has gone, and it can't stimulate the growth and the jobs that are necessary in this country.

When you are talking about returns on an investment, you will get a peach here if we are successful.

The CHAIRMAN. Off the record.

(Discussion off the record.)

The CHAIRMAN. On the record.

We have some other questions here for the record, but I think we will give them to you and then you can answer them in writing and we will place them in the record.

(The list of questions by Chairman Magnuson and answers by Chairman Dixon follow:)

Question 1

In your letter to the Committee of last November, you mentioned that the Commission had some evidence that certain large finance companies were linked with home improvement swindlers. Could you elaborate on that?

Answer

We have some indication of such a link. We don't know the full extent they may be working together. So, up to this point, with our limited manpower, we have simply confined our actions to the promoters themselves believing that this would have a salutary effect. But we would like to explore this situation in depth to see if such a link does exist between them to the extent that we would be justified in joining the lenders also. As I say, Mr. Chairman, we do not have the evidence necessary to tie them in now. For this reason, I would hesitate to name names. We don't want to be put in a position of being charged with prejudging, and I am afraid this might happen if we named them now—just as the respondents recently did in one home improvement matter after our report was sent to you last November. We ruled that their Motion to Dismiss our complaint was without merit—but this will give you a good idea of the problem.

Question 2

Since the Commission currently has the power to issue a final cease and desist order, subject to judicial review, wouldn't it be a simpler procedure to empower the Commission itself, rather than a court, to issue a temporary injunction—

provided, of course, that there was judicial review to guard against an arbitrary exercise by the Commission of this power?

Answer

We have advocated that we be given the authority in the past, and we still favor it. But we would not insist now on having such authority if our doing so would interfere with the passage of S. 3065 and S.J. Res. 130, as they are presently worded.

Question 3

Under S. 3065, as it is presently worded, would the Commission be able to seek a preliminary injunction in antitrust cases?

Answer

I do not construe S. 3065 to apply to antitrust cases. Anyway, the Supreme Court not long ago held in our Dean Foods Company case that the All Writs Act authorizes us to secure a preliminary injunction from a Circuit Court of Appeals requiring continuation of the status quo in a merger case in which we have assumed jurisdiction.

Question 4

When the Commission decides to seek a preliminary injunction, if S. 3065 is passed, is there any reason why it could not expedite matters by holding hearings on the merits of the case before a hearing examiner, at the same time it is seeking an injunction, through the Attorney General, in a District Court?

Answer

The bill specifically authorizes the Commission through any of its attorneys designated by it for that purpose to seek the injunction. There is nothing in the bill's provisions requiring that it be sought through the Attorney General, and I do not think any such requirement would be necessary or desirable. We construe the bill to permit us to seek the injunction either pending issuance of our complaint or after its issuance. The hearings on the merits of the case before a Commission hearing examiner would necessarily follow issuance of the complaint. Our present rules provide for expeditious hearings before a Commission hearing examiner on the merits of our cases.

Question 5

Do you feel that misdemeanor penalties under the FTC Act would help to deter some individuals from launching fraudulent schemes, since they now realize that a first violation of the FTC Act will result in no monetary penalty against them?

Answer

This goes back to the amendment of Section 14(a), as proposed by S. 3066. I hope you will not mind if I repeat myself, Mr. Chairman, but as I said in my formal statement we do not recommend this amendment. We believe that with it carrying additional criminal sanctions, this might well lead the courts to more narrowly construe our orders, and this would add to our enforcement problems. In our view this would outweigh whatever advantage such an amendment might afford and, on balance, our opinion is that adequate protection of the consumer would be afforded by passage of S. 3065 and S.J. Res. 130.

Question 6

I believe that many home improvement and other consumer frauds are practiced locally, in States with weak anti-fraud laws, by contractors doing a substantial business there. Would not broader jurisdiction for the FTC enable the Federal Government to crack down on these swindlers until the States are able to develop programs to combat them?

Answer

This apparently has reference to the amendment of Section 5(a)(1), as proposed by S. 3066. The answer would have to be yes, Mr. Chairman, if we had the manpower to cope with the problem which would be far more staggering than the ones we have now but we do not have the manpower now, so for this added reason we do not recommend passage of S. 3066. I might add that through the contacts our Federal-State Relations Office maintains with them we are seeking in every possible way to cooperate with State officials throughout the country in their efforts to secure passage of effective legislation on the subject at their level. As you know, this is bearing fruit, and we hope it will continue.

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Question 7

Could you tell the Committee about the Commission's case involving John A. Guziak, trading as General Aluminum Company and Superior Improvement Company (Docket #8614)?

I understand that although the Commission obtained an order against Mr. Guziak, he has now confined his activities so as to operate solely within the State of Arkansas where no agency has the statutory authority to proceed against him. In fact, I believe he has even asked the Commission for an advisory opinion to that effect. Since the Commission spent three years in developing the background for this case and obtaining its order, doesn't it clearly demonstrate the usefulness of broader Commission jurisdiction in certain cases?

Answer

We issued an order in Docket No. 8614, on June 28, 1965 against John A. Guziak, trading as General Aluminum Company and Superior Improvement Company. He appealed, and the order was affirmed by the United States Court of Appeals, Eighth Circuit, on June 8, 1966. On January 9, 1967, the Supreme Court denied his petition for certiorari.

The information he later supplied as his compliance report did reflect that he was confining his activities to the State of Arkansas, and he was subsequently advised that, on the assumption such information was accurate and complete, the actions set forth therein constituted compliance with the order. He was reminded at the same time that we might at any time reconsider, revoke or rescind such approval should it subsequently appear that the information he gave us was inaccurate or incomplete or in case actions were taken in violation of the order. He was also put on notice that the Commission had made no determination concerning the legality of any actions set forth in his compliance report which did not come within the terms of the order.

Of course Mr. Guziak was under no compunction to comply with the order until it became final, and this didn't happen until the Supreme Court denied his petition for certiorari. I wouldn't want to prophesy now about what he would have done if we then had the authority which S. 3065 would give us in the event we had sought a preliminary injunction. He might have been satisfied to limit his business to intrastate sales, as he eventually did, while the case was being developed on its merits. He might have also contested an injunction also, that would be hard to say. So I'm not sure that his case would be a good example as demonstrating what you suggest, and, of course, the preferable remedy against these strictly intrastate situations is adequate state legislation.

Question 8

Under Section 14 of the FTC Act, as it now reads, the Commission has the power to seek misdemeanor penalties in limited instances. Although these cases have been largely preempted by the Food and Drug Administration under the FDA Act, doesn't legal precedent make clear that the Commission must seek these penalties through the Attorney General in a U.S. District Court?

Answer

Section 13(a) which gives us our present authority to seek injunctions enjoining dissemination of advertisements that violate Section 12 specifically authorizes the Commission to bring the suit in a U.S. District Court. Of course that is a civil proceeding. Section 14(a) deals with misdemeanors—criminal violations. It doesn't expressly state that we cannot seek misdemeanor penalties, or that we must seek them through the Attorney General. In any event, the Commission sought them through the Attorney General in the two criminal information cases that have been brought under Section 14(a).

Question 9

Although there are civil penalties for violation of a Commission cease and desist order, this has little effect on the experienced con artist who, as soon as he is placed under a Commission order, simply devises a new scheme which is not covered by the original order. Misdemeanor penalties for willful violations of the FTC Act is one method of dealing with this type of operator, but if you don't favor such an amendment, what other alternatives would you recommend?

Answer

We have had some repeaters—people under an order who devised a new scheme which wasn't covered by it. So we've had to initiate another proceeding to stop that deception too but the greater number of repeat violators have not been what

we would want to call con artists. To the contrary, many have been firms selling a multiplicity of products, so under the law of averages they have had to be brought to taw more than once. But to answer the question—yes, there may be some instances where misdemeanor penalties might be more effective than an order to cease and desist but I have to go back to my previous statement and say again that on the whole and on balance I believe it preferable not to pass S. 3066 at this time. If we can get the authority S. 3065 and S.J. Res. 130 provide let us try that to see how it works out—and I believe it will—but, if not, I'll be right back to ask for the misdemeanor provisions, or some other alternatives, but I have no concrete thoughts about any other possible alternatives now.

Question 10

Could you explain how consideration of S. 3066 might jeopardize the proposal to amend the FTC Act to create authority to seek preliminary injunctions in certain cases, when different bills, which can be considered separately, are involved?

Answer

That is a difficult question to answer. But I have to fall back on what I said in my statement as the best answer I can give. Of course, I am not in the best position to predict whether passage of S. 3065, S.J. Res. 130, and S. 3066 all can be secured. I've thought that it might be more difficult and I do believe S. 3066 would add to our enforcement problems. I feel that adequate protection of the public can be obtained by passage of S. 3065 and S.J. Res. 130. I had much rather see them passed and I don't want to endanger that possibility by asking or insisting on anything more, such as S. 3066.

Separate Statement of Commissioner Elman

H.R. 15354 and S. 3065 (Deceptive Sales Act of 1968)

I join in endorsing the proposed Deceptive Sales Act of 1968, which would amend the Federal Trade Commission Act by authorizing a federal district court to issue a temporary injunction of restraining order in any case where the defendant is charged with engaging in business practices which are unfair or deceptive to the consumer, and the court finds, upon a "proper showing," that the granting of an injunction *pendente lite* would be in the public interest.

I am submitting this separate statement in order to propose, for the consideration of Congress and the appropriate committees, that there also be included in the Act a provision, comparable to Section 15 of the Clayton Act (15 U.S.C. § 25), vesting the district courts with jurisdiction to grant such preliminary injunctive relief upon application of a United States Attorney, acting under the direction of the Attorney General, and providing that the court upon exercising such jurisdiction shall proceed expeditiously to a trial and final determination of the case.

In effect, such a provision would grant concurrent authority to the Federal Trade Commission and the Department of Justice—similar to that which now exists under the merger law and other antitrust statutes—to invoke the jurisdiction of the federal district courts in consumer fraud cases where the public interest calls for immediate termination of the challenged acts or practices at the very outset of the litigation. The principal difference would be that, where the Attorney General is the moving party, the case would remain in the district court until final disposition, without remand to the Federal Trade Commission. The President's recent appointment of a Consumer Counsel to serve directly under the Atorney General provides fresh occasion for the consideration of such a proposal, which in my judgment would immeasurably strengthen and improve the effectiveness of the Deceptive Sales Act. The principal advantages of the proposal, as I see it, are that it would provide a more expeditious, less complicated, and more fair process for effectively stopping fraudulent practices which victimize the consuming public, particularly the poor and the elderly.[1]

It should be noted, at the outset, that whether possessed by the Commission or the Attorney General or both, the authority to seek preliminary injunctions

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[1] See, e.g., Note, *Consumer Legislation and the Poor*, 76 Yale L. J. 745 (1967); Note, *Translating Sympathy for Deceived Consumers into Effective Programs for Protection*, 114 U. Pa. L. Rev. 395 (1966).

in cases involving alleged violation of Section 5 of the FTC Act is, in any event, likely to be exercised only sparingly. It is a fact that consent orders are entered in more than 90% of the Commission's deceptive practices cases. In such cases, constituting the overwhelming bulk of the Commission's work in this area, final orders to cease and desist become effective immediately, and a preliminary injunction would serve no purpose. Similarly, in the cases which are contested because the evidence of violation is in substantial dispute, or where a doubtful or unresolved question of law or policy is presented, a preliminary injunction would clearly be inappropriate. A temporary injunction or restraining order issued under the Deceptive Sales Act would not, as in an ordinary lawsuit, merely preserve or maintain the status quo while the litigation proceeds through the courts. It would prohibit the defendant from continuing his business practices before their legality or illegality is finally determined; and in many cases the granting of such preliminary relief could entail substantial disruption or even destruction of the defendant's business.

By implication, the proposed Deceptive Sales Act recognizes that preliminary injunctions will be confined to those cases where the fraud on the consuming public is so flagrant and substantial that the public interest requires that it be stopped at the very outset of the litigation, and before any hearing or final decision. The Act expressly provides that a temporary injunction or restraining order may be granted only by a court, and only upon a "proper showing" that the public interest so requires.

The premise of the Act is that, in cases where the court so finds, the public interest in protecting the consuming public from continuation of allegedly fraudulent and deceptive practices may outweigh the defendant's private interest in being allowed to continue these practices until their legality is finally adjudged. A court would find a "proper showing" to have been made only where (a) it is reasonably probable that the challenged acts or practices will ultimately be determined to be illegal, (b) the continuing injury to the consuming public during the pendency of the litigation is manifest and substantial, and (c) the balancing of interests, public and private, tips clearly in favor of granting an interlocutory injunction.

The Commission's experience in food and drug cases under Section 13 of the FTC Act, and in labeling cases under the Wool, Fur, Textile, and Flammable Fabrics Acts, indicates that such cases will be relatively infrequent. Of the thousands of administrative proceedings brought under these Acts, in only a handful has the Commission gone into court seeking preliminary injunctions; and even in those relatively few instances, it has not always been successful.[2] Moreover, to avoid unfairness to the defendant by disrupting his business activities for an unnecessarily long period of time while the injunction is in effect, it is essential that the trial or hearing on the merits (in which the defendant might ultimately be vindicated) be conducted with maximum expedition.

In its present form, the proposed Deceptive Sales Act would require consumer fraud cases, in which preliminary injunctions are sought, to proceed through four stages: first, administrative; second, judicial; third, administrative; and fourth, judicial.

(1) The first stage is that in which the Commission investigates the matter, and then determines that a complaint should issue and a preliminary injunction be sought. In this stage the Commission acts essentially as investigator and prosecutor. (2) In the second stage the Commission goes into court as plaintiff, seeking a temporary injunction. In this stage, which may continue through appeals to higher courts, the Commission acts as an advocate and litigant having an adversary relationship to the defendant. (3) The third stage consists of the hearings on the merits of the complaint, first before the hearing examiner and then on appeal to the Commission. In this stage the Commission acts in its judicial capacity, adjudicating the case on the basis of the evidence in the record. (4) The fourth, and final, stage of the proceedings takes place in a court of appeals, and perhaps the Supreme Court, on review of the final order to cease and desist issued by the Commission. In this stage, the Commission again resumes the role of advocate and litigant in an adversary relationship to the defendant.

As previously indicated, it is essential that, where a preliminary injunction is granted, the hearing and determination of the case on the merits should be

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[2] The Commission has sought injunctions in only 46 cases since 1938 when the first of these Acts, Section 13 of the Federal Trade Commission Act, was passed. Preliminary injunctions were denied in three of these cases.

expedited in order to avoid unfairness to the defendant. Nevertheless, the Commission, while stating that it "makes every effort to expedite its proceedings", recognizes that the average elapsed time from the issuance of a complaint to final order in deceptive practices cases is approximately three years. Agency adjudication has its good points, but expedition does not seem to be one of them.

Even if swifter agency adjudication were to be attained, there would remain fundamental objections to a four-stage hybrid enforcement scheme in which the proceedings would be shunted back and forth between the Commission and the courts, and the Commission itself would be shifting back and forth between its various roles as investigator, prosecutor, judge, and litigant. The overriding duty of the Commission, in performing any one of these roles, is to make sure that it does not thereby impair or destroy its ability to perform the other functions it may be required to discharge. The problem arises because, whenever the Commission, in advance of hearing and deciding a case on the merits, determines that the respondent's fraud is so clear and substantial that it should go into court to seek a preliminary injunction, the effect is to compromise its judicial role and impair the confidence of the public in the fairness and integrity of its adjudicatory process. An essential element of fair adjudication is that the judge be, and appear to be, impartial and objective, and that he scrupulously avoid any indication of prejudgment. Fairness and open-mindedness must be both present and visible. The hallmark of agency adjudication is that it is conducted by officials who are expert in the subject-matter; but expertise cannot justify or excuse the appearance of injustice.

As has already been noted, a preliminary injunction will not be appropriate in cases where the evidence of violation is in substantial dispute, or where the case raises a doubtful or unresolved question of law or policy. On the contrary, preliminary injunctions will be confined to those cases where the fraud on the consuming public is deemed to be so blatant and substantial that the public interest requires that it be stopped at the very outset of the litigation, and before any hearing or final decision. Inevitably, in such cases the Commission's vigorous assumption of the role of prosecutor and advocate in seeking a preliminary injunction will cast a serious cloud on the adjudicative role which the Commission must later assume in deciding the case on the merits. The point is cogently made by Mr. Justice Fortas in his dissenting opinion in *Federal Trade Commission* v. *Dean Foods Co.*, 384 U.S. 597, 617–18 (1966):

"The Commission was not intended to—it has no power to—it should not—make a judgment on the merits prior to notice and hearing. To sanction its doing so is to strike a devastating blow at the fundamental theory upon which the exercise of both prosecutorial and adjudicatory functions by an administrative agency is based. Cf. § 5(c) of the Administrative Procedures Act of 1946, 5 U.S.C. § 1004(c).

"The Commission, prior to taking evidence and writing a report, is supposed to make only a very limited judgment: that there is 'reason to believe' the law is being violated. But to obtain a preliminary injunction, it must—without hearing the other side, and ordinarily merely on its staff's recommendation, necessarily based upon a quick exposure of the facts—file affidavits or produce evidence with the calculated purpose of demonstrating [the need for a preliminary injunction.] In fact, and in all realism, it must take positions and establish, with sufficient positiveness to overcome strenuous opposition, [that an injunction is essential to protect the public interest] * * *. There must be Commission conclusions, not merely the views of the staff. Their assertion and necessarily stout advocacy make a mockery of a subsequent quasi-judicial proceeding in which the Commission is supposed objectively to consider the same issues on the basis solely of the record." [3]

These and other problems that the proposed Act raises could easily be avoided by vesting the United States Attorneys, acting under the supervision and direction of the Consumer Counsel and the Attorney General, with the authority to prosecute consumer fraud cases in court. From the beginning of the common law, courts have dealt with problems of fraud and deceit. No unique or special expertise is required for dealing with the type of consumer fraud cases covered by the proposed Deceptive Sales Act. The federal courts are hardly newcomers to this area. They have long handled, for example, mail fraud cases brought

[3] See also *Dean Foods Co.* (Transfer Binder, FTC Complaints and Orders 1965–67) ¶ 17,765 at 23,124–28 (dissenting opinion); *A Note on Administrative Adjudication,* 74 Yale L. J. 652 (1965).

by the Department of Justice and the Post Office Department; fraud cases under the securities law brought by the SEC; and fraud cases arising under the food and drug laws brought by the FDA.[4] Throughout the country, both state and federal courts are increasingly dealing with such cases as a result of increased consumer protection activities initiated by state Attorneys General and local United States Attorneys.[5]

Experience under the antitrust laws confirms the view that authority to seek injunctions in consumer fraud cases ought to be vested in the Attorney General. If, for example, there is reason to bleieve that a respondent is guilty of price-fixing or bid-rigging in violation of both Section 5 of the Federal Trade Commission Act and Section 1 of the Sherman Act, the Commission does not proceed in the first instance but instead determines whether the Department of Justice prefers to present the case to a grand jury and seek criminal indictments. Indeed, as to any *per se* violation of the antitrust laws where elaborate inquiry into competing policies is unnecessary because experience has shown that the gains to the public from absolute prohibition of the practice far outweigh any possible losses, enforcement should be, and usually is, undertaken by the Department rather than the Commission, thus leaving the Commission free to concentrate on the significant questions—arising in the areas where *per se* rules are inappropriate—that should occupy its attention.[6] As our economy expands, the already heavy volume of the Commission's work will inevitably increase. To have the members of the Commission passing on evidentiary questions in simple fraud cases would be to squander scant resources.

Finally, the objective of effective enforcement will best be served by the amendment I propose. As a practical matter, the Commission's eleven field offices simply do not have available the investigative and prosecutorial facilities that the Department of Justice has, with local United States Attorneys and F.B.I. agents in every part of the country. A full panoply of enforcement remedies is available to the Attorney General and the Consumer Counsel, but not to the Commission. The Consumer Counsel would be able to develop a full program for marshalling the resources of the Government in attacking consumer frauds. He could invoke not only the injunctive power but also the other criminal and civil sanctions and remedies which the courts may impose.[7]

In my view, the purposes of the Deceptive Sales Act can best be achieved, with maximum fairness to defendants, highest regard for the public interest, and most efficient allocation of resources, by including a new provision authorizing the Attorney General in consumer fraud cases to obtain a preliminary as well as permanent injunction in the courts.

The proposed grant of authority to the Department would not conflict with, but should complement that given to the Federal Trade Commission. I am confident that both agencies, working together, would be able to do a better job in protecting the consumer interest than either could do separately. In this area, as in antitrust, the public is best served by full utilization of the distinct resources and skills of the two agencies.

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[4] See, e.g., 15 U.S.C. §§ 77t, 78u, authorizing the Securities and Exchange Commission to sue for preliminary and permanent injunctive relief in cases involving violation of the Securities Act of 1933 and the Securities and Exchange Act of 1934, respectively; 39 U.S.C. § 4007, conferring jurisdiction on the District Court to enter, on application of the Postmaster General, a temporary restraining order or preliminary injunction directing the detention of mail pending administrative action to have the matter declared nonmailable, for example, because it is fraudulent or lottery matter as defined in 39 U.S.C. § 4005; 21 U.S.C. § 332, conferring jurisdiction on the District Court to restrain violations of § 331, the Food, Drug and Cosmetic Act. Deception of the public is often a significant factor in cases arising under the Act. See *United States* v. *Article of Drug Designated as B Complex Cholinos Capsules*, 362 F.2d 923 (3rd Cir. 1966).

[5] In the *New York Times* for March 24, 1968, p. 62, there appeared an article, attached herewith, disclosing that the United States Attorney for the Southern District of New York has formed a consumer fraud unit to handle the same kind of cases as would arise under the Deceptive Sales Act of 1968.

[6] See generally, *Antitrust Enforcement: Retrospect and Prospect*, 53 ABA J. 609 (1967), a copy of which is attached.

[7] See, e.g., 18 U.S.C. §§ 1302, 1341.

[From the New York Times, Mar. 24, 1968]

U.S. PRESSES DRIVE ON FRAUDS HIRE

MORGENTHAU FORMS UNIT ON CONSUMER SWINDLES

(By Edward Ranzal)

United States Attorney Robert M. Morgenthau announced yesterday the formation of a consumer fraud unit for the Southern District of New York.

Mr. Morgenthau declared that vigorous law enforcement against consumer swindles was one of the key weapons in combating poverty, because, investigations had shown, the poor are the primary victims of consumer fraud.

He said the jurisdiction of his office over consumer frauds was based primarily on the Federal mail fraud statute. This, he said, makes it a Federal offense to use the mails in a scheme to defraud, even if the mailing was not part of the scheme.

Mr. Morgenthau said the unit would concentrate on the following areas:

"Sewer" and "gutter" service of process, in which consumers' wages are garnished although they never were served with papers in a law suit.

A fraudulent sales device whereby consumers are promised that they can earn merchandise free by referring names of other potential customers.

Fraudulent practices by finance companies.

An investigation of used-car dealers who, by use of the mails, have fraudulently sold worthless automobiles.

Insurance brokers who accept deposits upon representation that policies will be furnished, retain the deposits and never issue policies.

The extensive use of collection forms fraudulently purporting to represent a claim by the United States Government.

The unit yill be headed by Assistant United States Attorney Richard A. Givens. He will have a staff of four assistant United States attorneys. The group will use a special Federal grand jury to investigate suspected consumer frauds.

In the last six months, Mr. Morgenthau said, 10 individuals and companies have been indicted on consumer fraud charges.

[From the American Bar Association Journal, July 1967]

ANTITRUST ENFORCEMENT: RETROSPECT AND PROSPECT

Mr. Elman says that the Federal Trade Commission, "uniquely qualified to make an indispensable contribution to antitrust enforcement", is not fulfilling the role for which it was created in 1914. Stating specifically how the commission could improve as a regulatory agency, he says it should begin by limiting its present function as policeman and prosecutor.

(By Philip Elman, Member of the Federal Trade Commission)

It is a truism that the biggest and best agency of antitrust enforcement is the private Bar. When businessmen encounter what they perceive to be an antitrust problem, they usually seek and follow the advice of counsel—and not merely out of some misguided sense of civic duty. They cannot afford not to. Businessmen do well to avoid antitrust litigation like the plague. It is burdensome, time-consuming and unsettling; and it can be very expensive indeed. So if antitrust could be reduced to a manual of simple do's and don't's for the guidance of lawyers and their clients, the problems of enforcement would largely disappear.

But, alas—and this explains, too, why working in this area is both so challenging and so frustrating—the elements of antitrust are charged with complexities and contradictions. We begin with statutory provisions which range from the majestic generalities of the Sherman and Federal Trade Commission Acts to the specific rigidities of the Robinson-Patman Act, with its dazzling complex of

conditions, provisos, justifications and defenses. Superimposed upon the statutory provisions, to the point almost of obliterating them from view, is an impressive array of judicially established principles extending from the broad and amorphous rule of reason to the simple, and perhaps oversimplified, per se rules. Most important of all, these principles and rules must be applied to commercial practices and transactions of every type and decription which, more often than not, cannot be fitted into nice, neat pigeonholes, because they reflect the infinite variations of an extraordinarily dynamic and expanding economy.

At either end of the antitrust spectrum—the black-and-white areas—relatively simple and easily applied rules are not merely sufficient; they are an enforcement necessity. In regard to such practices, for example, as agreements of competitors to fix prices, divide markets or territories or boycott suppliers, rules and presumptions dispensing with elaborate market analysis are both essential and justified. When business behavior is manifestly predatory, unfair or anticompetitive, it is comparable to traditionally criminal or tortious conduct amenable to correction by traditional judicial remedies. The essence of a per se rule is that the practice involved should be condemned outright, whatever the circumstances of its use, because experience has clearly shown that the gains to the public from its absolute prohibition far outweigh any possible losses. In dealing with such conduct, antitrust enforcement has, I think, been quite successful. Here, the use of conventional judicial procedures and remedies in lawsuits brought in the federal courts by the Antitrust Division and private plaintiffs has been appropriate and effective.

In the vast and largely unexplored middle of the antitrust spectrum, however, lie the difficult and complex gray problem areas from which have come such additions to our vocabulary, for example, as conglomerate mergers, oligopoly power and undue concentration, "follow-the-leader" pricing, vertical integration, reciprocity and dual distribution. With regard to questioned conduct in these cloudy areas, moral judgments are usually difficult, if not impossible, and generally irrelevant. If such conduct is to be condemned, it should be because of its undesirable economic or social effects, not because those who engage in it can be found to have acted with evil or predatory motives.

In these gray areas, antitrust cannot be played as cop-and-robbers game with the good guys on one side and the bad guys on the other. Here, a determination that certain business conduct ought to be forbidden for reasons of public policy should carry no necessary connotation of unethical or immoral behavior; indeed, it should be made in a proceeding and in atmosphere where no one is stigmatized as a criminal or wrongdoer. And it is especially in relation to trade practices falling within these gray problem areas, I believe, that a specialized, expert administrative agency, not functioning like a prosecutor or a court of general jurisdiction, is uniquely qualified to make an indispensable contribution to antitrust enforcement.

We have grown so accustomed to litigation in the courts as *the* process by which the antitrust laws are enforced that we forget it was dissatisfaction with this process which led Congress in 1914 to establish the Federal Trade Commission. There was a general feeling then that the Sherman Act was ineffective and that judicial enforcement not only left too much power to the courts but also bred uncertainty and delay. Many believed that antitrust enforcement by means of lawsuits brought by the Attorney General had failed to stem a rising tide of monopoly. If full-blown Sherman Act violations were perhaps amenable to judicial correction, other restrictive practices, less palpable but no less harmful to the economy, were continuing unchecked. Congress considered that the prevention of such restraints in their incipiency was too big and complex a job for untrained judges, unaided by expert assistants and compelled to work within the limits of traditional adversary litigation. There was widespread agreement upon the need for an independent, expert administrative agency with broad and flexible powers to investigate and resolve trade regulation problems.

It was not contemplated that the commission would sit, like a court, as a passive arbiter of controversies brought to it fortuitously. Its role was to be positive and constructive, to adopt and actively pursue planned programs and policies to effectuate the basic goals of the antitrust laws. Unlike a court or prosecutor, the commission's job would be to conduct general economic studies and investigations, to spot problem areas and probe for practices and trends threatening free and fair competition and to identify acts and practices which, if unchecked, might lead to full-blown monopolies or unreasonable restraints of

trade. The commission was to be a reservoir of information on the structure and functioning of the economy and specific industries and markets—information which could be drawn upon not only by the commission but by the Congress, the President and other agencies of government in developing sound policies and programs.

As the legislative history of the Clayton and Federal Trade Commission Acts shows, the Congress of 1914 intended the commission to supplement, not to duplicate, the work of the courts and the Department of Justice in antitrust enforcement. The creation of a commission, equipped with a broad array of flexible powers permitting a comprehensive approach to trade regulation problems in their full dimensions, reflected a basic shift in emphasis from punishment and moral opprobrium to administrative adjustment, correction and regulation.

Yet today, conventional case-by-case litigation in the courts continues to be the principal method of antitrust enforcement, even in those gray problem areas where novel and difficult questions of law and policy are presented that call for extensive investigation and analysis of complex economic facts. Today, no less than in 1914, the ability of courts of general jurisdiction to handle such questions is subject to inherent limitations. The Supreme Court, in particular, should not be expected to act as a high court of trade regulation, making determinations of policy on controversial economic issues.

The Federal Trade Commission, on the other hand, was intended by Congress to overcome the inadequacies and weaknesses of judicial enforcement. As an instrument for helping make the antitrust laws more certain, more predictable and more effective, the commission is what the federal judiciary is not, a single tribunal whose only duty is trade regulation. Congress considered that a commission would be able to make reliable predictive judgments regarding the competitive effects of questioned business conduct.

An administrative agency has methods that courts do not generally have of finding facts and basing judgments of policy on its accumulated knowledge and specialized experience. A judge typically knows about a general economic problem little more than what he can extract from the record of the particular case. A commission, however, can and should draw upon its collective institutional experience and *expertise*, as well as relevant economic studies and reports. Difficult factual and policy determinations required under the merger statute, for example, are most reliably made by a tribunal constantly immersed in problems of competition and trade regulation, rather than by a tribunal before which such matters may be esoteric.

Consider, for example, the problem of conglomerate mergers—where determinations of legality cannot be based on a "nose-counting" of competitors or simple market-share data, but may require detailed examination of the structure and behavior of relevant markets or industries. The probable effects of the merger on concentration, on potential competition and barriers to entry may be of critical importance in judging its legality. But to obtain, sift and evaluate such "complex and elusive" economic facts is not a task for which courts of general jurisdiction are well suited. The courts may perhaps—for want of a better alternative—adopt drastically oversimplified tests of illegality. But if the statute is too strictly enforced in the name of simplicity, there is a risk of retarding economic growth and efficiency.

There is essential truth and validity in the cliché that a regulatory agency like the Federal Trade Commission is an "arm" of the Congress. The commission possesses a great variety of functions and powers: It conducts and publishes economic studies and industry and market analyses; it proceeds against alleged violations of law; it adjudicates cases and issues cease-and-desist orders; and it promulgates general rules, guides and statements of policy and enforcement intentions. All of its various activities, however, should be directed to a single central objective: the formulation and administration, within the general scope and limits of the commission's statutory authority, of a body of subsidiary principles, rules and policies effectuating the basic regulatory goals established by Congress. In all that it does and should do, the commission acts as the surrogate of Congress and the delegate of defined and circumscribed Article I, Section 8, legislative power. In this essential and crucial respect, the commission is very different from a prosecuting arm of the executive.

Almost the first question that a newcomer to antitrust asks is: How do the Antitrust Division and the Federal Trade Commission fit together, and where does the jurisdiction of the one end and the other begin? The answer usually

given is that their responsibilities are concurrent and overlapping—that the Antitrust Division enforces the Sherman Act, the commission enforces the Federal Trade Commission Act and they both enforce the Clayton Act. One must quickly add, however, that, as the Supreme Court has held, the Federal Trade Commission Act covers not only all conduct which violates the Sherman Act, but also that which conflicts with the basic policies of the Clayton and Sherman Acts. The area of overlap, on paper at least, is thus very extensive indeed. The next question is: How does co-ordination work out in actual practice? The anwser usually given is that there is a very satisfactory liaison arrangement between the two agencies; they are in constant daily communication to make sure that they do not get in each other's way by investigating the same companies at the same time for the same alleged violations.

It seems to me that the time has come to reassess and redefine in a more meaningful way the respective functions and responsibilities of the Antitrust Division and the Federal Trade Commission. We should develop a more creative and fruitful relationship between the two agencies. Co-operation should mean more than not competing with each other for the same defendants. What is called for is a merger of the two agencies' respective resources and skills. They should form a joint venture or partnership for antitrust enforcement.

Specifically, I would urge that the Federal Trade Commission should concentrate its resources on fulfilling the role for which it was originally created in 1914. The commission's role as policeman and prosecutor should be substantially deemphasized. The job of investigating and prosecuting specific violations of law by particular companies can be and is handled very well by the Department of Justice; the commission was not created by Congress to duplicate those functions. The commission should look to those areas of antitrust enforcement in which an administrative agency with distinctive powers of gathering and analyzing economic data has special competence. Whether through adjudication, rulemaking, reports and guidelines or otherwise, the commission's primary and principal job should be to assist in the orderly development of a coherent body of antitrust policies and doctrines in harmony with economic realities and the basic regulatory goals established by Congress.

In no field of the law is there greater danger that slogans and shibboleths will be substituted for hard, realistic and dispassionate analysis. A prime function of the Federal Trade Commission should be to prevent the antitrust laws from degenerating into a code of sterile, ritualistic verbal formulas unrelated both to the facts of competition and the needs and realities of our economic system. Especially in regard to the gray problem areas I have described, the commission can do much to identify and analyze unresolved questions of trade regulation law and policy.

A large and more creative role for the Federal Trade Commission in the scheme of antitrust enforcement would also imply an expansion, not a diminution, of the responsibilities of the Department of Justice. Specifically, I would favor an expansion of its investigative and prosecutorial functions to cover the whole area of antitrust violations. It is unfortunate that the Antitrust Division has remained relatively aloof from the kinds of unfair and anticompetitive trade practices which the commission deals with under the Robinson-Patman Act or the Federal Trade Commission Act. As the Supreme Court has stated, there is a great need for harmonizing all of the various antitrust provisions into a cohesive body of law and policy.

When, after investigation, the Antitrust Division finds a probable violation of *any* of the antitrust laws, it should have a choice of proceeding either in a federal district court or before the commission, whichever would be the more appropriate tribunal. Especially when the matter falls within an area of demonstrated agency *expertise*, the Department of Justice may consider the commission to be the proper tribunal in which to try the case.

This proposal does not necessarily require amendment of existing law, which permits the Attorney General to intervene in commission proceedings under the Clayton and Federal Trade Commission Acts. (He has never done so.) Nor would it require the commission to abdicate its important responsibilities for the wise selection of cases to be tried before it. When cases are recommended to it for complaint by either the Antitrust Division or its own staff, the commission would still be obliged to assure itself that initiation of a formal proceeding would be in the public interest. This determination could and should be made by the commission without embroiling itself in the substantive facts and evidentiary details of the investigation. Its inquiry, rather, would be whether the case is of such a

nature that trial before the commission, rather than a district court, would be more appropriate.

The commission, I repeat, should eschew the role of policeman or prosecutor—a job better left to the Department of Justice. A commission member who at the precomplaint stage does not review investigative files and who avoids making his own assessment of the evidence protects himself against the charge of acting unfairly by being both prosecutor and judge in the same case. To the extent that the commission limits its role as policeman and prosecutor, it would enlarge its contributions to the analysis and solution of trade regulation problems. It would thereby improve, also, the quality as well as the fairness of agency adjudication.

The failure to differentiate clearly the role of the Federal Trade Commission from that of the Department of Justice in antitrust enforcement seems, in retrospect, most regrettable. As I have already observed, the antitrust laws have been quite successful in outlawing and preventing many egregious and destructive anticompetitive practices. But in some industries today there is serious question whethere there exists enough of the right kind of competition. The conception of the Federal Trade Commission was basically in response to the monopoly problem; the deficiencies have been chiefly in the execution. It is a fair question whether the unfinished business of antitrust and the unfulfilled promise of the Federal Trade Commission are not intertwined.

Woodrow Wilson and Louis D. Brandeis conceived of the commission as a "new device in administrative machinery", whose "purpose in respect to restraints of trade was prevention" and not punishment. They saw the commission as "an indispensable instrument of information and publicity", "a clearing house for the facts" by which both the public and businessmen would be guided, "an instrumentality for doing justice to business where the processes of the courts or the natural forces of correction outside the courts are inadequate". This should be a time for re-examination and renovation, not complacency or indifference, in antitrust enforcement. We should seek to fulfill the vision of Wilson and Brandeis and the Congress which enacted the great antitrust acts of 1914.

(The following exchange of correspondence between Senator Magnuson and Chairman Dixon provides some of the background for the introduction of Senate Joint Resolution 130.)

OCTOBER 10, 1967.

HON. PAUL RAND DIXON,
Chairman, Federal Trade Commission,
Washington, D.C.

DEAR CHAIRMAN DIXON: Last week I received the enclosed letter from Senator Hartke suggesting that the Commerce Committee investigate the scope and nature of home improvement frauds. I recall that last June when you appeared before the Senate Appropriations Committee you testified that the Commission had authority under the Federal Trade Commission Act to deal with these rackets and had undertaken an active program to combat their spread.

The recent series of articles in the *Washington Post* has underscored the tremendous importance, particularly to the underprivileged members of our society, of accelerating our enforcement activities in the home improvements area. Naturally, we in Congress must inquire whether such enforcement programs would be aided by additional legislation, or whether existing legislation, when strongly enforced, is adequate.

My purpose in writing you, therefore, is to inquire whether, in your opinion, the Federal Trade Commission Act provides sufficient legislative authority to police home improvement frauds. If you feel it is not, I would appreciate receiving your suggestions for such additional legislation as might be required to do the job properly.

In addition, I would like you to outline in greater detail the Commission's current enforcement program in this area. How many attorneys are working on home improvement cases and in what types of fraud are their efforts concentrated? How long is the normal time lag between opening an investigation and obtaining an order? How many orders has the Commission entered in the past three years, against what companies and for what practices were they obtained, and in what geographical location did these companies operate?

Through a detailed discussion of these and related questions, you will be able to assist the Commerce Committee considerably. For if it appears that the present

regulatory machinery is inadequate and will remain so unless Congress acts, we shall, as Senator Hartke suggests, conduct a detailed investigation of these practices.

I thank you for your assistance and hope to hear from you shortly.

Sincerely,

WARREN G. MAGNUSON, *Chairman.*

NOVEMBER 28, 1967.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your letter of October 10, 1967 requesting an outline of the Commission's current program in the area of home improvement frauds together with suggestions for additional legislation to improve the enforcement program in this field.

The home improvement industry is vast and complex. The April, 1966 issue of the *Building Supply News*, a leading trade magazine, estimated that the current home improvement market is about 15 billion dollars annually. According to other presumably reliable sources the alterations and repairs of homes represent about 20–25% of the national spending on residential buildings. In this industry there are many product lines, manufactured, distributed and merchandised by thousands of individual firms at different levels of competition. Some of these are siding, storm windows, recreation rooms, kitchen fixtures, air conditioning systems, pools, intercoms, central vacuum systems, awnings, gutters, lightning rods, etc. It's a big industry and rapidly growing bigger. The growth of this industry has been further accelerated by the recent shortage of mortgage money and the sag in new home constructions.

From presently available published data, it is impossible to state accurately the number of firms engaged in the sale and installation of home improvements. The Bureau of Census reports that there are 285,000 contractors engaged in the building construction industry, of which 194,000 are special trade contractors. The latter are the type of firms which would be primarily engaged in the installation of home improvements.

An official of a large lending institution has estimated that there are over 50,000 firms engaged in the sale and installation of residential siding and storm windows.

The industry can be subdivided into four separate levels of competition. These are: 1. The producers of raw materials such as U.S. Steel, Alcoa, Reynolds, Monsanto, etc. 2. The producers sell their products to a large number of firms engaged in the fabrication and processing of various items used by the home improvement industry. These firms purchase the unfinished aluminum, steel, etc. from a manufacturer and convert it into a finished end product. 3. The fabricators generally sell their finished products to hundreds of building supply distributors located throughout the United States. 4. Distributors in turn sell home improvement products to local retailers, or building contractors.

In many cases the contractors (local retailers) are "fly-by-night" operators with minimal assets and gross annual sales in the millions. Generally speaking, these firms operate through a program of offering phony bargains, easy credit and exaggerated performance claims.

The operational patterns of the unethical firms in this industry defy any neat categorization of deceptive or unfair trade practices. They repeatedly change their method of operation to meet increased consumer resistance or governmental restriction. However, many techniques have become almost standardized. The fringe operators are out for the quick dollar and are without concern when it comes to squeezing the last possible dime out of their victims. Their arsenal of sales techniques include:

1. Fictitious and inflated prices from which the home owner is promised a substantial discount, but who actually ends up paying far more than a fair market price, as charged by ethical contractors.

2. The Model Home Sales Pitch—The home owner is offered a phony "special discount", "reduced price" or phantom commission for the use of his home for display or advertising purposes.

3. "Special" factory deals or wholesale prices which are neither "factory" nor "special", but which are actually overpriced.

4. Bait and Switch Tactics—Services or products are advertised at ridiculously low prices and then later disparaged in order to switch the purchaser to a highly overpriced item or service.

5. Bogus Contests—A so-called "lucky winner" is offered fictitious discounts in a rigged contest with the purchase of the product or service offered for sale.

6. Phony bargains are often disguised by salesmen poising as "a representative of a well known manufacturer".

7. Misrepresentations of guarantees—"Unconditionally guaranteed for 20 years" when there are conditions, limitations and restrictions which in fact render the "guarantee" worthless.

8. Misrepresentation of product efficacy, durability, performance, etc.—such as "never needs repainting", save 20% on fuel bills", "won't chip, crack or peel", etc.

9. Scare tactics to lead the consumer to believe that because of some defect in his home the lives of his family and himself are in danger if the product or services are not purchased.

10. Referral Selling—The consumer is mislead into believing that he can pay for all or part of the service or product through commissions gained from sales to his neighbors or friends.

11. Fraudulent misrepresentations in which the salesman promises one product or services, while the contract calls for another.

12. "Spiking the job"—where, within hours after signing, the home improvement racketeer initiates a minimum, token performance and then badgers the purchaser into believing that there is partial performance which makes the contract non-cancelable. It is frequently weeks and may be months before the job is completed at the convenience of the gyp operator.

13. Affirmative misrepresentations in connection with loan transactions—Sales of home improvement products are made on the representation of "buy now and pay later" coupled with an offer to consolidate all outstanding bills of the prospective purchaser. The deceptive practices include such things as actual misrepresentations as to the interest rates and finance charges; signatures obtained upon blank completion certificates before the work is completed and on blank contracts which are later loaded with unauthorized charges; and enticing home owners into executing first or second mortgages without their knowledge, or by subterfuge or misstatement.

14. In some cases the unethical operator employs such practices to obtain the signature of a home owner to a bogus home improvement contract through misleading statements and the procurement of signatures to blank contracts. He immediately sells the obligation to a finance institution who interposes the defense of a bona fide holder in due course, thus cutting off most defenses the victim might have against the seller.

Although we realize that consumer credit has become an integral part of our way of life and represents a means by which most Americans acquire, use and enjoy essential goods and services, it is believed that the manner in which the racketeering home improvement operator employs his offer of "easy credit" is a part of the scheme by which consumer frauds are perpetrated upon untold thousands of American consumers.

While the great majority of the abuses outlined above are worked against the uneducated, the unsophisticated and the poor, no one is immune from the glib salesman or unethical operator who urges the prospective buyer to sign a contract, which is often printed in small type, difficult to read and deliberately confusing.

I believe the objective of any program of the Federal Trade Commission in the home improvement field should be to put the consumer on an equal footing with the seller by requiring the vendor to provide the consumer with reliable, truthful information which will allow him to make an intelligent evaluation of the transaction and thus to protect him from the above described deceptive, illegal and unconscionable practices.

The home improvement situation is one of those in which the ultimate enjoining of fraudulent practices is not an adequate deterrent to the unethical operator.

Is it my opinion that the consumer today is faced by deceptions deserving a degree of protection from fraudulent, intentional violations of Section 5 of the Act, without regard to the type of commodity, comparable to those practices prevailing in food, drug, device and cosmetic advertising which impelled Congress in 1938 to enact Sections 13 and 14.

Section 13 now provides that the Commission may bring suit, when it would serve the public interest, in a Federal Court enjoining the dissemination of a false advertisement for a food, drug, device or cosmetic pending final disposition of a Commission complaint. Section 14 declares any false advertisement for such products, if disseminated with intent to defraud or mislead, to be a misdemeanor punishable by a fine of not more than $5,000 or by imprisonment for not more than six months, or both.

It is unthinkable that in these enlightened times a fraudulent operator can continue his vicious practices while his "rights" are being protected in the course of prolonged litigation. The Commission should be authorized to go to a Federal Court seeking a preliminary injunction, when in the public interest, to accord to the consumer the "right" at least to be protected from illegal practices while the operator delays issuance of a final order by insisting upon his full procedural rights.

Similarly, those practices in the home improvement field, as in others, when engaged in with intent to defraud or mislead, are equally as vicious as the false advertising of food, drugs, devices and cosmetics, and should be declared misdemeanors.

A major problem in this area is a lack of manpower and funds to undertake the extensive and aggressive program required to deal adequately with the sheer magnitude and complexity of the consumer problems in this area and to afford competitive protection to the thousands of honest firms in this industry. Our staff informs me that over the past three years our annual expenditure on the home improvement project has been approximately $30,000 (two man years).

In the past three years the staff has opened 75 field investigations of home improvement operations. During this time 9 orders and 5 assurances of voluntary compliance have been obtained. These are:

Formal	*Docket No.*
1. Interstate Builders, et al., Cincinnati, Ohio	8624
2. Gulfcoast Aluminum Supply Co., et al., Tampa, Fla	8662
3. Royal Construction Co., et al., Greensboro, N.C	8690
4. Cast-o-Brick, et al., St. Louis, Mo	C–1098
5. Modern Builders, Inc., et al., Winter Park, Fla	C–1130
6. First Federal Construction Co., et al., Evansville, Ind	C–1181
7. Youngstown Awning & Window Co., et al., Creve Coeur, Mo	C–1142
8. Republic Construction Co., et al., Fern Park, Fla	C–1164
9. The National Aluminum Co., et al., Columbia, S.C	C–1076

Assurance of voluntary compliance

	File No.
1. Ambrico, et al., Toledo, Ohio	662 3065
2. Dietz Home Improvement, et al., Alton, Ill	662 3116
3. Seaman Andwall, et al., Ixonia, Wis	662 3339
4. Lumaside, Inc., et al., Milwaukee, Wis	662 3362
5. Mastic Corporation, et al., South Bend, Ind	672 3080

The time lag between opening an investigation and obtaining an order for both consent orders and voluntary compliance matters has been approximately one year. In the three litigated cases the time lag has been approximately four years. This is precisely the time lag during which the consumer is entitled to the protection which would be afforded by amending Section 13.

Currently we have approximately 45 home improvement cases under active investigation. Two additional complaints are presently being litigated. The staff has further advised me that they are now in the process of preparing 12 additional matters in which they will recommend the issuance of complaints against home improvement companies.

Due to major manpower commitments to the packaging and cigarette programs, the District of Columbia Consumer Protection project, the automobile warranty and softwood lumber inquiries, bait-and-switch practices in the sale of frozen food and other promotions, the insurance investigation, and many other efforts reflecting a high degree of public interest, I can give you no assurance that additional personnel can be assigned to attack this swelling workload promptly.

Including all types of corrective action the companies involved in this enforcement program for the past three years operated in all 48 states of the continental United States.

Depending upon the facts of each individual case our orders and other corrective action generally cover the practices outlined above.

In addition to the activities in our Bureau of Deceptive Practices, the Bureau of Industry Guidance in administering the guides for the "Residential Aluminum Siding Industry", "Guarantees", "Pricing" and "Shell Homes", is constantly attempting to obtain voluntary compliance by various members of the home improvement industry with the Commission's Guides.

Recently, several states have passed legislation to control unfair and deceptive practices such as those involved in the sale of home improvement products. Our staff has on occasion met with officials from some of these states to exchange ideas and information for the purpose of obtaining more effective enforcement at both Federal and state levels.

In the past year, we have forwarded a number of matters in which the local home improvement retailer is not engaged in interstate commerce to various state officials for appropriate action. We expect to continue this practice in the future.

Our Assistant General Counsel for Federal-State Cooperation has devoted much of his time to encouraging various states to enact laws and proceed against unfair and deceptive practices at the state level.

Precision in identifying members in this industry is difficult, as there is no reliable published information available on firms engaged in various functional levels of competition in the home improvement industry. Sufficient funds are not presently available for the assignment of personnel to pursue a thorough industry-wide instructional study of the home improvement industry.

A brief outline of such study would include:

A. The home improvement industry:
   1. Products involved.
   2. Size of individual product markets.
   3. Number, location and size of retail firms and an identification of their behavioral patterns.
   4. Fabricators and suppliers of home improvement products together with a delineation of their relationship with individual home improvement retailers.
   5. Producers of raw products and their relationship with suppliers and individual retailers.
   6. Financing of home improvements and the relationship between the finance companies and individual retailers.

B. Remedial action:
   1. By Congress.
   2. By the Federal Trade Commission.
   3. Action by other Federal agencies.
   4. By state and local agencies.
   5. By industry.

I would estimate that such a study (apart from regulatory action) would require the time of a ten-man task force for approximately a year to serve as a basis for the multiple purposes indicated.

Essential to truly effective remedial action in this field, if adequate personnel were available, would be the issuance of investigational subpoenas against certain of the leading finance institutions engaged primarily in purchasing home improvement paper, and field investigations against others, to determine the actual involvement of the financing organizations.

The false, fraudulent and deceptive practices described above, continue to increase due to the exorbitant finance charges which makes ample easy credit available and encourages quick entry into this market with minimal assets. Furthermore, these fraudulent practices are carried on with impunity because of the immediate transfer of the negotiable instruments to the finance companies who claim the defense of a bona fide holder in due course, thereby stripping the victim of meritorious defenses. The Commission's staff believes it could be demonstrated that leading companies specializing in home improvement loans are not always innocent holders and should be prohibited from asserting this defense. Fragmentary but persuasive information raises the expectation that in some cases the staff may be able to develop facts which would demonstrate that certain finance companies have actually participated with selected home improvement retailers in obtaining contracts based on fraud and misrepresentations. Should the facts bear out the suppositions of our staff, such companies should not only be prevented from asserting the innocent holder defense, but should also be put under the same prohibitions as the retailer.

Our staff believes that such a program would foreclose substantial consumer credit which is presently being utilized by the home improvement racketeers, who cannot stand alone, to sustain their programs of unethical competitive conduct.

Our staff also advises me that they have reason to believe that many of the producers and fabricators of home improvement products may be placing in the hands of the home improvement swindlers certain sales promotional material which is so employed as to assist them in the consummation of home improvement frauds. There is also strong objective evidence that certain of the producers and fabricators may be operating finance branches in the manner described above. It is the opinion of our staff that in this area they may be able to develop facts which could be the basis for orders against these firms which would do much to eliminate consumer frauds in the home improvement market.

Under an accelerated program the staff would simultaneously attempt to increase the case-by-case approach at the retail level, and would also continue and expand, to whatever limits appeared profitable, our voluntary compliance work, our state cooperation efforts and our consumer education program.

One important factor, constantly in my mind, is that while much of our effort is in the interest of the consumer, the great majority of honest, reliable home contractors in this country are equally deserving of this protection.

It is obvious that the present assignment of two attorneys cannot be expected to keep abreast even of the increasing flow of litigation against individual operators.

Recapitulating:

1. Section 13 of the Federal Trade Commission Act authorizing petition for an injunction to prevent false advertising of foods, drugs, devices and cosmetics should be amended so as to extend to the enjoining of any charge of violating Section 5.

2. Section 14 should be amended so as to provide that any practice in violation of Section 5, if with intent to defraud or mislead, constitutes a misdemeanor.

3. No other legislative authority would be required to enable the Federal Trade Commission to carry out the type of enforcement program outlined above if it were provided with adequate additional funds for necessary personnel and other expenses. It is estimated that 25 attorneys would be required for a period of three years to cope adequately with this nationwide problem of consumer deception.

Sincerely yours,

PAUL RAND DIXON,
Chairman.

The CHAIRMAN. We thank you very much. The next witness is Mrs. Margaret Dana, Consumer Relations Counsel from Doylestown, Pa., but, as many of you know, she has also been the author over the years, of one of the finest series of syndicated articles on consumer problems that I know. I consider her to be an authority on consumer matters from both the lay viewpoint and the news viewpoint.

So we are glad to have you here.

Mrs. DANA. Thank you, Mr. Chairman.

Mr. Chairman, I have a prepared statement which can go into the record, but I thought that perhaps it would simplify it if I talked from notes.

The CHAIRMAN. We will put it in the record in full.

STATEMENT OF MARGARET DANA, CONSUMER RELATIONS COUNSEL, DOYLESTOWN, PA.

Mrs. DANA. There are some letters. I was asked to make a choice of perhaps a few letters that should go into the record. I have these here.

The CHAIRMAN. We will leave the record open, and you pick out the ones you think are pertinent to this matter and would add to the

hearing, and we will leave the record open so that you can put them in in full.

Mrs. DANA. Thank you very much.

(The letters to Mrs. Dana follow:)

MOUNT ORAB, OHIO.

MARGARET DANA,
Cincinnati, Ohio.

(Care of the Cincinnati Post and Times Star.)

DEAR MISS DANA: Regarding your article appearing in the Post and Times Star this evening concerning fraud, in the home repair and improvement racket.

A little more than 3 years ago, 2 men called at the home of my son in law, Herschel Garrison, at 3030 Mesmer Ave., in Dayton, Ohio, and talked to his Grandmother, Mrs. Anna Morrison, who was 79 years old at the time. The house was in her name, this they made certain of, before they talked her into signing papers, to have the basement wall fixed, which was leaking a little bit. They told her if it was not fixed, the whole wall could cave in.

She signed the paper, and they came and messed around a little while, about 5 hours, and sent her a bill for $2800.00.

Mrs. Morrison has since passed away, and Mr. Garrison inherited the house, and is still paying $50.00 a month on this bill.

Richfield Inc. was the name of these frauds.

I certainly hope this sort of thing can be ended, and I wish you good luck in exposing this racket.

MRS. THELMA FOREMAN.

DEAR MARGARET DANA: This happened to me several years ago but I understand the racket is still flourishing.

A young man came to my door asking if my furnace needed cleaning. Not knowwhen the former owners had done this I thought it might be a good idea. The company he represented was The Holland Furnace Company. When I was a child everybody had Holland furnaces so naturally I thought it was a reputable company.

The cost was to be $13 of which I paid $6 down. A couple days later two so-called furnace inspectors came to the house, they looked at the furnace and ripped the outside sheet metal off before my eyes & informed me it was a wonder we weren't all dead from leaking gas.

Immediately began the most concerned effort I have ever seen to get me to sign for furnace repairs amounting to $975 (for repairs yet) when they found out I was a divorcee living with my three children they really put on a campaign.

They laid on the flattery until it was sickening. They saw my classical records & immediately became music lovers (they looked like two bums) etc., etc. Well I immediately became suspicious of all this flattery & scare talk.

I refused to sign any thing but almost had to call the police to get them out of my house.

I called B.B.B. & found out that my suspicions were well grounded. I called the company and canceled the cleaning job which was to be done on Saturday. Since I worked I told my children (teenagers) not to even go to the door if they did come. And come they did. I guess they knocked and banged for a half hour, rattled door knobs knocked on windows etc.

It cost me the six dollars down payment & a small sum to have the sheet metal put back but I was lucky.

My mother & stepfather (in their seventies) were not so lucky. When these two hoodlums came to their house sometime later (posing as inspectors) they scared them so much with the leaking gas story that they were afraid to go to bed and signed a contract for over $900 for an old style coal furnace. Unfortunately they didn't mention this to any of their children and evidently had forgotten my experience. So they were stuck. Later on a representative of the furnace company spent a whole day at their house trying to threaten them into paying up in full instead of installments. This time they didn't fall for it but were very frightened. Again they didn't call any of their children. I wish they had.

This company does this in Toledo all the time & it seems a shame they've been allowed to get away with it all these years.

I certainly hope something can be done about these things since a lot of the victims are old people on pension.

As I said I was lucky. All that flattery was just too, too, much.

Thank you.

Mrs. Robert Segan,
Toledo, Ohio.

P.S.—A customer of mine told me her son works for this company & they were trained in all these dishonest methods. She said she was ashamed that he worked for them.

Winchester, Ohio, *December 28, 1967.*

Margaret Dana: Your article, "Meanest Fraud of All," has been read here with interest. Time something came to light.

Several years ago, while my mother was away from the house, and my stepfather was outside in the yard and garden, two men stopped and wanted to clean the cesspool where the toilet outside was. He understood they would do it for $6.00. He was up in years, both are gone now. But when the men were through they told him it would be $90.00. He told them you said $6.00. They said no, $90.00, and pay or else. He wrote a check, they went right to a man who cashed checks in no time flat. Mother thought she would try and have the check stopped—no chance, they were there and cashed the check and left town. Several people had the same experience. Do hope you receive a large number of letters.

I've had men to stop and say they want to examine your house for termites. One man told me one day my house would fall down and if it was his house he surely would let the exterminators take the contract. I told him I'd take a chance and they left in a *huff*.

Thanks for inviting letter.

Very sincerely,

Mrs. Truman M. Short.

Seattle, Wash.

Margaret Dana.

Dear Madam: Reading your article on Home Improvement Racket? Jan. 21, 1968.

I was a member of the Seattle Bld Dept Staff for over 20 years the last five as coordinator of permits & uses & one of the hardest tasks was to listen to complaints of fraud in pricings & incompetent-work, most of which was just outside of our jurisdiction, however we had considerable success in referring many cases to the State Consumers Protection Division & later when the licensing law was passed it did have a measure of controll.

However I believe if this legislation was made Federal & each contractor was required to be Bonded, the persons that are now victimized may have a chance to recover some of their money instead of losing their Life Savings & in some cases their Homes.

Trusting you will be successfull in curbing this Vicious Racket.

I am sure the Consumers Protection Division can quote many cases taken by them to Court.

J. E. Horspool,
Cordinator of Permits & Uses, Seattle Bld Dept,, Retired.

January 20, 1968.

Dear Miss Dana: A few weeks ago I read your article about the home repair racket. My wife and I seem to be the victims of these unscrupulous people. We signed papers to have our roof re-shingled, that same evening we came to realize that we did not get a copy of all the papers we signed and decided to call the salesman at his home. Needless to say he had an unlisted number therefor I became suspicious. So the next day I went to the bank to find out just what these papers involved. I spoke to a man in their commercial loan department who told me I had signed for a loan and showed me a blank copy of what appeared to be the kind we had signed. He explained that we had made a loan and it would be paid to the contractor upon completion of the work. I told him this was not my agreement with the salesman, that I would pay them in cash 120 days after the job was completed and this was my assurance that the

job was done right. Also that I had no intention of making any loan as I had the money set aside for such an emergency. I explained to him the way the salesman tricked us into signing these papers and how he described them as insurance papers for his company to collect the amount we were to pay in case of death before the 120-day period expired. He then assured me that I was dealing with a reputable company and that I had nothing to worry about. I accepted this as a recommendation and therefor allowed the contractor to proceed with the work.

Two months has passed since the job was completed and the roof is still leaking in the same places as before. I have written letters to the bank and have found out that we are obligated to pay the full amount and it is now apparent my wife and I are the victims of a fraud.

I had to fight with the contractor to get work done that was written in the contract. They did it but only because it was in writing. Now I realize why the salesman told me that some of the work I described to him was not in the contract. They must not have had any intention to do all what I had requested. The salesman's explanation was that this is done in our regular roofing job. Now that I failed to get all the extra work that was to be done in writing I am stuck with a job we could have gotten for half of the $1400 that we are compelled to pay to the Penna Roofing and Siding Company.

I am told that the laws are made to protect the buyer but all I ever hear are how people are swindled when they deal through banks. I therefore can only say take away this advantage of the sellers to make loans for the buyer and you have these crooks beat. The banks are not without sin once they get a signed paper for a loan they will recognize it and pay no heed to how it was obtained. I feel this makes them as guilty as the contractor that preys on unsuspecting customers.

ALBERT DE ROSA,
Morton, Pa.

LITTLE FALLS, N.J., *January 2, 1968.*

DEAR MARGARET DANA: I very seldom write letters. But after reading your column I had to do something that might help eliminate this racket.

I have an old father 83 years old who lives with my sister with limited schooling. One night the doorbell rang and one of these high pressure salesmen showed up. He came into their home uninvited and practically forced them to sign a contract. My father and sister called my home for advice. I was working late that night. By 9 p.m. I returned and had found out that he got my father who owned the house to sign a contract.

It was for some kind of plastic siding. My father and sister wanted to wait till I got home before doing anything, but he must of pressured them to go along with him.

The following day I called him and tried to get him to forget the whole thing. My dad was then 78 years old. This contract called for 3 years of $67.00 payments a month. This was ridiculous at his age. I pleaded with this man over the phone for hours, telling him how he could live with himself. Forcing this old man to make these payments every month for 3 years.

To make the story short, it cost my dad $500.00 in legal fees and a $250.00 payment to him to get out of the contract.

The thing that bothers me most, is, that they come up to your home uninvited and thru pressure get the old to sign a contract which can't be broken.

I've hoped and prayed that someone would lead our government into doing something. I want to thank you for your effort and hope that something comes of this.

Keep up the good work.

Sincerely yours,

TONY ASERO.

CLIFTON, N.J.,
January 3, 1968.

DEAR MRS. DANA: I read in yesterday's "Herald News" your shocking article on the home improvement rackets. I am only a high-school soph and nothing I say is world-shattering news, but reading about the widow who was cheated out of her pension moved me to answer your request for letters.

As our home has a fireplace, we were recently in need of chimney cleaners. My mother called a certain company, who came and did the job. The evening after,

our chimney caught fire because of their negligence (they left some rubbish in the chimney). My mother called the company and they finished the job. Since we had called the fire department that evening, my mother was so angry that she complained to the Fire Prevention Bureau. They asked to speak to her personally about the matter. Next day, their representative came. My mother learned, unfortunately, that nothing could be done about our complaint, because this company had finally finished the job satisfactorily. But the Bureau was interested because they had had several other complaints about the same company. *My mother learned that an elderly woman in our city had called in this company for some work*, and they informed her that somehow gas was leaking through her cellar wall, and that this was a *fire hazard*. To prove this, they put a match near the wall, which "caught fire." They advised her to allow them to treat the wall to fix this danger, for $500. When she said she couldn't afford that, she hired them to paint with a special paint. This cost her $200. For some reason, she later became suspicious and called the Fire Prevention Bureau. They inspected and found no gas leak. Their representative told my mother that the Bureau concluded that the company has sprayed the wall with something flammable to trick the woman, but they had no proof. They are now keeping close watch on the company.

I hope this letter will be helpful. Thank you for taking an interest and doing something about this terrible thing. Nowadays too many people are out picketing and protesting, and too few are doing something about it, as you are.

Very truly yours,

P. M. TENNEY.

BELLE VERNON, PA.,
December 31, 1967.

MARGARET DANA,
Pittsburgh, Pa.

DEAR MADAM DANA: I read with much interest your article "Before You Buy" in the issue of the Pittsburgh Press of this date.

I wonder why no mention is ever made of the financial institutions that buy such contracts, as surely they must know that these people are nothing but crooks, as they have many complaints made to them by the unfortunate victims of these racketeers.

Perhaps the Better Business Bureau should also take issue with these banks as they are as guilty of heartlessness as the original crooks.

Your truly,

WALTER PIEROTTI.

GLENFIELD, PA., *January 2, 1968.*

DEAR MISS DANA: This is only a comment on your column about fraud in the building trades.

About 10 years ago, we were taken on a roof job by the Williamsons. I never forget, and last year the coming generation infested this area again. They came back to our house and I followed them to get license numbers etc. Every where I turned for help to stop them, I ran into a brick wall. No one would do anything about them so they just went on operating their racket as they saw fit. I called police stations in every town, the B.B.B., to no avail. This is why they can come in and know that no one will lift a finger to stop them.

BETTY H. MEURINUN.

IRVING, TEX.,
January 15, 1968.

Re Dallas Morning News, article, Sunday January 14, 1968.
MARGARET DANA,
United Features Syn., Inc.,
Dallas Morning News:

I have factual data, cancelled checks, etc to show where a transient, posing as expert "took" my 82 year old childish aunt for $2,275.00 (check) for trimming trees and shrubs then the very next day came to get a check for $600.00 "Tree Service"—also she was taken for about $1500.00 (I don't have that check as a lawyer friend caught the "Con" man while he was cashing it) for pouring tar on a roof!

I have the evidence that she was "bled" of all her deposits, and we just recently managed to have her declared incompetent and put in a nice nursing home.

This is indeed a miserable racket and something should be done to curb it.

If the name of this con man (who gave a Missouri address) and these cancelled checks would help I would send them to you (photostatic copies) also a young college boy "conned" her into sending him $100.00 a month for months. I have a letter from him to her. She had the illusion she was rich, and by word of mouth it got around and all the con artists made use of it and they cleaned her out.

Yours truly,

Mrs. J. H. Barom.

Manchester, N.H., *January 11, 1968.*

Margaret Dana,
(Care of Manchester (N.H.) Union Leader).

Dear Margaret Dana: Here are two cases of repair fraud or attempts:

In Hancock, N.H. men came along in a truck and convinced my neighbor Luther Smith, 90, that his chimney was unsafe and they would re-cement it. He paid $12 but all they did was to coat it with plaster—of no real value. Another year they came but to my house first. After I said "No" they stopped at Smith's. I went there, too, carrying a large axe and starting to split wood for Smith as I did each day (yes, even women *do* split wood in the country) and advised against any deal. The men said they were not the ones hired before and resented my interference but I and the axe prevailed.

A similar group offered chimney repairs "very necessary" to an old couple for $300 but something prevented.

In Manchester last summer a group came to a house where I was but the woman was wise and said "No," but there were instances of fraud reported.

I hope such groups can be prevented but without bother for genuine contractors. Good luck.

Very truly,

Nancy West,
(*Formerly of Hancock, N.H.*)

Fort Madison, Iowa,
January 24, 1968.

Margaret Dana,
Des Moines, Iowa.

Dear Margaret Dana: I clipped your article "A Warning About a Vicious Racket" and then neglected to write to you. I hope I am not too late to express appreciation, and I will relate our experience.

A couple of years ago, my mother who was 80, a widow, and living alone was called on by three men in a pickup. They called her by name and said they were aware of my father's death and they expressed sympathy and went ahead to say that they had treated the trees for my father and that he had told them that he wanted them to continue treating the trees at regular intervals. My parents' life together was such that he took care of all the business so mother could not recall anything about the trees other than that dad was concerned about them and that he did hire men to trim and treat them at regular intervals. She had confidence in the three men on that particular day and told them that if my father said they should treat them, then it should be done. When they had completed that job, they told her that they had noticed that the foundation of the house as well as the cement of the storm cellar needed repairing and that they could call back the next day and do that work for her. She said that she would not be at home the next day and gave them a check for their tree work. When she returned home the next afternoon, the same three men were there. They had painted the foundation and cave with something which appeared to be a thin coating of cement and had knocked a hole in the north side of the foundation and said they found that the house needed some reinforcements replaced, and that they would do that the next day. She said there had been no agreement about working on the house—really no discussion about it except that the men had mentioned it to her the day before. The spokesman followed her onto her screened-in back porch and said to her that because she was a Christian woman, she surely would pay them for their work that day and would not deprive them of that, and I don't recall what else he said. She stepped into the house, locked the door, and called the police. The men left

before the police arrived and to my knowledge, the identity of the men was never learned.

Again, my sincere thanks.

My mother's address: Mrs. A. A. Stebbins, Box 404, Garber, Oklahoma 73738.

Sincerely,

Mrs. Charles S. Shaffer.

We certainly believe this fraud should be stopped!

January 21, 1968.

Mrs. Margaret Dana,
Consumer's Department:

I read about the fraud in home improvement. I too fell victim to such a racket. Until I read about it in the Times, I didn't know where to turn except a good lawyer and I am not able to engage the services of one. In April 1967, I signed a contract with Pioneer Improvement, Inc., 311 N. E. 71st St. to build a wooden deck with railing. Take out one window and replace with a storm door and prime door. Mr. Will Ritchie said it would cost me total price including sale tax $776.30. Payments $29.50 for 30 months.

Then in May 18th 1967, he came by and said it would cost me $850.00. By that time the work had started. Later on before it was completed he brought another installment contract this time the balance was $1110.96 with 36 monthly payments of $30.86. By that time we were stuck. I am paying them but I don't like it. As of now I have no choice. My husband is past 60 years and works for Civil Service and he can't afford to lose his job now. As in a few years he can retire. I am unable to hold a regular job because of illness. I have called them several times also wrote letters asking them to please come and finish the job. The doors don't fit, it rains in my bedroom if a rain comes up. But they refuse to talk to me or answer my letters.

The awning over the sun deck was put up later. Mr. W. Ritchies promised me a better deal he said if I bought it direct from him. It was to be a 10 ft. awning for $100.00 he said. It would cost me $193.30 and they installed a 9 ft. one while I was downtown. They haven't made any adjustments in the price at all. And won't even fix it. It is too narrow and too short. In the last 3 months they have gone up another $29.00 on the same deal which I don't intend to pay. They advertise their firm guarantees their work and will replace faulty material and workmanship but believe me they don't. Thanks for letting me tell someone of my bad luck.

Sincerely,

Mrs. Frank Badgett.

Seattle, Wash., *January 22, 1968.*

Consumers Question Box,
The Seattle Times,
Seattle, Wash.

Dear Mrs. Dana: In response to your invitation to the public to present factual accounts for the record pertaining to the home-improvement racket, I am submitting the following information.

On October 2, 1965, we signed a contract with Modern Construction Co., of this city, to have a 6 ft. extension added on to an existing room, to finish that room and install flooring and paneling, also to install paneling in two other rooms, and flooring in one other room, plus a few smaller items. For this, they received $1536.95. The sum was paid within 90 days.

Pertaining to the above improvements, we submitted a detailed letter to the Attorney General's Office stating three main complaints. This was done after trying unsuccessfully to have a representative of Modern Construction Co. come to the house and see for themselves that there was valid reasons for complaints; also after having written two letters to the Better Business Bureau, who were unable to help us.

Our three main complaints were as follows: 1. Wood paneling was specifically requested. Imitation paneling was installed. A neighbor helping with the selection heard me specify wood not paper. Samples were given us to choose from. We selected a walnut wood paneling. Later we were informed that they were unable to obtain the exact paneling we had selected but they would install a paneling of more expensive quality, or better quality. Paper paneling

was put up; 2. The flooring in one of the rooms begin separating and pulling up and became badly indented. We requested on several occasions that they come out and inspect this room and honor their guarantee that faulty materials or poor workmanship would be corrected. They completely ignored all requests; 3. The ceiling began to leak and small indentations appeared. The insurance company would not repair these as they said it was a result of "faulty workmanship."

Upon receiving our letter of complaint, the Attorney General's Office wrote to Modern Construction Co. requesting to hear from them in reference to our complaint, including any settlement which they believed appropriate. In the pursuing conversations and correspondence, it became evident that this Company would not honor it's guarantee, regardless. The Attorney General's Office had no success. We were advised to seek the aid of an attorney, which we did. We were informed that the cost of a private legal suit of this nature, would be prohibitive and they advised letting the matter drop.

We made use of all means possible to force this company to back up their guarantee, not to mention the fraud perpetrated in the substitution of inferior paneling, but to no avail. However, had we not paid this firm in accordance with that some contract, the means at their disposal to extract payment, would have been most effective. They would have not been told to forget it as we had, and the law would have backed up their demand.

We appreciate all efforts made on our behalf. It is only too bad that these agencies do not have more authority behind them, other than to issue reprimands and warnings.

To Date, not one representative of that firm has been to our home to inspect their work or to see whether or not we had a valid complaint. Their guarantee which they would not honor, has gone unchallenged. No settlement nor restitution of any kind, has been offered.

In their final letter to us, it was stated by the Attorney General's Office that they believed there had been a violation of the Consumer Protection Act, but they were unable to force a firm to come to a settlement in the first instance of a violation.

In conclusion, I would like to quote for you from the final letter sent to this firm from the Attorney General's Office, a copy of which was also sent to us. I believe it will add even more light to the situation and clarify the position of Modern Construction Co.

"Mrs. Seferos' complaint focused on a guarantee by Modern Construction Company which you admit. She contended that you did not live up to this guarantee since after the job was completed you have never inspected for faulty materials or poor workmanship. Similarly, you admit that you never inspected for faulty materials or poor workmanship although you contend that on two occasions you went to the home and Mrs. Seferos was not there. However, no appointment was made in which both parties could look at the alleged poor workmanship. No firm is required to make a guarantee for its materials or workmanship. However, if such a guarantee is represented the firm has a responsibility to live up to this representation. If the firm does not live up to this representation we would consider such practice as a violation of RCW 19.86.020. Such a violation seems apparent in this case." "From our conversation, it appears your position is that a firm does not have a responsibility when the customer brings a complaint to the Better Business Bureau and our office. We take exception to this contention, believing that the customer always has the right to go to such agencies when she can get no response from the firm after phone calls and promises that the work will be looked at. As indicated in our conversation, we do not act as a private attorney for individual complainants nor can we insist upon informal settlement to indicate their willingness to abide by the law in a case where a complaint is substantiated." Following was a severe reprimand and warning against such practices in the future.

This was our experience in the expensive and painful realm of home-improvements. I still have not given up hope of gaining some measure of satisfaction or retribution. Perhaps through the efforts which you are putting in to this endeavor, a solution will indeed be found to this expensive problem. This would be more than enough satisfaction.

I hope that I have presented this material in a clear manner and that it will prove to be of some use to you. Thank you for the opportunity; thank you for what you are doing.

Sincerely,

Mrs. Marvin D. Seferos.

JANUARY 22, 1968.

MARGARET DANA:

I most heartily agree that steps should be taken to protect citizens from unscrupulous "home improvement" operators.

A few years ago my sister, an elderly widow living in Lewiston, Idaho, was offered a "free furnace inspection". After looking at the furnace they informed her that she was lucky not to have turned the furnace on that morning for she and the house would have been blown "sky high". In a few minutes they persuaded her to sign a contract for $780. When she returned from the beauty parlor a few hours later the work was completed and they collected the full amount.

Having visited her home only a few months previous. I knew that her furnace was in excellent condition and needed no extensive repairs. I asked her to send me the contract and then contacted a number of reputable heating contractors in Seattle. I was told that the furnace would have to be in extremely bad shape to need this amount of work and, at the maximum, this should not have been billed at more than $275.00

This firm (Holland Furnace Company) has had a long history of fraudulent operations such as this over the entire country, however, nothing effective had ever been done against them. Usually they were fined $500—or their license had been cancelled for a short period.

After writing to various state and government agencies and officials, but without receiving any effective help (advice only), I wrote the firm (Spokane) threatening to do everything possible to see that they were put out of business unless her furnace were restored to its original condition and the full $780 refunded to her. (My sister refused to hire an attorney and sue.)

My letters proved to be effective. Although they did not re-install her original oil burner and thermostat, they did put it in operating condition and refunded the $780. When word of this got around Lewiston, my sister received a number of calls from others who had been similarly "taken". One woman had been charged $2100; another $1300 and a third almost $900. All of them wanted me to help them get their money back.

As far as I know, the firm is still operating. Since that time, we have been offered "free inspections" by this firm as have other friends of ours. The penalties imposed against this company are entirely inadequate for a fine of $500 can be made up easily on their next fraudulent job. Incidentally, before doing their selling job, these men inquired if my sister had a husband or relatives in Lewiston.

As to other "home improvements" for our own home, we have saved hundreds of dollars by getting a minimum of three bids on major jobs. In one instance we had bids of $300, $400 and $700 where all were bidding on identical specifications. We chose the $300 bidder and asked him to bill us by the hour giving a guarantee that the bill would not exceed $300 which he agreed to do. We changed the specifications which increased the cost of the materials $35 and we agreed to pay this increase. We also had him do several small jobs not originally included. His final bill was around $270 and he did an excellent job throughout. You can imagine what the bill would have amounted to had we had but one bid—the $700 bid—and awarded him the job.

When we had our house shingled, we had a number of bids of which the highest was $1500 for a composition job installed over the old shingles. We finally awarded the job to a local contractor who removed the old shingles and installed "barn shakes", one of the finest and most lasting surfaces available. He did an excellent job and his bill was $900. Later some friends reported that they had paid $1300 for a composition roof on their house which is less than half the size of our house.

In my opinion, legislation should be passed requiring two signatures to contracts with an *interval of a week between the two signatures* before the contract is binding upon either party. Many elderly people can, as my sister was, be easily frightened into signing by glib and convincing salesmen. An interval of a week would give most of them an opportunity to, at least, discuss the situation with neighbors or to request advice by mail from relatives.

Too, I believe that all of these door-to-door outfits should be required to pay heavy license fees and post bonds guaranteeing satisfactory workmanship and materials. Penalties against these companies should be severe and costly. No firm should be allowed to operate as the Holland Furance Company has for many years with no effective steps taken to put them out of business.

Sincerely,

HOWARD L. SEAVEY.

MAXINE WHITNEY, ATTORNEY AT LAW,
Coeur d'Alene, Idaho, January 1, 1968.

Re "Home Repair" Racket.

MARGARET DANA,
(*Care of Spokane Daily Chronicle*),
Spokane, Wash.

DEAR MARGARET DANA: I am glad somebody is making an effort to assemble data for the record in connection with the woes that have resulted to homeowners for so many years because of the home repair racket that continues unabated.

I have not the time available to search for all the incidents that have come to my office, brought by the unfortunate people who have got themselves into jams because of this racket. But I would like to mention to you some other evils attendant upon the racket which I think should be considered when attacking it.

Most of the people who have been sold on these loans have assured me that they did not sign notes for the payments to be made. In almost every instance, it has turned out that a note *was* signed, but the parties were not made aware of what they were signing. I have seen one such note that was printed at the bottom of the contract, so that the trusting people (careless, I'll admit) had signed it in the belief that it was just another part of the contract. These notes are not held by the contractors who promised to do the job with such superior workmanship. They are, of course, financed, with the tremendous interest rates that accompany financing, so that sometimes it is a couple of years before the amount due on the note has been reduced to the amount that was to be the cost of the job. The banks discount these notes, so that the workmen have their money and have disappeared from the picture. So, while most of these contracts do carry a "guarantee" there is no way of enforcing it without first finding the workmen and initiating a lawsuit. Once the note has passed into other hands, the failure of workmanship or materials cannot be used as a reason for non-payment of the note. The banks are in no sense guarantors.

Furthermore—and this is the matter that concerns me most—some of these notes are sold with FHA backing. When the consumers sign their contracts they are led to believe that the FHA is behind this sort of thing and will lend them the money as part of their Home Owners' Improvement program. I do not know of any other branch of activity where our Government has rendered more disservice to its citizens.

Two glaring instances I will recount. One was a recently widowed woman, ill, unable to work, and with almost no income, who, with her husband before his death had entered into a contract for aluminum siding for their home—one of the selling points being that it would add greatly to the cost of their home. (A realtor will tell you that this seldom adds as much as the cost of the siding contract, if it adds anything.) Although she did not remember signing a note, there was a note—held by a bank, and it was an FHA loan, guaranteed by the U.S. Government in case the amount was not paid. The husband's estate proved to be insolvent, so it was the tax payers' money that paid for part of that siding loan. I feel that the banks and the FHA are not without blame in this situation.

Another widow, whose husband had transacted all the family business during his life, was having a hard time making ends meet on a small pension, a poor-paying job for a couple of hours a day, and payments received on a home they had sold in another community, which were not sufficient to meet the payments on the home they were buying here. Some men came to her home one day and said, authoritatively, that they had come to inspect her furnace. She let them in, and they returned from the furnace with harrowing tales as to what might happen to her house if she continued to heat it with that furnace. She signed a contract for a new one, it was installed, and was unsatisfactory. She was unable to find the workmen who had installed it, and, the last I heard, was still trying to scrape up the payments on it.

There is another unfortunate factor in the situation in this community that has some bearing but is in no way subject to attack. It is difficult to get local workmen to do the jobs on these small or old houses. They are just peanuts to them, as there is considerable large construction work going on around here and everybody wants to be working on it. So the people in the smaller places find it pretty hard to get a plumber, a roofer, a carpenter, or an electrician. (I know this from my own experience, as I live in one of those older homes. It took me two years to find a local man who would re-roof my house, and then I had to settle for an inferior workman. The predatory companies from out of

the State, however, are at my door frequently, trying to sell aluminum siding furnaces, roofing jobs, and the rest—usually merely having to leave their glowing prospecti, since I am seldom at home to receive them.) While our supply companies here resent the intrusion of the out-of-state people, it is easy to understand why folks who do not know what they are getting into and are frustrated at waiting to get things done are a target for outsiders who come around with glib talk, bright promises, and the prospect of immediate performance.

I am glad there is going to be some sort of concerted attack on this sort of thing. And I think you will be a good one to help get it done.

Sincerely yours,

MAXINE WHITNEY.

SEATTLE, WASH., *February 13, 1968.*

MARGARET DANA,
Seattle Times,
Seattle Wash.

DEAR MRS. DANA: In reference to your article in the Seattle Times on Jan. 21, 1968, I offer our unfortunate experience with home repair (fraud?) contractors.

We contracted a well known, well advertised firm (Washington Builders) who in turn sub-contracted our job which is still not completed to our satisfaction since they supposedly completed the job in November 1967.

We asked for help from the attorney general's office and were informed they could not represent an individual. They insinuated we have a legitimate case and to hire an attorney. This we have done and to date it is still in the talking stages, no suit has been filed.

Our contract was to remove the existing siding from our house and to install (3) three aluminum windows, enclose the front porch and re-side with white cedar shakes.

The first contractor had to be fired his work was so bad, and to remove and redo his work was too costly so it was patched. The shakes are a sickly yellow even after an extra $100.00 contract to paint the new shakes.

The shakes came from Olympic Stain and Shake. Their excuse is we have cedar rust, a phenomenon of nature they are not responsible for (customer beware). The painter applied good paint and his work was good including what was sprayed on the windows, aluminum frames, roof and our shrubs. The carpenters are only installers and Washington Builders can't and won't back up another company's product.

So we're out $2873.00 for a job that we're ashamed of.

Our attorney indicates we have a case and there is nothing to worry about. I wonder?

NEIL N. MAURICE.

The CHAIRMAN. I might say we appreciate this information from you—the letters and things you get—because they would represent a sampling of the entire Nation, whereas our attorney general had to zero in on our own State.

I want the record complete because I think we will find that the situation is pretty much the same everywhere.

Mrs. DANA. You are absolutely right, Mr. Chairman.

The CHAIRMAN. It is worse in the States that do not have strong laws, and it is worse in the areas where there are poor people or people who are not, as the term is used, too informed about the matters in the marketplace.

Mrs. DANA. You are absolutely right. I think I should take this opportunity to tell you that hundreds and hundreds of letters have come in asking me to please thank Senator Magnuson and the Commerce Committee for being willing to look into this and do something about it.

I am expressing their appreciation.

The CHAIRMAN. I thank you for that, and surely I want those letters in the record. But your statement is sufficient on that, thank you.

Mrs. DANA. I do think I should give you this background of the validity of the voice of consumers I'm going to give you today. My columns of consumer information do provide a two-way channel of communications. They are in nearly all of our States, and my letters from the consumers of this country for some years have ranged everywhere from 5,000 to 15,000 a month. I think that is a valid cross section of American consumer opinion and attitude.

But it is interesting, too, and I think you will particularly appreciate the fact that the letters come not only from those consumers we can identify as consumers and consumer buyers, they do come also from businessmen, from industry, from Government officials, from attorneys general, welfare workers, all those who are concerned with the thing we are concerned about, which is a decent economic system in this country that is fair, fair to competition and fair in its protection of the consumer.

So, I think I'm presenting to you a fair and impartial viewpoint in discussing these three bills today. I am thinking of them as a package.

The CHAIRMAN. I want the record to show, too, that we have this broad base, because your weekly columns run in more than a hundred newspapers.

Mrs. DANA. About 110.

The CHAIRMAN. They cover the United States pretty well.

Mrs. DANA. It goes from the Seattle Times—you would be interested to know in the last 6 weeks I have had more than 3,000 letters from Seattle alone. You have got a very active group in Washington. They like to write letters.

The CHAIRMAN. I will surely need those other letters.

Mrs. DANA. I want to interject here a short story to tell you why I began to get very intensively interested in this home improvement and repair racket a few years ago. It is kind of a heart breaking story, but it belongs in the record.

A few years ago when I was doing a series of consumer programs on radio over in Princeton, N.J., I got a letter written in broken English, bad spelling, from a woman who said she lived in the countryside there, she had heard on the radio that I was interested in consumer problems, and she said, would you come and see me and let me tell you what the trouble is?

I took the time, it was hard to do for my schedule, but I took the time, I took a day to go and find this woman. She lived in a tiny little house 3 miles from the nearest village. She owned that house. She lived there alone. She was very proud of that house, proud to own it and proud to live there.

But 2 years before, a couple of men had stopped in a truck and told her that they noticed her roof was in very bad shape and that if she didn't get it fixed pretty soon, she would have to give up the house because the whole house would rot away and she would have no home.

The woman was terrified. She told me they talked to her a long time and finally got from her how much money she had every month coming in. She had a tiny pension and social security totaling about $80 a month. They said they would fix the roof for her, and she was so frightened she agreed.

They went up and spent a few hours on the roof. She had no way of knowing what they did, of course. But they came down and presented

her with a contract. She didn't even have a copy of the contract. She could only tell me what they told her it said. She was to pay them $70 a month for Heaven knows how many years. She had been doing it for 2 years.

She said as far as she knew she thought she had to keep on doing it as long as she lived. She was trying to live on the $10 that was left from the $80 that was her total income. She had no friends, she had no relatives, and she didn't know where to turn or what to do.

I started to try to find out, and I met a blank wall everywhere I turned. The address given to which she sent her money order each month proved to be nothing but a mail address, and whoever they were had gone from that State to another State and we never were able to do anything about that poor woman. She was afraid to stop paying.

That began it. That is when I wrote to you, when I realized that the letters were piling up from all over this country, and that the Federal Trade Commission was not in a position to move in and help the local authorities, the states' attorneys general, and that we needed something to cover the whole country.

What I have been doing as I studied this was to divide it up the letters show, into three particular divisions. There is, for instance, the problem of the itinerant home repair racketeer. He moves with the seasons up and down the country, crossing State lines, back and forth, year after year, and he never misses the rural sections or the suburb or the city. He gets them all.

Second, and this is the worst of the problems in a way, is the local dealer who sometimes is a perfectly good, well-known local dealer—sometimes he is not well known—but he manages to stay within the law at the same time he's cheating on the home repair contract.

I ought to emphasize because I have worked very closely with a good many trade associations, and I know they are doing a good job, that they are not catching all of these who in a curiously within-the-law way, can cheat a great number of people.

The third section which is a bothersome thing is when they use the brand name of a well known company to say, oh, boy, here is something we are going to give you special. But a substitute material is actually installed—sometimes that company does know that their name and product is being used that way. On the other hand, I do know that a lot of them don't.

Let me document a little bit of this for you. I suspect by now you must be familiar with some of these stories, because they are repeated over and over again all over the country.

Do you know the story of the terrible Williamsons? The terrible Williamsons are a gang which for 60 years, have moved up and down this country, hundreds of them. They are a clan with, nephews, brothers-in-law and sisters-in-law, and in the last 4 or 5 years they have moved into the home repair racket.

For instance, they go into a country area like in Iowa out in the farm section. They will flimflam the farmer into having his barn painted, and the first time the rains come, the paint washes away. But that farmer may have paid $1,800 to $2,500, maybe more, to have that barn painted.

Now, why—is a question I ask—why does this go on? Why has it gone on all these years without it being stopped? I think the best

answer I have gotten is from Kenneth Wilson, who is president of the National Better Business Bureau, and, as you know, they are desperately concerned with this. Their hands are almost tied; they can inform, but they are not policemen.

The CHAIRMAN. The better business bureaus do a tremendous job, but they will admit they are really limited because the consumer has to come to them. They haven't the facilities to go out and investigate.

Mrs. DANA. And they have no punitive powers, you know.

The CHAIRMAN. And so many of these people are afraid to go anyplace when they get into a mess.

Mrs. DANA. A lot of people don't even know the name "better business bureau." But Kenneth Wilson says that the terrible Williamsons flourish decade after decade largely because when apprehended they usually are held in low bail which they jump or they are just ordered out of town to get rid of them because the local people would rather have them across the State border or somewhere else.

Here is a letter I had from a woman in Pennsylvania just a few weeks ago, and she said she was "taken" on a roof job by the Williamsons 10 years ago and she never forgot about it. The next year the new generation of Williamsons came back again. She said:

> They came to my house and I got their license number, but everywhere I turned for help to stop them I ran into a brick wall. No one would do anything about that, so they just went on operating their racket as they saw fit.

It wasn't because nobody wanted to do anything about it; nobody was empowered to do anything about it nor could they catch up with them. You have heard about the Holland furnace racket. I think one of the meanest rackets in the world is this furnace racket because it rests on frightening to death lonely old people. Their letters to me are just heartbreaking. It would make you sick to see what happens when somebody comes in and says:

> Your furnace is about to blow up. If you don't let me go down there and fix it, you may die tonight in your sleep.

The Pittsburgh Better Business Bureau, for instance, told me they had a case in which a 90-year-old woman had been persuaded to buy over $15,000 in furnaces and repairs in the last 5 years for a house that couldn't have possibly been sold for more than $10,000.

You see, it is the old, the ignorant and the isolated who are targets for a good deal of this. But as Rand Dixon just said, it is not only the poor and the ignorant. Some of my letters are from extremely well-to-do people who said:

> We never realized that this contract was going to get us in for all these things that are involved, and in fact we had lots of oral statements made us that weren't included in the contract but we assumed this man was a perfectly honest man. He said he was going to have our note discounted at our bank. It is a good bank in our community, and we figured that means he was a reliable person.

An Iowa woman wrote me that two men came to the house of a relative, talked to the grandmother there—the house happened to be in her name—and they got her to sign a contract to have the basement wall fixed. There actually was a tiny leak in that basement, that's all. When they had spent 5 hours there, they presented the old lady with a bill for $2,800. She died a year later but her son is still paying off at $50 a month.

I know this will get you as it did me. A Michigan man wrote me last month:

> Just because I live in a remote part of the United States, it doesn't mean I shouldn't have as much protection as those who live in the city. Or does it? The "little people" like me feel like it is worthless to ask for help, but it is people like me who certainly appreciate it.

I think they were talking to you when they said that.

You know the use of these brand names has been brought to my attention recently because while I do feel a great many of the big companies are skimming over their responsibility. There are some who are very much upset and doing their best to stop it.

You know, Du Pont, for instance, has discovered that there are itinerant contractors who are going around telling people they can resurface their sidewalks and their driveways with teflon and charging enormous amounts to put this stuff on that they say is teflon. Teflon has a great prestige in this country, particularly with homemakers, and Du Pont themselves over and over again have repeatedly stated you cannot use it that way, it cannot be applied that way, it has no use that way, and still the racket goes on.

But I do feel that not enough of these companies are doing anything about it, and you may remember that last month a New York Supreme Court Justice in handing down a decision made a rather remarkable statement. He said:

> Any reputable business firm is under an obligation to allow the use of its name only where it takes active steps to prevent the misuse of its name for the purpose of fraud and deceit.

If these companies had gotten into this years ago. They could have stopped an awful lot of this home repair racket in its tracks.

Now we come back to: What are we going to do about it?

This is where the consumers of this country in their thousands of letters to me have asked me to turn to the Federal Trade Commission. But to do the job, the FTC needs help.

So I have turned to you and the Senate Commerce Committee to see if we can't provide a vast answer to this enormous problem.

I know we have got time against us here. I could talk for hours, as you know, because of the vast weight of material that has come in. It has kept me awake at night for months, because these people need help so badly I feel now I can take them a story of help.

Between Rand Dixon and you I think we are going to get somewhere. But, you know, something has got to be done about this bank situation. Too many banks are buying these notes with absolutely no investigation of how they were made, the situation involved or the worth of the property against which the note had been made. I think they should be investigated carefully.

These three bills—until I heard Rand Dixon, I felt the three were essential. I will go along with what Chairman Dixon has said. Perhaps we need to wait on the matter of letting this include "affecting interstate commerce."

It seemed a good idea to me, but perhaps he is right and you are right, maybe that should wait, but we desperately need to have the Federal Trade Commission spearhead this thing.

I was appalled when I first talked to the Commission and urged them to do something about this, to get into action, and found that they had two men only——

The CHAIRMAN. I am glad you mentioned that because I hope there is no implication here that we are going to pass the so-called study bill and then wait until they make a study and come back. I think it is vitally necessary we proceed with S. 3065 and that the study goes on simultaneously with this.

Mrs. DANA. I hope this is what you mean.

The CHAIRMAN. That is what we wanted to do; yes.

Mrs. DANA. That is going to be important. If we are going to just have one more study set up to go on for years——

The CHAIRMAN. We can study this to death.

Mrs. DANA. Yes. We do need to have the Commission get to work fast on this and to know that Congress is with us on this.

The CHAIRMAN. Part of the study will set forth their experience with the operation of the act.

Mrs. DANA. Right.

The CHAIRMAN. And then they can come back and say this didn't work and this did work; we need the change or we don't need the change. They can come back to support S. 3066 later on. They might find out from their experience with S. 3065 that they need S. 3066 as well.

Mrs. DANA. I think you are right on that. I think it is the kind of thing that would make the consumers of this country feel somebody is listening now, somebody is going to be watching, somebody is going to be doing something, not saying just that we ought to do something.

So, I do urge the quick passage of the two bills that would implement this so that it can be quickly attacked and carried through.

I appreciate deeply the opportunity to give the voice of the consumer here.

The CHAIRMAN. I'm sure we all appreciate what you have been doing for so many, many years in this field. I needn't tell you that for a long time you were sort of a voice in the wilderness, but there is some awareness now.

Also this committee has been at this matter for a long time. I introduced the Fur Labeling Act years ago and the original Flammable Fabrics Act, and we have passed other bills, but we didn't find much interest around for these bills even in Congress.

When I finally got them to the floor, they said they guessed they were all right, but there is a great awareness now about the importance of these bills by the attorneys general in the various States, by the Governors in the various States, and by the legislatures. They all feel we should proceed, as you suggest, on the Federal level.

It was amazing to me the opposition we received to those first labeling acts. I remember we found 116 different names for muskrat under the Fur Labeling Act. You know, that is not even fair to the muskrat.

Mrs. DANA. Quite a few years ago, I wrote an article for the Atlantic Monthly, "Fear the Facts and Fool the Women." That is just about what has been going on.

(Mrs. Dana's prepared statement follows:)

Mr. Chairman, my name is (Mrs.) Margaret Dana, and I am a professional consultant on consumer problems, attitudes and education. In addition, in the past five years I have conducted weekly columns of consumer information (BEFORE YOU BUY, Consumer's Question-Box, and The Candid Customer) for more than 100 newspapers, coast to coast. The readers of these columns provide a continuing cross-section response which gives a valid picture of consumer attitudes and problems from day to day and year to year.

Because I consider it an obligation to listen to the voices of these thousands of men and women, and to report their thoughts to those who should hear them, I appreciate the opportunity given me here today to present the urgent call for help that these consumers have asked me to put before you. In addition, many responsible businessmen, local law enforcement officials, welfare workers, and others concerned with maintaining decent and honest competition and consumer good will, have written me to urge me to present their viewpoints too.

As you know, Mr. Chairman, I have been troubled for a long time by the miserable racket involving phony home improvements and repairs. I know from my records that this has been a growing menace for years, and is consistently listed near or at the top of the Better Business Bureau's ten most unwanted frauds. But it continues to grow, people continue to be defrauded and hurt.

In studying this strange phenomenon which no one seems able to stop, I have found that it divides into several distinct sections—all of them related to a basic situation which could be dealt with under the proposals we are discussing at this hearing. First, there is the weird problem of the itinerant or "gypsy" repairman who travels with the seasons up and down the country, from state to state, not missing rural areas, suburban, or city sections. Second, is the local dealer, sometimes well-known, sometimes unknown, who may stay within the law but finds ways to make cheating profitable. Third, is the use by either an itinerant or local dealer of *actual-materials* carrying a famous brand and with an implied "guarantee" because of this famous brand, or the fraudulent claim that such a famous brand material is used, when it is not.

To document each of these areas, I can give some brief details from case histories well known to all local Better Business Bureaus, the National BBB, and many a law enforcement group around the country. Take, for instance, the itinerant gang called the "Terrible Williamsons". Back in 1965 the National Better Business Bureau reported it had followed and reported on this crew for years. Acually they have been skilled con-men for some *sixty* years. There are uncounted members of the clan who travel throughout the country successfully bilking trusting people everywhere. They tour rural areas painting barns at fancy prices, with "paint" which washes off with the first rain. They flim-flam farmers and homeowners with fake lightning rods, home repairs, driveway surfacing, etc.

From time to time one or several members of the gang are arrested, fined and sent on their way. The president of the National Better Business Bureau, Kenneth Willson, says, "The Terrible Williamsons flourish, decade after decade, largely because when apprehended they usually are held in low bail, which they jump, or they are ordered out of town. They easily take such punishment in stride."

And still they go on. Here, for instance, is a brief letter I have recently received from a woman in Pennsylvania. She says: "About ten years ago we were 'taken' on a roof job by the Williamsons. I never forgot, and last year the coming generation of Williamsons infested this area again. They came back to our house and I got their license numbers, etc. Everywhere I turned for help to stop them I ran into a brick wall. No one would do anything about them so they just went on operating their racket as they saw fit. I called police stations in every town, the Better Business Bureau, and to no avail. This is why the Williamsons can come in and know that no one will probably lift a finger to stop them."

The Holland Furnace racket has been a similarly prolonged fraud. This and other furnace "gyps" are a particularly mean racket because it rests on frightening old people—especially women—who are alone and without family or friends to advise them. The Pittsburgh Better Business Bureau reported a case in which a 90-year-old woman had been persuaded to buy over $15,000 worth of furnaces and repairs during the past five years for a house that could not be sold for more than $10,000. This is a lush field for those who prey on the elderly, because, except for a few areas, this home repair business is unregulated by either Federal or local governments.

The old, the ignorant, and the isolated families are also the target of the inexcusable local dealers or companies who manage to use contracts to fool their victims into disastrous financial deals. An Ohio resident wrote me about two men who called at a relative's home and talked the grandmother, in whose name the house was, into signing a contract to have the basement wall fixed, as it was leaking a little. They told her if it wasn't fixed right away, the whole wall might cave in. They came in, stayed about five hours in the basement

and around the house and gave her a bill for $2800. She has since died, but her son is still paying that off at $50 a month—it will take him years to do it. And the original "leak" was a minor matter.

A Michigan man wrote me last month, "Just because I live in a remote part of the U.S., it doesn't mean I shouldn't have as much protection as those who live in cities. Or does it? The little people like me feel like it's worthless to ask for help—but it's people like me who would certainly appreciate it."

The use of famous brand names in bringing pressure to bear on homeowners is a serious problem. From information I have collected over the years, I am forced to recognize that sometimes a big corporation making a material used in home repairs or improvements, sells his products to contractors or subdealers knowing perfectly well that the use made of them will be fraudulent. On the other hand, some manufacturers know their products' names will be misused to sell people a repair job, and try to stop it. DuPont, for instance, has been concerned about this and tried to stop it. Their "Tedlar" surfacing for siding is often sold with irresponsible claims by local dealers. DuPont's "Teflon" also has become the tool of fraudulent or mistaken sidewalk and driveway repairmen, and DuPont has constantly battled to keep the misuse from continuing.

But the fact is that not enough of the big companies do accept any responsibility for the way their products and names are misused to defraud consumers. In this context it is interesting to note that in New York last month a N.Y. Supreme Court Justice held that "Any reputable business firm is under an obligation to allow its name to be used *only* where it takes active steps to prevent the *misuse* of its name for the purposes of fraud and deceit." The manufacturers of products for home repairs and improvements could have done a good deal to prevent the gigantic growth of the current racket, if they had taken positive action when alerted to the problem years ago.

The question consumers are asking me, and I have been asking the Federal Trade Commission, various State Attorneys-general, and others, is simply—What can be done to stop this racket fastest and most efficiently?

Can the states or local police handle it? I see that the Attorney-General of California not long ago stated that the California consumer market is "taken" annually for $7,000,000 worth of fraudulent and illegal aluminum siding sales schemes. If you extrapolate that to a national figure, the problem becomes gigantic. Moreover, no matter how much an Attorney-General's office may want to help the many who have been defrauded in this racket, the inevitable response is that they cannot "represent an individual."

Involved in the problem is the whole matter of how the loans for many of these improvement or repair deals are financed. The record of what banks in this country are doing that actually helps the swindler by financing questionable notes, without investigation or checking, is a serious charge against bank policy. But who can, under present law or ruling, require correction of this situation?

Mr. Chairman, what is needed is enactment of the three bills we are considering. I know the work and the approach of the Federal Trade Commission well, after more than 25 years of cooperation with them. They—and consumers, and decent businessmen—need the FTC power to issue an injunction to halt a deception without waiting until the end of long litigation. They need the ruling that the FTC is to police unfair or deceptive acts "affecting" interstate commerce. And above all, they need the funds to get to work fast and intensively on this problem.

I recognize this will need teamwork on the part of all of us. It will need state and local law enforcement agencies; it will need the voluntary regulation assistance of the Better Business Bureaus; and the broad and hard-hitting educational campaign to give consumers alert awareness of the facts.

But the Federal Trade Commission can spearhead this campaign best, and I urge the quick passage of these laws to give it the tools needed. Thank you for letting consumers speak through my voice.

The CHAIRMAN. We thank you very much. I have to go over to the floor. You pick out the letters that you think would be pertinent to this, and they will be available for us in our consideration of the bill.

Thank you all so much.

(Whereupon, at 12:30 p.m., the committee was adjourned.)

UNFAIR PRACTICES IN THE HOME IMPROVEMENT INDUSTRY AND AMENDMENTS TO THE FTC ACT

THURSDAY, MARCH 28, 1968

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The commiteee met at 10 a.m. in room 5110, New Senate Office Building, the Honorable Vance Hartke presiding.

Present: Senator Vance Hartke.

Senator HARTKE. The hearing will come to order.

We will continue the hearings today on Senate Joint Resolution 130, S. 3065, and S. 3066.

Is Mr. Miskell here?

Francis A. Miskell, Commissioner, Office of Consumer Credit, Austin, Tex.

STATEMENT OF FRANCIS A. MISKELL, COMMISSIONER, OFFICE OF CONSUMER CREDIT, AUSTIN, TEX.

Mr. MISKELL. Gentlemen, my name is Francis A. Miskell. I serve as consumer credit commissioner of the State of Texas. I appear before you today in support of S. 3065, S. 3066, and Senate Joint Resolution 130. These proposals to strengthen the power of the Federal Trade Commission in regard to unfair or deceptive interstate trade practices and to investigate home improvement frauds would effectively complement activities of the State of Texas and many other States in the field of consumer protection.

In Texas, the office of consumer credit commissioner, in cooperation and conjunction of the attorney general, various district and county attorneys, Better Business Bureaus, and programs and projects of the War on Poverty, has been engaged for several months in a comprehensive investigation of home improvement abuses. In the course of this project, which is still in progress, the office of consumer credit commissioner has investigated 168 home improvement companies and financial institutions in Texas and other States. Over 15,000 separate home improvement transactions have been examined in minute detail.

This investigation has uncovered large-scale and clear-cut patterns of fraud, deceit, and deception on the part of a small segment of the home improvement industry in Texas. To date, 58 felony indictments, 12 misdemeanor complaints, 44 cease and desist orders, and 34 injunctions have been filed against home improvement contractors and financial institutions. In addition, civil suits to recover several million dollars in illegal charges have been filed or are in the process of being filed, and the end of such actions is not in sight.

Home improvement frauds constitute the most vicious, most virulent area of consumer abuse today. This stems from the fact that these abuses are found primarily among the poor, the uneducated, the unsophisticated, the elderly—the segments of our society least able to protect themselves and least liable to recover from the substantial financial injury imposed upon them as a result of such transactions. The economic loss from such abuses is estimated at from $20 to $30 million a year in Texas alone. Dollars and cents though is not a meaningful measure of the injury that flows from such abuses. In many, if not most, cases, the home of the victim constitutes the only tangible asset of a lifetime of labor. Yet once trapped, the victim is confronted by the constant specter of foreclosure for failure to meet contractual obligations entered into as a result of fraud, deceit, and deception.

This social and economic impact is amply substantiated by a random sample survey of 400 fraudulent home improvement transactions conducted by the Office of Consumer Credit Commissioner during our home improvement investigation.

The information accumulated during this survey confirmed the fact that unethical home improvement operators prey on older and poorer people in a community. Table I indicates that 59.1 percent of all transactions surveyed involved persons over 45 years of age; 8.2 percent involved persons 65 years of age or older.

Equally important, however, is the size of transactions by each age group. The largest percentage of those persons sampled—23.8 percent—had expended $2,500 or more for home improvements. A further breakdown shows that 15.2 percent of those over 45 years old expended in excess of $2,500 for home improvements, while no one in the 18–24 age group had expended that much.

TABLE I.—HOME IMPROVEMENT EXPENDITURES BY AGE GROUP

Cash loan or home improvement expenditure	Ages 18 to 24	Ages 25 to 34	Ages 35 to 44	Ages 45 to 54	Ages 55 to 64	Ages 65 to 70	Ages 70 to 80	Total
Cash loans, all amounts		2.0	3.7	6.1	2.5	1.2	0.2	15.7
$1 to $199					.2			.2
$200 to $499	.05	.5	1.2	.5	1.0	1.5		5.2
$500 to $999	.2	.7	2.2	2.5	2.7	1.2		9.5
$1,000 to $1,499	.2	1.0	2.5	2.5	2.7	.7		9.6
$1,500 to $2,000	.7	3.7	6.1	4.2	5.1	1.5		21.3
$2,001 to $2,500		2.2	4.9	4.7	2.7	.2		14.7
$2,500 plus over		2.5	6.1	8.6	4.9	1.5	.2	23.8
Total	.16	12.6	26.7	29.1	21.8	7.8	.4	100.0

Source: Survey ,Office of Consumer Credit Commissioner, State of Texas.

Table II reveals that 68 percent of the persons sampled were employed as blue-collar workers—a group that is generally unfamiliar with legal instruments. It is also noteworthy that the sample revealed that one out of every 10 persons is a pensioner or a person with a fixed income, usually widows.

TABLE II

Occupation	*Percentage*
Skilled workers, craftsmen	22.5
Unskilled workers	36.8
Laborers	9.3
Farm (owners, manager)	1.0
Office, clerical	3.0
Sales personnel	2.3
Teachers	2.0
Professional-technical	2.8
Managers officials	2.0
Proprietors; self-employed	5.8
Government	2.4
Policemen	0
Pensioners, independent income	9.1
Service workers, domestic	1.0

Table III shows that one-fifth of the individuals make less than $300 per month, and 40 percent make less than $400. On the other hand, no income group is immune to home improvement abuses, since nearly one out of every 12 persons sampled makes $10,000 or more a year. It is important to note that these figures represent gross income per month, not take-home-pay per month.

TABLE III

Gross monthly income	*Percentage*
$100 to $200	5.8
$201 to $300	15.5
$301 to $400	20.0
$401 to $500	21.2
$501 to $600	14.8
$601 to $700	6.5
$701 to $800	7.0
$801 to $900	2.0
$901 to $1,000	2.5
$1,001 to $1,100	.2
$1,101 to $1,200	1.0
$1,201 to $1,300	.8
$1,301 to $1,400	.2
$1,401 to $1,500	1.2
Not listed	1.3

Table IV shows that one in four homeowners had four or more dependents and over 40 percent had three or more dependents. Hence, by comparing the data in table IV with the income figures in table III, one finds that approximately 40 percent of the group make less than $400 per month and approximately 40 percent have three or more dependents. In view of the size of these groups, it is reasonable to expect the two characteristics (dependents and income) to overlap significantly with the result that many of those with the most dependents will have the least amount of monthly income.

TABLE IV

Number of dependents:	*Percentage*
0	14.0
1	29.0
2	13.8
3	16.8
4	12.0
5	7.2
6	2.2
7	3.0
8	.8
9	.2
10 or more	.2
Not listed	.8

Table V illustrates that three out of 10 homeowners involved in fraudulent home improvement transactions had monthly debts, exclusive of house payments, in excess of $100, and 57.7 percent had debts exceeding $50 per month. The average monthly debt was $77.20. It is significant that 41 percent of those who had home improvement work done received a cash loan which in almost every case was applied to paying off the existing debts. Of those receiving a cash loan, 50 percent received between $101 and $1,000.

TABLE V

Debts, total payments per month	*Percentage*
0	14.0
$1 to $50	24.8
$50 to $100	28.5
$101 to $150	16.5
$151 to $200	8.2
$201 to $250	2.2
$251 to $300	1.0
$301 to $350	1.3
Not listed	3.5

One of seven homeowners in the sampling had lived in the same house for more than 20 years. Almost 30 percent had lived in the same house for more than 15 years, and a majority, 52.8 percent had lived there more than 10 years. Over 75 percent of those surveyed had lived in the same house for more than 5 years. Since homeownership and the length of time a debtor has lived in a house are indexes heavily relied upon by creditors in determining credit risks, the apparent stability of the great majority of homeowners raises serious questions about the justifications for high time-price charges and the requirement of a homestead lien as security for home improvements.

The full impact of home improvement abuses cannot be adduced by statistics alone. A more personal, more meaningful insight into this problem area can possibly be derived from the letters of complaint and statements made by victims of home improvement frauds which have been included in appendix I of this statement. Appendix II contains a series of photographs of workmanship performed under fraudulent home improvement contracts in Texas.

The State of Texas under the leadership of Gov. John Connally is determined to stamp out home improvement abuses and all other consumer abuses. Last year upon the recommendation of Governor Connally, our legislature adopted a comprehensive consumer credit code which went into full effect on January 1 of this year. Under this code all types of consumer credit transactions are subject to regulation and control. Fraudulent and deceptive trade practices are specifically prohibited and provision is made for consumer credit counseling and education.

It is our hope in Texas that, through enactment of our consumer credit code, and vigorous enforcement by State and local officials and agencies, we can demonstrate conclusively that consumer credit abuses will not be tolerated in our State. Yet paradoxically, the more successful we are in our efforts the more problems we create for our sister States.

The so-called home improvement contractors who specialize in fraud and deception are not legitimate businessmen. Many would be hard put to know one end of a nail from the other. Many, in reality, are nothing more than confidence men, swindlers, and criminals. They are transient by nature, constantly moving from community to community and State to State. In recent months there has been an exodus of home improvement salesmen and contractors from Texas to other States and even to Canada.

Much the same can be said of the so-called financial institutions that specialize in handling transactions generated by home improvement contractors who have long histories of fraudulent operations. These institutions take care to locate in cities or States far removed from the scene of operations where fraudulent transactions are taking place. They then use such distance and the skillful invocation of legal theories such as the holder in due course doctrine to provide protection from the claims of abused homeowners and the prying eyes of public officials. Like the three monkeys, they see no evil, hear no evil, and speak no evil. They simply rest content drawing interest rates ranging as high as 25 percent per year on transactions secured by first or second liens on real property.

If we are to effectively stamp out home improvement abuses and other types of consumer abuse too, we need to strengthen the powers of the Federal Trade Commission in order that it can coordinate and assist our States in their efforts to protect the American public.

Thank you, sir.

Senator HARTKE. Thank you for your testimony.

I have looked over some of these exhibits. You state on page 9 that much the same can be said of so-called financial institutions that specialize in handling transactions generated by home improvement contractors who have long histories of fraudulent operations. Just how deeply are the finance companies involved in the home improvement frauds that you have unearthed in Texas?

Mr. MISKELL. I think to some extent they are integral parts of the operations. We know that we have one company operating in the Dallas area that holds itself out to the public as a contractor, that is, a subsidiary of a corporation that has its home office in New York. That operating company supposedly sells all its paper to a finance company located in another State. The finance company in the other State is a wholly owned subsidiary of the company in New York. In other words, these are two tentacles flowing from the same source; yet, time and time again we have spoken to public officials and attorneys, homeowners would have a complaint against the operating company, an attorney would write the finance company, the finance company would simply say we know nothing about it, we bought this paper in good faith, we are a holder in due course, if you have any complaint contact the operating company. Yet, both companies are wholly owned subsidiaries—affiliates—of the parent company in New York.

Senator HARTKE. Has any action been taken against them in Texas?

Mr. MISKELL. Yes; legal action is being prepared against these companies in Texas. But we will have legal problems with the finance company. This is the point I think the Federal Trade Commission can help on. The finance company insofar as we know operates entirely from a home office in Georgia, it has no operating offices in Texas, and we have serious problems, for example, for the attorney general who represents our office to file suit or to bring them within the jurisdiction of our State.

Senator HARTKE. How widespread is this practice among finance companies in your opinion?

Mr. MISKELL. Quite frankly, I would say it predominates in the industry.

This pattern that we have seen, I have tried to emphasize that these people float from State to State. We have picked up people in Texas who have been driven out of California, who have been driven out of Ohio that move into Texas. We pick them up in Texas, and quite frankly we have moved them out to some other State.

I would be less than honest if I told you that we have solved our problem, but we are creating problems for people in other States.

Senator HARTKE. Are there any major and substantial financial institutions that are involved in these practices which you are describing?

Mr. MISKELL. No, not major in any extent. This is sort of a specialized trade. We do have instances where the traditional finance institutions, the banks, the savings and loan associations, the old line general finance institutions occasionally and rarely will acquire some of this paper from fradulent contractors. But ordinarily we find the finance institutions that are involved in this seem to specialize in this type paper.

In Texas, for example, we have run into finance companies that have purchased from contractors who have been on the FHA precautionaly list, that have criminal records, that have complaints, long lists of complaints against them for shody workmanship, fraud and deceit, and they are financing these people.

Then, we get complaints in other areas such as carpentry, sewing machines, transmissions, we find the same finance companies financing the same type operations.

Senator HARTKE. Are you familiar with the various types of gimmickry and some of the pernicious financial arrangements, such as balloon payments and things of that sort, that these financial institutions are using.

Mr. MISKELL. Yes.

Senator HARTKE. Would you describe some of them.

Mr. MISKELL. Well, we have a problem of fraud. Now, balloon payments, we haven't found that to any extent in Texas. We have found a tremendous amount of deception. The district attorney in Dallas did a great deal of work. We have found it is the high pressure home solicitation salesmanship type of approach. In case after case we have found people who have gone in and signed contracts in blank——

Senator HARTKE. Contracts signed in blank, right?

Mr. MISKELL. Yes.

Senator HARTKE. What about false notarization?

Mr. MISKELL. False notarization, the indictments in Dallas, they would take the contracts to the home office, take them back to the office, and employees there would use tracing machines. There wasn't much need to forge signatures on the contracts because many of these people would sign the contracts in blank. They would not necessarily know they were contracts. These people would simply say "I am on a quota basis, I get $10 for each solicitation I make. Would you just sign this to show the company that I have been here," just like punching in a time clock. People would sign that. The figures would be blank. Sometimes the figures would be filled in. It would make no difference, they would change the figures.

Senator HARTKE. What about debt consolidations?

Mr. MISKELL. Yes, they played a large part in the operations in Texas. I think our figures indicate that they are dealing primarily with people down at the lower end of the economic strata, and these people have many other debts.

Now, the debt consolidation serves several purposes. It eased out the payments, it was attractive to people, they would put cash out in the hands of people. In other words, they would come out and offer some people $500. Now, for a person that has a $300 a month take-home-pay, was making $1.50 an hour, $500 is more money than he has probably seen in 10 or 15 years at one time. They just take it and sign anything.

But this consolidation, they were using it to clear all liens, and then they were moving in and trying to get a second or first lien on the property.

Senator HARTKE. To what extent do you consider the problem completely intrastate or how much of it is interstate?

Mr. MISKELL. I think it is probably 50–50. We started our crackdown and it flowed from a court of inquiry in Dallas, but we were chasing people all over the State of Texas.

Again, I stress we are not dealing with legitimate businessmen who have been established in the community, who have an office, membership in civic clubs, bank records, and whatnot. These people are operating out of their pants, so to speak. They load the records in the back end of a Lincoln and they go.

We were chasing one man for 2 weeks in Dallas, and we must have gone to half the hotels and apartment houses in Dallas trying to catch him. We chased another man from Fort Worth to El Paso back to Fort Worth to El Paso. We know, for example, that many of these other people, just as soon as the heat is on it takes them 5 minutes to take a couple of boxes of records and put them in the car and they are off to Oklahoma, Louisiana, and what have you.

Senator HARTKE. Do you believe that criminal penalties are necessary or is it better to proceed by injunctions, or would you recommend a combination of both?

Mr. MISKELL. I think a combination on this. We need to recognize when we say penalties it is really a problem. We have put a lot of effort and a lot of work in the State of Texas. Our agency spent $125,000 in investigation. Some of these people have had criminal records for 20 or 30 years in various type confidence games. If we clear up this area, they are going to be in another area in 6 months or 2 or 3 years.

I think this is the importance of the Federal Trade Commission. We need to identify these people. In other words, we need to say, it is John Jones, he has a record in California, Ohio, and so forth. This is where we need the cooperation and the assistance of the Federal Trade Commission, that they can tell us in Texas, "Watch out, here they come," rather than just have us on the ground and we won't know until 3 months or 6 months, and then we will pick up traces of some racket.

Quite frankly, when we get to it it is too late to help the innocent people.

Senator HARTKE. What types of statutory authority has your office found particularly helpful in cracking down on home improvement frauds in Texas?

Mr. MISKELL. Quite frankly, we have been pushing on the cash loan section. Up until January 1 of this year we had no statutory authority to move in the field of home improvements or in the field of sales or deceptive practices. When we got our consumer credit code, we could move.

We have the legal authority when they gave that man $500 and signed the contract, and they put that all in sales contract, they were violating our regulatory loan act by making a cash loan without a license. Quite frankly, this is something we have to grab and to hold on to. The thrust of our case is that these people are unlicensed loan operators.

Now, the various district attorneys are moving on the felony payments on the basis that they clouded land titles which is a felony in the State of Texas and subject to 5 to 20 years' imprisonment. They are moving on that basis.

Until the first of the year, we didn't have what might be called a full range law to deal with it. We had to go out and find what we could and move in and deal with these people.

I think injunctions will help, but the key here is to look toward the financial institutions. Without these so-called finance companies who

are going to buy this paper, close their eyes, and take anything that comes across the desk, without that source of money, most of these rackets are going to subside, they are going to go down to a low level. There is still going to be an itinerant racketeer running from town to town.

In San Antonio we worked with the district attorney, and they had a case history of some of these fellows that started out before World War II. One of them started out before World War II and he was selling lightning rods in farmhouses. After World War II he was moving up supposedly in the exterminator or termite business. He would get a gallon of creosote and 40 gallons of water and would go under a house and spray it, and it wouldn't do any good. He would take $300 from the homeowner for that supposed exterminating job.

The finance companies came along and said, "Why get $300 for a little scheme when you can get $3,000 on a 5- or 6-year contract? So, go for big money. Why use a sales pitch to get the cash? Why not tie up their property and get them for $3,000 at a time?" This is what they do.

We have looked at the finance records of some of these salesmen, and they make $2,500 to $3,000 a month. You can survey the legitimate home improvement field, I mean the people who are in place, the lumberyards, Sears, Wards, the other contractors, and I doubt if you will find salesmen making $2,500 to $3,000 a month for selling materials or estimating what it takes to make a home improvement job.

Senator HARTKE. Are you familiar with the FHA blacklist of contractors?

Mr. MISKELL. Yes, we are.

Senator HARTKE. Does that help any?

Mr. MISKELL. This is the point I am making about the financial institutions. Practically everybody we have picked up has been on that blacklist, and yet these financial institutions——

Senator HARTKE. It is a precautionary measures list, isn't it?

Mr. MISKELL. Yes.

Senator HARTKE. That is a nice term. In common talk it is a blacklist, isn't it?

Mr. MISKELL. It is for most of the reputable institutions, but yet these finance companies—we have checked the contractors back against the finance companies—and practically every contractor is on the blacklist or should be.

Senator HARTKE. How many of these fraudulent schemes are FHA financed in your opinion?

Mr. MISKELL. None. They wouldn't go near the FHA to save their life. They would not touch them.

Senator HARTKE. Do you find any relationship between the fact that the higher the interest rate goes the less the people tend to use FHA financing and therefore you have an increase in the number of fraudulent activities?

Mr. MISKELL. Yes. We have run some statistics on that, and there has been over the years, I think, a tremendous decline in the number of FHA-insured loans. We have found that responsible financial institutions, savings and loan associations, and banks in our State are not using FHA. What we would say would be legitimate sales finance companies or mortgage companies, they are using it less and

less. There is more flexibility outside, but quite frankly the interest rate, that is, the type interest rate on home improvement contracts——

Senator HARTKE. What would you say the general going rate is? Is there an average among these people or is it just what the market will bear?

Mr. MISKELL. We have found the rates ranging from roughly $8 per hundred add-on as high as $14 per hundred add-on. It seems the rates have very little relationship in this whole contract. You have got to put it out to one side and think of it as a monopoly game for there is fraud from inception to completion. There may be a $3,000 contract, there may be less than $300 in labor, materials, and workmanship invested in that. So the contractor could sell that contract for $2,000 and discount it at the finance company, and he would still make $1,700 on it.

Senator HARTKE. Would you recommend an across-the-board procedure whereby any institution buying from a blacklisted company could not assert a holder in due course defense?

Mr. MISKELL. Yes. I think there is a very real demand to look at the holder in due course. If you review the law, it is needed in terms of commercial transactions. It seems to me there is a real question——

Senator HARTKE. But this presents a problem if you have a non-FHA list. Would you count on the FHA listing, or who would do the so-called precautionary measures listing? Would you just depend on the FHA listing?

Mr. MISKELL. Yes, I think you could.

I might make note that in the various States the States are moving. I think we will raise the question to our legislature about a restriction. We have restricted the holder in due course by requiring 30 days' notification.

For example, in Texas under our consumer credit code when a finance company purchases any installment paper they must give 30 day's notice to the person, the purchaser, that they have purchased the paper and notify him that he has 30 days in which to assert any claims or defenses he has in regard to that contract. Now, this helps somewhat.

Senator HARTKE. Does it help or does it freeze the man in? Does it establish a 30-day statute of limitations in effect?

Mr. MISKELL. This argument has been raised; in other words, this is a problem. We are searching around.

Senator HARTKE. Fraud ordinarily carries 6 years, doesn't it?

Mr. MISKELL. Generally, yes.

Senator HARTKE. What you may be doing here, if you require him to give a 30-day notification of any claims on that paper, is to create a situation where he cannot assert any defense after the period of 30 days. That shortens his fraud statute.

Mr. MISKELL. We have a savings clause in that. We even have that for automobile sales. It is what we call obvious fraud. This is true, an individual—how many times? We have heard it constantly—the first time he knows what has happened to him in so many of these transactions he gets the notice from the finance company that you owe us "x" dollars per month for "y" months, and he says that isn't what they told me.

Senator HARTKE. Don't you find that a lot of people then throw up their hands and quit? In other words, they don't know where to go. They receive a notice from a finance company showing that they owed a lot more than they thought they owed, and they say, "Here I go, I might as well forget about the whole deal and wait until the finance company comes and takes me for everything I have."

Mr. MISKELL. No, sir. I think this is one of the misconceptions. The average consumer pays his debts, if he can.

Senator HARTKE. I am not saying he doesn't pay his debt. What I am saying is that the poor man, when he receives his notice from the finance company and they tell him he owes $2,000 in payments at a certain rate per month, looks at it and says, "Well, the finance company says so, I didn't think it was that way," and he gets mad——

Mr. MISKELL. He gets mad and he goes ahead and makes the payments and says I am not going back there again.

Senator HARTKE. I know that, but that is pretty late.

Mr. MISKELL. It is really late.

From the complaints we receive in our agency, the complaints you receive up here, it is just like the iceberg, what you see is a small part that is above the surface. Most people just have the feeling I have been taken on this and I am not going to go there again. They are ashamed of it.

Senator HARTKE. They are ashamed of the fact that they were the victims of a fast buck artist.

Mr. MISKELL. There is sort of a feeling of guilt. "I was so stupid, I never should have done it and I am going to pay it." It is sort of psychological payment "I ought to pay it for being such a fool." But they will pay it.

Senator HARTKE. Thank you, sir. I want to thank you for your testimony. I hope you will continue your diligence down there in Texas, and maybe we can come up with something here.

(Attachments to Mr. Miskell's statement follow:)

APPENDIX I

LETTERS OF COMPLAINT AND STATEMENTS TO OFFICE OF CONSUMER CREDIT COMMISSIONER, STATE OF TEXAS REGARDING HOME IMPROVEMENT ABUSES

HOUSTON, TEX., *November 29, 1967.*

Mr. FRANCIS A. MISKELL,
Austin, Tex.

MY DEAR MR. MISKELL: On November 15th I sent a copy of the enclosed material describing my experience to the Better Business Bureau, following a previous telephone conversation with her, and before I had noted the articles in the Houston Post concerning your work as consumer credit commissioner.

This information is given to you with the hope that it may be of some remote help, or that it may help eventually those even less fortunate than I.

My preference at this time is to remain unidentified.

Sincerely yours,

———— ————.

On May 23rd, 1967 my husband and I were requested by telephone to see Mr. ———— who wanted to tell us about the tremendous advantages of his product, aluminum siding. A big limousine, complete with telephone, and driven by a liveried chauffeur brought him to our door. A dapper man in his middle fifties entered our home leaning on a cane. Introducing himself, this courteous, utterly charming man, made overtures of friendship and told us something about himself. He explained that he had suffered a very serious accident years before, from which he had not fully recovered.

Upon his arrival in Houston, over a year ago, he had made his home at ——— an elegant apartment address. He and his young and beautiful bride now resided in style in a mansion in the plush Memorial area. He gave her credit for investigating an advertisement describing the place complete with furnishings offered in distress sale for a sacrifice price.

Late that night he used our telephone to inform his wife that the chauffeur would pick her up. We asked her to come in.

Mr. ——— told us of his wonderful relationship with his wife, and about her daily thirty minutes $10,000 vocal lesson from Mr. ——— a Houston musician.

He mentioned as his close associate the names of the ——— and ——— prominent influential, highly respected Houstonians of long years standing in our community.

He insisted we address each other by our given names, declaring that it was evident that I was a fine cook and home-maker. He wanted to return to partake of a home-cooked meal. I have never been able to contact him subsequently.

A photograph of our home was shown to us. This house had been selected as a perfect style and structure to display his superior product. The exterior and foundation had been examined (without our knowledge or permission) and found to be in good condition.

He produced an advertisement of aluminum siding published in the Houston Post Sunday magazine of some date in 1966, showing cost of $5,450.00 for covering an average house.

The product was to be used for the first time in this "area". This sub-division of Houston was selected for promotion of the product because some of the homes were beginning to show need of repair.

We would pay only $2,350.00, less than advertised cost, and be under no obligation to show the exterior to prospective customers.

The house would appreciate by $3,450.00. The improved appearance would be so outstanding that neighbors and passers-by would be eager to derive the same benefits by application of aluminum siding to their homes.

In addition there was an unconditional lifetime guarantee. There would be no further upkeep for life of the home. The guarantee, received later, is a study in percentages.

Further Mr. ——— offered us home improvements of any kind from ——— at cost for a period of five years. I tried to no avail to obtain bids from them on repairing a broken sink and a broken driveway.

Since the aluminum siding reflects heat, our electric bills for air conditioning would be reduced by a third and our heating costs would be lowered. This has not been borne out, in fact as far as cost of electricity is concerned. Cost of heating is just starting for the season.

The reflecting ability of his product was demonstrated by holding a burning cigarette against a handkerchief laid over the piece of the aluminum. The handkerchief was not burned or discolored. We were impressed by this seeming magic.

We would receive a photograph of the improved house along with the original photograph—a sort of before and after appraisal. These have not been forthcoming.

We told him of the settling that had occurred and our fears for the condition of the foundation. He reassured us that our fears were groundless. The condition of the slab foundation was excellent, showing no evidence of a break. Also aluminum siding would keep the walls rigid! We were greatly relieved and extremely grateful to him for his interest in our welfare.

Lulling of fears of existing serious structural defects could be of malignant mischief, encouraging expenditure on non-essential items rather then remedying essential ones.

I do not wish to imply that his statements about the foundation were deliberate untruths. I think they were part of the salesmanship campaign.

I do not know to date if the foundation is sound. However this summer there has been additional settling, cracking of inside walls and cracking of tiles around the edge of our bathroom floors. The garage floor slanted. The garage doors sagged and would not close. My husband had to trim them.

We demurred and finally he offerred the proposition to us for $500.00 less—$1,850.00, about "half-price", and more than a $500.00 loss to his Company. This loss, he said, could be deducted from the company's income tax as advertising cost, therefore he could make the offer. It eventually would increase his sales by displaying the product.

We were assured that we would not have to pay if we found any statements untrue. We had 60 to 90 days before payments began on an FHA loan for home improvement.

He said, "——— go ahead and sign. You'll thank me later. There are two families begging to be allowed the same privilege, but your house will show the greatest improvement in appearance, and display the siding to better advantage. I want you to have the opportunity to benefit."

He had to have the signatures on the contract before midnight, because a long distance call had to be placed from his car by that time confirming the completion of the transaction.

We woke our son, who sleepily agreed that aluminum siding was a fine product if it would produce the benefits and advantages claimed by Mr. ———. However he suggested that we consult my husband's brother, owner of a food market. This we did not do at that late hour of night.

Inquiring how long the job would take we were told about ten days or more. It actually took no more than three days in all.

It is remarkable and lucky that during my forty-eight years in this city I have never encountered a situation of this kind, or a display of such super-salesmanship and persuasive ability projected with so much personal charm by an individual. It is almost unbelievable that my husband and I had the same reaction simultaneously.

Suffice it to say that close to midnight both signatures were on the ——— Builders contract. We had been enchanted by the clever build-up, entranced, hypnotized (not to say seduced) into signing.

Eight hours later ——— workmen were here ripping the cedar shakes off the house. Awaking to a feeling of alarm I called my bank to receive information which increased by anxiety. The bank clerk intimated that I might have been "taken," although Mr. ———'s credit rating was fine and no law suits were pending against him at that time.

The Better Business Bureau offered information on this type of operation, giving me a Fact Line phone number to call which cautioned against purchase of such contracts without investigation.

Three or four days later in a telephone conversation with Mr. ———'s attorney, ———, a long time acquaintance from my childhood days, I was informed that cash was payable immediately. My husband and I decided to save interest charges, and withdrew $1,850.00 from our account to purchase a cashier's check, which we delivered to Mr. ———, employee or associate of ——— Builders. At that time Mr. ——— indicated that subconsciously we must have wanted aluminum siding. He suggested that we sell the proposition to our neigbors for commission. This can be interpreted as casting doubts on our integrity and motives or adding insult to injury, since we are now less than enthusiastic about the results.

I have been unable to reach Mr. ——— to discuss the matter since he has no listed phone number. Mr. ——— of ——— Builders informed me that he was no longer in our city, having gone to the West Coast. A letter to him, enclosed herewith, sent care of ——— Builders has not been acknowledged. In addition I have received no reply to my letter to ——— Aluminum Corp., enclosed herewith, describing the situation, and enclosing a copy of the previous letter to Mr. ———.

Mr. ——— has been civil but not cordial. He stated that I got what I wanted and should not complain. I get the impression that he is humoring me as you would a crank, and that he intends to do nothing about the broken driveway and sink, for which I requested repair bids.

Very few calls have been made to the office of ——— Builders. Further calls would be a waste of time and energy, and would be emotionally frustrating to say the least.

My complaint is not the cost of applying aluminum siding, but that I was induced to replace the cedar shakes at great cost and no especial advantage over the original product in usefulness, benefit or appearance.

All additional promises of benefits to induce purchase of the contract have not materialized.

Looking back, it is difficult to understand my lack of intelligence in this situation. Natural defenses or sales resistance failed to come to my rescue. Usually I depend on my husband to exercise caution in undertaking new venture. We were both misled. Most people probably would not be duped in the same way. At fifty-five years of age I admit my naivete. May I be trite enough to say I

never thought it could happen, being clever enough to see through schemes of this sort. This was a wrong assumption.

There was a rough period of self-recrimination during which there was doubt of my own convictions and ability to make a judgment, but that has ended thankfully.

I always have been able to understand and respond to the reasoning and feelings of others. This characteristic has been a help in my vocation and avocation of piano instruction to children and young adults.

Having accepted my temporary lack of judgment and feeling a bit more sophisticated I certainly intend to investigate carefully before further purchase of any product or service.

An element of shame enters the picture, which prevents or delays discovery of this special kind of operation, publicity of information and warning to the public. This obviously is known only too well to the operators and is of great use and comfort to them. After a transaction of this kind the victims would rather not be identified. They do not want their freinds and relatives to know they were stupid enough to fall for such a scheme. Both my husband and I experienced this emotion to a great degree. And so silence usually ends the matter and the promoter wends his merry way across the country peddling his wares for his sole enrichment.

Perhaps at some time others like us might not be alert to a situation of this kind. For whatever reason or condition, they might be vulnerable just as we were on May 23rd.

Just take care! It is important to emphasize the necessity for constant alertness to such operations—in order to safeguard our own interest and that of others. Under no conditions sign a contract without investigation. Be sure such contract contains a list of every service expected.

With individual vigilance, properly effective laws, dedicated public administrators and quick exposure of operations that periodically crop up in our midst, reliable merchants and legitimate businesses will be able to operate successfully for their own welfare and the welfare of the public.

SEPTEMBER 29, 1967.

Re Loan No. 773890.

Mr. FRANCIS A. MISKELL,
Commissioner, Texas Consumer Credit Code,
Austin, Tex.

DEAR SIR: In reference to a loan from ——— Corporation, now under investigation, I would like to give you information about our part of the loan. I called the Better Business Bureau and they gave us information to write and give you the facts and all the details.

Recently my husband changed jobs taking a cut in salary in order for better advancement in the future, therefore we felt we must consolidate our bills. We checked several loan companies, but for the length of time they allowed, the payments were too high to help us. We had seen advertisements on television about Bond Investment Co. making loans to home owners. We called and they asked for credit information. Then a Mr. ——— came to our home and asked what bills we planned to consolidate. We gave him the required information and he informed us that they could make a $1200 loan and the payments would be $39.34 a month for 60 installments. He told us actually the loan would have to be more to cover insurance and something about title changes which we did not understand but assumed it was legal. Therefore we agreed to make the loan as a second lien on our home at ———, Arlington, Texas.

Mr. ——— asked us to come into the office and go to the title company to sign necessary papers together. We did not remember the name of the title company but it was just across the expressway from ——— Co. in Dallas. Mr. ——— told us that he would have to have $350.00 over the $1200 loan for his part or the company, we did not understand completely this information. He then told us before we got to the title company not to exchange the check for the money until we had signed the papers and outside the building again, and that we would receive all necessary papers in the mail from ——— Co. as they were handling our loan. The date of this transaction was April 21, 1967.

A few days later we received a short letter from ——— Co. giving information as follows:

"Today we purchased your home modernization promissory note from ———. The terms of this note are 60 installments of $39.34 each, with the first payment due on June 20, 1967.

"We will mail you, within the next few days, a supply of identification cards bearing your name, loan number, and due date to be mailed with your payment each month. We shall also include an ample supply of self-addressed envelopes for your convenience in mailing."

Also we received an insurance paper. This was from ——— Life Insurance Co., Group Policy ———. A covering debtor ———, giving age 46 years, premium $77.50, initial amount $2359.88, effective date April 24, 1967, Expiration Date 60 months from date.

Then we also received payment cards and envelopes in the mail.

We have notified the District Attorney's Office in Ft. Worth and given him all of this information.

We do not know if we have been over-charged but will appreciate your interest in this matter.

Thank you for your co-operation.

Sincerely,

Mr. ———
Mrs. ———.

LA GRANGE, TEX., *October 30, 1967.*

Mr. FRANCIS A. MISKELL,
Commissioner, Consumer Credit Department,
Texas State Department, Austin, Tex.

DEAR MR. MISKELL: Since reading of the accounts of the "Builder Loan Firms" in the Newspapers, I am writing this message to explain to you, what happened to me two years ago and continued through the present year, 1967.

During the Summer season of the year 1965, a Representative of the ——— Construction Company of; ———; Austin, Texas,was in La Grange doing repair work on homes of other people. This man contacted me in person and said he or his Company would repair my home. We agreed on the matter, then he "sketched" on a piece of paper, listing the work that should be done and that they would do it. Then, he had me to sign a Blank Contract and said he would send me a copy when he arrived back in Austin, Texas. He did not send me a copy of said "Blank Contract".

Within a few days, a Carpenter and a teenage boy arrived and began the repair work. This man and boy worked part-time, for a few weeks, and then left as though they had done all of the work previously described by the first man. In the meantime, I had no copy of the Contract to judge their work by. Then, I asked The ——— Construction Company to send me a copy. They flatly refused to send it.

In a matter of a week or so, I received a Statement from ——— Finance Company, Inc; ——— stating that I owed them Six Thousand Dollars ($6,000.00) to be paid in monthly payments over a period of Ten Years. I became alarmed over such a large debt. Therefore, I wrote to the Finance Company for an explanation and finally obtained a copy of my Contract from them. Then, I learned of how far short the ——— Construction Company fell in fulfilling its Contract. They listed major jobs in the Contract, which they definitely did not do, and they charged me Three Thousand Dollars ($3,000.00) for three or four-hundred dollars worth of "Patch up" work they did. They did not list a "Nine-Hundred Dollar" cash, hand-to-hand Loan which they made in the "Bait Deal". After receiving the copy of the Contract, I immediately wrote to ——— Finance Company, Inc. in ——— and told them everything concerning my home from the beginning and how The ——— Construction Company had given me a very "Crooked Deal". Then, the Finance Company had their Branch Office, ———; Houston, Texas, to contact me. However, the said Corporation made absolutely no effort to make the ——— Construction Company live up to its Contract.

I made four payments on the total debt of $6,000.00. Then, upon the advice of a local Attorney, I quit making the payments. Since that time and through part of this year, I have received letters threatening to foreclose on my home. Finally, I received a Citation delivered to me by a local Deputy of the Sheriff's

Office. Later, I met with the Finance Company's Attorney and compromised on a Two Thousand and eight hundred dollar "deal" plus One Hundred Dollars for which they would not give an explanation. I am now making Fifty-Dollar monthly payments on the $2,800.00 plus $100.00 deal and all that I got was this:

1. Three Hundred Dollars worth of "Patch-up" work on my house and this work came apart within six months.

2. My previous Lien Note of $436.00 (with another Company) was purchased and included in this "Crooked Deal".

3. A Nine Hundred Dollar "Cash Hand-to-Hand Loan" which was never mentioned nor written into the "Repair Contract". The recent "Compromise Papers" do not list the "Cash Loan" nor do they state the principal or what the repair debt amounted to. The Lien Papers only state that I am to make monthly payments of $50.00 for the first eleven months and $40.00 thereafter until the total $2,900.00 is paid in full.

I sincerely hope that you and your Department can help me. I am a World War I Veteran's widow, receiving a low income.

My neighbors, Mr. & Mrs. ——— have a similar Case with a different Contactor, but with the same Finance Company "set-up". They are also writing to you.

Very truly yours,

(Mrs.) ———.

HOUSTON, TEX., *April 6, 1967.*

Hon. FRANCIS A. MISKELL,
Regulatory Loan Commissioner,
Austin, Tex.

DEAR HONORABLE MISKELL: I am appealing to you for help if possible. The ——— Loan Company and ———Management Company are taking my property due to the fact that I am three months past due on my payments to them.

The reason I am past due is the fact that I was given a bad check for $250.00 from the contractor who did work on my home and sold the contract to ——— Loan Co. ——— paid the contractor off when they bought my contract and he gave me a check for $250.00 which was no good.

I can't prove that ——— knew about this but I believe they did. I am a poor Negro and want to do what is right. I am enclosing a letter I sent to them about this and one they sent back to me.

I hope you can help me.

Yours truly,

——— ———.

BAYTOWN, TEX., *October 26, 1967.*

TEXAS CONSUMER CREDIT COMMISSION,
Austin, Tex.

DEAR SIR: On November 30, 1966, Mr. ——— from ——— Builders, a house improvment contractor, came to my house and told me he would like to put some steel siding on my house to show other people.

He told me he was putting steel siding on various houses for Steel and that he would pay me one hundred and fifty dollars ($150.00) for each showing. He gave me a thousand dollars ($1,000.00) in advance for the showings to pay off a previous improvement loan of five hundred dollars ($500.00) and a few other bills. He also painted the front three rooms, installed aluminum screens around the house and two screen doors, One three lite front door, and killed kitchen window when they put up the siding.

They did all this *free* so I would let them put on the siding to show other prospective buyers. All they were going to charge me was $3,400.00, including insurance.

They sold the note to ———, ———, Houston, Texas ———, and it cost me $5,179.00, which I think is rather high, but I had already signed the contract, and the work was finished, when I found out the total price I had to pay back.

I believe they did and are cheating me like them and other companys have cheated other customers. I would like to know what to do, so I won't lose my house and belongings if I should miss a payment.

Mr. ——— and ——— are two of the men I talked to about the siding.

Thank you.

Mr. ——— ———.

STATE OF TEXAS
County of Wichita, ss:

I state that my name is ———, and I reside at ——— Wichita Falls, Texas. I further state that I have been placed under oath, and do hereby make the following statement:

On March 1968, I entered into a home improvement contract on a residence at ———, in Wichita Falls, Texas.

I entered the agreement by way of answering an offer in my local newspaper which offer was by ———. An agent of ———, ———, came to see me. He and I discussed the 1000 sq. ft. for $299 offer. We signed the contract for the cheap siding. At that time he went to his car and brought back a sample of both the cheap siding and the better siding. He tore our signatures off the contract, but said that he had to keep the contract because it was a contract with a number registered by the state. It was a bait and switch practice because we had signed a contract for the cheap siding, and then he began to downgrade the cheap product. For example, he told us that the siding would have to be calked 3 or 4 times a year at the seams and the hail would dent it. Also, he said the paint wouldn't stay on the cheap siding, but it would stay on the better siding. The nails which held the cheaper siding on would be exposed; and, thus, would allow leakage. In contrast he showed us by bending the siding that the paint would not come off the better siding, that the nails would not be exposed, that the better siding had locked in corners which would eliminate caulking. He kept saying that there was a lifetime guarantee on the better siding and they would come out and replace dented better siding, regardless of the cause of the dent.

He said the insurance provided in the contract would pay our payment for the month if we were off from work for sickness even one day in the month. That is the reason he wrote his telephone number on the back of the contract.

When he talked about the better siding, he said you may not be able to afford it. We asked how much it was. He said it will cost about $3000. Can you afford that? We said we didn't know. He said if we would allow it to be shown to six people, we will take $1,100 off the price. This would leave about $1,900.

I asked him about the patio cover. He said I will just throw that in for you and take $100 more off of this. That's how we got $1855 on the contract. Then he said we could just pay him for the patio cover.

This statement, made under oath, has been read by me, and I fully understand its contents, and it is true, accurate, and complete to the best of my knowledge and belief. I made this statement freely and voluntarily without any threats, rewards, or promises of reward having been made to me in return for it. This affidavit may be used or introduced in any action or proceeding deemed proper by the Consumer Credit Commissioner of the State of Texas.

In witness whereof, I have hereunto signed my name on this, the *11th* day of *March, 1968.*

NOVEMBER 2, 1967.

MR. CRAWFORD MARTIN,
Attorney General, State of Texas,
Austin, Tex.

(Attention of office of consumer, credit commissioner).

DEAR MR. MARTIN: On January 29, 1963, my wife and I signed a contract with ——— Building Service, ———, Houston, Texas, for improvements to my home located at Humble, Texas. The contract was for improvements to my home in the amount of $2,350.00 payable in monthly payments of $56.28. Actually, besides the improvements to my home the contractor also paid off the balance owed on a deep freeze and TV set in the amount of $396.03.

On the same day, January 29, 1963, we signed a mechanics and materialmans lien contract with the same company whereby we promised to pay $3759.60 payable in 60 payments of $62.66 each. This contract is recorded in Vol ———, of the Contract Records of Harris County, Texas.

On February 27, 1963, ——— Building Service assigned this lien to ——— Trust Co., ———, Dallas, Texas.

On April 15, 1965, we were advised that our loan had been purchased by ———., Houston, Texas, 77005.

In May of 1964, while the loan was still owned by ——— Co., the loan was refinanced at a cost of $530.45.

At this time we have paid about $2451.88 on this note and still owe $1945.03, payable over 31 months at $62.66 per month. Therefore, when we have completely paid the note we will have paid $4,396.91 in order to borrow $2,350.00 for five years.

I am employed as a laborer making $1.50 per hour. Most of that period my salary has been much less than this amount. My reason for writing this letter is to ask whether this is an illegal loan because of a violation of the usury laws. I have read about many such suits for home improvement loans concerning Houston contractors and wonder if this law would not apply to my case.

Your attention to this matter would be greatly appreciated.

Yours very truly,

_____, _____.

APPENDIX II

Examples of Workmanship, Home Improvement Transactions, State of Texas

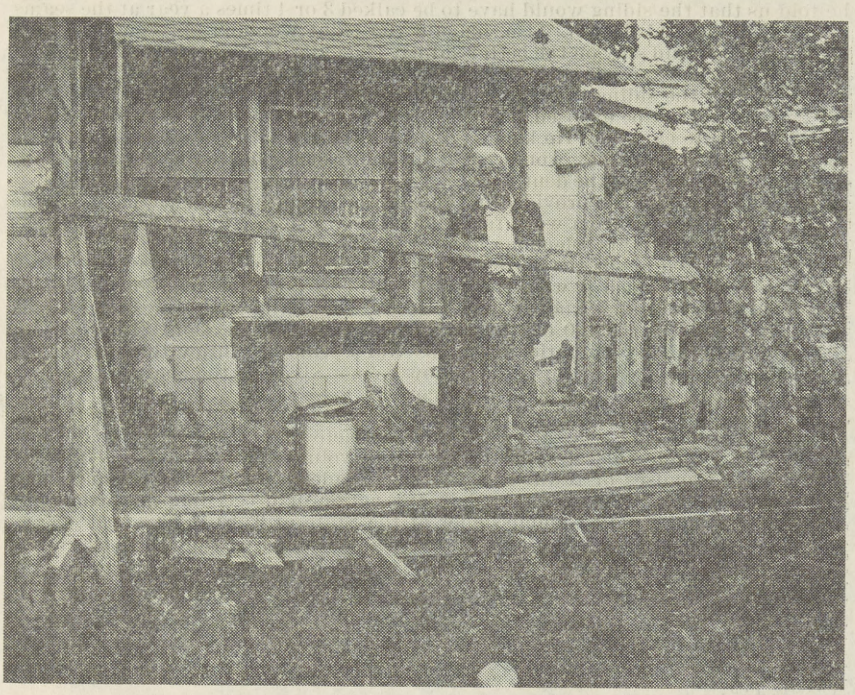


Exhibit 1

This 80-year-old Austin man who is standing on the front porch of his home lives on old-age assistance payments. He signed a promissory note and lien for $3,280.40, and the contractor agreed to install new wiring, install new fixtures in the bathroom, and level and reblock the house. The only work actually performed on the house was the installation of electrical wiring.



EXHIBIT 2

A contractor who represented himself to be a city inspector threatened to condemn this house unless improvements were made immediately. The owner obligated himself to pay $1,872 for certain home improvement work, but the actual value of the work was worth approximately $170

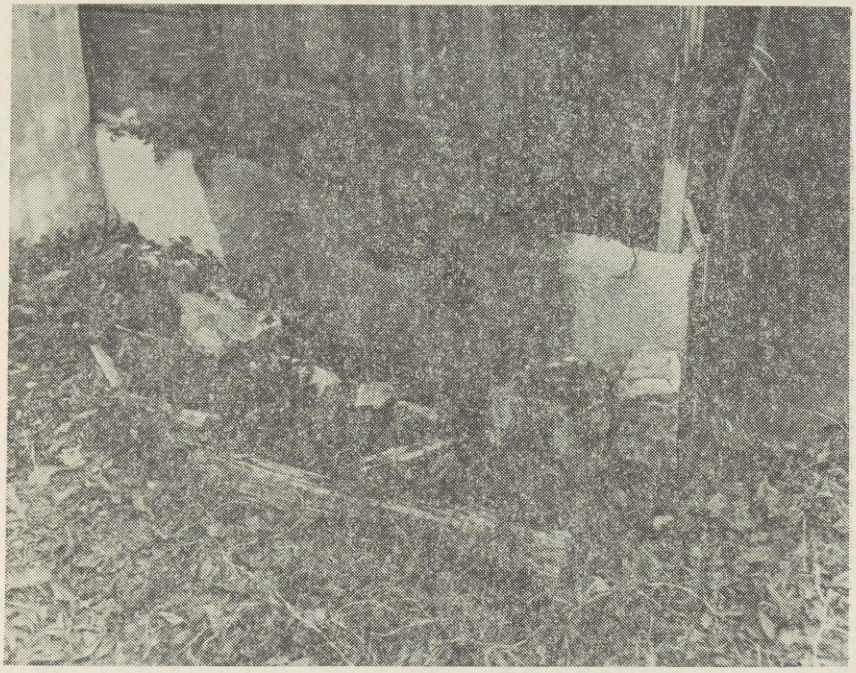


EXHIBIT 3

While the contractor agreed to level the foundation and repaint the house, no real effort was made to comply with the conditions of the contract. The whitewash shown in this picture was painted in patches and added no value to the house

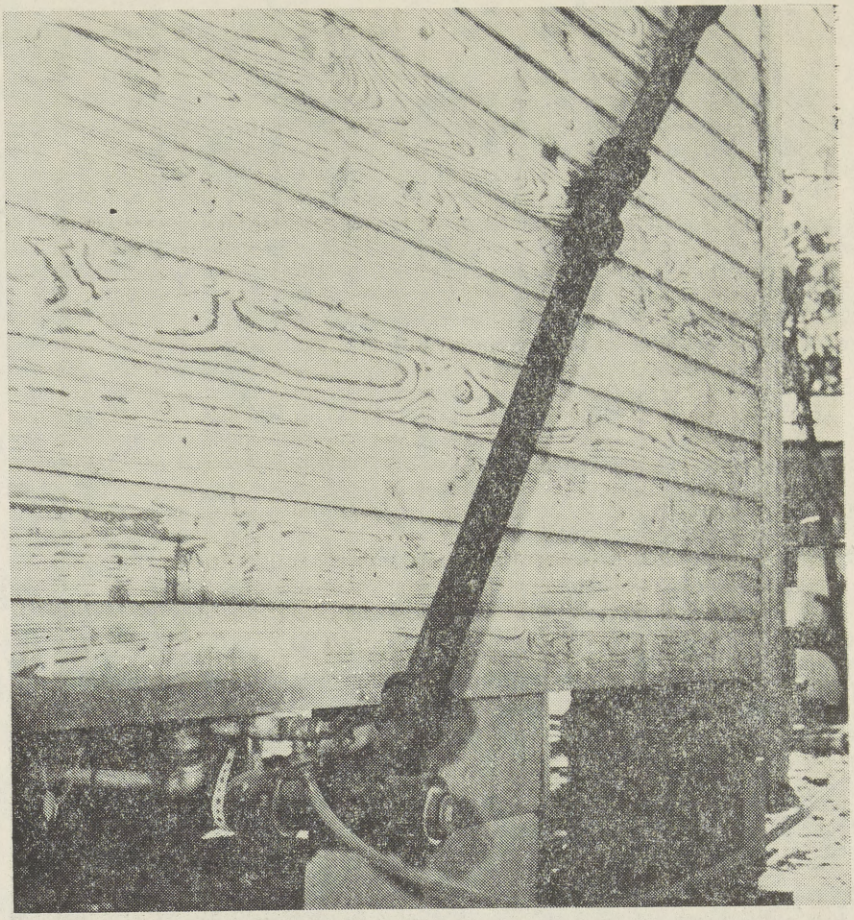


EXHIBIT 4

The homeowner, who is in his early seventies, paid $1,041.81 to a door-to-door home improvement salesman for the installation of bathroom facilities in his house. The contractor paid the elderly gentleman $15 to allow the workmen to place the vent pipe at an angle rather than vertically. This vent, however, must be placed in a vertical position if it is to function properly

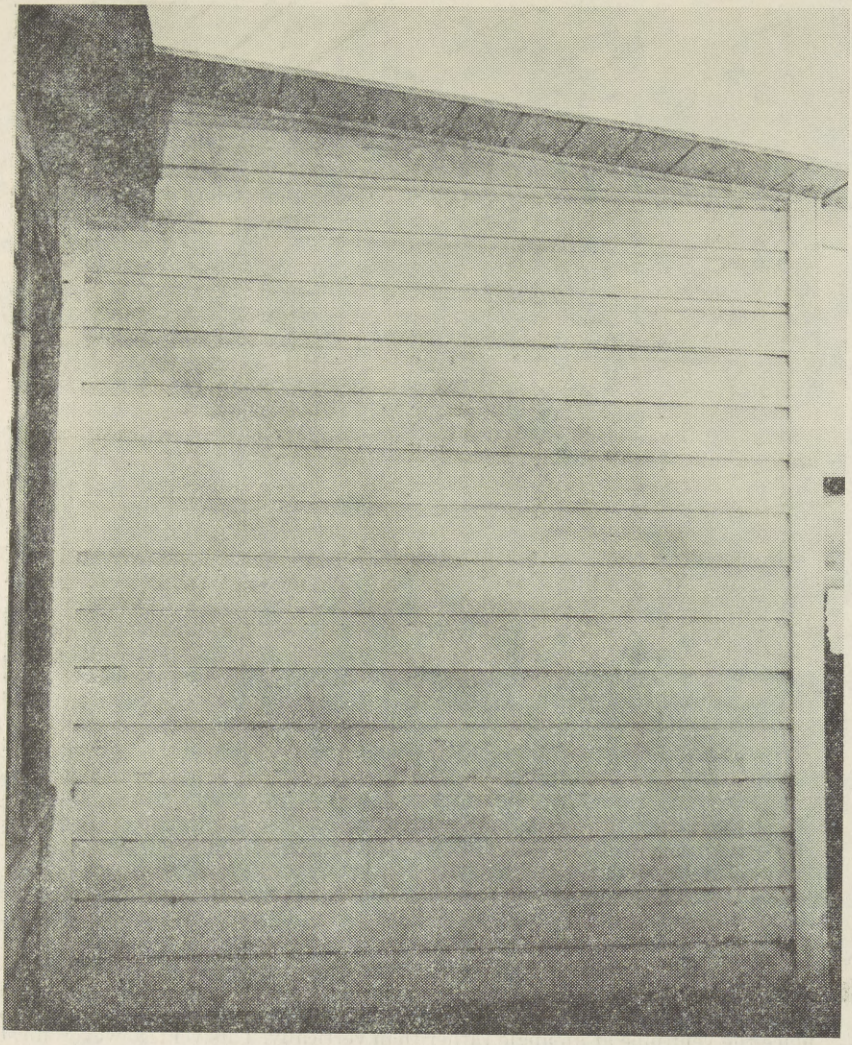


EXHIBIT 5

A Houston homeowner responded to a television advertisement for home improvement work and obligated himself for $2,337.30, payable in 60 equal monthly installments of $38.96. The contract specified that a bath would be added onto the house, but the faucets were not connected to a waterline and the outside of the bathroom was not painted



EXHIBIT 6

This 88-year-old widow was told she could have her home covered with aluminum siding for $299, but the note she signed was for $1,600. Her sworn affidavit states that she did not sign a mechanic's lien and did not sign any papers before a notary public.

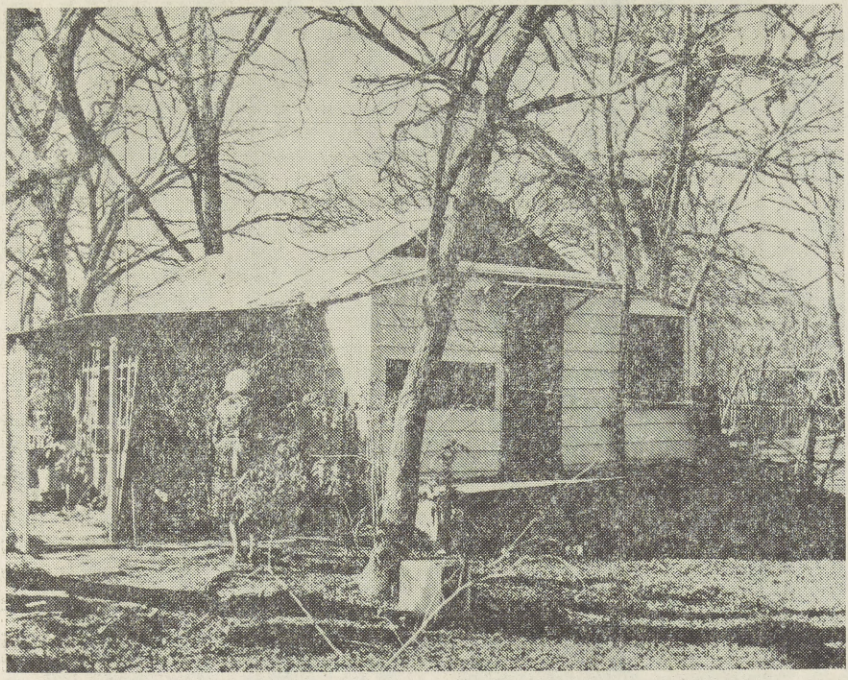


EXHIBIT 7

This widow's house consists of two rooms, each 9 by 12 feet. After the aluminum siding was installed, the contractor returned and said the cost would be $1,000 rather than the amount originally stated in the contract. The total time-sales price was $1,600

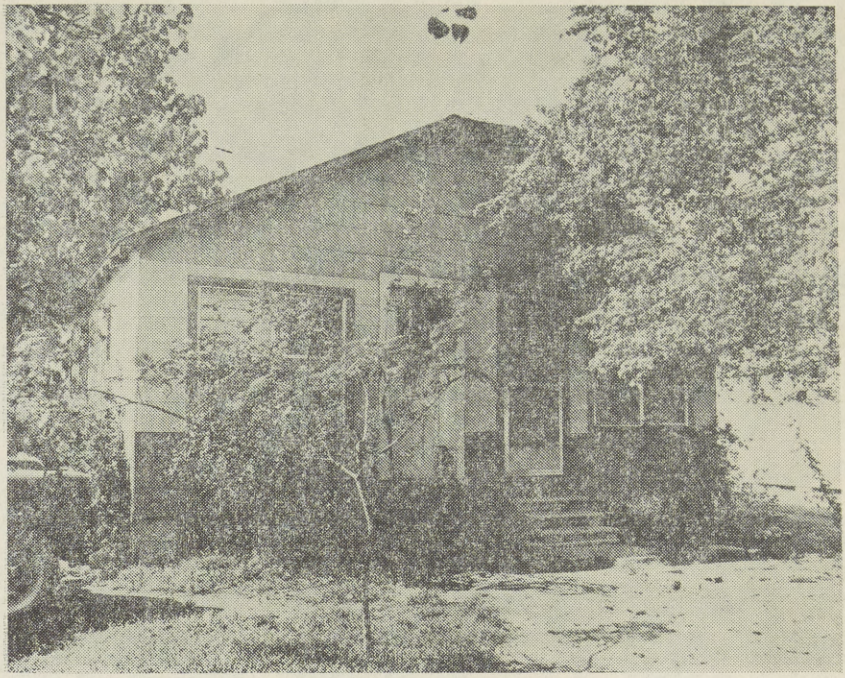


EXHIBIT 8

A Houston couple obligated themselves to pay $6,073.26 for major repairs on their house. The aluminum siding was not installed, except for a strip around the middle of the house, and the old front door was not sealed off as specified in the contract. An officer of the out-of-State finance company that purchased the note stated that his company had "acted in good faith, and as far as they knew, the work described in the contract had been completed"

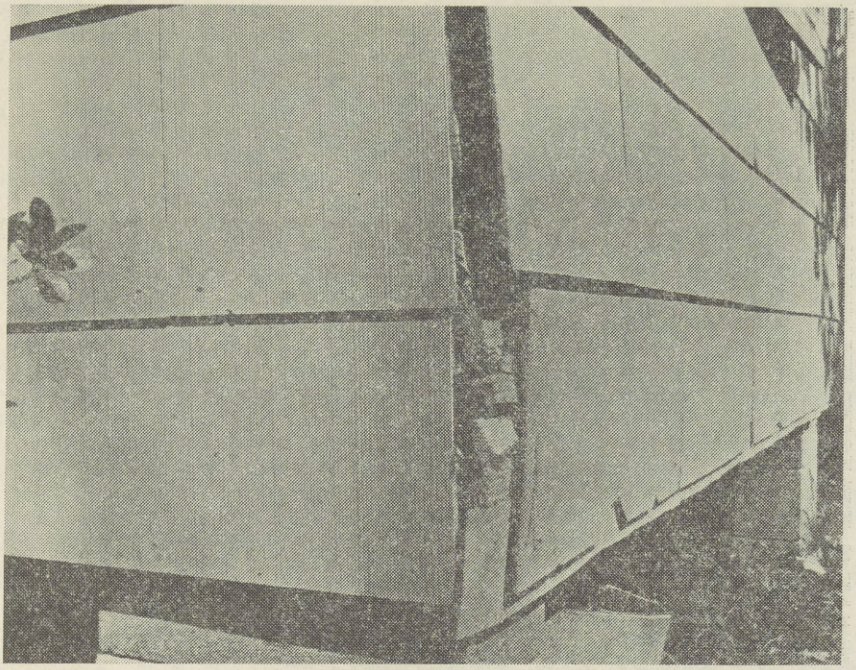


EXHIBIT 9

The $6,073.26 home improvement contract called for "labor of the first quality"

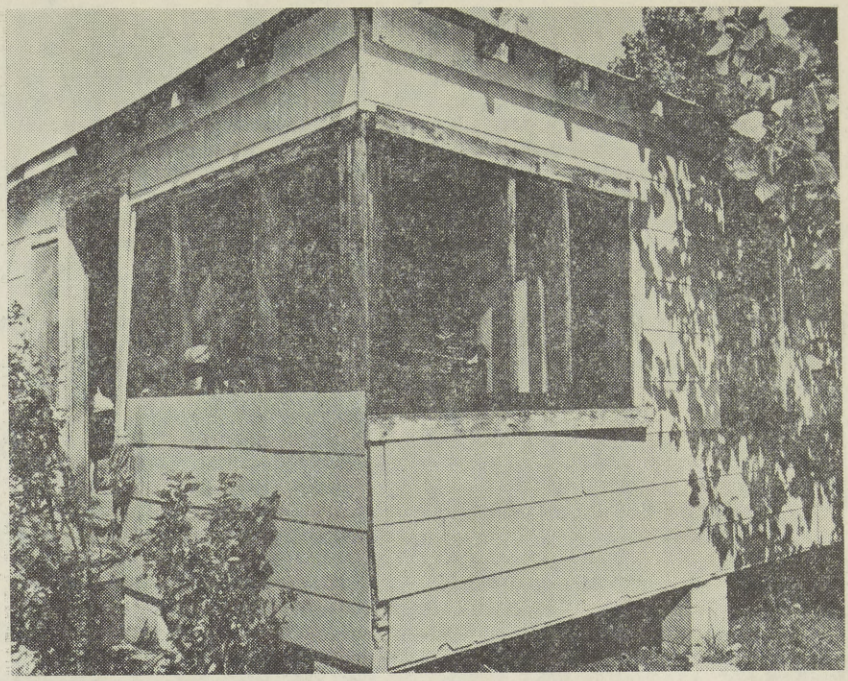


EXHIBIT 10

After performing the "improvement" work, the contractor did not even replace the delapidated rear door. The contract specified the installation of an aluminum screen door

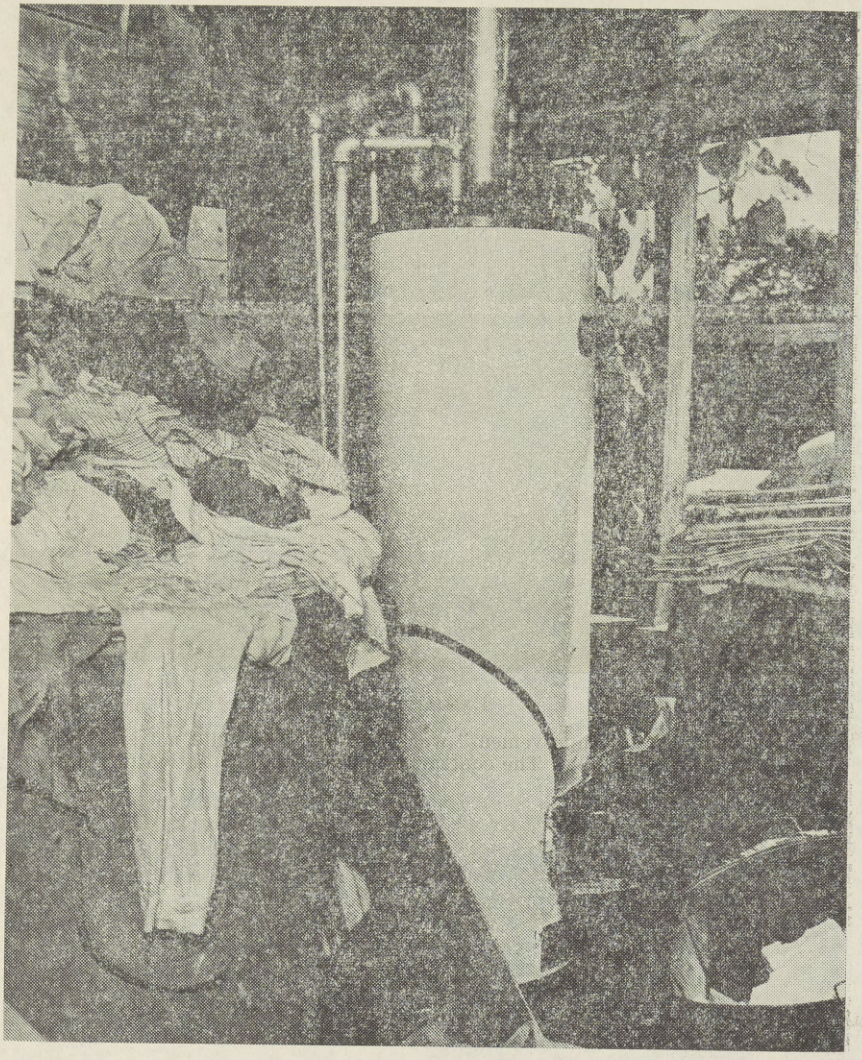


EXHIBIT 11

This heater was installed by the contractor to heat the nonexistent running water for the bathtub that was to be drained into nonexistent sewer lines

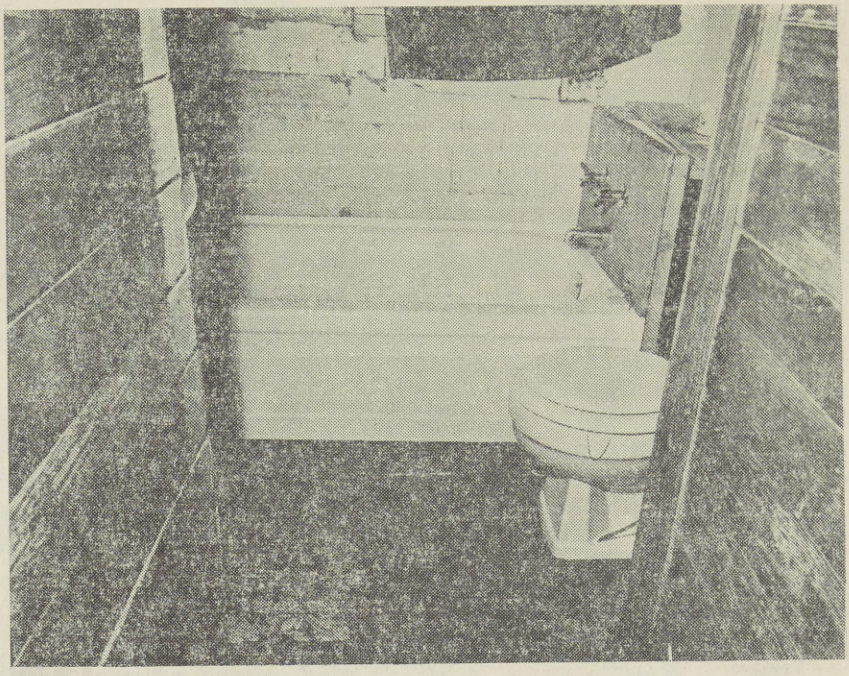


EXHIBIT 12

These fixtures that were installed in accordance with the contract might have been valuable if they had been connected to running water and sewer lines

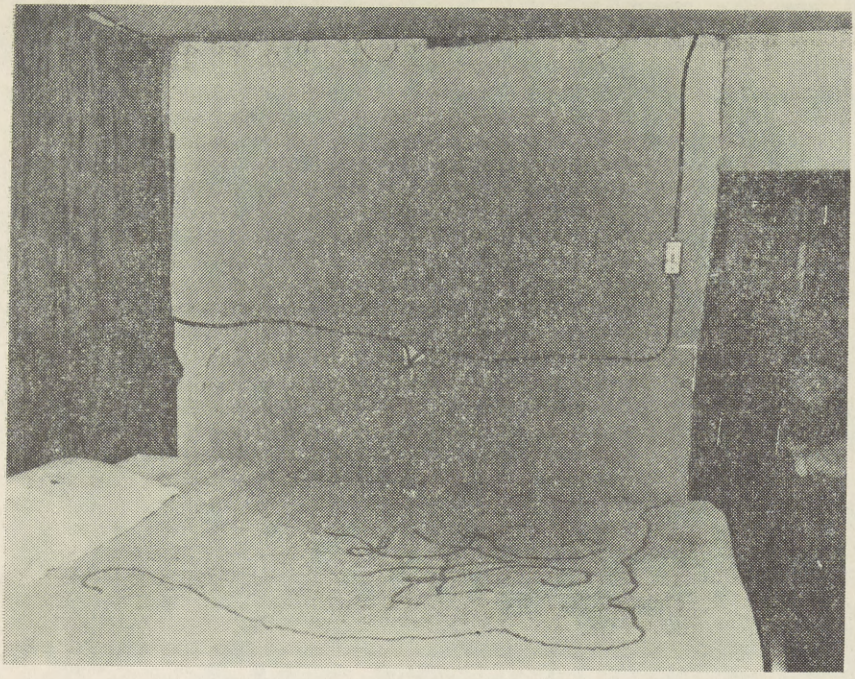


EXHIBIT 13

This homeowner contracted for electric wiring to be installed at a cost of $1,918.14. A reputable contractor later estimated the value of the work to be $185

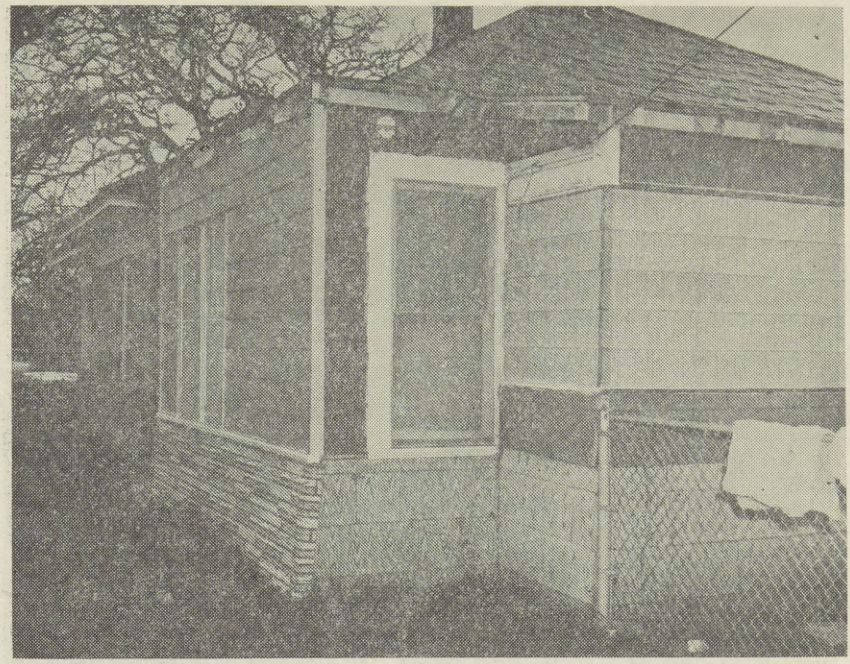


EXHIBIT 14

The improvements that were to be made to this house at a cost of $3,415 were never completed. The exterior of the house was supposed to be entirely covered with steel siding, but the homeowner received five different types of siding

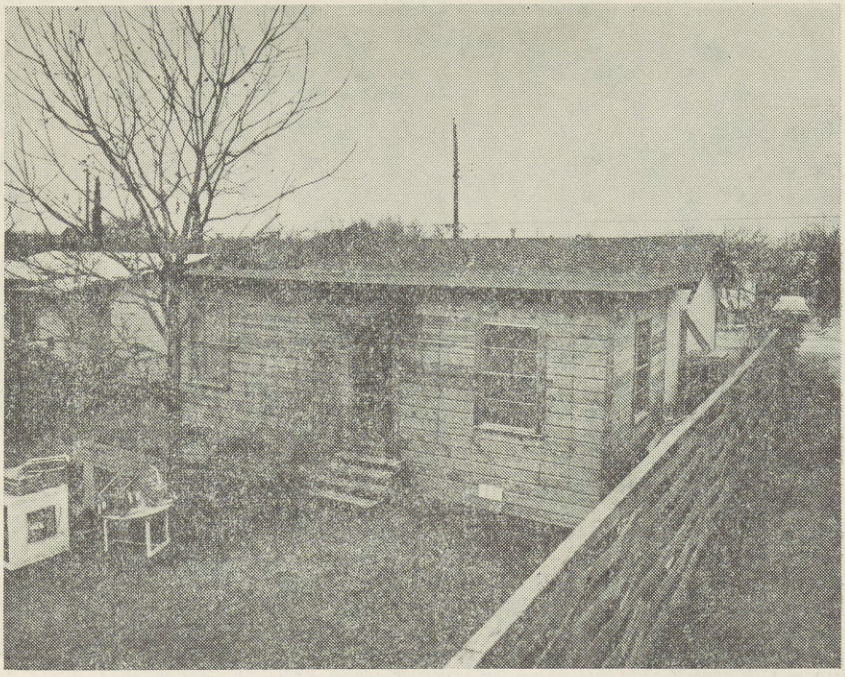


EXHIBIT 15

This picture is evidence of what can befall a homeowner when a contractor sells the promissory note to a holder in due course. The homeowner agreed to a price of $2,000 for an addition to his house. Before the work was completed, the contractor left town and the financial institution that purchased the paper has notified the owner that the lien on the house will be foreclosed unless the time-sale price of $4,500 is paid

Senator HARTKE. The next witness will be John H. Haas, Workshop 221, Inc., executive vice president, General Improvement Contractors Association, Washington, D.C.

STATEMENT OF JOHN H. HAAS, PRESIDENT, WORKSHOP 221, INC.; EXECUTIVE VICE PRESIDENT, GENERAL IMPROVEMENT CONTRACTORS ASSOCIATION, WASHINGTON, D.C.

Mr. HAAS. Mr. Chairman, I have a short, concise prepared statement which I would like to ignore at this time.

Senator HARTKE. The entire statement you have will be placed in the record as though it were read, and you can cover such portions of it as you deem pertinent.

(Mr. Haas' prepared statement follows:)

STATEMENT OF JOHN H. HAAS, PRESIDENT, WORKSHOP 221, INC.

Mr. Chairman, members of the Committee, abuses in our—as in any other—industry or profession are caused by the temptation of the less competitive elements to follow the path of least resistance. The success of such attempts depends largely on two factors: the degree of self-discipline a group is able to muster and the amount of obstacles laid in that path. In our trade, self-discipline is a must because most of the ethical business is generated by repeats and referals. This is one source the shady operator misses; to generate business he reverts to harmful practices and, in the process, casts suspicion on the entire profession.

As to obstacles against that tendency, licensing on a state or local basis has been the customary deterrent but it does not work out too well unless the rules are both firm and workable. The D.C. license law established several years ago is one of the best in the country: offenders are few and usually have a short life expectancy. In neighboring Maryland, the opposite is true: licensing is a formality and enforcement against violators inefficient and dragging due mostly to lacking publicity and grossly understaffed administration. In many other states, licensing laws are either missing or ineffective. This is the main reason why some assistance from the federal government seems unavoidable—even in the mind of many of us who, as a matter of principle, resent government interference in private enterprise operations.

FHA exercises a limited but healthy amount of disciplinary deterrent on our trade practices as long as FHA financing is involved. Unfortunately, the volume of that lending facility has dwindled considerably although population and housing is on a steady increase. This leaves only FTC as a potential regulator of trade practices but, up to now, that potential was greatly hampered—if not cancelled out—by the clumsey and imperfect machinery at the disposal of the agency. The time lag between complaint and censure is stupendous—up to three years—and the procedure is clogged up by legalistics, red tape and, most of all, a deplorable lack of field and enforcement personnel. Add to this the limited authority of the agency to obtain compliance in the absence of punitive consequences that would deter rather than interrupt abusive practices—and you have the whole story in a nutshell.

The proposed Resolution and bills provide a ray of hope although they contain some weak spots that could easily be improved upon.

The authorization of FTC to conduct a comprehensive investigation of the trade seems more of a moral reminder than a new tool: FTC has been doing this on a miniscule scale for many years, obviously with unsatisfactory results. To ask it to expand its enforcement activities would be futile unless it is given better tools to do it with; this is proposed by S. 3065 and 3066 whose passage is essential for obtaining the purpose of the Resolution.

Subparagraph (a) of the Resolution contains the word "producing". Competitive or deceptive practices do not exist on the production level; they do sometimes emanate in the distributing process of manufactured goods and, therefore, the term "distribution" should be substituted for "producing".

It would also be helpful to change some wording at the start of subparagraph (c) which might read: "increase and intensify its enforcement program . . .", and to which should be added at the present ending of the section (after the word "industry") "including its affiliated and related trades and services; and". In section 2.(a)(1), the word "production" should, again, be exchanged for the word "distribution".

Finally, the authorization—in sec. 3—of $500,000 per year presents perhaps the best assurance to the abusive practitioners that this Resolution is not going to do them any harm. Considerably more money would be needed to put FTC in a position to deal with authority and efficiency in this field, esp. since these funds would not only have to sustain the increased investigation but also the new and

far-reaching enforcement program under its proposed expanded authority. There are two more points that should be taken into account as possible additives to the proposed legislation: to enact rules that would prohibit those selling goods or services to include the cost of financing in the official sales price; and to establish, through cooperation with local authorities, a prompt and practical system of channeling complaints from the consumer level to the agency. This might conceivably be accomplished by the creation of federally appointed Ombudsmen for Consumer Protection and Housing who could be located in strategic urban areas and would remain independent of local pressures and influences.

Mr. HAAS. I have been in this business for over 20 years, and 12 years of that time I have conducted the affairs of a contractors association.

It is not a very pleasant job to speak for a profession that has a tinge of disrepute hanging over it. I have faced the challenge before, before other committees of the Senate, and I am trying to convey the impression that in this profession of ours there are, of course, like in most other professions, the good guys and the bad guys.

The trouble is that the bad guys all wear the white hats and you can't catch them through Federal Trade Commission regulations or others.

So, we have to find other ways and means to catch the abusers because abusers there are, as everybody knows, but I would state emphatically that the percentage of bad guys in our profession runs around two. So, let's call them the 2 percenters. We have worse, as you know, in other trades.

Now, the 2 percenters are a very bad influence, not only on the homeowners, on the consumers, but also, of course, on the profession and on the authorities of local, Federal, or State governments which sometimes run up against them.

What can be done in order to cope with that situation? Well, I know of only two major ways. One is self-discipline, and the other is obstacles laid in the path of their activities.

In our profession self-discipline is very important because most of us run old, established companies. We don't advertise. We don't canvass. We get most of our business through repeat and referral. In order to get repeats and referrals you have got to be good.

Now, the 2 percenters don't have that advantage. They have to get out to the public. In order to do their business, they have to advertise. Consequently, the best way to catch them in the act is to catch them at their advertising.

In a minute or two, I am going to give you a very impressive example of how that can be done.

The obstacles consist primarily in licensing on a local, State, or Federal basis. We have had some local licensing and some States that have enacted license laws. The State laws are usually not effective, the reason being, in spite of the best of intentions, that the State legislatures do not appropriate enough money and authority to their licensing agencies to do a good job.

You take the State of Maryland. On my last inquiry I found out that they have two investigators to cover the whole State. Naturally, you can't do very much with that. The local laws are much more effective. Probably the best local law is in the District of Columbia. It is about 4 years old, is an excellent law, works beautifully, and I say that with authority because I am one of the people who wrote it. The fact is complaints in the District are very few. Those few cases

we had are monstrous, but that in turn is good because it helps the authorities and the press to point up to the public, to the trade and to the homeowner how bad guys operate. This is probably the best disciplinary measure.

Senator HARTKE. We are going to be faced with a time problem. Now, the *Monarch* case, explain to me how that was good for this community. That was here in Washington, it involved about 6,000 homes and over $2 million before they went out of business and finally left. Can you explain to me whether it was the licensing provision which was a failure, or whether it was a failure in the enforcement, or why that thing continued for so long before it was stopped?

Mr. HAAS. I will give you a rundown on the case in 2 minutes. I have it right here.

Senator HARTKE. That is great.

Mr. HAAS. That group came up with a brilliant idea: You take $400 worth of material and about $500 worth of labor and you put some aluminum siding, a few shutters, and coach lamps in front of a house and call it private renewal. The job was sold on an average of $3,000 to an unsuspecting and innocent homeowner. That happened in many cases, and they noticed that it worked beautifully. So they started getting bolder.

The next thing they did was to take out full page advertisements in local newspapers, a full page at a cost of over $1,000, calling it private renewal.

The first few ads were all right, we couldn't catch them. Then they got careless. In one of their ads on the 1st of February 1965 they quoted two things particularly:

One, that they had FHA approval, (2) that their job (which cost about $900) increased the value of the average property by $6,000. When I saw that, I saw red, and I did four things for our association. I wrote to the newspapers, I filed a complaint with the District License Bureau, I filed a complaint with FTC, and I filed a complaint with FHA, FHA got the letter on the 2d of February and Commissioner Brownstein replied on the 3d and promised action. On the 4th of that same month a correction appeared in one of the newspapers correcting the FHA approval.

A week later Commissioner Brownstein sent me another letter and said "I am going to send a member of the General Counsel down to you, I want to get the facts," which he did.

Three months later the company was on the precautionary measures list, and 6 months after that they went out of business. Now, that sounds beautiful.

Let's look what the others did. The papers whose attention was drawn to the fact did not respond very pleasantly or encouragingly to the fact that this advertising was misleading. We didn't get to first base with them. The District government called a hearing which I attended as a representative, and due to some circumstances beyond my conception and maybe control, the thing ended in a washout.

The Washington Post picked the case up 2 years later, commented on it very nicely and effectively, and it had some reverberations in the District Building.

Finally, 6 months after I sent the complaint to FTC, one of their men appeared in my office and said, "Let's have the facts, I am a

busy man, I have a terrible schedule, I have three States to cover," or something to that effect. He spent 2 hours with me, got all the documentation, and that is the last thing I heard from him. Nothing ever happened to my knowledge.

What does it prove? It proves that FHA has an excellent system of supervising the trade. We like it, we approve of it, we should learn from it.

It means that local government agencies, licensing agencies, as a rule can be very effective. This was perhaps the only slipup in the District of Columbia government. I have never heard of another one.

Finally, it proves that the Federal Trade Commission, which could be probably the most potent agent in combating these abuses, is utterly inefficient and incapable of doing it not because they don't want to do it, but they don't have the tools to do it with. For this reason, I would like to point out very strongly that what your committee has done in this case, namely, the resolution and the two bills, is, in my opinion, of the utmost importance toward eradication of these abuses.

Of course, you will never eradicate them completely, but you can do a terrific job with it, because at the present time it takes an average of 2 years for a Federal Trade Commission case to come toward the stage of action. It takes only 2 hours to ruin a homeowner or to cheat him out of x thousands of dollars, and as long as that discrepancy prevails, we are not going to be able to make much progress.

There are, as I mentioned in my outline, two steps that I think should be added to existing or proposed legislation. One is to exclude any cost of financing in all sales contracts. If we can establish a separation of financing costs and work costs or price, we will have made a great step forward.

No. 2, I would recommend very highly the creation of federally appointed "Ombudsmen for consumer protection and housing."

Just this morning I got a report from HUD where it states that HUD, Labor, and the Office of Economic Opportunity together have approved $5½ million for two cities to put up neighborhood service programs. It would be a cinch to incorporate some form of ombudsman function into these services.

I would also like to make a special point that the $500,000 appropriation is, in my opinion, a joke, if you will pardon the expression. Nothing would be happier for the shysters in this trade than to see the FTC get only $500,000.

Senator HARTKE. William P. Youngclaus, Jr., managing director, Nersica, Inc., the National Remodelers Association, New York City.

STATEMENT OF WILLIAM P. YOUNGCLAUS, JR., MANAGING DIRECTOR, NERSICA, INC., NATIONAL REMODELERS ASSOCIATION, NEW YORK, N.Y.

Mr. YOUNGCLAUS. There are copies of my statement up there. I would like to just go over the highlights, if I may.

Senator HARTKE. The entire statement will appear in the transcript as if it were read.

(Prepared statement follows:)

PREPARED STATEMENT BY WILLIAM P. YOUNGCLAUS, JR., MANAGING DIRECTOR, NERSICA, INC., THE NATIONAL REMODELERS ASSOCIATION

Gentlemen, my name is William P. Youngclaus, Jr., and I am Managing Director of NERSICA, Inc., The National Remodelers Association, which was organized in 1933.

To reiterate from last week's testimony that I gave in this room on S. 1599, NERSICA is the only national trade association exclusively representing the home improvement and remodeling contractors.

The Home Improvement and Remodeling Industry has a sales volume in excess of 18 billion dollars a year. This volume is done by approximately 190,000 home improvement and remodeling contractors throughout the United States. The home improvement and remodeling contractor is a small businessman with an average of 8 employees. He is in the business of *custom* remodeling and installation of every conceivable type of improvement for the home.

In addition to these contractors, supplier members of the Association are:

Alcoa Building Products, Inc.
Alsco, Inc.
Alside, Inc.
Avco Security Corporation.
Crown Aluminum Industries Corp.
Eastern Metal Mouldings, Inc.
Lloyd A. Fry Roofing Company.
Hastings Aluminum Products, Inc.
International Aluminum Ltd.
Johns-Manville Sales Corp.
Kaiser Alumium & Chemical Sales, Inc.
Reynolds Metals Company
Solmica, Inc.
Tapco Products Co., Inc.
U.S. Aluminum Corp.
Wolverine Aluminum Corporation

I am here to testify on Senate Joint Resolution No. 130. I must say it was with mixed emotions that I read this bill, and I reread the letter from Mr. Paul Rand Dixon, Chairman of the Federal Trade Commission to Senator Warren G. Magnuson, dated November 28, 1967, and I have spent a great deal of study the last several months on this subject.

I am sure it is of no news to those present that we in NERSICA, Inc., The National Remodelers Association, are familiar with the pratices outlined in Mr. Dixon's letter, and I hope it is no news to you that NERSICA has had a Code of Ethics banning these practices since 1945.

We have long worked with the Bureau of Industry Guidance in aiding the development of the guides that were mentioned in Mr. Dixon's letter of November 28th and expect to continue to do so.

Recently I attended a meeting of trade association executives in New York, and an excellent talk was given by William B. Snow, Jr., Assistant Director of the Bueau of Industry Guidance of the Federal Trade Commission. At that time he suggested that the Federal Trade Commission was anxious to bring the industry guidance programs to the attention of the businessmen comprising the various associations, and I must wholeheartedly agree that the associations should cooperate in this sort of activity. I do believe, however, that this is a two-way street, and I am happy that we have the opportunity to make our comments today, although I feel the same comments would have been made had we been asked any time in the past few years. Our comments follow.

A. I think that the title of the joint resolution is an indictment against the industry in the manner in which it is worded and the industry does not merit the tag. I realize that to get support certain statements must be made, but I feel that this particular statement casts aspersions on over 188,000 businessmen and their companies in the United States. If there is any way to concentrate on the remaining 4,000 or so companies and individuals who may or may not be utilizing some of these techniques, this association will be most happy to cooperate.

B. I want to emphasize that the home improvement industry is divided into distinct levels with the national manufacturer at one end and the local home improvement contractor at the other. That between the two are the various national, regional and local distributors of the products used by the contractor ultimately in behalf of the home owner. That on the national level the manufacturer is already subject to various federal laws and regulations, including Anti-trust, Federal Trade Commission, FCC and ICC regulation. Generally the national, regional and local distributor of the product is similarly regulated by these laws. It does not seem at this time that more legislation in this area is necessary. The home improvement contractor, who is the contact with the consumer, is generally a local businessman operating within a twenty-five mile radius (in some cases perhaps fifty mile radius) from his office, and is engaged wholly in *intrastate* commerce, making local purchases of material, employing local labor, and therefore would not be included in federal regulation. That in most instances even his advertising is done in a local newspaper serving the community in which he operates.

C. Since the home improvement contractor operates generally in *intrastate* commerce he is best controlled or regulated by local legislation of which there is presently a greater awareness. As I mentioned last week, this association favors, when necessary, state licensing laws for home improvement contractors and their salesmen. For several years now we have had available to state legislators NERSICA's Model Home Improvement Contractors' Licensing Law, copy of which I have filed with this statement. State licensing can go a long way to controlling the fluid movement of the state-line hoppers who mulct and move on to another locality. Furthermore, it permits the local communities to interfere with the fluid movements of such nefarious gangs as the "Williamsons" as fraud no longer has to be proved—merely that they are attempting to do business without a license—a fairly simple procedure.

D. That with reference to an investigation by the Federal Trade Commission of the financing of home improvement contracts, it is to be noted that most, if not all, lending institutions engaged in financing home improvement contracts are regulated by ample existing state laws as well as national laws with regard to banking and FHA financing. The method of financing by these various lending institutions is a procedure that has long been in practice and established and known to the banking community and its enforcers. In addition to the laws referred to, currently, Retail Installment Sales Laws will add additional muscle to the financing area.

E. I would also point out that a publicized investigation of the scope portended by this act would have a depressive and repressive effect on that segment of the home improvement industry that is least capable of bearing the brunt of a business recession. That this is a critical time of economic growth in this country and that with new housing starts failing to keep pace with need, it is more important than ever before that old residential properties be renovated and reconditioned to take up the gap of new construction failure to meet demand. That everything should be done to encourage the growth of the home improvement industry on the local level and for the home owner to reinvest his dollars in his real property by its improvement. That there is strong possibility that a highly publicized undisciplined investigation of this industry by the FTC could have a deleterious effect upon the contractor at every level. It is conceivable that the national manufacturer may curtail his advertising budget; that lending institutions may become hesitant and reluctant to make the necessary loans; and that the local contractor may hesitate to expand his own business in the face of the obstacles and barriers that he may believe will be thrown in his path.

F. For the past several years we have been pushing further development of our Mechanics Training Course which has been offered for some three years in Pittsburgh, Pa. and other cities to improve the manpower situation in our industry. It has been slow and difficult work because of the lack of funds available through Federal sources. We have taken completely untrained young men, taken them off the relief rolls, and put them in jobs that pay them as high as $100. and $120. per week as siding mechanics. In the training they have learned basic carpentry, sheet metal work, and roofing. We have only barely scratched the surface in this training, but I am sure that widespread publicity program that would accompany such an investigation as planned, would virtually make it impossible to get future students.

G. One governmental department's aid could be utilized and virtually wipe out 50% or more of the sales techniques listed on page 2 of Chairman Paul Rand Dixon's letter to Senator Magnuson, dated November 28, 1967. These are the ones that you see in your newspapers every day; in certain localized editions of national magazines and program guides, and hear over the radio and on television. They are "1,000 square feet of aluminum siding $289." This is a "bait and switch" ad. The minimum cost on an average to the consumer should be at least $760. The cost to the contractor alone is well over the $289 as stated in the advertisement. Yet in this case alone it is through the advertisements not only in the publications and media mentioned above, but also in direct mail to the "Occupant" that lures people and makes the job of the unethical sales organization easy. I would like to point out that certainly the U.S. Post Office Department should be made aware of these frauds, and the government mechanism involved in the use of the mails to defraud, be brought into full focus. After all, the newspapers and the magazines all have second class mailing privileges and utilize the mails for delivery to their customers—not only interstate but intrastate. Not only could the "bait and switch" tactics be stopped by the conscientious effort by the U.S. Post Office, but the bogus contests, the model home sales pitch, referral selling and misrepresentation of product efficacy could be stopped virtually overnight. It would seem to me also that the Federal Communications Commission could be of help in controlling the "bait and switch" ads of the same type that are used on television. We would be happy to work closely with any of these departments in aiding them to determine if the prices quoted were anywhere within the realm of possibility of good business practices.

H. Last week at the hearing on S 1599, Mr. Allan E. Bachman, Executive Vice President of the National Better Business Bureau, stated that last year there were over 23,000 frauds in the home improvement area reported by their bureaus. I discussed at that time that a great many of these frauds were probably committed by the fluid force from Cincinnati—the "Williamsons". This is a group estimated at approximately 2,000 Scotch Gypsies who start from the South in the Spring and work to the Canadian Border in their Cadillacs, changing from town to town to their work clothes, and buying old used trucks, and drums of used crank case oil, and spreading out over the area offering the homeowner topping for his asphalt driveway, waterproofing of the roof, all using the same material. These people deal in cash only—no checks. The big push is to get the cash right then and there—spray the useless materials—and move on. They are not in the home improvement industry. They buy no home improvement products—they add nothing to the gross national product—they only are leeches on the consumer and every effort should be made to wipe them out without wiping out the ethical businessmen. I talked to Mr. Bachman Tuesday morning and he agreed with me, although he could not verify it through their records, that the chances are most of the 23,000 complaints were for cash, and a great many of them were caused by the so-called "Williamsons".

I. As a taxpayer I feel I must make this comment. With the world monetary situation that exists today, and the unbalance that has created our gold crisis, I am naturally concerned with the U.S. economic system. In these critical budgetary times when every effort should be made to curtail federal expenditure, it would appear that the appropriation of a million and a half dollars over a three year period to investigate an industry that contributes some eighteen billion to the gross national product (spent in the U.S.) whose sole purpose is to ascertain what type of regulatory measures can be effected against this industry, is to spend money neither wisely nor well.

Thank you very much for permitting me to appear before you.

Mr. YOUNGCLAUS. We have long worked with the FTC in the industry guideline area on aluminum siding, on the current program that covers paneling, interior and exterior decorative paneling, and other guidelines. We want to continue to work with the FTC as we have for so many years.

One of the problems that faces us today is the investigation. We feel that we could have been called in some time ago and given suggestions. The problem that worries our industry the most—I guess I will have to use John Haas' terms, the good guys and the bad guys—there is over 190,000 home improvement contractors in the United States and

this bill is aimed at finding and doing something about the roughly 4,000 who are the bad guys.

We would like to do everything we can to see if there is a way to concentrate and locate and see that something is done about them.

NERSICA has had code of ethics since 1945. Our members subscribe to it. If they violate it, we have procedures so that they may be dropped from the association. All of the techniques that were outlined in the letter to Senator Magnuson from Paul Rand Dixon are against, and always have been against, NERSICA's code of ethics.

I want to point out, too, that there several different levels of the industry. John has pointed this out and the gentleman from Texas has done a very fine job in pointing this out. We would like to get down to the small guy, the average contractor, who only works within a 25-mile radius of his home business and he does it for years. He is engaged for the most part in intrastate commerce.

John mentioned licensing. We in NERSICA for some years now have proposed and made available to the States a model home improvement licensing act that licenses not only the contractors but their salesmen, and any licensing act that doesn't cover the salesmen will be unsatisfactory.

Senator HARTKE. How many States have adopted this code?

Mr. YOUNGCLAUS. This one is based on the Maryland law. New Jersey has this. They adopted all except the licensing of salesmen which will be done this year. It will be more effective.

Our law was the basis for the law in Michigan which is quite effective. We currently have in both houses in New York State this law. We hope it gets passed this year. We had it up last year, but it didn't. We are pushing on all fronts to try to get the States to take this kind of action to protect the industry.

Senator HARTKE. As I understand it, Maryland has the law.

Mr. YOUNGCLAUS. Yes, sir.

Senator HARTKE. It is your opinion that it is enforced satisfactorily?

Mr. YOUNGCLAUS. I think they need a few more investigators.

Senator HARTKE. You see, Mr. Haas has just said, in talking about the strong licensing in the District of Columbia, "in neighboring Maryland, the opposite is true."

If I can point this out—you and I are reasonable men——

Mr. YOUNGCLAUS. The policing problems are tough.

Senator HARTKE. You find yourself, and I find the industry in the position of feeling that it is being indicted for legitimate operations. The net result is that you find yourself defending illegitimate operations.

Mr. YOUNGCLAUS. No; we can't defend that.

Senator HARTKE. Let me come back to a little article, the "Bandit Homeowner," which appears in your 1968 January-February Nersica contractor magazine. If I ever saw anybody throw the book at any group, as a whole, this is an overall indictment of the homeowner.

Mr. YOUNGCLAUS. Certain homeowners, sir.

Senator HARTKE. "Stay away from aged people over 65 with run-down properties, without full utilities and a limited income." He is not a crook. You are indicting him as a crook.

Mr. YOUNGCLAUS. You are just going to get in trouble if you sell them something.

Senator HARTKE. In other words, those poor men are not going to have the legitimate people to deal with them.

Mr. YOUNGCLAUS. I never thought of it that way.

Senator HARTKE. What about it if I am over 65? My mother is 81. What about aged people over 65. They have rundown property—and, after all, there are a lot of those because the aged still comprise one of the large groups of people who are poverty stricken in America—without full utilities, which is true, and with a limited income, since most of them probably depend upon social security payments? In other words, those poor people are shunned by this legitimate organization, which in its national publications, instructs its members to forever stay away from them. Don't help those poor people.

Mr. YOUNGCLAUS. I suspect we will all be in that shape sometime. I would hate to think about it.

Senator HARTKE. How do you justify putting that out?

Mr. YOUNGCLAUS. To be perfectly frank with you, this is based on another angle completely, on the number of frauds perpetrated on the contractor. They have been documented, sir. The statistics are available. I know I can get them.

Senator HARTKE. Why don't we put this in after your statement today and let it speak for itself?

Mr. YOUNGCLAUS. All right.

Senator HARTKE. We will insert this article in the record on behalf of the acting chairman so that you don't have to say you inserted it.

(The article referred to follows:)

[From the NERSICA Contractor Magazine, January-February 1968]

THE BANDIT HOMEOWNER

(By Wade Gale, Manager of Avco Delta Corp.)

Today, more so than at any time in the history of the home improvement industry, honest home improvement contractors everywhere are being confronted with many so-called "rigged" charges thrust upon them by dishonest homeowners. These implications range from over-pricing, unsatisfied service complaints, misleading advertising, omitting open-debts on the application for credit, and conspiracy to cheat with intent to defraud. Case after case reveals that these contractors are facing federal and state prosecution; being character-assassinated and deprived of their right to earn an income in their chosen occupation. Because of this corrupt harrassment, a considerable number of fine remodelers are being forced out of the home improvement business. All because of a "wised up" public with more larceny in their noggins than the likes of the Dillingers, Jesse James and Younger Brothers combined.

It doesn't take a Wall Street superstar to understand that we pour millions of dollars into the economy yearly for property owners to improve their homesteads. It's a safe wager to make that most people deserve the credit extended. On the other hand, it's an equally good wager to make that many were undeserving of credit. For the most part, it's the latter who are screaming, "We wuz robbed." To understand this statement clearly, let's delve into the matter.

In twenty odd years (having a Bachelor of Law Degree to guide me), I've held management positions in banks, savings and loan associations, finance companies and also the Federal Housing Administration as a Title I Representative. This background has given me the insight to see what the home improvement contractor is up against. His business is not all glamour, gaiety, big profits, and shiny new cars, as most people would like to believe. Item: Once he cashes in his completed home improvement contract to the lender, it remains his contingent liability on a Modernization Plan for approximately one year—the FHA Plan, until the account is paid in full. For example, take the contractor selling under FHA Title I. In 1956, I vividly recall, while employed with the FHA, an appalling incident. A customer who had a complaint wrote directly to President Dwight Eisenhower

and having read it, he handed it down for action in the following order—to the Commissioner of the Housing and Home Finance Agency, then to the Commissioner of the FHA, who submitted it to the local area FHA Director and finally this well traveled letter, ended up in my possession. Now you must agree, it went through the hands of some pretty important people. So hold onto your hat and dig this fiasco. The complaint was that the complaintant had siding put on his home along with an awning installation over a picture window, some three years back. It had blown off during a severe wind storm and was damaged beyond repair (about a $400.00 canopy type awning). The letter was tear-stained with words such as "I'm a poor tax payer with hardly enough money to feed my eight children. I had called the contractor many times to let him know that the awning wasn't put on right and was loose. And he didn't even have the decency to return any of my calls—and then the wind came! Is it fair that the federal government permits men like these to fleece a poor working man with ten mouths to feed? I thought this was America. I beg of you, dear President, please help me."

Subsequently, the contractor was called into the FHA office and he explained that the only time this customer ever called was three years later when he found his awning in an empty lot fifty feet from his home and tried to reason with him that he wasn't responsible for an act of God. His contract specifically covered this and suggested that if he had a homeowners policy, to file a claim with his insurance company. The buyer claimed he didn't have one and shouted with profanity, "Pal! You haven't heard the end of this. A guarantee is a guarantee. ¢?xfifl" Nice sweet guy, wasn't he? Nothing like that in his letter to the President!

Now, normally, the FHA would concede that the contractor wasn't to blame—especially an incident that happened three years prior. However when political pressure is exerted, as in this case—from the President of the United States on down, plus the government dealing with a poor misled homeowner and a tax payer to boot, the complaint then becomes far more serious. The FHA examined the awning installation. They notified the contractor a few days later, that it wasn't installed properly and "asked" him to hang another awning. The contractor advised the FHA that he would consult with his attorney first. His attorney suggested even though he was legally right, that he put up an another awning. It was a question of Administrative Law. He could be placed on the FHA Precautionary List and removed from the Title I program as a contractor detrimental to the FHA's best interest and his name would be smeared because of it. A new awning was anchored under protest by the contractor. And wouldn't you know—the customer who complained so loudly was three months past due with the lending institution who financed the job.

Let's face it, contractors. Facts can be twisted. In the Law of Evidence—it's not what the facts are, but rather, how do you prove them. I've seen some of the most grotesque trumped up charges made against contractors, planned deliberately by the homeowner and in some instances, collaborating real cute-like with their attorneys, conspiring to cheat both the contractor and the lender. Or for that matter, anyone else who gets in their way. They use such tactics as threatening a conspiracy action of some sort against the lender, contractor of combination of both. By utilizing to their advantage the offices of the federal and state governmental agencies (of course there are dishonest attorneys too. Any Bar Association would be a reliable source of information). These attorneys throw out the code of canons as if they were feeding peanuts to a monkey. By twisting facts, they can make a mockery out of justice. If all else fails, they run their client through bankruptcy courts.

They get away with it. There are just too many instances where you're wrong and the customer's right, regardless of the circumstances.

At the beginning, I stated—a "wised-up" public. What I should have said was a bunch of thieves. In the foregoing paragraphs, we dealt with nuisance-type problems, that could usually be worked out in some reasonable rationalized manner. Now, we're going to get into the blood-and-guts of this problem—the really serious troubles that you can innocently become involved in. Let's take a look at some nauseating facts. How clever the property owner has become! These case histories will illustrate. If he can't beat you legally, even with a "frame" thrown in, he uses other gimmicks. Here are actual cases from a Chicago newspaper. The names and addresses are omitted.

"Suburban factory worker nabbed for giving false FHA data." He was charged with falsifying an application for Federal Housing Administration loans and arrested by the FBI. The man, thirty-seven years of age, was taken into custody after being indicted by a Federal Grand Jury on charges that he gave false

statements when applying for FHA home improvement loans. According to the FBI, he applied for seven loans through various contractors totaling $14,960.00. The indictment charged that he failed to list prior FHA debts on his application—a violation of federal law. At this point, you might suggest—chalk one up to the good guys. But the story behind the story was never told of how this homeowner tried to implicate an honest contractor, by stating he had given all his open accounts to this contractor, and was told—"Don't worry about anything. I can get your loan through in spite of your indebtedness. I've got connections." Of course he never made such a statement and had no other knowledge of additional open accounts. The property owner thought he could fix up his house to sell it, and pocket the profits by not paying for its improvements. What actually happened, the loan was discounted and the thief carried out his plan. The lender couldn't collect and later filed a claim with the FHA who then discovered the property owner had other open items and forwarded the file to the Department of Justice for investigation. They finally brought it to a head. Would you believe that this contractor was investigated and harassed by the FBI for nearly two years because this homeowner was looking for a way out and blamed an innocent party, thinking he could get away with it. The contractor spent over $5,000.00 in legal fees in addition to costly time spent away from his business, supporting his contention of innocence. Finally, the man, when faced with other like charges, broke down and absolved the contractor of any guilt.

Like it or lump it—this is democracy in action. These federal and state governmental agencies do an honest job and are faced with many difficult situations. The sickening part of it all is there are a few rotten and prejudiced agencies with very little respect for the civil and constitutional rights of others. So with this in mind, you, the honest contractor, must fill the gap between the lawfulness of your business against the unscrupulous agencies and pirate homeowners, to the best of your ability. Prepare yourself in advance. These helpful hints may offer a solution to the most common everyday nuisance occurrences and the real serious ones also:

1. Against charges of omitting debts from an application for credit.—Regardless of what type plan you use—MOD or FHA. When you receive an approval from your lender, ask them if they found during their credit investigation, any additional debts that were not listed on the application. In the event that they did, ask them for the names of the firms, amount still owing, and monthly payments. Then before submitting your deal for discounting, make sure they appear on your application for credit.

2. Beware of trick questions asked by a property owner. You know—I really can't afford to make these payments steadily each month. If I list all my obligations, I'll not be able to get the work done and I need it badly. Will the lender really find out how much I owe and have to pay out each month? Stop—right then and there. That's the time to have you or your salesman obtain a clear-cut picture of their total indebtedness. If this is not done and the lender inadvertently purchases the deal, it just might come back to haunt you later. It may only temporarily be a profit. An ounce of prevention is worth a pound of cure.

3. Stay away from aged people over sixty-five with rundown properties without full utilities and a limited income. Believe me, no one is a winner when these customers appear in court in a wheel chair or on crutches! (Incidently, they can be rented very reasonable too). Ask any attorney about the poor old unsophisticated customer. He'll tell you they can put on a performance in a court room—the likes of which Shakespeare never dreamed. Now, I ask you what judge would pick on a poor little old lady, unless, you the contractor are a poor little old man.

4. Look out for people, regardless of age, with a truthful knowledge of being overloaded, income wise, and then charging them a good buck for the job. Believe me, these kind are usually the ones who cause the most headaches for you and also the lender. Most of them are deadbeats to start with in order to avoid making payments, they shout out to anyone who'll listen to them—they cheated us. We can't afford to pay that much and we told them so. They said there'd be no interest charges. They told us our payments would be far less than they actually are. We signed blank papers and besides, the work is unsatisfactory.

After they've been pressed long enough by the lender, they seek help from their attorney who smells he has a real winner. Anything goes.—from bankruptcy to contesting the judgment on a fraud action through civil courts or

courts of equity. And if that fails, as mentioned heretofore, it ends up with some governmental agency. Case after case has proven this to be the most difficult kind to deal with.

In conclusion, if you give your customer the best possible job at a right price, being honest with both the customer and yourself, also servicing your complaints expediently taking no detours, then following the above four mentioned points, combined with a little luck and an excellent attorney, you may never have to face the consequences of a "frame," feeling the wrath of the "Bandit Homeowner."

Mr. YOUNGCLAUS. I know that one of the problems we are always faced with is many of the frauds that are reported on the part of the homeowner rather than on the part of the contractor, and there have been a great many. It costs the industry about $150 million a year. They are all minor in nature, but it costs the small businessman a lot of money, relatively speaking.

One of the things that we believe will be helped by State licensing will be State line operators that move on to another locality. I am speaking here primarily of the Williamsons type that has been touched on lightly. The Williamsons is a group of Scotch gypsies. They say there are about 2,000 of them. They claim they move from the south to the north every spring. These people are not in the home improvement industry, they don't add anything to the gross national product. They are just thieves.

Senator HARTKE. How are you going to stop them? What can keep those people from using their bandit practices on the unsuspecting public? What would you suggest?

According to your information, you have two or three States which require licensing under the code which you have proposed. That reminds me of one of the reasons we have Federal legislation in a lot of fields. The States have not moved. And when they fail to move, and when the need is there for somebody to do something, then in the absence of the States moving effectively to counteract these measures, the Federal Government steps in. That is probably the natural process.

The States have not done it. Now we have a Federal proposal in front of us. The problem is not being met at the present time. You admit that. Now what are you going to do about it?

Mr. YOUNGCLAUS. One of the suggestions in my notes today is "G": One governmental department's aid could be utilized and virtually wipe out 50 percent or more of the sales techniques listed on page 2 of Chairman Paul Rand Doxon's letter to Senator Magnuson, dated November 28, 1967. These are the ones that you see in your newspapers every day; in certain localized editions of national magazines and program guides, and hear over the radio and on television. They are "1,000 square feet of aluminum siding, $289." This is a "bait and switch" ad. The minimum cost on an average to the consumer should be at least $760. The cost to the contractor alone is well over the $289. as stated in the advertisement.

Yet in this case alone it is through the advertisements not only in the publications and media mentioned above, but also in direct mail to the "occupant" that lures people and makes the job of the unethical sales organization easy. I would like to point out that certainly the U.S. Post Office Department should be made aware of these frauds, and the Government mechanism involved in the use of the mails to defraud, be brought into full focus. After all, the newspapers and the magazines all have second-class mailing privileges and utilize the mails

for delivery to their customers—not only interstate but intrastate. Not only could the "bait and switch" tactics be stopped by the conscientious effort by the U.S. Post Office, but the bogus contests, the model home sales pitch, referral selling, and misrepresentation of product efficacy could be stopped virtually overnight.

Senator HARTKE. Would that apply to the Williamsons?

Mr. YOUNGCLAUS. No, not to the Williamsons.

Senator HARTKE. I am not saying there isn't room for great improvement in the field of so-called bait advertising. We have been through that, and if you noticed what John Haas said here a few moments ago, he had to wait until they slipped up—I think that is the word he used—they slipped up in their ad. He said their original ads were all legitimate and that anyone would be hard-pressed to really prosecute them on the basis of bait advertising in the original ads, as I understood Mr. Haas' testimony.

He said that they just became more bold. Now that is one situation. What about the Williamsons. Do you have an answer?

Mr. YOUNGCLAUS. We can't get all of the Williamsons, but we can get some of them. It is so difficult to get a fraud case against the Williamsons type because they deal in cash. They don't have any loans. They get $90 for topping a macadam driveway, whatever cash they will do it for and they will skip.

The only thing you can get them for is a violation of not having a license.

Senator HARTKE. You don't want to go back to bonding?

Mr. YOUNGCLAUS. Yes, I am ready to do it.

Senator HARTKE. Let's do it.

Mr. YOUNGCLAUS. I don't think you will catch them on bonding. They are pretty hard to catch on anything. The problem in bonding the home improvement contractor is merely his size. He is not large enough. He does not have the capital to get a regular bond. Let me read what my insurance adviser gave us:

A surety bond is quite different from an insurance policy. The surety guarantees the obligations of the principal. In the event of a default, the surety—and that is the company—may be called upon to make payment.

However, they will look to restitution from the principal. In an insurance contract the insurance company has the obligation to make payment for their insured without the ability to recover from the insured.

Since a surety company wishes to reimburse in the event of payment, they always look for the principals who are financially sound.

This would be the first difficulty in universally writing bonds for the home improvement contractors. Most surety companies require minimum working capital—generally over $10,000.

A great majority of home improvement contractors in the United States do not have this kind of money. They are small, local businessmen.

Senator HARTKE. Would criminal penalties be of any help in regard to the Williamsons?

Mr. YOUNGCLAUS. I believe so.

Senator HARTKE. National criminal penalties?

Mr. YOUNGCLAUS. Oh, national?

Senator HARTKE. After all, you see, the States haven't done it.

I am receiving all these letters at home, and I might tell you one thing to relay to your people who are sending the mail to my house, that they are not going to get the courtesy of a reply. I have an office. If they send it to my home, it goes into the wastebasket. They can cease and desist.

As far as I am concerned, they will not even get the courtesy of a reply. I am not going to even bother to look at it. I have on office, and that is what it is intended for, and if they want to cause additional trouble at home, they are irritating one Senator.

There is a nice mail campaign being put on by some organizations, I don't know who they are, but I want you to know that they have irritated one Senator by asking him to do his office work at home.

Mr. YOUNGCLAUS. I would resent it too, I don't have your home address, so it wouldn't be me.

Senator HARTKE. You can't get the States to move in this field, and you don't want the Federal law. What are we going to do, have the United Nations take over? How are you going to do it?

Mr. YOUNGCLAUS. I don't know.

Senator HARTKE. This is the point. We have had testimony about this great amount of fraud. You say criminal penalties in your opinion would be helpful, but you don't want Federal criminal penalties.

Mr. YOUNGCLAUS. I didn't say that. You added the Federal. I think you are right.

Senator HARTKE. Do you want Federal criminal penalties?

Mr. YOUNGCLAUS. Because many of these people, as everyone mentioned, move from State to State, and there is no way you can stop them unless you have some kind of Federal control.

Senator HARTKE. I really feel that a legitimate operator would have nothing to fear from this.

Mr. YOUNGCLAUS. The operator doesn't. The real problem is the black eye, as John knows or as anybody in the industry knows. He mentioned he has always been bothered by the fact that as soon as somebody finds you are a home improvement contractor, you are one of those bandits that you read about in the paper. This is true. It hurts the industry where there are a lot of headlines. I suspect it is only natural. We are concerned about how much bad publicity will be given in the industry rather than just the bad guys in the industry. There has not been enough emphasis on the small number of criminals in this case.

Senator HARTKE. What is the difference between a Senator saying we propose to write a law with criminal penalties to apply to those people who violate the law, and your organization putting out a model home improvement licensing act which says that we propose to have criminal penalties against those people who violate the licensing requirements? It is the same thing.

Mr. YOUNGCLAUS. Right.

Senator HARTKE. Why isn't that an indictment of the industry?

Mr. YOUNGCLAUS. I guess we don't make the same kind of headlines that the Senator does, or we would be able to get a licensing law in most of the States.

Senator HARTKE. I think a lot of the people who are legitimate in this operation——

Mr. YOUNGCLAUS. Ninety-eight percent of them.

Senator HARTKE (continuing). . . . are really wearing their feelings on their sleeves, so to speak. I think they have concrete suggestions as to how to move in this field, I am sure I would, and this committee would, be more than receptive in trying to cooperate with the industry to do this right.

There is nobody on this committee who is interested in penalizing the legitimate operation. I do think the black eye is there, so to speak, and as some of these people have just said, it may just be a few rotten tomatoes in the basket, but they sure smell.

Mr. YOUNGCLAUS. They sure do. I would like to say another word for title I. I would like to see the Congress increase the interest so there would be more title I loans made.

Senator HARTKE. We will take care of that in a minute.

Mr. YOUNGCLAUS. Maybe what we could do—and this could pe a joint industry operation with the FTC—maybe there should be an FTC blacklist.

Senator HARTKE. That may not be a bad idea. Let me come back to the Williamsons again. Don't you really believe that a Federal criminal statute of some type is probably necessary to catch the Williamsons' operations?

Mr. YOUNGCLAUS. The Williamsons, yes, if you can catch them. The problem with the Williamsons is how you are going to catch them. This is rough.

Senator HARTKE. Once you catch them, you have the difficulty of enforcement in some of these States. We have to look for a law in order to prosecute them. But if you had this in a Federal law, why——

Mr. YOUNGCLAUS. In other words, what you are saying is the gentleman from Texas disappears with the boys leaving Texas, the Federal law will catch him anywhere.

Senator HARTKE. What I am saying is it is a question of jurisdiction, and for jurisdictional purposes a Federal penalty appears almost to be necessary.

Mr. YOUNGCLAUS. I am telling you we are certainly willing to help in any way we can.

Senator HARTKE. Do you want to cover something else? I don't want to stop you.

Mr. YOUNGCLAUS. No.

Senator HARTKE. I want to thank you for your testimony. And I want to assure you again that we are willing to work with any organizations. I would hope that they would take their feelings off their sleeves; instead of writing us letters to try to keep us from doing something, just write us some good suggestions rather than to say don't do this thing and give the industry a black eye.

I listened to that in the automobile safety hearings, in the pipeline safety hearings, in the question of medicare. And I think any type of proposed regulation is understandably looked upon with a great deal of question by many people in the industry because they have enough regulation to contend with already.

I am not interested in burdening you down with any more.

Mr. YOUNGCLAUS. Do you want me to send you a copy of that bonding statement?

Senator HARTKE. Why don't you prepare that and we will put it in the record with your testimony.

(The document follows:)

A surety bond is quite different from an insurance policy. The surety guarantees the obligations of the principal. In the event of a default, the surety may be called upon to make payment, however they will look for restitution from the principal. In an insurance contract, the insurance company has the obligation to make payment for their insured without the ability to recover from the insured.

Since a surety company wishes to reimburse in the event of payment, they always look for principals who are financially sound. This would be the first difficulty in universally writing bonds for home improvement contractors. Most surety companies require minimum working capital—generally over $10,000.

There are other problems equally as important, such as:

1. Frequency of claims—the premiums for suretyship do not contemplate claims frequency.

2. Poor specifications which prohibit definable obligations.

3. Lack of uniform contracts with customers or a variety of contracts for each government jurisdiction would require a review by the legal department and the underwriter on each submission.

The above conditions would apply whether we are speaking in terms of a straight performance bond or a licensing bond. You will always have the problem of personality differences in dealing with homeowners.

The final witness is Edwin Rockefeller, an attorney, representing the National Chamber of Commerce, from Washington, D.C.

STATEMENT OF EDWIN S. ROCKEFELLER, ATTORNEY, NATIONAL CHAMBER OF COMMERCE, WASHINGTON, D.C.

Mr. ROCKEFELLER. I realize your time is short. We have a brief written statement which we will submit for the record.

Senator HARTKE. The entire statement will appear as though it was read.

(The prepared statement follows:)

PREPARED STATEMENT BY EDWIN S. ROCKEFELLER

My name is Edwin S. Rockefeller. I am a partner in the law firm of Wald, Harkrader and Rockefeller of Washington, D.C. From 1956 to 1961, I served on the staff of the Federal Trade Commission—first as an Attorney in the General Counsel's Office, later as Executive Assistant to the Chairman.

I am a member of the Chamber of Commerce of the United States, and I serve on its Committee on Antitrust and Trade Regulation. I am here today to present the Chamber's position on S. 3065, the Deceptive Sales Act, as well as S. 3066 and Senate Joint Resolution 130. With me is Fred Byset, Secretary of the Chamber's Antitrust and Trade Regulation Committee.

S. 3065

The National Chamber supports the enactment of S. 3065. There is one point, however, on which we would suggest clarification.

S. 3065 would give the federal district courts power to enjoin temporary certain unfair or deceptive acts or practices attacked by the Federal Trade Commission pending the outcome of the Commission's administrative proceedings. The bill would expand the jurisdiction of the district courts now provided for in Section 13 of the Federal Trade Commission Act as to the dissemination of false advertising of Food, drugs, devices or cosmetics to "any act or practice in commerce within the meaning of Section 5 which is unfair or deceptive to the consumer."

At the present time, there may be occasions when the Commission's procedure for stopping deception is too slow to protect adequately the consumer, with consequent unfairness to the honest business enterprise.

In protecting the consumer from the business firm reluctant to comply with the law, the FTC has a procedure provided by Section 5 for the issuance of cease-and-desist orders enforceable in court. This process from complaint to binding order may run over a period of several years—and the respondent is free to continue the activity alleged to be in violation until the process is complete. FTC proceedings, at times, are not *more* expeditious than court proceedings, as it was originally hoped they would be, but *less* expeditious.

The Chamber of Commerce of the United States supports effective elimination of consumer deception and supports the addition to the Commission's powers of enforcement contained in S. 3065. We regard the proposal as a sensible extension of the procedures already provided for in Sections 12 and 13 of the Federal Trade Commission Act as well as Section 6 of the Flammable Fabrics Act, Section 9 of the Fur Products Labeling Act, Section 8 of the Textile Fiber Products Identification Act, and Section 7 of the Wool Products Labeling Act.

Under the provisions of S. 3065 the Commission could seek a temporary court injunction when the Commission "has reason to believe"—

1. That an unfair or deceptive act or practice in interstate commerce is taking place or is about to take place; and
2. That a temporary injunction "would be to the public interest."

The bill would then provide that "Upon proper showing a temporary injunction or restraining order shall be granted without bond." This language parallels that in the existing consumer protection laws to which I have referred.

Under existing law, interpretation of the term "proper showing" has presented something of a problem. The courts have disagreed as to what is a "proper showing." Some have held that the Commission makes a "proper showing" and is entitled to an injunction on the mere showing that it has "reason to believe" a violation has occurred. Others have held that the court should have more discretion—that an injunction should not be granted automatically on the mere showing by the Commission that it has reason to believe a violation has occurred. We would submit that the court should be free to decide for itself whether to grant an injunction under all the circumstances—that the court should be free to balance the likelihood of potential harm to consumers as a result of the alleged deception against the likelihood of harm to the defendant should the allegation of deception prove to be unfounded or insubstantial.

The present conflict of decisions is illustrated by three cases under the drug advertising provisions of the FTC Act. In *FTC v. Rhodes Pharmacal Co., Inc.*, the U.S. Court of Appeals for the Seventh Circuit took the view that Commission proof of reason to believe a violation had occurred was enough alone to entitle the FTC to an injunction. The court said:

"It is true that there is nothing in the Act or its legislative history to indicate what should be considered 'a proper showing'. We think, however, that it is fair to say that all the Commission had to show was a justifiable basis for believing, derived from reasonable inquiry or other credible information, that such a state of facts probably existed as reasonably would lead the Commission to believe that the defendants were engaged in the dissemination of false advertisements . . ." (191 F. 2d 744, 747, 748 (1951).)

In *FTC v. National Health Aids, Inc.*, the U.S. District Court in Maryland, by contrast, concluded:

" . . . that in view of the nature of the subject matter it was hardly the intention of Congress to require a district court in the exercise of the extraordinary remedy of injunction to proceed affirmatively merely on the basis of the reasonable belief of the administrative agency. Very important rights may be effected by the issuance without bond of an injunction . . . Obviously much care should be exercised in the issuance of an injunction without bond which might destroy or very largely depreciate a business of this size ($600,000 annual gross) and action should be withheld unless the facts fairly require affirmative relief in the public interest . . . The reasonable belief of the Commission is sufficient to warrant its application for the injunction, but the action of the court would be based on the general considerations that properly apply in the issuance of preliminary injunctions." (108 F.Supp. 340, 346 (1952).)

In *FTC v. Sterling Drug, Inc.*, the U.S. Court of Appeals for the Second Circuit left the problem unresolved:

"The Commission contends that a preliminary injunction under section 13(a) should issue immediately upon a showing that the specific requirements of the act—'reason to believe' and 'interest of the public'—have been met, and that matters usually considered in the traditional equity suit are irrelevant. This

question has been a source of some conflict in the courts . . . In any event, since we find . . . that the commission failed in the initial step of making a proper showing that it had reason to believe the advertisements were false and misleading, it is unnecessary to resolve the question here raised." (317 F.2d 669, 678 (1963).)

We respectfully suggest that this Committee consider clarification of S. 3065 to avoid perpetuation of this problem by providing expressly that the granting of an injunction shall be discretionary with the court. This might be accomplished by amending the next-to-last sentence in Section 2 which now reads: "Upon proper showing a temporary injunction or restraining order shall be granted without bond" to read: "Upon proper showing, the court, in its sound discretion, may grant a temporary injunction or restraining order without bond."

S. 3066

In language similar to S. 3065, S. 3066 would provide for temporary injunctions against unfair or deceptive acts and practices in interstate commerce. In addition, it would—

1. Extend FTC power to those "affecting" interstate commerce; and
2. Add a criminal dimension to the regulatory procedure provided in the FTC Act.

This proposed extension of FTC Act enforcement to the local level, and through the criminal process, presents issues entirely different from those involved in S. 3065. We would question the need for such extension or its appropriateness to the existing scheme of trade regulation.

We would urge the Committee to consider favorably the temporary injunction proposal, as embodied in S. 3065, and to take no action on S. 3066.

SENATE JOINT RESOLUTION 130

This resolution would direct the Federal Trade Commission to set up a special three-year investigation and enforcement program in the home improvement industry to (1) determine whether the FTC Act is being violated, (2) prosecute violations found, and (3) determine whether new legislation is needed.

The resolution would also—

1. Authorize temporary injunction power similar to S. 3065 for a term of three years in cases involving the home improvement industry.
2. Authorize special appropriations in each of the three years of $500,000 above the normal FTC salaries and expense budget.

While we favor vigorous action by the FTC against all fraudulent and deceptive practices, we recommend against the adoption of this resolution. There are two reasons for this opposition: (1) a part of the alleged need for the adoption of the resolution would be met by passage of S. 3065 which we do support; and (2) the resolution would add to government expenditures at a time when inflationary Federal deficits compel reduced government expenditures at every opportunity.

CONCLUSION

To review our position on the three pending proposals—

1. We support the enactment of S. 3065, but recommend that the Committee consider clarifying language to assure that the granting of temporary injunctions shall be discretionary with the court.
2. We oppose the extension of FTC Act enforcement to local businesses "affecting" interstate commerce or through the criminal process as proposed in S. 3066.
3. We oppose the adoption of S. J. Res. 130 because we are unconvinced of the need for this proposed additional expenditure of government funds.

Mr. ROCKEFELLER. I will read the first and last paragraphs.

My name is Edwin S. Rockefeller. I am a partner in the law firm of Wald, Harkrader and Rockefeller of Washington, D.C. From 1956 to 1961, I served on the staff of the Federal Trade Commission—first as an attorney in the General Counsel's Office, later as Executive Assistant to the Chairman.

I am a member of the Chamber of Commerce of the United States, and I serve on its committee on antitrust and trade regulation. I am

here today to present the chamber's position on S. 3065, the Deceptive Sales Act, as well as S. 3066 and Senate Joint Resolution 130. With me is Fred Byset, secretary of the chamber's antitrust and trade regulation committee. Fred is also a staff worker of the Federal Trade Commission.

The position of the chamber of commerce on these three pending proposals is as follows:

1. We support the enactment of S. 3065, but recommend that the committee consider clarifying language to assure that the granting of temporary injunctions shall be discretionary with the court.

2. We oppose the extension of FTC Act enforcement to local businesses "affecting" interstate commerce or through the criminal process as proposed in S. 3066.

3. We oppose the adoption of Senate Joint Resolution 130 because we are unconvinced of the need for this proposed additional expenditure of Government funds.

We are not here to contradict the testimony that you have heard this morning from Mr. Miskell, for example. We merely question whether this isn't one of the many things that the Federal Trade Commission should be doing, and we can't really offer much on why a particular additional sum of money should be spent for this particular small aspect of the Federal Trade Commission's many responsibilities.

Senator HARTKE. I have looked briefly through this. I will review it in detail and will be glad to receive any suggestions you have in the future.

We thank you for your testimony today.

Mr. ROCKEFELLER. We have also brought with us a note from the Harvard Law Review as to this one particular point as to which we make some suggestion, that is, 65 Harvard Law Review 349 for 1951.

Senator HARTKE. We will include that in the record.

(The document follows.)

65 HARVARD LAW REVIEW 349 (1951)

FEDERAL TRADE COMMISSION—MATERIAL DISPUTE OVER FACTS DOES NOT JUSTIFY DISTRICT COURT DENIAL OF TEMPORARY INJUNCTION AGAINST ALLEGEDLY FALSE ADVERTISING.—During administrative proceedings against defendant for falsely advertising a drug, the FTC sought a temporary injunction under § 13(a) of the Federal Trade Commission Act, 38 STAT. 717 (1914), as amended, 52 STAT. 114 (1938), 15 U.S.C. § 53(a) (1946). The section authorizes application to a federal district court for such relief whenever the FTC has "reason to believe" that false advertising is being disseminated in violation of § 12 and that an injunction would be "to the interest of the public"; upon "proper showing" a temporary injunction "shall be granted." Both sides filed affidavits, and the district court denied an injunction on the ground that there was a material dispute as to the facts. On appeal, *held*, that to obtain a temporary injunction the FTC need only show that it has reasonable cause to believe the advertising false and the public interest affected. Reversed and remanded. *FTC v. Rhodes Pharmacal Co.*, CCH TRADE REG. REP. (9th ed.) ¶ 62,894 (7th Cir. 1951) (2–I decision.)

Following closely upon the FTC's announcement that it plans to expand use of the injunctive power under § 13(a) see CCH TRADE REG. REP. (9th ed.) ¶ 10,405 (1951), this case, the first since 1942 in which the FTC has sought such interim relief, turned upon the nature of the "proper showing" which the agency must make in order to secure an injunction. But the opinion does not clearly indicate whether, after the agency has established a prima facie case, the district court must automatically issue an injunction or whether it retains some equitable discretion. Since under either view the defendant cannot block an injunction merely by disputing the facts, the question arises whether he can ever prevent issuance. Even assuming that he can, he probably would have to surmount the evidentiary

obstacle of proving the agency's belief unreasonable. The district court must also give meaning to the nebulous statutory provision requiring reasonable agency belief that an injunction is "to the interest of the public." Literal interpretation would rob these words of meaning, for any statutory violation involves some public interest. More likely the statute should be construed to require that material harm be shown. Arguably the language should be further restricted to cases of physical harm, since the injunctive remedy is limited to false advertising of foods, drugs, devices or cosmetics and since the sponsors of the legislation explicitly stated that the statute was directed at physical rather than financial injury, 83 CONG. REC. 3256, 3292 (1938); but thus far the courts have not imposed such a limitation. *FTC v. Thomsen-King & Co.*, 30 F.T.C. 1692 (N.D. Ill. 1940), *supersedes denied*, 109 F.2d 516 (7th Cir. 1940); cf. *Ewing v. Mytinger & Casselberry, Inc.*, 339 U.S. 594 (1950), 64 HARV. L. REV. 118, 124.

The district court's refusal to grant an injunction because defendant's counter-affidavits raised debatable questions, *FTC v. Rhodes Pharmacal Co.*, CCH TRADE REG. REP. (9th ed.) ¶ 62,872 (N.D. Ill. 1951), would seem to frustrate the congressional purpose to provide a means for preventing appreciable public harm before there can be a determination on the merits. See 83 CONG. REC. 329, 3290 (1938). But if the court of appeals, in reversing, intended that an injunction automatically be granted, there will be a substantial risk that the advertiser will suffer unjustified economic loss. The possibility of considerable delay by the district court in acting upon the application for the injunction would not materially alleviate this risk. Cf. Blumenthal, *Mandatory Injunctions and the NLRB*, 2 LAB. L.J. 7 (1951). If, on the other hand, the court of appeals intended that the district court retain some discretion after the FTC has established its prima facie case, then it would be following the reasonable approach taken in *FTC v. William F. Koch*, 34 F.T.C. 1867 (E.D. Mich. 1942), 38 F.T.C. 931 (E.D. Mich. 1944), where the court balanced protection of the public against detriment to the defendant. Cf. *Hecht v. Bowles*, 321 U.S. 321 (1944). But see *FTC v. American Medicinal Products, Inc.*, 30 F.T.C. 1683 (S.D. Cal. 1940).

Senator HARTKE. That concludes the hearings for this morning. They will resume on Friday, March 29, with Mr. Weiner, Mr. Hall, Mr. Weil, and Mr. Benton and whomever else the staff assigns to us.

(Whereupon, at 11:20, the subcommittee was adjourned, to reconvene on Friday, March 29, 1968.)

UNFAIR PRACTICES IN THE HOME IMPROVEMENT INDUSTRY AND AMENDMENTS TO THE FTC ACT

FRIDAY, MARCH 29, 1968

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 10 a.m. in room 5110, New Senate Office Building, the Honorable Daniel Brewster presiding.

Present: Senator Brewster.

Senator BREWSTER. The committee will come to order. As an objection has been filed on the Senate floor this morning to any committees holding hearings, we shall place the statement of each witness in the record, in the same manner as if it had actually been delivered to the committee. Our first witness will be Max Weiner, of CEPA.

STATEMENT BY MAX WEINER, EDUCATIONAL DIRECTOR, CONSUMERS EDUCATION AND PROTECTIVE ASSOCIATION (CEPA), PHILADELPHIA, PA.

Mr. WEINER. The Consumers Education and Protective Association (CEPA) of Philadelphia, Pa., offers this testimony in support of S.J. Res. 130, S. 3065, and S. 3066. We fully support the proposal for study and crackdown of deceptive practices in the home improvement industry. We are particularly anxious to have the Federal Trade Commission provided with injunctive powers to stop the home improvement swindlers from plying their evil works while they are under investigation.

The report of the President's Consumer Advisory Council and the more recent report of the President's Crime Commission both estimated consumer losses resulting from home improvement frauds at $500 million to $1 billion annually.

When it is considered that property damage resulting from all the riots in the past several years does not total one-half billion dollars, and when it is considered how vast was and is the mobilization of city, State, and Federal resources to suppress the riots and protect property, the paralysis of the same officials in face of the yearly theft of $\frac{1}{2}$ billion to $1 billion is a sorry contrast. The President's National Commission on Civil Disorders indicated that unscrupulous commercial practices, which include home improvement swindles, were among the 12 "deepest grievances" contributing to the cases of riots in our big cities, but little or nothing is being done on any level to combat these rotten practices.

In the past 2 years of its work, Consumers Education and Protective Association (CEPA) has contributed its small effort toward exposing and combating the practitioners of fraud and swindling. We have pooled the efforts of simple citizens, victims of fraud and swindling, in a voluntary effort for consumer justice. We have exposed fraudulent practices in the sale of home improvements, remodeling, roofing, carpeting, fire alarm systems, swimming pools, heating systems, storm windows, and electrical wiring.

From our files, we bring you the documentary evidence of the specific ways the swindlers operate. We can report from direct, firsthand experience of the many fraudulent methods used by the unscrupulous contractors and merchants to dupe and trap the trusting, unwary consumers. All we can do with the few examples we are citing here is to confirm what this committee already knows of the actual swindling practices that are stealing hundreds of millions of dollars from millions of consumers and homeowners throughout our area and the country as well.

We have the case of Mr. Lloyd Tyner, 70 years of age, surviving on social security and part-time employment, who is paying $4,200 for a heater, in a house that costs altogether $7,000.

We have the case of Mr. and Mrs. Davis, of Chester, Pa., who were charged $1,756.80 for 14 storm windows, a storm door, and 120 square feet of roofing.

We have the cases of Mrs. DeLoatche, Mrs. Ellerbe, Mr. and Mrs. McNeil, and Mr. and Mrs. Spurrier, who were defrauded out of hundreds of dollars in hidden charges, for sloppy and unfinished work.

We have the case of Mr. and Mrs. McNeil, of Chester, Pa. who were charged almost $1,400 for 34 accoustical tile and two wooden kitchen cabinets as part of a "debt consolidation" home improvement swindle.

We have the case of the family that wound up paying $4,985 in a "bait and switch" deal on a swimming pool advertised originally for $499.

We have the cases of fire alarm system buyers who were supposed to pay $150 and wound up with judgments on their homes of $900 and $1,000, some of whom faced loss of their furniture and their homes at sheriff sales.

We have the case of Mr. and Mrs. Gallman who suffered an outrageous attack in a sheriff sale proceedings flowing out of a home improvement swindle.

Our experiences will show how the finance companies and banks cooperate with swindlers and gyps to finance their evil operations—and then hide behind the "holder in due course" doctrine as a defense against justified consumer complaints. We will show how these same finance companies do not hesitate to use the most oppressive collection practices to enforce payment on the debts arising from these swindles. We will show that consumers have lost and are losing their furniture, their household goods, even their homes as a result of these swindling operations.

CASES

Consumer: Annie Mae DeLoatche, 5858 Pine Street, Philadelphia, Pa.
Contractor: Lit Brothers, Philadelphia, Pa.
Financed by: First Pennsylvania Bank, Philadelphia, Pa.

Mrs. DeLoatche signed a home improvement contract with Lit Brothers to remodel her front porch. She was told by the salesman the total price, including financing, would be $2,000.00. Her copy clearly states the price as being $2,000.00. Nothing whatever is filled in as to finance charges, insurance, or other fees. The contract submitted to the bank by the contractor is filled in for $2,800.00.

Mrs. DeLoatche's copy calls for 60 payments, but states no amount for the monthly payment. The Bank's copy sets the monthly payment at $46.67.

In addition to the financing, Mrs. DeLoatche complained that the price was too high, the workmanship unsatisfactory, and the work unfinished. She said, "The job was not done the way the salesman promised me. The panelling is nothing but cheap plywood painted over and it was supposed to be white pine paneling. The windows leak with every rain. The door threshold is so wide people trip over it coming into the house."

CEPA made a thorough investigation of the cost of each item on the job. The complaint was finally settled by reducing the contract price for $2,800.00 to $1,700.00, including finance and insurance charges.

Consumer: Mr. and Mrs. Samuel Boozer, 2640 North 30th Street, Philadelphia, Pa.
Contractor: David Ghen, Real Estate Broker.
Financed by: Provident Consumer Discount Company, Philadelphia, Pa.

Over the past 12 years, Mr. and Mrs. Boozer had made mortgage payments totaling $8,355.13 on their home. Due to illness, Mr. Boozer had fallen behind in his mortgage payments. The mortgage company foreclosed and put the house up for Sheriff Sale for a small balance due of $669.

A real estate broker, promising to help Mr. and Mrs. Boozer obtain the money to pay off the mortgage and save their home, induced them to sign a home improvement contract for $1,800. He took then to a finance company where they signed a judgment note for $3,360. This included a concealed fee of $900 for the broker. In addition, he obtained another judgment note for $1,820.

About $150 worth of horribly bad painting was done on the exterior of the house. The broker delivered 5 gallons of paint to the Boozer home with instructions to "paint the inside yourself."

Thus, for a debt of $669, Mr. and Mrs. Boozer were flim-flammed into a $5,180 liability through the medium of a home improvement contract.

A CEPA picket line compelled Mr. Ghen, the real estate broker, to return the $900 fee and cancel the home improvement contract. The finance company liability was reduced from $3,360 to $1,548. CEPA saved Mr. and Mrs. Boozer $3,632.

Consumer: Mr. and Mrs. Stanley Spurrier, 315 Persing Avenue, Collingdale, Pa.
Contractor: City Heating & Remodeling Co., Philadelphia, Pa.
Financed by: First Pennsylvania Bank, Philadelphia, Pa.

Mr. and Mrs. Spurrier needed to have their kitchen enlarged. The contractor promised to meet their needs with a 7-foot-wide enlargement. The price was set at $1,730.

Because of faulty planning, the floor of the enlarged portion was 18″ below the kitchen floor. This necessitated a 9″ step which so reduced the usable space that the enlargement cannot be used efficiently for any purpose.

Adding a financial flim-flam to a construction mess, the $1,730.00 turned out to be $2,564.00. The salesman got Mr. and Mrs. Spurrier to sign a separate financing contract in blank under the impression that it was the same document they signed for the $1,730.00 price.

$2,564.40 for a useless "hole in the wall" has driven Mr. Spurrier to work on two jobs in an effort to make the payments and save his home from the Sheriff.

It is interesting to note the mis-leading advertisement method resorted to by this contractor. They place a small ad in the classified section of the newspaper which reads: "Additions, custom recreation rooms, apt. conversions, garages. Master carpenter will do the whole job. Terms arranged. Call Rocco, CE–2–3131."

Rocco is a non-existent master carpenter, an unregistered fictitious name of the City Heating and Remodeling Company.

CEPA is working on this case currently and has hopes of achieving a favorable settlement for Mr. and Mrs. Spurrier.

Consumer: Mr. & Mrs. John Cook, 5017 Woodland Avenue, Philadelphia, Pa.
Contractor: Heating Service Company of America, 6146 Market Street, Phila., Pa.
Financed by: Pen-Mod, Inc., subsidiary of ABC, Philadelphia, Pa.

Mr. Cook signed a "Memorandum Receipt" for a heater, showing a price of $1,189.00. However, his payment book from the finance company called for $1,863.00.

Mr. Cook refused to let the contractor hook up the heater. He personally visited the finance company and told them he had been lied to on the price and did not want the heater on those terms. Due to his old heater being torn down and the new heater not being installed, Mr. Cook was forced to pay over $900.00 extra to keep his house warm by electricity.

In November, 1966, the Finance Company instructed the Sheriff to execute on the Judgment Note Mr. Cook had signed for the heater. His household goods and all contents were subjected to seizure and sale to force payment on this fraudulent bill for a heater that had not even been installed.

A CEPA delegation to the Finance Attorney lodged a strong protest against this type of unscrupulous activity. Two more cases with the same company were presented at the same time. The Sheriff Sale was stopped, but the Judgment Note has not yet been cancelled of record.

When the attorney for the finance company was asked: "If this heater company is giving a 'memorandum receipt' with a lower price to the customer—and then presenting a copy with a higher price to the Finance Company, isn't that obtaining money under false pretenses, and isn't that something the District Attorney should be looking into?" his response was that that was not his job.

Consumer: Mr. and Mrs. Norman Williams, 5244 Greenway Avenue, Philadelphia, Pa.

Contractor: Heating Service Company of America, 6146 Market Street, Phila., Pa.
Financed by: Pen-Mod, Inc.

Mr. and Mrs. Williams bought a new heater, complete with burner and controls. The price on the "memorandum Receipt" they received was stated as $1,089.00. When their payment book came in from the Finance Company, the total was raised to $1,705.20.

CEPA is now in the process of collecting all the complaints against this company in our files. They show a definite pattern of fraudulent and mis-leading sales practices. We will undertake to expose their method of swindling consumers. And we will press for prosecution by City and State authorities as far as the inadequate consumer protection laws will permit.

Consumer: Mr. and Mrs. James Jackson, 5556 Pine Street, Philadelphia, Pa.
Contractor: Protect-A-Life Corporation, Philadelphia, Pa.
Financed by: First Pennsylvania Bank, Philadelphia, Pa.

Mr. & Mrs. Jackson wrote the following complaint to the Better Business Bureau: "The salesman told us that by sending out 50 referrals, the fire alarm system could be purchased for $250.00. This we agreed to. We were shocked when we received a book of coupons from the Bank totaling $1,031.40. At no time did the salesman tell us that we could not pay cash. We told him we definitely did not want to purchase a system through a bank. We felt the company was reliable since the salesman displayed a Better Business Plaque."

That tells the story in a nutshell. It is the notorious "referral plan" used as bait to trap thousands of families into Judgments on their homes of $900.00 to $1,000.00 for fire alarm systems supposed to cost $150.00 to $250.00.

As a result of pressure, exposure, and picketing by CEPA, the District Attorney of Philadelphia went into court and secured an injunction against Protect-A-Life using the fraudulent contracts. The law also provides criminal penalties of fine and imprisonment, but no move has been made by City or State officials to apply these penalties.

The First Pennsylvania Bank, informed of the Court's decision declaring the fire alarm system contracts illegal, persisted nevertheless in their efforts to collect the bills arising from these frauds. CEPA is therefore planning to take the issue to the public in protest against the immorality of the Bank's position in enforcing collection on contracts that a court has outlawed.

Consumer: Mr. & Mrs. Gaylord Johnson, 5840 Brush Road, Philadelphia, Pa.
Contractor: R & S Fire Security Company, 2233 North Broad Street, Phila., Pa.
Financed by: Beneficial Finance Company, Philadelphia, Pa.

Mr. & Mrs. Johnson were caught by the "referral plan" in the fire alarm system trap. Unable to pay the bill, they faced a Sheriff Sale on their household goods and contents. To hold off the Sheriff and save his home and family of 5 children, Mr. Johnson paid $200.00—and fell behind in his other bills. This is how many families are put under pressure—and broken up—by unscrupulous sales companies.

When Mr. Johnson came into CEPA's office, he was desperate. He had been to every city agency seeking help, including Legal Aid, Better Business Bureau, and the District Attorney. "If the Sheriff comes into my house," Mr. Johnson said, "I will get a gun and shoot. I've got to protect my family."

With the support of the organization, however, Mr. Johnson saved his home, and his furnishings. A picket line exposing the unscrupulous practices of this fire alarm system sales company brought justice, stopped the sale, and removed the Judgment Note from record.

Consumer: Mr. & Mrs. Edward Simpson, 2639 N. Corlies Street, Philadelphia, Pa.
Contractor: Protect-A-Life Corporation.
Financed by: Merchantile Banking Company, Philadelphia, Pa.

Another victim of the phoney fire alarm system "referral plan" was Mr. Edward Simpson. He was told that by sending in 50 referral cards, the $650.00 Fire Alarm System would be his for only $150.00. Instead, a judgment of $772.20 was placed against his property. Reluctantly, over a two year period, he paid the sum of $439.21. Then, feeling he had more than paid the amount required, he stopped making payments.

The account was sold to a Sheriff Sale Ring operating in Philadelphia, financial liquidators who buy up "distress" paper for a fraction of the face value. They proceeded to put the Simpson home up for Sheriff Sale to collect the balance of $332.00 due on the original contract.

CEPA pickets in front of the office of the "financial executioners" and at City Hall protesting the unfair Sheriff Sale succeeded in preventing the loss of Mr. Simpson's home. Subsequent negotiations with Protect-A-Life Corporation resulting in their paying off the full balance due the Finance Company.

But how many other thousands of helpless victims of this fraud and deceit either paid their bills in full or lost their homes when they refused to pay will never be known.

Consumer: Lloyd Tyner, 757 S. 15th Street, Philadelphia, Pa.
Contractor: Consumer Engineering Co., 4306 Parkside Avenue, Phila., Pa., Automatic Heating Engineering Co., 6239 Frankford Ave., Phila., Pa., Comfort Heating, 6215 Lebanon Avenue, Phila, Pa.
Financed by: Commercial Banking Corporation, Philadelphia, Pa.

Mr. Lloyd Tyner is now 70 years old. He lives on his social security payments and part time work. Mr. Tyner needed a heater for his home. Like most laymen, he had to depend upon the heating contractor to do what was right.

In August, 1963, Consumer Engineering Company installed a heater, but just a heater, with no burner, no controls, no duct work. The quoted price was $665.00, but Mr. Tyner signed a note in blank which was later filled in for $881.00, payable to Consumer Associates, located at the same address as the contractor. The note was discounted at the Commercial Banking Corporation.

It was not until cold weather that Mr. Tyner learned the heater was not doing the job. In April, 1964, Mr. Tyner was compelled to install a blower and controls in an effort to heat the house properly. The

new company, Automatic Heating Engineering Company, charged an additional $465.00, plus interest of $111.36, or a total of $576.00 for the installation.

Finally, the following year, Mr. Tyner was compelled to install a new burner at a price of $865.00, plus $276.44 finance charges, or $1,141.44. The heating system is still unsatisfactory, Mr. Tyner complains.

To date, Mr. Tyner has paid out $2,336.01 on these heater bills. There is still owing a balance of $1,927.00 to the Commercial Banking Corporation. Before he is finished, Mr. Tyner will have paid $4,263.00 for his heater. The entire house cost only $7,000.00.

Now, in January, 1968, the old Consumer Associates reappeared and proposed to fall for this latest swindle and turned the case over to the CEPA for investigation.

Consumer: Mr. & Mrs. Arthur Green, 2151 North 29th Street, Philadelphia, Pa.
Contractor: First National Service & Carpet Company, Philadelphia, Pa.
Financed by: Mid-Penn Discount Corporation, Philadelphia, Pa.

In need of money in a hurry, Mr. Green approached a contractor who promised to get him the loan. But the contractor demanded that Mr. Green agree to pay $595.00 for 100-A wiring—a job worth $200.00 at most. In the process of a bewildering series of negotiations, the contractor either fraudulently obtained or actually forged Mr. and Mrs. Green signature on a blank note which was later filled in for $2,038.00 and discounted with the finance company.

When no wiring was performed, Mr. Green refused to pay. Whereupon the finance company sent the Sheriff with instructions to sell Mr. Green's furnishings to collect the bill. A CEPA picket line halted this outrage.

Consumer: Mr. & Mrs. Cliff McNeil, 1526 Roselyn Street, Philadelphia, Pa.
Contractor: High Life Corporation, Philadelphia, Pa.
Financed by: First Pennsylvania Bank, Philadelphia, Pa.

A six-point complaint was filed with CEPA by Mr. and Mrs. McNeil. They charged the home improvement contractor with violating the Home Improvement Act, concealing finance charges, vague specifications and mis-representation, over-charging, shoddy workmanship, and unfinished work.

The contractor failed to give Mr. & Mrs. McNeil a copy of the contract. Instead, he provided the notarized "memorandum receipt," showing a price of $1,500.00 for the job. The copy submitted to the Bank was filled in for $2,287.32.

Mrs. McNeil was shown a beautiful sketch of a modern kitchen to induce her to sign the contract. The actual job had the following defects:

A 30″ range was installed in a 40″ space, leaving inaccessible openings on either side where food and dirt could not be cleaned up; the range was an inch below the counter height; the range back splash blocked the exhaust fan. The range was one of the cheap models instead of the "good" range Mrs. McNeil was promised; the plastering was left unfinished; the trim did not match and was left unpainted; the cabinet doors warped soon after installation.

As a result of a CEPA protest to the bank, the contractor was compelled to buy back the note. Mrs. McNeil is now refusing to pay for the job until it is finished to her satisfaction, and at the $1,500 price quoted in the "memorandum receipt."

Consumer: Mrs. Mary Ellerbe, 5922 Sansom Street, Philadelphia, Pa.
Contractor: Liberty Home Decorators, Philadelphia, Pa.
Financed by: First Pennsylvania Bank, Philadelphia, Pa.

Mrs. Ellerbe's copy of her contract to remodel her kitchen shows a price of $2,077. Finance charges of $907.40 were added without her knowledge or consent.

Following the completion of her job, Mrs. Ellerbe received a violations notice from the city of Philadelphia charging six serious violations of the building permit. One of the chief complaints was the kitchen floor, ¼-inch plywood, which sagged dangerously with every step.

Following a complaint, the bank compelled the contractor to buy back the note. Mrs. Ellerbe got her own contractor to fix up the job—and deducted the cost from the $2,000 price agreed upon with the original contractor. But without the support of the organization, Mrs. Ellerbe, like so many thousands of victims, would have been stuck with a $3,000 bill for horribly inferior workmanship.

Consumer: Mr. and Mrs. John Gallman, 1341 North Dover Street, Philadelphia, Pa.
Contractor: City Heating & Remodeling Co., Philadelphia, Pa.
Financed by: Mid-Penn Discount Corp.

The most horrible case in our organization's history was that of Mr. and Mrs. Gallman. This aged couple ordered a contractor to point, paint, and stripe the 14-foot front of the two-story row house in the heart of the ghetto of North Philadelphia. The price agreed upon was $695. The contractor claims some additional work was done at a cost of $305 and had Mr. and Mrs. Gallman's initials on the contract to prove it. Mrs. Gallman barely reads and writes; Mr. Gallman signed his name with an "X." They both signed a judgment note in blank, believing it to be for $695, since the extra work was not done. The note was filled in for $1,631.52 and discounted with the finance company.

When they received their payment book for 48 payments of $33.99, Mr. and Mrs. Gallman knew they had been overcharged. Nevertheless, they went ahead and made 42 payments to the finance company. Due to Mr. Gallman's illness, they were two payments behind—a total of $67.98—when the finance company ordered the sheriff to break into the Gallman home to seize and sell all their furniture to collect the amount due.

Mrs. Gallman, 66 years of age, tried to defend her "castle" with a little barbecue fork. Whereupon two deputy sheriffs and an escort of policemen broke down the door, seized Mrs. Gallman, beat her, kicked and stomped her, handcuffed her and footcuffed her. Her husband had some chemical sprayed in his face and was also handcuffed. Following this beating, Mr. and Mrs. Gallman were arrested and thrown into jail, where Mrs. Gallman lay on a cell floor for 5 hours, cuffed hand and foot.

The sheriff then proceeded to sell $2,347 of Mr. and Mrs. Gallman's furniture, the accumulation of a lifetime, to the vice president of the finance company for $90.

This outrageous attack upon the Gallmans, the sheriff breaking into their home, the sale of all their furniture and possessions, was entirely legal and in accord with common practice of execution on judgment notes in Pennsylvania. The judgment note confers this terrible power upon creditors while the consumer is trapped and helpless, having waived all legal rights to hearing or stay.

As a result of picketing the home improvement company, CEPA won a credit and cash refund reducing the cost of the contract from $1,631 to $962. As a further result of picketing the finance company in protest against their outrageous "looting" of Mr. and Mrs. Gallman's furniture, yesterday the finance company replaced the furniture seized at the sale with completely new furniture.

As a result of the experience with the Gallman case, CEPA has launched a campaign for wiping out all sheriff sales on consumer debts.

Consumer: Mr. and Mrs. Henry Davis, Penn Street, Chester, Pa.
Contractor: Everready Builders, Philadelphia, Pa.
Financed by: Fidelity Fund, merged with Equitable Finance Co., 674 North Broad Street.

Fourteen storm windows, an aluminum door, and a small roofing job measuring 120 square feet cost Mr. and Mrs. Davis nearly $1,800. The windows are already falling apart, but Everready Builders have gone out of business.

A delegation of CEPA members from Chester and Philadelphia protested and picketed the offices of Fidelity-Equitable Finance Co. A company official, who claims they check out all the companies they do business with, said he knew nothing about Everready Builders, denied any responsibility, and refused to make any adjustment on the bill under the "Holder-in-due-course" doctrine.

The signs carried by the pickets voice the urgent needs of consumers for protection from this type of unscrupulous home improvement swindles. They read:

"Finance Company Is Responsible When Consumer Is Swindled."
"Banks and Finance Companies: Don't Finance Swindles."
"Something Is Rotten in Home Improvement Financing."
"Overpriced, Overfinanced Home Improvements Lead to Sheriff Sales."
"Stop Home Improvement Swindles."
"City Council: Investigate Consumer Fraud."
"Outlaw Judgment Notes on Home Improvement Loans."

Consumer: Mr. and Mrs. Earnest McNeil, West 9th Street, Chester, Pa.
Contractor: Frantz Builders, 28th & Lehigh Avenue, Philadelphia, Pa.
Financed by: First Pennsylvania Bank, Philadelphia, Pa.

Mr. and Mrs. McNeil were approached by a salesman for the home improvement company and told that by consolidating their debts through a highly reputable bank, they would save enough money on interest charges to have some home improvement work done. Mr. and

Mrs. McNeil signed the contract, 34 non-matching acoustical tile were crudely installed in the living room ceiling; two pitiful, small wooden kitchen cabinets were hung on the kitchen wall; and an exhaust fan that blows smoke and grease up to the kitchen ceiling was installed. One small bill of $106.00 was paid off to a local finance company—and Mr. and Mrs. McNeil wound up with a judgement to the bank of almost $1,400.00.

The Pennsylvania Home Improvement Act specifically prohibits cash loans or consolidations as part of a home improvement contract. Despite this, the District Attorney of Delaware County has steadfastly refused to prosecute. When first approached by a CEPA delegation, the Assistant District Attorney said, "The Home Improvement Act? What's that, I've never heard of it."

The Bank at first asserted the "holder-in-due-course" defense and refused to take any step to protect Mr. and Mrs. McNeil. CEPA broke through this defense with a picket line, urging the bank to protect the consumer just as vigorously as it would protect its own money from a thief. The bank was persuaded to send a representative to present the facts to the district attorney, urging prosecution. A bank official also inspected the "home improvements" at the McNeil home and agreed they were not worth over $200.00. Mr. McNeil's obligation with the bank was reduced to the value of the work performed plus the $106.00 paid on his behalf to the finance company. Efforts are still continuing to have Frantz Builders prosecuted for a clear violation of the Home Improvement Act.

Consumer: Mr. and Mrs. Nick Giangola, Runnemede, New Jersey.
Contractor: Starlite Pools, 70th & Essington Avenue, Philadelphia, Pa.
Financed by: Atlas Financial Corporation, Elkins Park, Pa.

A slick "bait and switch" salesman combined with a phoney "referral plan," trapped Mr. and Mrs. Giangola into a debt of $4,985.00 for a swimming pool.

Answering a full page ad for swimming pools selling for $499.00, Mr. and Mrs. Giangola were induced to sign a contract for the "better, rust-proof, life-time service, deluxe" pool for $2,975 on the promise that their pool would be shown on "national television" and the resulting sales would bring them $100.00 for each prospect.

The $2,975.00 price turned out to be the "cash price." The mortgage on their home, signed in blank, was filled in, including the finance charges, for $4,189.08, which represented a "service allowance" from the $4,985.00.

Confronted with the evidence of the unscrupulous sales method, fraudulent addition of finance charges without the customer's knowledge or consent, alteration of the mortgage from the agreed upon amount, the finance company pulled out of the deal and turned the mortgage back to the contractor. They are trying to settle with Mr. and Mrs. Giangola at any price, but Mr. and Mrs. Giangola insist the pool be taken out completely.

Consumer: Orelia Gulley, 2500 North 10th Street, Philadelphia, Pa.
Dealer: Carpet Fashions, 2558 North Broad Street, Philadelphia, Pa.
Financed by: Cancelled.

A "bait and switch" carpet ad proposing to cover three rooms for $129.00 trapped Mrs. Orelia Gulley into a contract for "better, longer-lasting rugs," priced at $513.95. At the same time, she signed a financing contract in blank, which would have cost her $169.05, interest, or a total of $682.00.

Mrs. Gulley called the company the next day to cancel the contract, but the dealer refused. The goods "has already been cut," he insisted. A strong protest by CEPA canceled the contract.

The experience of CEPA in combating home improvement swindles and other types of consumer fraud leads us to make three basic recommendations to begin to remedy the present situation which amounts to a national scandal:

1. Legislation to remove the "holder-in-due-course" defense from financial institutions.

The basis of most of the swindling is the unfair and confusing system of financing home improvement loans. Without the cooperation of the banks and finance companies, the swindlers could not exist.

The Pennsylvania Motor Vehicle Finance Act prohibits a contract from containing any provision relieving the holder from liability for legal remedies which the buyer may have had against the seller under the contract. In compelling the holder to protect himself, the law would be compelling the holder to protect the consumer.

2. Licensing of home improvement contractors and salesmen. Gyps and frauds who violate a strict code of ethical business conduct could be driven out of business be revoking their license.

3. Tough and vigorous enforcement of existing consumer protection laws.

The widespread fraud and swindling that is stealing millions from consumers cannot be stamped out with Madison Avenue techniques of public relations either on a local or a national scale.

If a small, voluntary, nonprofit, nonfunded organization like CEPA can expose the frauds and the gyps, can save people's homes and furniture from sheriff sales arising from swindles, can secure thousands of dollars in refunds to victims of the swindlers, the consumers certainly have a right to ask, why can't the government bodies on a city, State, and National level with the vast resources at their command, do the same thing, but a thousand times more effectively?

In the face of apathy of most government bodies, in face of the support and cooperation of financial institutions with swindlers and gyps, in face of the widespread unscrupulous activities of many dealers, contractors, merchants, and salesmen, the consumers are moving to protect themselves, through such organizations as CEPA, demanding exposure of the frauds, vigorous prosecution, and effective legislation for consumer protection.

CEPA is reversing the age-old doctrine of "Let the Buyer Beware." On the masthead of our newspaper, "Consumers Voice," we have raised a new warning: "Let the seller beware."

If government agencies on a city, State, and Federal level would spend some of the money now being appropriated in buying riot-suppressing equipment in an effective program of consumer protection to suppress the swindlers who are stealing our money, our cars, our furniture, our homes, the consumers and the Nation would be much

better off, and one of the basic causes of the fires that are burning in our cities would be shut off.

In Philadelphia, for instance, the city fathers spent $5.2 million last summer for police protection, but not one penny was spent for consumer protection to combat the fraud which is one of the conuditions underlying the unrest in the ghettos.

CEPA is happy to lend its support to every move, even the slightest, on the part of government and legislative bodies to deal with the monstrous evil of consumer fraud. We heartily endorse the intent of the legislation being considered by this committee as necessary steps in the great crusade for consumer justice.

Senator BREWSTER. We will now hear from Edgar V. Hall of the National Home Improvement Council, Inc.

STATEMENT OF EDGAR V. HALL, EXECUTIVE DIRECTOR OF NATIONAL HOME IMPROVEMENT COUNCIL, INC., NEW YORK, N.Y.

Mr. HALL. Mr. Chairman and members of the committee, I am Edgar V. Hall, executive director of the National Home Improvement Council. Our organization is an outgrowth of a 1-year endeavor back in 1956 to promote the idea of improving homes to the American public. This promotion had been suggested to the industry from the highest governmental level through the U.S. Chamber of Commerce. Most of our present national membership, a roster of which is attached, trace their support to that time.

As you will see from that roster, many of the industry's leading manufacturers, accounting for a vast amount of materials used in remodeling work, as well as leading associations representing still other national companies and local businessmen, are involved in our activities.

Also, we have some chapters throughout the country. And we have a number of local businessmen members in communities where there are no chapters. We are additionally in frequent communication with many thousands of other small home improvement businessmen whom we serve in a variety of ways.

I am including a brochure which explains the council's background and its aims.

Mr. Chairman, the National Home Improvement Council wants to speak up in support of the proposed investigation by the Federal Trade Commission of those fringe elements of the industry whose unethical and illegal practices damage the reputations of the great majority of honest remodeling businessmen seeking to serve the public in a fair and honest manner. I am pleased that you, Mr. Chairman, in a recent letter to me, spoke of the "fringe operators" in the industry, indicating that you also recognized the honesty and high ethical standards of the great majority.

Our council and its members are anxious to see industry standards improved. We believe that the Nation's homeowners have the right to expect the highest of standards from an industry so important to the fabric of the Nation.

May I point out to you that the National Home Improvement Council has an ethics committee. The chairman is Mr. Monte C. Carpenter, vice president and general manager of the Flintkote Co.'s building products group. Mr. Carpenter is immediate past president of our council. This committee, prior to the time that the proposed FTC investigation was announced, had met with the President's Committee on Consumer Interests and had suggested formation of an industry advisory group to upgrade remodeling industry practices.

Also, Mr. Chairman, NHIC has another committee which has been trying for several years to get strengthened the FHA title I program, because we have felt that FHA title I provided homeowners with many safeguards against remodeling malpractices. That committee is chairmanned by Mr. E. T. Butler, vice president of IDS Credit Corp. IDS Credit Corp. is one of the largest home improvement lenders in the Nation. I am happy to report that this committee's activities are bearing fruit—that improvements in the title I program are included in the administration's 1968 housing bill. If passed, title I will once again become widely used, with its protective devices working for the benefit of the homeowner.

Also, today, I would like to bring to the committee's attention the many steps being taken by the home improvement industry to give homeowners the information they need to intelligently proceed to remodel their dwellings. And, I want to point out what is being done to aid the many honest home improvement businessmen in developing their businesses and in providing honest services in every community in America:

1. The industry is currently engaged in promoting May as National Home Improvement Month. As a part of this program several hundred thousands copies of this consumer bulletin will be distributed. Any homeowner reading through it will gain information on proper buying practices, fair pricing for work wanted, and credit guidelines as well as advice on how to avoid unethical practices. Also, national publications like American Home magazine, House Beautiful magazine, Popular Science, and others supporting May—National Home Improvement Month, have extensive editorial material in spring issues of those publications giving guidance to many millions of readers interested in fixing up their dwellings.

2. The National Home Improvement Council has an extensive newspaper publicity program wherein remodeling information is circulated to 1,800 newspapers, and, in turn, published in many of those newspapers. Next month, for example, more than 60 articles are being offered and these are packed with information designed to help consumers buy remodeling in an intelligent manner and to avoid the pitfalls.

3. NHIC has recently produced a television series for public service TV stations—10 30-minute sequences on home improvement. The programs have been shown to date on 15 television stations, including WETA here in Washington, and should be on the great majority of the 120 such stations over the next year or two. Many thousands of viewers are given guidance in buying remodeling products and services.

4. The council also has conducted a home improvement school for homeowners in major cities throughout the Nation. At these as many as 3,000 people have attended to examine products and services, hear

talks on remodeling and ask questions about their own home improvement needs. Usually in conjunction with these programs there has been a special newspaper supplement on modernization—as many as 36 pages of remodeling information, published by a leading newspaper in the various communities. This has further informed many millions of people countrywide about proceeding intelligently to fix-up their homes.

5. With NHIC's help at the local level, Mr. Chairman, groups of remodeling businessmen are forming associations to upgrade industry ethics and to provide homeowners with a source of supply for their remodeling needs. Businessmen who join not only pledge to abide by a strict code of ethics, but also conduct community education programs for homeowners as well as management training clinics for themselves. The theory for the latter is that better training makes for businessmen better able to serve their market honestly and well.

I would like to cite, if I may, some of the things these groups of remodelers are doing to protect their communities against malpractices:

(*a*) In Minneapolis, a group of home improvement contractors affiliated with the Minneapolis Home Builders Association have a bonding program. Any complaints about a job are investigated. If the complaint is justified, the responsible contractor is required to adjust the difference to the homeowners satisfaction. If he refuses he loses his association membership and other members make good on the job.

(*b*) In Chicago, our council chapter there requires that all of its members be members, at the same time, of the Chicago Better Business Bureau, abiding by its ethical standards as well as those of NHIC.

(*c*) In Cleveland the contractor group works closely with the BBB there. It also publishes an annual consumer remodeling guide with information designed to help readers with their remodeling problems.

(*d*) In California our remodeling chapters in San Diego, Los Angeles, and the San Francisco area have instituted a remodeling salesman's identification system to identify the unethical salesman and get rid of him.

(*e*) In Tacoma, Long Island, New York, Milwaukee, and elsewhere our groups hold consumer clinics, publish remodeling information of a wide variety for homeowners, work with local better business bureaus and engage in a variety of activity to encourage families to remodel with confidence that the work will be done well, at fair prices with quality materials and workmanship.

Mr. Chairman, the above is only a brief review of what is taking place at national and local levels. This council, supported largely by the leading organizations listed on the attached roster, is working continuously to upgrade the industry. Other organizations are doing their share.

The remodeling industry in 1967 was nearly a $12 billion business—up about $4 billion in volume in the last 10 years. In recent years, despite increased volume indicating that more homeowners than ever before are undertaking remodeling projects, Better Business Bureau figures indicate that complaints about remodeling have not risen although total calls to the BBB by the public have doubled. Further, many inquiries about remodeling directed towards BBB's are not complaints, but homeowner interest in the subject which results in

calls to a BBB as the logical source of general information about contractors in business in that community.

Mr. Chairman, in conclusion I repeat that we welcome this investigation as a means of helping to expose and eliminate the unethical and crooked businessman. The home improvement industry, which plays such an important role in preventing the Nation's housing inventory from deteriorating into slums, will benefit accordingly. At the same time we stress the great importance of letting the American public known that the vast majority of home remodeling businessmen at all levels are honest, ready to be of service to their communities and proud of their profession.

MEMBERSHIP ROSTER

Alcan Aluminum Corporation
Alcoa Building Products, Inc.
American Gas Association
American Plywood Association
Andersen Corporation
Certain-Teed Products Corporation
Conwed Corporation
Electric Heating Association, Inc.
Evans Products Company
The Flintkote Company
Forest Fiber Products Company
Formica Corporation
Gas Appliance Manufacturers Association
General Aniline & Film Corporation
Georgia-Pacific Corporation
Home Improvement Marketing Consultants, Inc.
House Beautiful Magazine
IDS Credit Corporation
Kaiser Gypsum Company, Inc.
Masonite Corporation
Middle Atlantic Lumbermens Association
Montgomery Ward & Company
National Gypsum Company
National Lumber & Building Material Dealers Association
Owens-Corning Fiberglas Corporation
The Philip Carey Manufacturing Company
Sears, Roebuck & Company
United States Gypsum Company
United States Plywood Champion Papers Inc.
United States Savings & Loan League
Westinghouse Electric Corporation
Weyerhaeuser Company
Whirlpool Corporation

(The following material was submitted by Mr. Hall with his statement:)

NATIONAL HOME IMPROVEMENT COUNCIL, INC.—ON THE THRESHOLD OF THE SEVENTIES

"The National Home Improvement Council was organized to provide a single industry coordinating association. There is a need to develop coordinated programs . . . to expand markets for suppliers, create more opportunities for lenders, stimulate the growth—and profits—of small businesses and move toward a better community."

TELEVISION SERIES

The Council has produced a series of ten 30-minute television shows for educational stations nationwide. The series is titled "More Room For Living." Subjects covered include: getting started, financing, kitchen remodeling, bathroom remodeling, remodeling after a fire, basement remodeling, finding new space, adding

a room, exterior remodeling, patios and fencing and home maintenance. The programs will first be shown on member stations of the Eastern Educational Network with an audience potential of 20,000,000 viewers. Other stations will receive the series later.

The products and services of national members of the Council are shown in the series. Products and services literature are distributed in a Home Improvement Idea Library sent on request to viewers of the series.

TRADE ADVERTISING PROGRAM

NHIC conducts an extensive trade advertising program to aid local remodeling businessmen. During 1967 the advertisement on the opposite page was run as an industry service by the following publications, among others: American Builder, American Building Supplies, American Roofer & Building Improvement Contractor, Building Materials Merchandiser, Building Products Guide, Building Supply News, Crow's Forest Products Digest, Dixie Lumberman, Florida Builder, Florida Contractor & Builder. Hardware Retailer, Home Builder News, Illinois Building News, The Lumber Merchant, Lumber Co-Operator, Mississippi Valley Lumberman, NLPGA Times, Northwestern Lumber Dealer/Iowa Lumber Dealer, Plan, Plywood & Panel, Practical Builder, Western Lumber & Building Materials Merchant, Wood Construction & Building Materialist and Wood Preserving News. Space was contributed by these publications. Total circulation of this message: 1,000,000.

As a result of this activity, Council support at the local level is growing, numbering nearly 1,000 contractors, dealers, lenders, utilities and other members.

NHIC CHAPTERS

The Council has eight chapters through which a variety of industry-wide programs are tested. In addition, each chapter has regular meetings to discuss matters of local importance. Chapters conduct educational seminars, stimulate remodeling interest locally, encourage consumer confidence in the industry as well as guard against industry malpractices. The individual chapters represent the professional remodelers in their communities in the same manner as those associations representing doctors, lawyers, bankers and other business leaders.

[Telegram]

THE WHITE HOUSE, *Washington, D.C.*

NATIONAL HOME IMPROVEMENT COUNCIL: My commendations to the National Home Improvement Council for designating 1963 as "Home Improvement Year". There is real merit in an industry-wide drive which encourages Americans to remodel and improve their homes. Such a program also helps in the maintenance and enhancement of community life throughout the nation.

There are few domestic matters of more importance than the preservation of the $500 billion worth of property in this country, the stabilization of real estate values, and the economic stimulus that results from individuals, communities, and industry working together to achieve these goals.

In America there were 11 million substandard houses in 1960, and many more were in need of alteration, expansion, or repair. More than 45 percent of America's houses were built before 1929. Many of these structures are basically good houses, but they need some improvements to bring them up to code or acceptable modern living standards.

If action were taken only to bring the units lacking basic facilities up to minimum standards within a 10-year period, it would increase the annual outlays on residential maintenance and repairs by $3½ to $4 billion.

The 1961 Housing Act has provided some important loan insurance programs for home improvement and rehabilitation, and the longstanding FHA programs have provided valuable aids to industry for 28 years. The NHIC has helped to keep these programs and private industry participation in them active and vital.

The work of the council in cooperation with Federal programs is encouraging.

My best wishes to the National Home Improvement Council and its industry affiliates in 1963.

JOHN F. KENNEDY.

NATIONAL HOME IMPROVEMENT MONTH

The Month is an outgrowth of NHIC's Home Improvement Year, 1963 promotion endorsed by the late President John F. Kennedy whose message to the Council then is still true today. It is a continuing program of promotional effort toward stimulating home improvement activity amongst millions of home owners.

Each year the governors of the states and the mayors of many cities proclaim the Month. 80,000 retailers, contractors, lenders, and utilities receive promotion planning materials covering the point of sale as well as newspaper, radio, TV and direct mail aids. A number of consumer magazines publish special issues or sections in support of the May effort. Trade publications devote special issues, encouraging their readers to participate. Local communities function to establish city-wide programs.

COMMITTEES

Council committees operate to assist the development of the remodeling industry. Committee chairmen and members are from industry. They devote their time on a voluntary basis in the interest of resolution of industry problems and creation of industry direction. These include:

Advertising and Promotion
Contractor Development
Ethics
Home Improvement Schools
Lenders
Liaison
Market Trends
Membership Development
Research
Public Relations and Publicity
Urban Rehabilitation

HOME IMPROVEMENT SCHOOLS

The Council conducts a series of consumer Home Improvement Schools in major cities. At these, home owners hear lectures on a variety of remodeling subjects. They receive information on their own home improvement needs, see product displays and take home remodeling literature for further study. Schools have been held in:

Allentown, Pa.
Ashtabula, Ohio
Baltimore, Maryland
Binghamton, New York
Boston, Massachusetts
Bremerton, Washington
Camden, New Jersey
Chicago, Illinois
Cleveland, Ohio
Dallas, Texas
Detroit, Michigan
Douglas, Arizona
Hazelton, Pa.
Houston, Texas
Indianapolis, Indiana
Kansas City, Missouri
Long Island, New York
Los Angeles, California
Minneapolis, Minnesota
Milwaukee, Wisconsin
New Brunswick, New Jersey
Hartford, Connecticut
Philadelphia, Pa.
Oakland, California
Paterson, New Jersey
Phoenix, Arizona
Pittsburgh, Pa.
Portland, Oregon
Providence, Rhode Island
Puyallup, Washington
St. Paul, Minnesota
San Diego, California
San Francisco, California
Seattle, Washington
Syracuse, New York
Tacoma, Washington
Washington, D.C.
Wichita, Kansas
Wilmington, Delaware
Yuma, Arizona

More than 50,000 people have attended.

These programs are financed locally and involve the cooperation of local remodeling businessmen, utilities and leading newspapers.

The cooperating newspaper publishes a section featuring home improvements. As a result of this major effort, 20,000,000 people have been made aware of the benefits of home improvement.

PUBLICITY

A newspaper publicity kit consisting of editorial material, photographs and advertising mats is published and distributed annually to the leading 1800 newspapers in the nation. Additional material is offered to these newspapers again in the spring. This results in many special issues, pages and features on remodeling, reaching literally millions of home improvement minded families.

NHIC members are given an opportunity to have their product publicity included in these kits.

SUMMING UP

The National Home Improvement Council was organized to provide a single industry coordinating association. There is a need to develop coordinated programs before the full potential of this vast industry can be realized. We can expand markets for suppliers, create more opportunities for lenders, stimulate growth—and profits—of small businesses and move toward a better community. But, there are also industry problems to be solved:

1. Better statistical information on the size, nature and trends of the industry is needed. The first—and very nearly the last—accurate and comprehensive survey of the industry was made by the Bureau of the Census in 1962. Council intercession saved the program. But, we must have more and better data of this kind.

2. The reputation and standards of the home improvement contractor must be improved. To some extent this has been done on a local basis through various industry associations, and the result has been a growth in the volume of local business. But the job is far from complete. Complaints about home improvement contractors still rank high in terms of the total complaints made to local Better Business Bureaus.

3. Better methods for financing home improvements must be developed to keep pace with rising costs and changing needs. For example, longer term financing at reasonable interest rates can go far in expanding this market. Also, an improvement in the FHA Title I program is urgently needed.

4. Means of effectively informing consumers on how to improve their homes, what products and services are available and ways to obtain the necessary financing must be developed.

5. Industry-wide promotional programs to stimulate the growth of the home improvement market are needed. This will require the cooperation of all the various segments of the industry. Its results can add several billion dollars to our gross national product through new business growth and increased employment.

Currently, the members of the NHIC include other trade associations (8 in all); it includes suppliers (23 in all); it includes large merchandisers; it includes independent small contractors; it includes the press; and it includes dealers, lenders, utilities and regional manufacturers. For this reason, we believe the NHIC can provide the proper vehicle to pull together the segments of the home improvement industry and thus provide leadership in solving its problems. Within the last several years the NHIC has:

1. Resurrected the U.S. Census report on remodeling which was to have been discontinued, and helped in the preparation of the last Census survey so as to provide more meaningful data for the industry. Also, NHIC is undertaking its own study and has retained F. W. Dodge for this purpose.

2. Assisted the Association of Better Business Bureaus in developing a film on home improvement to be shown on television and before consuming groups. It is working with the ABBB on the preparation of an industry code of ethical practices.

3. Established a Title I task force in cooperation with members of the lending community to work toward improving the terms of FHA Title I home improvement loans.

4. Sponsored more than 100 "How To Improve Your Home" schools which have been attended by over 50,000 home owners. (Because of these schools local newspapers have published a total of 20,000,000 copies of home improvement sections, thus informing the public about this industry.)

5. Produced ten, 30-minute television shows on all facets of home improvement. These shows are being shown on educational television stations throughout the country.

6. Worked with newspapers, magazines, radio and television to stimulate coverage of home improvement industry activities.

7. Published and distributed 150,000 copies of the NHIC newsletter which serves as one of the few media for internal industry communication.

One could say this list represents a considerable achievement of which any trade association would be proud. But the NHIC must do far more if it is to fulfill its proper role in the home improvement industry. We have stressed the theme of industry coordination. And we have indicated that we believe the NHIC is the logical coordinating vehicle. What specifically does this mean? As an association, the NHIC performs these functions:

It is a forum where related industry manufacturers, associations, lenders, utilities, suppliers, the press and government agencies can gather together to analyze specific problems affecting the home improvement industry and initiate programs to solve these problems.

It is a liaison between the industry and the federal government.

It actively promotes the growth of the industry through education, publicity and development of creative programs to capture the public's imagination.

The public has a great need for the proper development of the home improvement industry; the opportunities to the businesses in the industry are equally great. Through the effective execution of its function NHIC is helping to meet the public's need and helping to expand the business opportunity.

ABOUT OUR NATIONAL MEMBERS

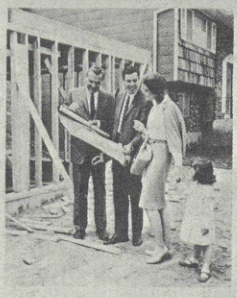
The remodeling industry is a business of intangibles, ill-defined areas of interest, varied occupations, and diverse objectives. Despite these handicaps and lacking the cohesiveness of the new home construction industry, it is none-the-less a giant business. The federal government's most recent statistics show the size at approximately 11½ billion dollars annually. That volume demands an industry spokesman. NHIC was established, supported in the main by a number of leading producers and associations. These organizations realize the difficulty of pinpointing immediate benefits from their participation, given the industry's varieties and intangibles. Their support has been based largely on their realization that industry leadership carries with it the responsibility to take a stance where the need exists.

For this reason the suporters of the National Home Improvement Council, listed below, are acting in the higest traditions of the American business community!

Alcan Aluminum Corporation
Alcoa Building Products, Inc.
American Gas Association
American Plywood Association
Andersen Corporation
Certain-teed Products Corporation
Conwed Corporation
Electric Heating Association, Inc.
Evans Products Company
The Flintkote Company
Forest Fiber Products Company
Formica Corporation
Gas Appliance Manufacturers Association
Georgia-Pacific Corporation
Home Improvement Marketing Consultants, Inc.
House Beautiful Magazine
IDS Credit Corporation
Kaiser Gypsum Company, Inc.
Masonite Corporation
Middle Atlantic Lumbermen's Association
Mongomery Ward & Company
National Gypsum Company
National Lumber & Building Material Dealer's Association
Owens-Corning Fiberglas Corporation
The Philip Carey Manufacturing Company
The Ruberoid Company
Sears, Roebuck & Company
United States Gypsum Company
United States Plywood Corporation
U.S. Savings & Loan League
Westinghouse Electric Corporation
Weyerhaeuser Company
Whirlpool Corporation







Does your home have the needed space? Are its facilities adequate and functional? How about those high upkeep and maintenance costs? Could a certain charm or improved livability be added? Sometimes a comparatively few dollars in improvements can transform a home completely by adding to its resale value or bringing more leisure time to its occupants—or simply improving family environment. So inquire now! See if you are not surprised by the low cost, the low monthly payments, the exciting new materials. Now is the time to remodel or improve your home!



HOME IMPROVEMENT TIME

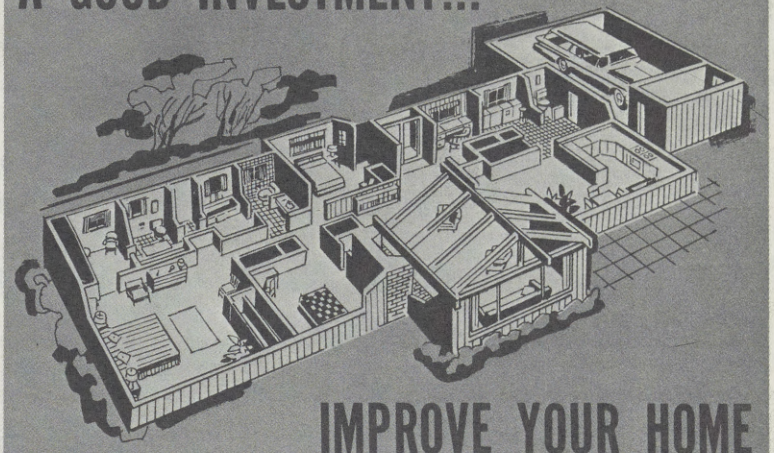
'68

SPONSORED BY

HOME IMPROVEMENT COORDINATING COMMITTEE

PAGE 1

A GOOD INVESTMENT...



IMPROVE YOUR HOME

Your present home represents a big investment--probably the single largest investment of your lifetime. Protecting this investment is just good business. Safeguard your home with improvements and maintenance which protect and extend the long term value of your investment. Homeowners everywhere are finding that investment of funds in home improvement and modernizing is one of the soundest investments that they can make. A remodeling job is not likely to wear out as time goes by as is true in the case of many expenditures. The well planned and executed remodeling project, using quality materials, usually will increase the value of the home by more than the cost of the project. Remodeling will help to protect the long-term market value of your property.

Look beyond your home and give some thought to the price range of the homes in your neighborhood. If the remodeling project you plan is so expensive that it would bring your total investment in the home far above the price of most of the other property in the neighborhood, it might be wise to scale down your plans.

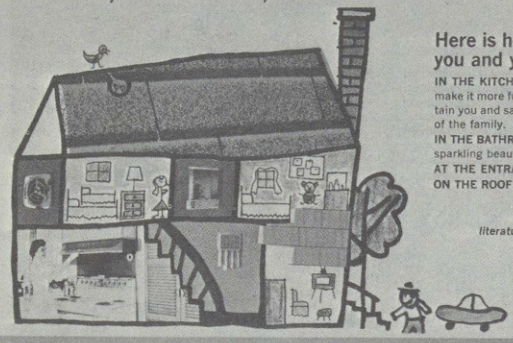
Some improvements tend to add more value to a home than the cost of the project. Other types of improvements, those made to accommodate unusual taste or unique family circumstances, may be almost meaningless when the time comes to sell the house. For example, the addition of a third bedroom to a two-bedroom house is the type of remodeling that can add substantial value. But, the addition of a sixth bedroom to a five bedroom house might make very little difference in value. Remodeling projects which follow highly individualized personal taste can, in many instances, detract from the value of property instead of adding to it. Remodeling can be the answer to your space, growth, and pleasure needs.

This Guide to Home Improvement was produced for you by the Home Improvement Coordinating Committee with the cooperation of these Sponsors:

Alcan Aluminum Corp.-Bldg. Products Div.
Alcoa Building Products, Inc.
Amana Refrigeration, Inc.
American Gas Association
American Iron & Steel Institute
American Plywood Association
Andersen Corporation
Asphalt Roofing Industry Bureau
Bird & Son, Inc.
California Redwood Association
The Philip Carey Mfg. Company
Celotex Corp.
Certain-teed Products Corp.
Electric Heating Association
The Flintkote Company
Formica Corporation
Georgia-Pacific Corporation
Hastings Aluminum Products, Inc.
IDS Credit Corporation
Inland Steel Products Company
Johns-Manville Corp.
Malta Manufacturing Company
Marlite Div. of Masonite Corp.
Masonite Corporation
National Gypsum Company
The Ruberoid Corp.-A Div. of General Aniline & Film Corp.
Sears, Roebuck & Company
Simpson Timber Company
United States Gypsum Company
United States Plywood Corp.
Westinghouse Electric Corporation
Weyerhaeuser Company
Whirlpool Corp.

...and sent to you through the courtesy of the business firm on the Front Cover

GIVE YOURSELF AND YOUR HOME A LIFT
INSIDE, OUTSIDE, ALL AROUND THE HOUSE



Here is how to make you and your home feel new again . . .

IN THE KITCHEN a new Range Hood and Ventilating Fan to make it more fun to work there. Add a Radio-Intercom to entertain you and save steps when you want to check on the activity of the family.
IN THE BATHROOM a new cabinet and accessories for instant sparkling beauty.
AT THE ENTRANCE a new door chime to announce visitors.
ON THE ROOF new colorful shingles.

Use the inquiry coupon to receive literature describing this "House Treatment".

CIRCLE NO. 1 ON PAGE 22

Sketch Courtesy of Philip Carey

Need another Conversation Area?

THEN CREATE TWO ROOMS OUT OF ONE . . . WITH PREFINISHED PANELING



Photo Courtesy of U.S. Plywood Corp.

One 8 foot wall was paneled in Prefinished De Luxe Walnut, using the panels horizontally to give the wall the appearance of greater width. The same paneling was then used vertically to create the divider, which consists of two panels. Divider was then attached to the backs of two storage cabinets, one in the dining room serving as a buffet, one in the living room housing hi-fi, television and such. Brass pipes at ceiling and floor give the divider extra support. Cabinets are made of Walnut panels to match the walls.

How else can you buy a room for so little! And the beauty of it all is that Prefinished Paneling will last and look lovely for a lifetime. It's guaranteed, in writing. There are 70 different varieties of Prefinished Paneling . . . *Use the inquiry coupon for literature describing hundreds of ways to work wonders in your home.*

CIRCLE NO. 2 ON PAGE 22

FINEST MATERIALS – QUALITY WORKMANSHIP – PERSONALIZED SERVICE

SUGGESTIONS TO HELP YOU AVOID COSTLY MISTAKES . . .



LIST YOUR NEEDS
Decide exactly what you're trying to accomplish. Make a list of the things you want done. Don't try to do too much in too little space. Consider your family's changing needs. Try to build in flexibility.

CONSULT AN EXPERT
Get professional help immediately. Be sure your plans are workable. Check building codes, restrictions and whether the structure of your house will permit the changes you have planned.

PAGE 3



Photos Courtesy of Asphalt Roofing Industry Bureau

IF YOU HAVE ROOF PROBLEMS...

A worry-free roof with HEAVYWEIGHT asphalt shingles is the answer



Self-sealing types of asphalt shingles—bonded one to the other by thermo-setting adhesive strips—provide the ultimate in wind protection.

PROTECTION FROM RAIN, SNOW, SLEET AND HAIL Heavyweight asphalt shingles do a superior job of keeping all the weather out.

PROTECTION FROM WIND By their nature, heavyweight asphalt shingles are more rigid and substantial providing added protection from gale-force winds.

PROTECTION FROM FIRE As evidence of their fire resistance all heavyweight asphalt shingles bear the coveted label of the Underwriters' Laboratories, Inc.

BEAUTY Heavyweight asphalt shingles allow the home owner to express his own personality. They are made in a wide range of solid and blended colors.

Use the inquiry coupon to learn more about the advantages of Heavyweight Shingles.

CIRCLE NO. 3 ON PAGE 22

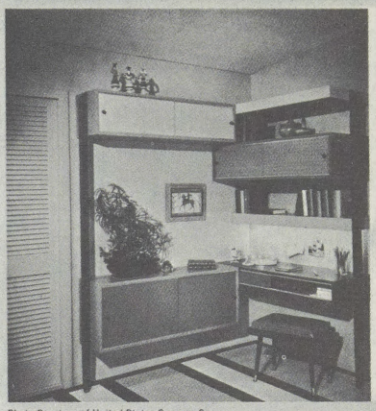


Photo Courtesy of United States Gypsum Co

A NEW ROOM FROM CEILING TO FLOOR...

Isn't expensive when you select the right materials with the assistance of a qualified remodeler.

WASHABLE PIN-PERFORATED ACOUSTICAL TILE ON THE CEILING

Heavenly beauty... heavenly quiet. PIN-PERFORATED tile comforts a room with the silent beauty of starlight.

GYPSUM WALLBOARD ON THE WALLS COVERED WITH LATEX PAINT IN THE COLOR OF YOUR CHOICE

HARDBOARD BUILT-INS FOR WORK AND STORAGE

A new, improved kind of wood with no knots, no grain, no soft spots, that won't crack or splinter. Painted with a velvety matte finish that can be scrubbed again and again.

Use the inquiry coupon for details about new inexpensive rooms.

CIRCLE NO. 4 ON PAGE 22

NO CHARGE OR OBLIGATION FOR AN ESTIMATE



SUGGESTIONS TO HELP YOU AVOID COSTLY MISTAKES . . .

THE LENDING INSTITUTION

On most loans, the lender will require a detailed cost analysis of your remodeling. The Contractor will provide this. They will also take care of such things as building permits. If you go to a lender other than the one who holds the original mortgage, know the unpaid balance on the original mortgage.

THE CONTRACT

After the loan is approved, sign a contract. Specify the materials. Detail a complete agreement about the extent of the work.

CONVERT YOUR OLD BACK PORCH TO A FAMILY ROOM



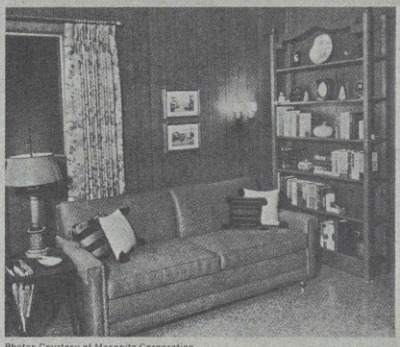
Exterior—Before



Exterior—After

This room addition, replaces an old-style back porch and gives the family a comfortable, general-purpose living area. Custom-built bookcase with the natural beauty of hardboard prefinished wall paneling as a background is a feature of this corner. Hide-a-bed offers spacious seating and sleeping. Other features are a powder room, a storage wall behind louvered doors, a built-in desk with overhead cabinet space, and a large picture window overlooking the yard. The interior wall panels and exterior siding are factory-finished hardboard that require only minimum care, occasional damp-wiping. They are resistant to hard knocks and abrasion. **Use the inquiry coupon for ideas to add-a-room for better living.**

CIRCLE NO. 5 ON PAGE 22



Photos Courtesy of Masonite Corporation

PUT BEAUTY AND PROTECTION ON YOUR ROOF...

WITH A 25-YEAR WARRANTY

These shingles are extra tough and rugged. They pack enough power to resist winds of gale force and to meet Underwriters' Laboratories requirements for fire resistance. These uniquely grained shingles with hand-chiseled design, cast thick, rugged shadow lines that add richness to a roof and prestige to a home.

Use the inquiry coupon for information about heavy, ceramic-rock surfaced shingles.

CIRCLE NO. 6 ON PAGE 22

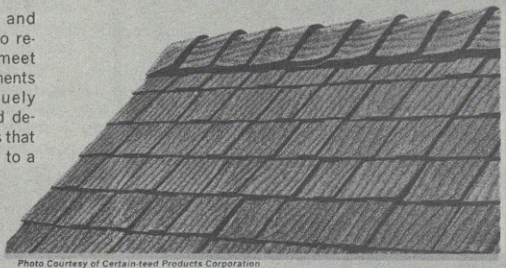


Photo Courtesy of Certain-teed Products Corporation

CALL TODAY — DISCUSS YOUR PLANS — NO OBLIGATION

SUGGESTIONS TO HELP YOU AVOID COSTLY MISTAKES . . .

LIST YOUR ASSETS

Visit the lending agency early. They will consider—Will the remodeling add to the value of the house? What kind of neighborhood is the house in? What's the state of your present mortgage, the amount of your equity and your personal financial condition? Most people can get a loan for an intelligently planned remodeling job.

PLANS AND BUDGET

Make detailed plans. Even the simple addition of a room can profit from a contractor's advice. By this time, you'll have a fairly firm budget established.



THIS IS HOW CEILING TILE CAN BRING NEW GLAMOUR TO OLD STORAGE SPACE



Photo Courtesy of The Celotex Corporation

. . . a room of her very own in what was once cluttered storage space. This ceiling tile in Sculptured Diamond White finish provides an effective background for the vivid color accent of the furnishings. Besides transforming a dingy storage area into a charming bedroom, the fiberboard ceiling tile adds extra comfort through its insulating qualities. Note how the bed's canopy makes good use of the slope of the roof line.

Use the inquiry coupon to discover how ceiling tile gives new glamour to a room.

CIRCLE NO. 7 ON PAGE 22

IF YOU NEED A NEW ROOF DRAINAGE SYSTEM...

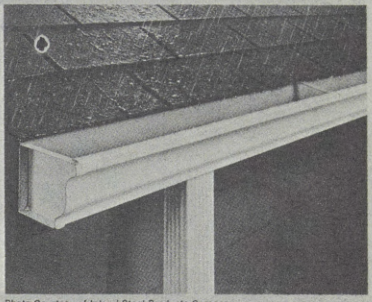


Photo Courtesy of Inland Steel Products Company

A pre-painted galvanized gutter and pipe made of steel with two coats of baked enamel will...

- End your scraping and repainting Problems for a GUARANTEED 10 YEARS.
- Hold its beauty and enhance your home's appearance.
- Resist dents and damage.
- Stay tight because of less expansion and contraction.

And It Is Inexpensive!

Use the inquiry coupon to find how inexpensive it is to have a new roof drainage system.

CIRCLE NO. 8 ON PAGE 22

BE SURE YOU INVESTIGATE BEFORE YOU INVEST



WE HELP YOU TO AVOID COMMON MISTAKES IN REMODELING

We've all seen mistakes by home owners in remodeling. Bad planning, poor coordination, and costs exceeding estimates by extensive margins, have made many a dream job turn into a sour nightmare.

See that you avoid the pitfalls. By preplanning... by seeking sound, professional opinion on whether or not the project is practical and financially wise.

If you plan an addition, assure yourself that the remodeling will provide the living space wanted...and at the same time, add to the over-all value of the home. Ask three questions: Is the addition planned, ade-

PAGE 67

NOW! SAY GOODBYE TO OUTSIDE EXPENSIVE MAINTENANCE BY REMODELING WITH . . .

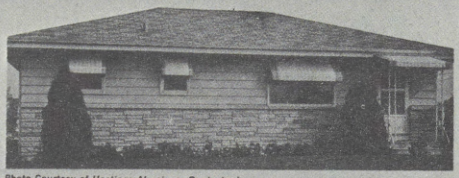


Photo Courtesy of Hastings Aluminum Products, Inc.

INSULATED ALUMINUM SIDING

When you purchase aluminum siding for your home, you want complete assurance that you have made the best buy. You have this assurance with a tested and proved product from a sound nationally known company.

ALUMINUM AWNINGS

So skillfully created and expertly installed, they never look like an afterthought. Charming new beauty, new color elegance and protection from the toughest weather.

ALUMINUM RAIN CARRYING EQUIPMENT

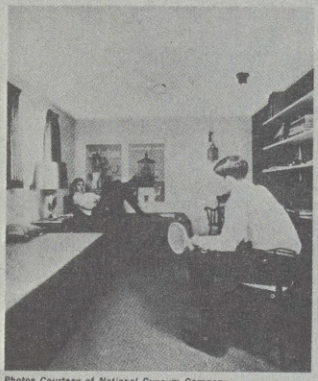
Extra strong, Rain Carrying Equipment that has been designed to withstand the ravages of weather including excessive loads of leaves and debris, even ice and snow, without damage. And when coated with pure vinyl enamel, assures many additional years of trouble free service.

ALUMINUM SOFFIT

An aluminum soffit system that not only covers up the dirty, ugliness of the open soffit but also eliminates the costly and irritating nuisance of continually repainting.

Use the inquiry coupon to learn how to end outside maintenance.

CIRCLE NO. 9 ON PAGE 22



Photos Courtesy of National Gypsum Company

NOW YOU CAN AFFORD A "PENTHOUSE" FOR THE ADDITIONAL SPACE YOU NEED



THE HEAT IS IN THE CEILING. YOU SAVE THE EXPENSE OF EXPANDING YOUR PRESENT HEATING SYSTEM

The economy of this heating system, which is installed like drywall, made this "penthouse" addition a practical addition.

- Large panels are fastened to the ceiling.
- Non-heating wires, that extend from the back of panels, connect each panel to the electrical circuit and the thermostat.
- Insulation is applied between the joists.
- The panel joints are finished to form a smooth, seamless surface . . . ready for the decoration of your choice.

The walls are colorfully predecorated vinyl plastic gypsum wallboard. Easy to clean. Stain repellent and child-proof!

Use the inquiry coupon to find out how inexpensively you can add a "penthouse".

CIRCLE NO. 10 ON PAGE 22

BEFORE YOU DO ANYTHING – CALL US FOR ADVICE

WE HELP YOU TO AVOID COMMON MISTAKES IN REMODELING

quate for future, as well as present needs? Is the location correct? When completed, will it be pleasant, attractive, and useful? The answer to each of these questions must be "yes."

On an addition job, the top, center and bottom lines of new windows must correspond with the similar lines of existing windows. Materials used should look the same —if the house is clapboard, the addition should also be of matched siding (there are exceptions to this rule). It is important to match the roof line extension with the old (unless the new roof is a hip roof).



PAGE 7

SURROUND YOURSELF WITH THE ELEGANCE OF CAREFREE LAMINATED SURFACES WHEN YOU MODERNIZE

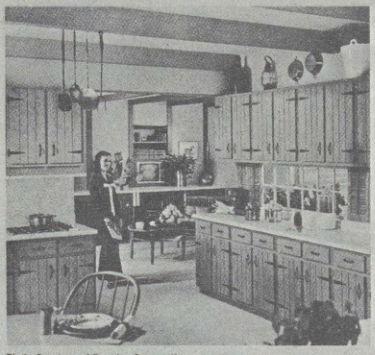


Photo Courtesy of Formica Corporation

■ Cabinets
■ Counter tops
■ Backsplash walls

You'll enjoy the practical elegance of laminated plastic on kitchen cabinets and backsplash walls, as well as counter tops. Cabinets are available in a variety of woodgrain patterns and a full line of solid colors.

Cabinet surfaces and walls are unharmed by repeated cleaning, even with harsh liquid detergents. Finish will not fade, is highly resistant to surface damage.

Use the inquiry coupon for more information on laminated surfaces.

CIRCLE NO. 11 ON PAGE 22

AN OUTDOOR REDWOOD DECK

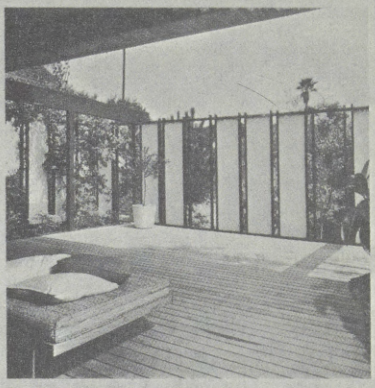


Photo Courtesy of California Redwood Association

ADDS INEXPENSIVE LIVING SPACE

One way to increase both the living space and the livability of your home is by adding a redwood deck. It makes a private outdoor living room with partially enclosed plastic panel walls in redwood frames. Connected directly to the house, it is a good spot for entertaining and family living. The redwood gives care-free maintenance with its resistance to decay, warping, shrinking and termites.

Use the inquiry coupon for more information about the uses of redwood.

CIRCLE NO. 12 ON PAGE 22

IDEAS ARE VALUABLE – AND WE DON'T CHARGE FOR THEM



WE HELP YOU TO AVOID COMMON MISTAKES IN REMODELING

Always use quality wall paneling, flooring and siding. Quality in materials adds to the quality look of the finished construction. Check zoning regulations to make sure there is no violation as to the location of the room on the lot, its height and type. An addition built in violation might have to be removed. Meet or exceed the standards of safety and health as demanded by electrical and plumbing building codes.

The best way to avoid remodeling mistakes is to call in professional help to plan, estimate and complete your next home improvement project.



Illustration Courtesy of Electric Heating Association

Remodeling a kitchen or bathroom? Adding a room?
Finishing an attic or basement? Building a patio?
Putting a workshop in the garage?
Renovating the whole house? Adding a porch?

ELECTRIC HEAT HAS A PLACE IN YOUR MODERNIZATION PLANS

- Electric Heat offers a wide selection of products and systems.
- Electric Heat solves many different heating problems.
- Electric Heat is easily installed with so little effort.
- Electric Heat provides sure, carefree, worry-free comfort.

Call us or your local electric utility today for full information on electric space conditioning. You'll be glad you did.

Use the inquiry coupon to discover the many benefits derived from electric heating.

CIRCLE NO. 13 ON PAGE 22

DO YOU WANT TO FEEL AND SEE

A ROUGH SAWN WOOD TEXTURE

ON YOUR REMODELED WALLS?

Rough sawn textured plywood on the walls of your room will give it new beauty and character. Try it on any room . . . living room, family room, game room and other interior areas for accent. Plywood paneling can solve many interior remodeling problems that demand a different treatment. It is available in a broad range of surface textures and grooving patterns. You'll like the low cost that will give you a new room. Call us today.

Use the inquiry coupon for more information about rough sawn textured plywood.

CIRCLE NO. 14 ON PAGE 22



Photo Courtesy of American Plywood Association

SMALL REMODELING JOBS WELCOME — THEY MAKE BIG INVESTMENTS FOR YOU

BE SURE YOUR REMODELER IS QUALIFIED . . .

If the man who remodels your home is not qualified, you pay for his mistakes.

To avoid the disappointment of a poorly done home remodeling job and to assure "getting full dollar's worth," five basic rules to follow are suggested to the homeowner.

"1. Be wary of the traveling remodeler. If you can't locate the company, future adjustments are your responsibility.

"2. Get specifics as to what work the remodeler is going to do. An open job can mean unexpected costs.



LIVE IN A "NEW HOUSE" WITHOUT MOVING!

NO DREAM! IT'S EASY... WITH TODAY'S MIRACLE SIDEWALL MATERIALS THAT GIVE YOUR HOME A TRULY CUSTOM LOOK.

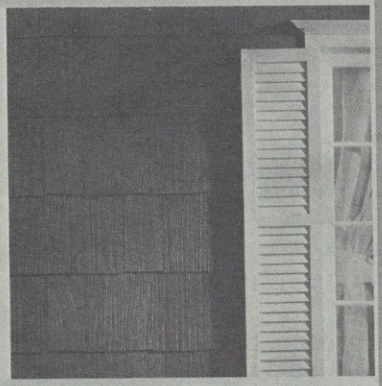


Photo Courtesy of Johns-Manville

Tired of the weather-worn appearance of your home but hate to leave your neighborhood and friends? There's an easy solution! Completely transform your home with beautifully-textured sidewalls that capture completely the natural warmth and charm of hand-split wood shakes, yet are trouble-free, maintenance free. They look like wood and feel like wood . . . in white or rich, weathered colors. They will not burn, rot, warp, split . . . specially-developed plastic finish won't blister, crack, peel, check. Let us show you samples . . . give you a free estimate for your home. You'll be amazed at the low cost.

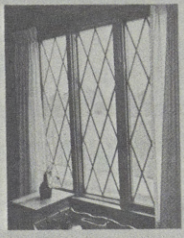
Use the inquiry coupon for more information about maintenance-free textured sidewalls.

CIRCLE NO. 15 ON PAGE 22

RE-WINDOWING WITH WOOD WINDOWS WILL GIVE YOUR HOME A NEW OUTLOOK...



When you
add-a-room
or
replace windows





Photos Courtesy of Malta Manufacturing Co.

Window placement can simplify room decoration and furniture placement. As the focal point in most rooms, windows should be carefully selected to complement the activities for which the room is designed.

Re-windowing is a small investment for a large improvement in any room remodeling. Let your imagination go. A broad range of sizes and types gives exceptional opportunities for original expression.

Kitchen planners are quick to realize the functional advantages of hinged casement or lever operated vent windows. No more reaching over the sink to lift window sash. Be sure your window selection takes into consideration the convenience with which windows are opened or closed.

Furniture groupings beside, beneath or around window areas add great interest to interior planning. And wood windows are traditionally warmer—more compatible.

Use the inquiry coupon for more information about trouble-free wood windows

CIRCLE NO. 16 ON PAGE 22

CALL COLLECT IF YOU ARE IN A TOLL AREA



BE SURE YOUR REMODELER IS QUALIFIED . . .

"3. Ask about other jobs the remodeler has done, and then check with the homeowner. A ten cent telephone call could save you hundreds of dollars.

"4. Don't only ask price. Determine the materials to be used. There can be a big difference between the quality of national brand merchandise and so-called just-as-good items.

"5. Choose a remodeler who knows his costs. If the man you do business with doesn't know his costs, his charges will be indefinite, too."

PAGE 10





Photos Courtesy of Alcan Aluminum Corporation

ENJOY THE PROTECTION OF A CARPORT —THE PLEASURE OF A PATIO COVER

Great weather shelter for your car — and you. It is made from a special aluminum, selected for hardness and dent resistance. It features 2 coats of gleaming white baked enamel to assure you years of carefree service.

Relax in cool comfort. No unfinished underside, no ugly nuts-and-bolts look. The deep, interlocking sections are as handsome as your ceiling.

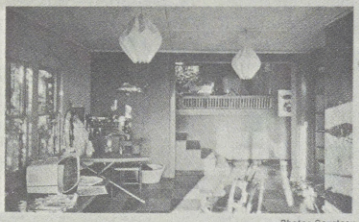
ENJOY THESE SPECIAL FEATURES . . .

- Available in single or multiple units.
- Easily screened or louvered — now or later.
- Colorful valance accent-stripes in Emerald Green or Scarlet Red, optional at slight extra cost.
- Free-standing units have 4 V-posts. Wall-attached units have 3 ornamental columns.
- Integral gutter system around perimeter can be drained at any point.

Use the inquiry coupon for more helpful information.

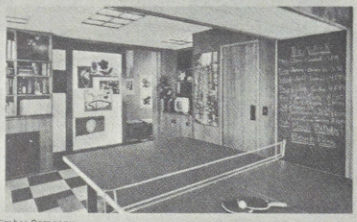
CIRCLE NO. 17 ON PAGE 22

A SIX-STEP WAY TO HAVE A ROOM REMODELED



BEFORE

AFTER



Photos Courtesy of Simpson Timber Company

The beauty of this home improvement remodeling idea is that all of the projects don't have to be done at the same time, messing up your home and pocketbook. You only have to take on one job at a time. Then rest before you take on the next one, enjoying what you have done while you think about what the next project should be. FIRST STEP: Re-panel the walls with redwood paneling and rough-sawn redwood plywood. SECOND STEP: Install a suspended ceiling system (covering pipes, joists, ducts, wiring, etc.) using acoustical ceiling board. THIRD STEP: Insert redwood light panels in the suspended ceiling which allows easy access to overhead wiring. FOURTH STEP: Enhance windows with sliding screens of redwood and hardboard lattice. FIFTH STEP: Build sliding doors to hide unsightly corners, utilities, etc., using an acoustical surface doubling as a bulletin board. SIXTH STEP: Fill the room with folding stools, game tables and ping pong table which unfold from storage to suit family hobbies and activities.

Each of these projects is relatively simple and does not have to be done in any particular order other than it would be easiest to finish off the walls and ceiling first. And each project can be modified to suit almost any family need, or adapted to fit any size room. How do you start? Simple:

Use the inquiry coupon for a four-page folder which contains complete plans for the sliding doors, ping-pong table, stools, game table, light panels and window screens.

CIRCLE NO. 18 ON PAGE 22

OUR WORKMEN ARE TRAINED EXPERTS

PROTECT YOURSELF FROM UNETHICAL OPERATORS

1) Be wary of the contractor offering to cut his price if you sign immediately.

2) Be wary of the contractor using the promise of commissions for referrals or saying he'll use your home as a "model home" as the opening of his sales talk. While many ethical contractors do pay customers for referrals, this offer is not the prime method of selling you.

3) Be wary of the man who pressures you to sign by saying: "If you sign tonight, we'll start the job tomorrow." Good contractors are usually busy contractors and they must complete their work in the order they get it.



ENJOY THE "BETTER LIVING" THAT IS OFFERED WITH THE HOME IMPROVEMENT IDEAS FEATURED IN THIS BOOK



Photo Courtesy of IDS Credit Corporation

. . . Use Budget Planned Financing

You will be pleasantly surprised with the convenient monthly payments that can be arranged so your family can enjoy any one or several of the home improvement "BETTER LIVING IDEAS" suggested in this book.

The monthly payment amount is set by planning with you . . . so that payments are a reasonable part of your budget . . . to permit you to enjoy the "BETTER LIVING" of your home improvement project.

Use the inquiry coupon for complete detailed information about budget planned Home Improvement Financing

CIRCLE NO. 19 ON PAGE 22

BEAUTIFYING PROJECT UNDERFOOT:

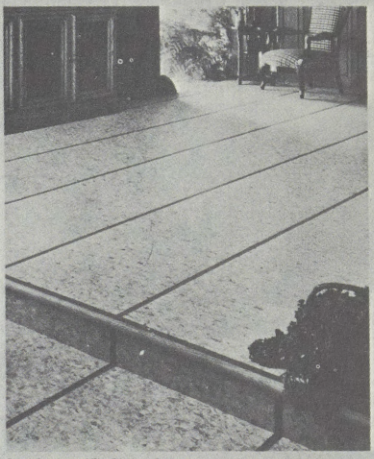


Photo Courtesy of The Flintkote Company

Have your old or unattractive floors transformed into new bright ones in a jiffy and with none of the customary mess and fuss. We just strip away the paper backing, press the 9" x 9" tile firmly where you want it on the floor, and it's there to stay. Disruption of family activity is reduced to barest minimum, since the adhesive-backed tile requires no "set-up" time after application. As soon as an area is tiled, furniture may be replaced and the floor returned to normal use. It can be applied over wood, concrete and old floor coverings in suitable condition. Bathrooms, kitchens, basements, dining areas, family rooms, and foyers take on new sparkle within a few hours. A variety of handsome patterns are offered in a palette of most-wanted flooring colors. One charming embossed pattern resembles travertine marble; another looks like wood grain. Still others combine metallic chips with solid or multicolored flecks. Smooth-surfaced tiles are available in lively tone-on-tone shades of olive green, tan, grey-blue, or red-pink.

Use the inquiry coupon for more information about easy-to-install vinyl asbestos floors.

CIRCLE NO. 20 ON PAGE 22



TIPS ON WORKING WITH YOUR CONTRACTOR

1) Think your project through. Keep in mind the main purpose for embarking upon your improvement project . . . extra space, modernization, weather conditioning, etc.

2) Sketches—Insist that you okay sketches before work begins. When you see the sketch, study it, and then okay it.

3) Materials—All materials should be specified in the contract — brand names, quantity, etc.

4) Be certain that your contractor provides a Certification of Insurance covering Workmen's Compensation, property damage, and personal liability.





HOME IMPROVEMENT IDEAS WITH STEEL

SIDING—Prepainted galvanized steel siding is competitive in price and warranty; and manufacturers guarantee their siding from 15 to 30 years. **FIREPLACES**—Installation of a modern steel fireplace will add an extra touch of comfort to a remodeled family room or be a cozy addition to a master bedroom. **SOFFITS and FACIA**—Prepainted galvanized steel soffits and fascia require a minimum of maintenance. **GUTTERS and DOWNSPOUTS**—Prepainting galvanized gutters and downspouts provides the homeowner with a product that can go for years without painting. **SHUTTERS**—A house without shutters is like a woman without makeup," according to one manufacturer of prepainted steel shutters. **RAILINGS**—Many remodeling projects are enhanced by the installation of steel wrought-iron railings on porch steps and porches. **KITCHENS**—You will love the decor and color scheme of a modernized steel kitchen. **AND**... bifold closet doors, bathtubs, stainless steel sinks, sliding patio doors, garage doors and house doors.

Photos Courtesy of American Iron & Steel Institute

Use the inquiry coupon to discover the many ways to improve with steel.

CIRCLE NO. 21 ON PAGE 22





PLAN A CONVERTIBLE ROOM WITH VERSATILE WOOD PANELING

This young boy's wood-paneled room can quickly and easily be transformed into almost any room you choose —a teenage girl's hideaway, a study, guest bedroom or a rumpus room. And the warmth and beauty of prefinished hardwood paneling adapts easily to any decor, whether it's contemporary, traditional or period. Even better, the paneling requires little care, because a tough prefinish protects the wood against scratches, marks and scuffs and repels dirt and grease. To clean, simply wipe the panels with a damp cloth or sponge.

Use the inquiry coupon to discover about the versatility of wood paneling.

CIRCLE NO. 22 ON PAGE 22

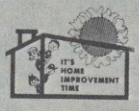


Photo Courtesy of Weyerhaeuser Company

CONVENIENT BUILDING INFORMATION

DETAILED DRAWINGS MEAN A BETTER JOB

Detailed and exact drawings to scale are needed to do a quality job. These drawings must also be submitted in order to obtain a building permit where required. Accurate drawings and good specifications protect you as these two items provide real significance in your contractual agreement. One distinct benefit is that these drawings and specifications act as a reference point for any questions which come up during the performance of the work. If the specifications and drawings are completely clear and all brand names indicated, you can be sure that there will be no disagreement.



ADD GLAMOUR TO YOUR BATHROOM WITH PLASTIC-FINISHED PANELING

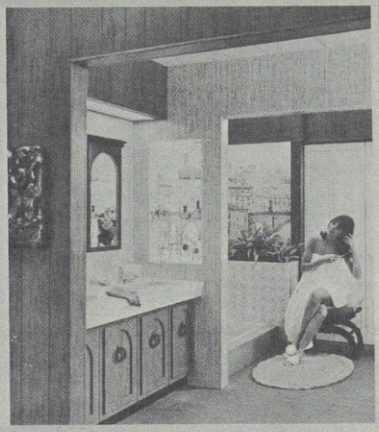


Photo Courtesy of Marlite Division of Masonite Corp.

Plastic-finished paneling will make your bathroom so beautiful, you'll wonder why you lived with the old room so long. This paneling installs over existing walls or new framing and in just a few days you have a new bathroom.

The plastic finished hardboard paneling stays fresh as new in spite of dirt, smoke, stains or rough-and-tumble kids. Its rugged wash-and-wear finish is soilproof—wipes clean as easily as the surface of your refrigerator.

In fact, the only hard part is picking out the decorator paneling you like best from the more than 70 kinds available. Choose from textures you can actually feel, bold or subtle colors, distinctive patterns and designs.

Use the inquiry coupon for information about the many uses of plastic-finished paneling.

CIRCLE NO. 23 ON PAGE 22

THERE'S NOTHING LIKE A NEW KITCHEN FOR BETTER LIVING!



Better living through remodeling with an all gas kitchen will make the family happy and everyone will enjoy the new appliances in a luxury kitchen that includes a gas broiler, refrigerator/freezer combination, two gas ovens, ice maker, gas water heater and automatic dishwasher. This traditional family activity center will inspire everyone with its new life after you remodel.

Another popular home improvement project is construction of a patio, which brings a vacationland right into your own backyard. Gaslights lengthen day into night, gas infra-red patio heaters can double the outdoor living season and gas grills enable the family chef to prepare complete meals without fuss or muss.



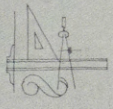
Photos Courtesy of American Gas Association

Use the inquiry coupon for more information about the many uses of gas in the home.

CIRCLE NO. 24 ON PAGE 22

IDEAS ARE VALUABLE — AND WE DON'T CHARGE FOR THEM

DESIGN AND FUNCTION IN REMODELING



First and foremost, make a list of the activities for which your room will be used. Wherever possible a room doubles its effectiveness when it can be used flexibly. For example, an adult bedroom ought to provide a quiet retreat for reading, sewing or relaxing. A dining room could certainly also serve as a second sitting room, a music room or a library.

Think, too, of the mood you wish to express—should it be formal or informal, a quiet background for people, or a strong

PANELING IS INEXPENSIVE HOME IMPROVEMENT

The remodeling boom is here and homeowners nationwide are busy giving tattered, lifeless walls a new lease on life with real wood paneling.

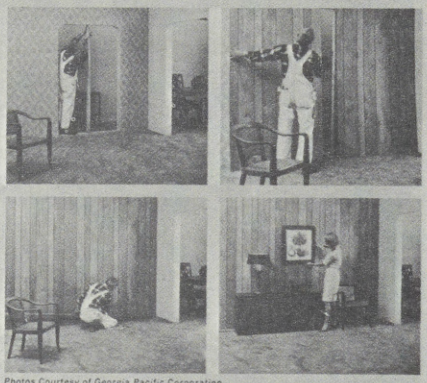
Popular "knotty elm" is just one of more than 100 imaginative paneling types now available. It has a permanent factory finish and, as shown, can be applied over any old wall. Its factory finish means no on-the-job varnishing, painting or other finishing. Adding that professional touch are factory finished moldings that complement the different hardwood and softwood wall panelings.

Other new ideas in wood include an inlaid plywood paneling that combines two different wood species. Another style looks like 16-inch hardwood planks and has wide, stained grooves in which can be inserted contact tape in many colors to fit any decor.

In the low-budget price range is an entirely new wood paneling line that includes 10 wood species in a wide variety of natural woodgrains and colortones. Choices range from hardwoods like hickory, maple and teak to softwoods like pine and cedar.

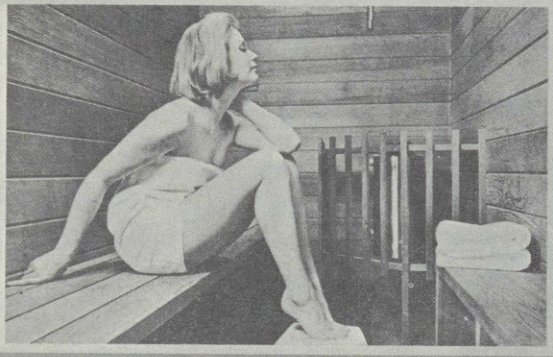
Use the inquiry coupon for more details on real wood paneling.

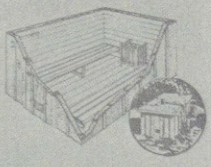
CIRCLE NO. 25 ON PAGE 22



Photos Courtesy of Georgia Pacific Corporation

ENJOY FAMILY HEALTH AND VIGOR WITH AN AUTHENTIC FINNISH SAUNA





Thousands of families in Europe and America are now enjoying at home this modern version of the ancient Finnish Sauna or hot air bath. You bathe in hot, dry air (no steam) in a room lined with kiln-dried redwood.

Use the inquiry coupon for helpful information about Sauna baths.

CIRCLE NO. 26 ON PAGE 22

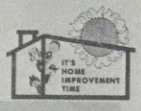
SMALL REMODELING JOBS WELCOME — THEY MAKE BIG IMPROVEMENTS FOR YOU

DESIGN AND FUNCTION IN REMODELING

reflection of your personality?

Then you are ready to draw your simple floor plan using graph paper, and patterns of your furniture cut to scale. In laying out your room arrangements, keep in mind open traffic areas, a center of interest, conversation groupings, storage space and adequate lighting.

For practical, time-and-money saving hints be sure to consult on every phase of home maintenance, decorating and remodeling.



REMODELED FACE OF SOLID VINYL

... THE TOUGHEST
of all plastic compounds



Photo Courtesy of Bird & Son, Inc.

- SIDING
- SHUTTERS
- GUTTERS
- DOWNSPOUTS
- SOFFIT PANELS
- ROOF EDGINGS

Vinyl is an attractive, versatile material with broad-appeal aesthetic qualities. It provides the feeling of authenticity in traditional design, yet lends itself to contemporary ideas as well. This is truly a low-maintenance exterior. It requires no painting because it is solid color throughout. It won't blister, peel, warp, dent or corrode. It won't show scratches, won't conduct electricity. Top off with hurricane-resistant asphalt roofing shingles for complete security.

Use the inquiry coupon for more information about tough solid vinyl and hurricane-resistant asphalt roofing shingles.

CIRCLE NO. 27 ON PAGE 22

A LAUNDRY CENTER CAN BE ATTRACTIVE...
AND A PRACTICAL PART OF THE KITCHEN

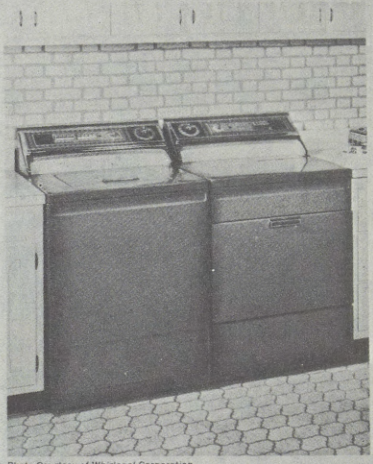
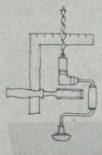


Photo Courtesy of Whirlpool Corporation

A complete laundry center that is as convenient to use as it is attractive . . . and includes special cycles for every washing and drying need. The convenience of a laundry center in the kitchen can be a boon to homemakers. Think of the steps you will save and the joy of working in the laundry.

Use the inquiry coupon for more facts about practical, up-to-date laundry centers.

CIRCLE NO. 28 ON PAGE 22



TIPS ON BUILDING CODES AND PERMITS

Building codes are established by each city and county and vary considerably from one community to another. However, as a general rule, a building permit is required whenever structural work is involved or when the basic living area of a residence is to be changed. For instance, if you have a house with an unfinished basement and partition off a segment and complete it as a room, you would need a building permit in most localities. This is because you have changed the basic amount of living area in

CONVERT YOUR PATIO TO AN OUTDOOR LIVING ROOM IN ONE DAY

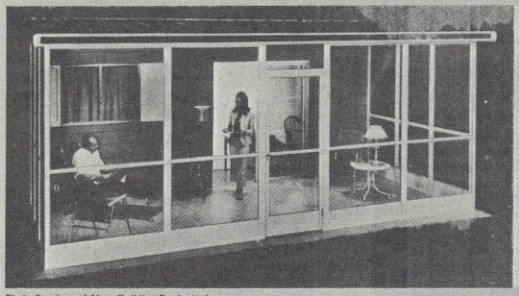


Photo Courtesy of Alcoa Building Products, Inc.

Get all the pleasure your home has to offer—enjoy it more with an outdoor living room. Completely enclosed with aluminum screening and heavy duty, all-aluminum structural members. The unique design permits the screen door to be installed at any point, on any side of the unit. The durable, baked enamel finish stays new looking for years. Built-in gutters carry rain and melted snow from the roof. You have a choice of contrasting feature trims along the fascia and side panels.

Use the inquiry coupon for helpful information about an outdoor living area.

CIRCLE NO. 29 ON PAGE 22

OPEN UP A ROOM AND BRING THE OUTDOORS IN...

with beautiful precision built wood windows

With a wide variety of styles and sizes of wood windows to choose from, you are sure to find one that will blend into the architectural style of your home.

When remodeling is finished, your room takes on new character. You have a new focal point with these large windows and a warm, livable family room. See how they bring the outdoors in... make the outside beauty a part of the room. You can count on them to close snugly tight to seal out unpleasant weather.

Use the inquiry coupon for more details concerning precision-built wood windows.

CIRCLE NO. 30 ON PAGE 22

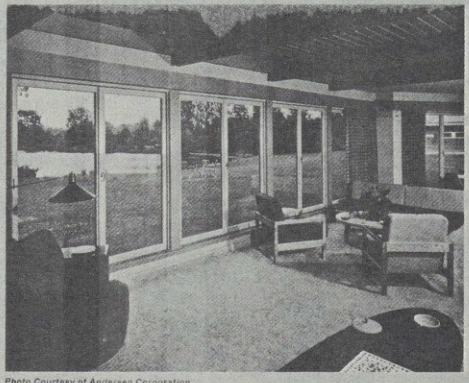


Photo Courtesy of Andersen Corporation

OUR WORKMEN ARE TRAINED EXPERTS

TIPS ON BUILDING CODES AND PERMITS

the house from storage space to livable space. Building codes in each region will determine for you the amount of area that must be in glass. As an example, for bedrooms, cross ventilation is usually required, which means two windows. For a garage to be changed, the building code will tell you the legality of off-street parking. It would be embarrassing to build a carport and then find you had it too close to the sidewalk and, therefore, be required to tear it down. Before remodeling, check building codes.



THIS ENTERTAINMENT ROOM WAS AN UNTIDY CATCH-ALL STORAGE SPACE IN A BASEMENT



Do you have idle space in your home at a time when you're cramped for entertainment space? Why not use the space you've got? The space in your basement is wasted if it's unfinished. Add value to your home, and insure many years of pleasure for your family, with an entertainment room.

Beautiful paneling is ideal for recreation rooms because it resists dents, mars and scuffs, and is easy to clean and maintain. You have a wide selection from which to choose.

So plan now to turn your dark, dingy, unsightly basement into a bright, cheerful, functional playroom . . . for your family, for your guests. Make that wasted space in your basement work for you!

Use the inquiry coupon for more details about converting an unsightly basement to an entertainment room.

CIRCLE NO. 31 ON PAGE 22

GIVE AN OLD PLACE A NEW FACE... NEW BEAUTY FOR OLDER HOMES





Live better in your own modernized home

Your home, like thousands of others, is undoubtedly structurally sound, but the architectural style may have become outmoded or your family increased so more space is required. Technical and professional help will give you the best result at the least cost. We can help you with recommendations and estimates.

Use the inquiry coupon to learn how to make your home pleasantly modern.

CIRCLE NO. 32 ON PAGE 22

BEFORE YOU DO ANYTHING – CALL US FOR ADVICE



EXPERIENCED INSULATION ADVICE IS IMPORTANT

Proper insulation actually pays for itself. Insulation lets you install a smaller heating unit—a smaller air conditioning unit, too (often there's a big cost savings right here). With insulation you don't need as much heat, you don't use as much fuel. You can save as much as 40% on winter fuel bills—every winter for years to come. In summer, your home stays up to 15° cooler. You make your air conditioning system more efficient—more economical to operate.

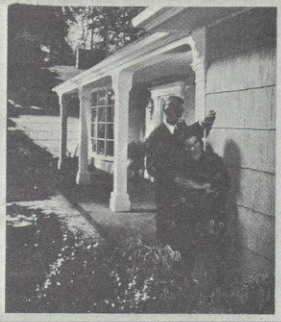
COVER UP THE OLD INSIDE . . . AND THE OUTSIDE, TOO!



FLOORS of beautiful decorator vinyl asbestos tile designed to endure for years to come. Floor Tile is resistant to grease and household acids and alkalis. Occasional waxing keeps it looking like new. Economical in initial cost and extremely easy to maintain. A color and pattern for every decor.

SIDING that looks like wood. It shares the deep shadowline and attractive texture of wood. Until you touch it, you can't tell it from wood. Year after year, its unique composition stands up to the elements, delivering new freedom from weathering and aging. A wide variety of colors to suit your taste in decorating.

Photos Courtesy of Ruberoid Co.—A Div. of General Aniline & Film Corporation



Use inquiry coupon for information about interior, exterior remodeling.

CIRCLE NO. 33 ON PAGE 22

LUXURIOUS KITCHENS THAT ARE FUN TO LIVE IN . . . EASY TO WORK IN!



Photo Courtesy of Westinghouse Electric Corporation

A modern kitchen, featuring a wide range of wall and floor cabinets and all the newest time-saving appliances, will add new enthusiasm in the preparation and enjoyment of every family meal.

The **design** offers the charm of solid stateliness and classic simplicity. The **texture** is charmingly distinctive, and the finish so rich in appearance that any setting takes on a sense of quality. The **versatility** of special cabinets provides space to accommodate built-in ranges, ovens and free-standing ranges. The **construction** is the best. The finest hard woods have been carefully tooled. All frames have been expertly secured and reinforced.

Use the inquiry coupon for information about beautiful, yet practical, kitchens.

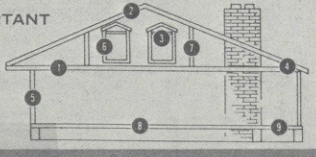
CIRCLE NO. 34 ON PAGE 22

NO CHARGE OR OBLIGATION FOR AN ESTIMATE

EXPERIENCED INSULATION ADVICE IS IMPORTANT

CHECK HEAT LOSS IN ALL THESE CRUCIAL AREAS OF YOUR HOME

(1) Ceiling, below unfinished attic
(2) Sloping ceiling in finished attic
(3) Dormer ceilings
(4) Enclosed porch ceilings
(5) Exterior walls
(6) Dormer walls
(7) Attic knee walls
(8) Floor over crawl space
(9) Porch floor



PAGE 19

ARE YOU READY FOR A VACATIONLAND HOME?





Use the inquiry coupon to see how easily you can become the owner of that "second" home.

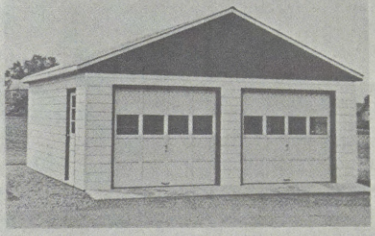
Vacation homes! They're becoming as all-American as automobiles and TV. Adventure-minded folks everywhere find the idea alluring. That "second" home in vacationland opens up—for you, too—happy new vistas of family fun and living. Special emphasis can be placed on storage, such as the ski and outdoor equipment space at the front entrance, wood fuel storage with a pass-through to the fireplace area, and bedroom put-away space both upstairs and down.

CIRCLE NO. 35 ON PAGE 22

DO YOU NEED A GARAGE?



... One that complements your home?



Your car is a major family investment, so why not protect it from all types of inclement weather! We have many garage and garage door ideas. One to meet your needs, and to compliment the architectural style of your home . . . priced so low you can't afford not to build or remodel.

Use the inquiry coupon for more information about attractive garages.

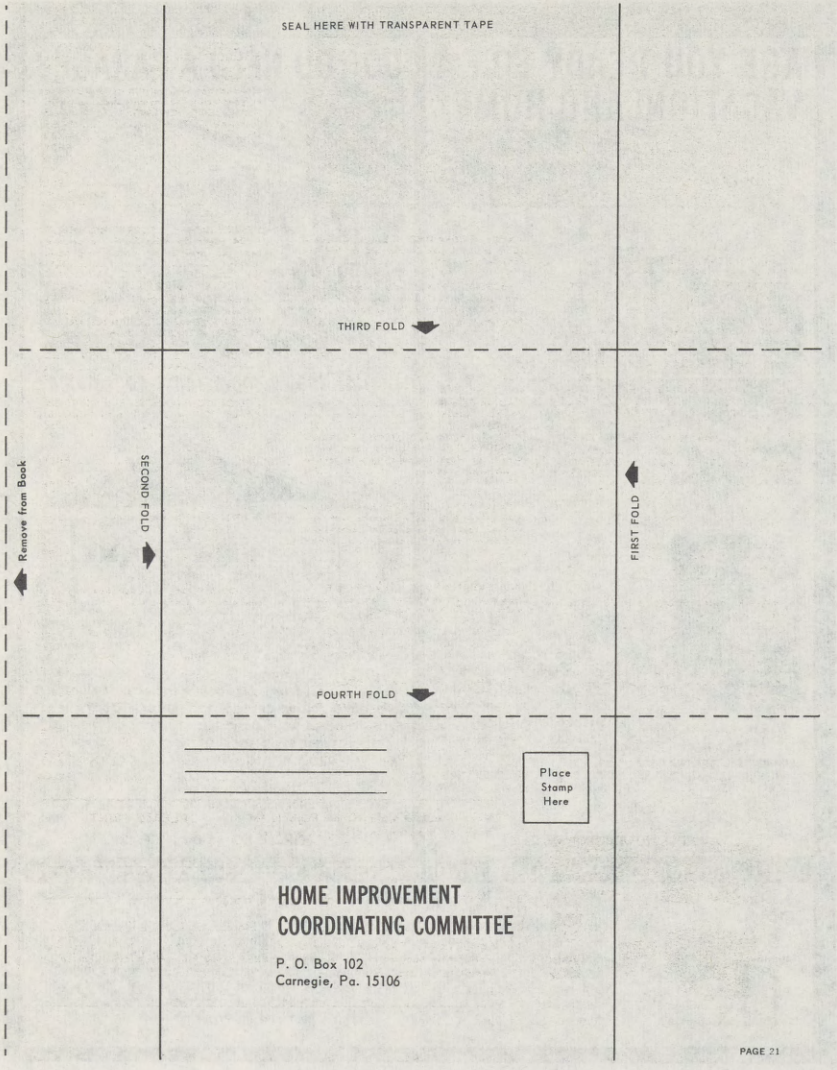
CIRCLE NO. 36 ON PAGE 22

FINEST MATERIALS — QUALITY WORKMANSHIP — PERSONALIZED SERVICE



CONSIDER UTILITIES WHEN REMODELING

If you are creating additional living space, will you be able to heat and wire it properly without enlarging existing facilities? If the answer is "no," investigate the possibility of heating the addition with auxiliary equipment. Electric and gas heaters of various types are available to do the job. Or if you decide to revamp your entire heating plant, you may want to consider the addition of central air conditioning at the same time. If you have to re-wire, go to a minimum of three-wire 100-amp service. Then you'll be set for almost anything except electric heat and heavy air-conditioning loads.


SEAL HERE WITH TRANSPARENT TAPE
THIRD FOLD
Remove from Book
SECOND FOLD
FIRST FOLD
FOURTH FOLD
Place Stamp Here
HOME IMPROVEMENT
COORDINATING COMMITTEE
P. O. Box 102
Carnegie, Pa. 15106
PAGE 21

Send Today For Home Improvement Ideas

In making requests for literature, circle the number(s) below of items that you would like. Add check or money order when necessary. Fill out coupon completely and see other side of this page for mailing instructions.

1. GIVE YOURSELF AND YOUR HOME A LIFT INSIDE, OUTSIDE, ALL AROUND THE HOUSE

"WHAT'S NEW IN BATHROOMS?" – A booklet full of exciting new ideas to improve your bathroom.....25¢

2. CREATE TWO ROOMS OUT OF ONE...WITH PREFINISHED PANELING.....FREE

"PREFINISHED PANELING" – A collection of colorful suggestions for paneling.....FREE

3. IF YOU HAVE ROOF PROBLEMS.....FREE

4. A NEW ROOM FROM CEILING TO FLOOR.....FREE

5. CONVERT YOUR OLD BACK PORCH TO A FAMILY ROOM

A. "MIX & MATCH WITH ROYALCOTE PANELING".....FREE

B. "X-90 SIDINGS FOR DISTINCTIVE EXTERIORS".....FREE

6. PUT BEAUTY AND PROTECTION ON YOUR ROOF.....FREE

7. THIS IS HOW CEILING TILE CAN BRING NEW GLAMOUR TO OLD STORAGE SPACE

"ROOM IDEAS" – 16 Pages of full color improvement ideas for every room in the house.....25¢

8. IF YOU NEED A NEW ROOF DRAINAGE SYSTEM...

"MILCOR PAINTED GALVANIZED RAIN GUTTER".....FREE

9. NOW! SAY GOODBYE TO OUTSIDE EXPENSIVE MAINTENANCE BY REMODELING WITH...

"HOME IMPROVEMENT IDEAS IN ALUMINUM" – Ask for these colorful pieces about siding, awnings, canopies, shutters, and aluminum products for new ideas.....FREE

10. NOW YOU CAN AFFORD A "PENTHOUSE" FOR THE ADDITIONAL SPACE YOU NEED.....FREE

11. SURROUND YOURSELF WITH THE ELEGANCE OF CAREFREE LAMINATED SURFACES WHEN YOU MODERNIZE

"NEW DECORATING IDEAS" – Every room in the house is covered in this informative booklet.....FREE

12. AN OUTDOOR REDWOOD DECK

"REDWOOD DECKS" – 8 colorful pages show solution to sloping sites, small yards and decks to bring house and garden together.....10¢

13. ELECTRIC HEAT HAS A PLACE IN YOUR MODERNIZATION PLANS.....FREE

14. DO YOU WANT TO FEEL AND SEE A ROUGH SAWN WOOD TEXTURE ON YOUR REMODELED WALLS?

"ADD-A-ROOM IDEAS" – Colorful 32-page brochure shows you how to add a room with plywood.....25¢

"IDEAS FOR TEXTURED PLYWOOD PANELING" – A portfolio containing a wealth of ideas for paneling with texture.....35¢

15. LIVE IN A "NEW HOUSE" WITHOUT MOVING!

"NATURAL WOOD APPEARANCE SIDEWALL" – Full color brochure with embossed cover showing actual texture and and advantages of this sidewall.....FREE

16. RE-WINDOWING WITH WOOD WINDOWS WILL GIVE YOUR HOME A NEW OUTLOOK...

"CASEMENT WINDOW CONVENIENCE" – Your good taste is evident when you choose Malta Wood Casement Windows.....FREE

17. ENJOY THE PROTECTION OF A CARPORT–THE PLEASURE OF A PATIO COVER.....FREE

18. A SIX-STEP WAY TO HAVE A ROOM REMODELED

"EXTERIOR AND FAMILY ROOM REMODELING" – Idea brochures show how Simpson redwood, redwood plywood, redwood grid ceilings and decorator doors turn even routine remodeling jobs into real home improvements.....FREE

19. ENJOY THE "BETTER LIVING" THAT IS OFFERED WITH THE HOME IMPROVEMENT IDEAS OFFERED IN THIS BOOK.....FREE

20. BEAUTIFYING PROJECT UNDERFOOT:

"ACOUSTICAL AND DECORATIVE CEILINGS" – Six sheets to help you create quiet and ceiling beauty.....FREE

"A ROOF THAT IS A ROOF" – The roof of distinction with built-in extra protection for your family and possessions.....FREE

"SUSPENDED CEILINGS" – Pamphlet describes GRID ceilings.....FREE

21. HOME IMPROVEMENT IDEAS WITH STEEL.....FREE

22. PLAN A CONVERTIBLE ROOM WITH VERSATILE WOOD PANELING.....FREE

23. ADD GLAMOUR TO YOUR BATHROOM WITH PLASTIC-FINISHED PANELING

"PROFESSIONAL DECORATING IDEAS" – 24 pages by Ving Smith, to achieve beautiful results in modernizing home interiors.....25¢

24. THERE'S NOTHING LIKE A NEW KITCHEN FOR BETTER LIVING!

"IMPROVE YOUR HOME" – You will like the valuable ideas in this book.....50¢

"YOUR PLAN FOR DESIGNING AN EFFICIENT KITCHEN – Every suggestion you need is in this informative book.....50¢

"YOUR GUIDE TO KITCHEN AND LAUNDRY PLANNING.....50¢

25. PANELING IS INEXPENSIVE HOME IMPROVEMENT

"GUIDE TO PRODUCTS FOR INTERIOR PANELING" – 24 full color pages of beautiful paneling ideas.....25¢

26. ENJOY FAMILY HEALTH AND VIGOR WITH AN AUTHENTIC FINNISH SAUNA.....FREE

27. REMODELED FACE OF SOLID VINYL.....FREE

28. A LAUNDRY CENTER CAN BE ATTRACTIVE, AND A PRACTICAL PART OF THE KITCHEN.....FREE

29. CONVERT YOUR PATIO TO AN OUTDOOR LIVING ROOM IN ONE DAY.....FREE

30. OPEN UP A ROOM AND BRING THE OUTDOORS IN...

"GOOD WINDOWS" – Learn how to select and get good windows.....FREE

31. THIS ENTERTAINMENT ROOM WAS AN UNTIDY CATCH-ALL STORAGE SPACE IN A BASEMENT...FREE

32. GIVE AN OLD PLACE A NEW FACE...NEW BEAUTY FOR OLDER HOMES.....FREE

33. COVER UP THE OLD INSIDE... AND THE OUTSIDE, TOO.....FREE

34. LUXURIOUS KITCHENS THAT ARE FUN TO LIVE IN...EASY TO WORK IN!.....FREE

35. ARE YOU READY FOR A VACATIONLAND HOME?.....FREE

36. DO YOU NEED A GARAGE?.....FREE



PAGE 22

Make Check or Money Order Payable to: **PLEASE PRINT**
Home Improvement Coordinating Committee

Name_____

Address_____

City_____ State_____ Zip_____

IMPORTANT: The Name of the business firm (appears on the front cover) who mailed this booklet to you must be included below for correct identification of literature you are requesting.

_____

MODERNIZE YOUR HOME...

MAKE IT MORE COMFORTABLE AND ATTRACTIVE

***TYPICAL MONTHLY PAYMENT SCHEDULE FOR HOME IMPROVEMENT**

Home Improvement Contract Price	1 YEAR		2 YEARS		3 YEARS		4 YEARS		5 YEARS	
	Amount of Note	Monthly Payment	Amount of Note	Monthly Payment	Amount of Note	Monthly Payment	Amount of Note	Monthly Payment	Amount of Note	Monthly Payment
500.00	545.04	45.42	585.12	24.38	625.32	17.37	665.28	13.86	705.00	11.75
600.00	648.48	54.04	690.72	28.78	732.96	20.36	775.20	16.15	817.20	13.62
700.00	756.60	63.05	805.92	33.58	853.00	23.75	904.32	18.84	953.40	15.89
800.00	864.72	72.06	921.12	38.38	977.40	27.15	1,033.40	21.53	1,089.60	18.16
900.00	972.72	81.06	1,036.08	43.17	1,099.44	30.54	1,162.56	24.22	1,225.80	20.43
1,000.00	1,080.84	90.07	1,151.28	47.97	1,221.48	33.93	1,291.68	26.91	1,362.00	22.70
1,100.00	1,188.96	99.08	1,266.48	52.77	1,343.52	37.32	1,420.80	29.60	1,498.20	24.97
1,200.00	1,296.96	108.08	1,381.44	57.56	1,465.92	40.72	1,549.92	32.29	1,633.80	27.23
1,300.00	1,405.08	117.09	1,496.66	62.36	1,587.96	44.11	1,679.04	34.98	1,770.00	29.50
1,400.00	1,513.08	126.09	1,611.86	67.16	1,710.00	47.50	1,808.16	37.67	1,906.20	31.77
1,500.00	1,621.20	135.10	1,726.80	71.95	1,832.04	50.89	1,937.28	40.36	2,042.40	34.04
1,600.00	1,729.32	144.11	1,842.00	76.75	1,954.44	54.29	2,066.40	43.05	2,178.60	36.31
1,700.00	1,837.32	153.11	1,957.20	81.55	2,076.48	57.68	2,195.52	45.74	2,314.80	38.58
1,800.00	1,945.44	162.12	2,072.16	86.34	2,198.52	61.07	2,324.64	48.43	2,451.00	40.85
1,900.00	2,053.56	171.13	2,187.36	91.14	2,320.56	64.46	2,453.76	51.12	2,587.20	43.12
2,000.00	2,161.56	180.13	2,302.56	95.94	2,442.96	67.86	2,582.88	53.81	2,723.40	45.39
2,100.00	2,269.68	189.14	2,417.52	100.73	2,565.00	71.25	2,712.00	56.50	2,859.60	47.66
2,200.00	2,377.80	198.15	2,532.72	105.53	2,687.04	74.64	2,841.60	59.20	2,995.80	49.93
2,300.00	2,485.80	207.15	2,647.92	110.33	2,809.44	78.04	2,970.72	61.89	3,131.40	52.19
2,400.00	2,593.92	216.16	2,762.88	115.12	2,931.48	81.43	3,099.84	64.58	3,267.60	54.46
2,500.00	2,701.92	225.16	2,878.08	119.92	3,053.52	84.82	3,228.96	67.27	3,403.80	56.73
2,600.00	2,810.04	234.17	2,993.28	124.72	3,175.56	88.21	3,358.08	69.96	3,540.00	59.00
2,700.00	2,918.16	243.18	3,108.24	129.51	3,297.96	91.61	3,487.20	72.65	3,676.20	61.27
2,800.00	3,026.16	252.18	3,223.44	134.31	3,420.00	95.00	3,616.32	75.34	3,812.40	63.54
2,900.00	3,134.28	261.19	3,338.64	139.11	3,542.04	98.39	3,745.44	78.03	3,948.60	65.81
3,000.00	3,242.40	270.20	3,453.80	143.90	3,664.08	101.78	3,874.56	80.72	4,084.80	68.08
3,100.00	3,350.40	279.20	3,568.80	148.70	3,786.48	105.18	4,003.68	83.41	4,221.00	70.35
3,200.00	3,458.52	288.21	3,684.00	153.50	3,908.52	108.57	4,132.80	86.10	4,357.20	72.62
3,300.00	3,566.64	297.22	3,798.96	158.29	4,030.56	111.96	4,261.92	88.79	4,493.40	74.89
3,400.00	3,674.64	306.22	3,914.16	163.09	4,152.60	115.35	4,391.04	91.48	4,629.60	77.16
3,500.00	3,782.76	315.23	4,029.36	167.89	4,275.00	118.75	4,520.16	94.17	4,765.20	79.42

**This chart is intended as a typical guide only and will vary according to the area where you live, the type and circumstances of your loan.*

For most families, the decision to remodel brings up the matter of financing. Enjoy your improvement—and pay for it at the same time. It can be financed with any of several home improvement loan plans. The type that's right for your project depends on the total cost; how big a monthly payment you are able to handle, and the present level of mortgage indebtedness on your home. None of the loan plans require down payments and all are designed for equal monthly payments over a period of years.

NO DOWN PAYMENT



PAGE 23

IS THERE AN AREA IN YOUR HOME FOR...



FORMAL ENTERTAINING?



FAMILY RELAXATION?



THE COLLEGE SET?



TEEN-AGE GET-TOGETHERS?



OUTDOOR ENTERTAINMENT?

If your home is lacking any of these areas, or those listed below, make a check list of what you would like to have done. We would like to serve you in any remodeling project you undertake. If you do, it will be our pleasure to give you the best possible products and services at fair prices. We are pledged to provide quality building materials and deal fairly with our customers. We will give you the benefit of our years of experience...provide you with ideas and advice...show you how to get the most for your money...suggest ways to finance your projects...and try to make the actual remodeling work as painless as possible for you and your family.

( ) ADDITIONAL ROOM	( ) FLOOR TILE	( ) PORCH
( ) ATTIC	( ) FOUNDATION	( ) RAIN GUTTERS
( ) BATHROOM	( ) FRONT STEPS	( ) RE-DECORATE
( ) BEDROOM	( ) FUN ROOM	( ) RE-FINISHING
( ) CARPORT	( ) GARAGE	( ) RE-SIDING
( ) CEILING TILE	( ) HEATING PLANT	( ) RE-WINDOWING
( ) CELLAR	( ) INSULATION	( ) RE-WIRING
( ) CLOSETS	( ) KITCHEN	( ) ROOFING
( ) DORMERS	( ) LAUNDRY CENTER	( ) SAUNA BATH
( ) DRIVEWAY	( ) OUTDOOR DECK	( ) SCREENS
( ) FENCES	( ) PAINT OUTSIDE	( ) SHELVES
( ) FIREPLACE	( ) PANELING	( ) STORM SASH
( ) FLOORS	( ) PATIO	( ) TV ROOM

PHONE TODAY... NO OBLIGATION FOR DISCUSSING YOUR PLANS

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Senator BREWSTER. The next witness is Gilbert Weil of the Association of National Advertisers, Inc.

STATEMENT BY GILBERT H. WEIL, PARTNER, LAW FIRM OF WEIL & LEE, NEW YORK, N.Y., REPRESENTING THE ASSOCIATION OF NATIONAL ADVERTISERS, INC., NEW YORK, N.Y.

Mr. WEIL. The association, the ANA, is a trade association incorporated as a membership corporation by virtue of the laws of the State of New York. In excess of 450 companies throughout the United States hold memberships in the association, the companies being engaged in the sale of various products or services. The basic common interest of the companies, which is the primary reason for the association's existence, is their use of varied advertising media to promote their respective businesses and, through the offices and facilities of this association, the various companies strive to improve the efficiency, elevate the stature, and enhance the productive value of advertising and its techniques as a constructive marketing tool, within the confines of their own companies and upon an industrywide basis.

We appreciate greatly the opportunity to express our views on the subject of extending the Federal Trade Commission's opportunity to apply to the Federal courts for temporary injunctions in cases involving possible violations of section 5 of the Federal Trade Commission Act. That avenue exists already, of course, with respect to foods, drugs, cosmetics, and devices. It is undoubtedly appropriate as to such products, because of their intimate involvement with public safety and health. The question now posed by the proposed Senate Joint Resolution 130, and by S. 3065 and S. 3066, is whether it should be enlarged to other areas.

In general we support such an extension, as being in the public interest. We propose certain safeguards, however, which we believe to be equally in the public interest.

As we see it, there are two important objectives to be achieved, and, since they are somewhat at odds with each other, one must seek the wisest adjustment between them, the tempering of each to the imperatives of the other, which will produce the greatest amount of good at the least expense in detriments.

The two interests are: on the one hand, that if there is false advertising or promotional activity, the public shall be relieved of its assault as quickly as possible; on the other, that a valid advertising or promotional campaign not be unfairly sacrificed to the substitution of speed for justice.

The public has a stake in both concerns. It is readily obvious with respect to the first, but no less real with regard to the second. Apart from the fundamental importance to our society that principles of due process not be short-circuited in any circumstances, there is a growing appreciation in these days that legitimate purchase information regarding available products and services is of considerable importance to consumers; and that advertising and promotional functions contribute substantially to the mass distribution which underprops our GNP and our standard of living.

A temporary injunction is a drastic remedy. It is granted in civil cases only when the court is convinced of two essentials: that the plain-

tiff in the case is highly likely to be the victor after the case has run its full course, and that the plaintiff will be seriously and irreparably injured if he does not get the temporary injunction in the meanwhile. Even then, a bond is usually required of the plaintiff to indemnify the defendant for the harm occasioned by the temporary injunction if it later turns out that the plaintiff was wrong.

In many instances, if not most, a temporary injunction at the behest of the Federal Trade Commission will mark the end of the case. Once an advertising campaign has been interrupted, it will rarely be worth reinstating a year or more later, especially if a cloud has been meanwhile cast upon its believeability by the interim pronouncement of a court that it is so probably and grievously deceptive as to call for summary interdiction. Thus, the question becomes unfairly begged, for an ultimate determination of whether the temporary injunction had really been justified in the first place may never be made; and the right to make the claim (and the public's right to receive it) will have been lost to the force of circumstances, even though it might have been vindicated by a full and fair trial.

In this very connection, it is important to note that there may be an unusually liberal predisposition in some courts to grant temporary injunctions to the Commission where it would not issue them, under the same facts, to private plaintiffs. This would be due not only to deference to the Commission as a guardian of the public. (That office is undoubtedly entitled to great respect and weight; but it should not be a substitute for proof that the proper prerequisites exist for unleashing such a potent and potentially damaging, weapon as the temporary injunction.) It would be the consequence, also, of the wording proposed, that the temporary injunction be ordered "Whenever the Commission has reason to believe" that there is or is about to be a violation of section 5. That might be construed to mean any case in which the Commission issues a complaint, for such "reason to believe" is a statutory condition precedent to instituting every case under section 5(b) of the Federal Trade Commission Act. Some courts (with others disagreeing) have given almost that automatic an application to such language in the present section 13(a) of the Federal Trade Commission Act.

Certainly it cannot be intended that there shall be a right created for the Commission to have a temporary injunction in every case it brings.

But if it is not so intended, there should be some legislative pronouncement to inform the courts that they are required to exercise the drastic remedy only in the drastic situations.

That does seem to be all that the proponents of the pending bills have in mind. It is probably what they believe to be implicit in the prerequisite of "Upon proper showing * * *."

The proposals are in response to what appears to be a shocking set of conditions particular to the home improvement area. The cause for legislative action has been described by the Chairman as "schemes to defraud the public which are clearly in violation of the FTC Act," by which "consumers may be lured into participating in schemes which ultimately defraud them of hundreds of dollars. * * * extensive swindling * * * fly-by-night operators who are currently fleecing the public."

Senate Joint Resolution 130 seems to us well calculated to meet such needs without unduly impinging upon the other interests to which we have referred. It is limited to the industry where the legislature finds existent transgressions of such flagrancy and serious consequences as would well justify invoking such drastic jurisprudential surgery under any traditional legal conceptts.

S. 3065 and S. 3066, on the other hand, could become legislative overkill, for which a commensurate need has not been demonstrated. If, as, and when it is shown, the pattern of S.J. 130 can always be extended to the additional situations which properly call for it in the judgment of Congress. S. 3065 and S. 3066, however, might remove that exercise of judgment into the hands of the Commission, if its view is correct that little more than rubberstamping by the courts, upon a mere showing that the "Commission has reason to believe * * *," is permitted by the proposed form of statute.

And there is a further evil in making temporary injunctions that easily available. The road to a temporary injunction should not be so inviting that the Commission may seek to travel it in any but relatively extreme cases where, as the Chairman has said, there is actual intent to defraud, clear violation of the Federal Trade Commission Act, and truly substantial injury to the public; for the very act of seeking the temporary injunction commits the Commission to a point of view as to the merits of the case which renders it virtually incapable thereafter of proceeding with the judicial-like freedom from bias that is so essential to a fair trial—or at least to the appearances of a fair trial which, as Congress emphasized so often during its deliberations upon the Administrative Procedure Act, is equally important in preserving public respect for the law and order of the administrative agency process.

Mr. Justice Fortas expressed this well in his dissenting opinion in *FTC* v. *Dean Foods Co.*, 384 U.S. 597 (1966), when he wrote, at pages 617–618:

> The Commission was not intended to—it has no power to—it should not—make a judgment on the merits prior to notice and hearing. To sanction its doing so is to strike a devastating blow at the fundamental theory upon which the exercise of both prosecutorial and adjudicatory functions by an administrative agency is based. Cf. § 5(c) of the Administrative Procedure Act of 1946, 5 U.S.C. § 1004(c) (1964 ed.).
>
> The Commission, prior to taking evidence and writing a report, is supposed to make only a very limited judgment: that there is "reason to believe" the law is being violated. But to obtain a preliminary injunction, it must—without hearing the other side, and ordinarily merely on its staff's recommendation, necessarily based upon a quick exposure of the facts—file affidavits or produce evidence with the calculated purpose of demonstrating to the court of appeals that consummation of the merger will have such adverse effects that it must be halted *in limine*. In fact, and in all realism, it must take positions and establish, with sufficient positiveness to overcome strenuous opposition, that the merger will tend substantially to lessen competition or create danger of monopoly, that it is harmful to the economy, immediately threatening in its consequences, and that it is unlawful. There must be Commission conclusions, not merely the views of the staff. Their assertion and necessarily stout advocacy make a mockery of a subsequent quasi-judicial proceeding in which the Commission is supposed objectively to consider the same issues on the basis solely of the record.

Notwithstanding that a bare majority of the Supreme Court did not find this reasoning sufficiently compelling as a matter of law to govern the decision in that case, its logic may well command respect, as a matter of policy, in the legislative chambers.

This would seem especially appropriate to the fundamental character of the Commission's function, as originally conceived under the Federal Trade Commission Act; that is, to serve as an adviser to the befuddled businessman as to the specific application to particular practices of the general language of the antitrust laws—and of section 5 of the Federal Trade Commission Act itself. Necessarily this calls for constant clarification of what has previously been obscure—a clarification which should be reached only after full and considered, and open-minded deliberation; and which should not then serve, post facto, to punish.

The temporary injunction process is antithetic to all of that, by predisposing the Commission too prematurely to its ultimate conclusion—as Mr. Justice Fortas points out—as well as by aborting many cases short of full exploration and resolution—as we have earlier referenced—thus frustrating the primal purpose of elucidation.

In sum:

1. The ANA supports Senate Joint Resolution 130.

2. The ANA opposes S. 3065 and S. 3066 as presently written, but would support them if amended, or otherwise defined, to predicate the temporary injunction upon intent to defraud—or upon a clear violation of the Federal Trade Commission Act which is deceptive to the consumer—coupled with an actually substantial quantum of injury to consumers; that is, the "proper showing" customarily associated with granting temporary injunctions.

3. The ANA additionally proposes that, in fairness to defendants who may find themselves compelled, on relatively short notice, to defend themselves against a motion for a temporary injunction whereas the Commission may have had months, if not years, to marshal its evidence supporting the motion, that granting the temporary injunction be further conditioned—especially under S. 3065 and S. 3066—upon the Commission having given the defendant fair, timely notice of its being under investigation, and of the general nature of the charges being considered. The defendant would thereby be accorded evenhanded opportunity to defend itself—which seems an unobjectionably fair thing to do. Such notification may well be expected to have an added advantage of inspiring early voluntary cessation of many violations.

Senator BREWSTER. The next witness is John B. Benton.

STATEMENT OF JOHN B. BENTON, EXECUTIVE VICE PRESIDENT, JEWELERS VIGILANCE COMMITTEE, INC.

Mr. BENTON. The Jewelers Vigilance Committee, Inc., is a national organization specializing in trade regulation problems, including deceptive practice problems, throughout the jewelry industry. It was first organized in 1912 to combat false marking of gold, was incorporated in 1917, and has been in continuous existence ever since. We are the first industrywide group organized in this country to police an industry. Our board of directors includes representatives of virtually every trade association—retailer, manufacturer, and wholesaler—in the jewelry industry, and our membership reaches into every State.

Unfortunately, jewelry items generally have to be sold on faith, and it is our job to protect that faith. Oftentimes destructive testing by experts is the only method by which the truth of a quality claim can be ascertained. Few consumers are competent to do this, so the phrase "caveat emptor" has little meaning for us. The industry itself is responsible, and we are still, today, trying to live up to that responsibility.

When the Federal Trade Commission first began operations in 1915, we began working with that agency to promote and enforce proper practices in our industry. The Federal Trade Commission has entered a total of several hundred orders to correct deceptive practices in our industry. Jewelers Vigilance Committee, Inc., initiated many of those cases. But for many years we have noted deficiencies in enforcement that these two bills can help remedy. Here are two cases that are fairly typical of the problems encountered.

CASE NO. 1

X Jewelry Company, with annual sales of approximately one million dollars, was falsely marking and labeling base metal as "Sterling," "Gold Filled," and "14 Kt. Gold," and imitation pearls as "Cultured Pearls." The chronology of events was as follows:

June 1962: Our first knowledge that large quantities of false goods were being sold by this concern all over the United States. We brought this to the attention of the United States Attorney and Justice Department, hoping that in view of the apparent willful nature of the practices and the substantial scale of operations the United States Attorney could act under a criminal statute (National Stamping Act, 15 U.S.C. 294, et seq.) and could act more quickly than the Federal Trade Commission.

February 1963: The Federal Trade Commission began an investigation, on our complaint, when the United States Attorney appeared uninterested in proceeding.

January 1965: The United States Attorney finally advised that there would be no prosecution by that office.

April 1965: The Federal Trade Commission issued its formal complaint, having previously withheld action pending final decision by the United States Attorney's office.

December 1965: The Federal Trade Commission's initial decision was entered, and "X" Company was liquidated, both in the same month.

November 1967: The Federal Trade Commissioner's final order was entered.

Throughout this entire period, until only a few months before liquidation, we continued to receive indication that "X" Company was distributing these same falsely marked goods.

If this legislation had been on the books at that time, the Federal Trade Commission could have gone to court for an injunction by at least the end of 1963, and could probably have imposed an actual penalty instead of a prospective order. At least two years of full scale operation, in which both consumers and honest businessmen were victims, could have been avoided.

CASE NO. 2

Y Retail Chain, with total sales of several million dollars, engaged in deceptive price claims, falsely advertised guarantees, and made other false claims. All of its stores were within the borders of a single state and it ordinarily declined to ship merchandise across state lines to purchasers. There was no effective consumer protection law in that state. Other retailers considerably smaller than "Y", some of whom were in interstate commerce, continued to comply with the requirements of the Federal Trade Commission Act. They were directly injured by unfair competition and by the damage to consumer confidence that resulted. Many jewelers who are not presently within the jurisdiction of the Act nevertheless attempt to comply simply because they believe it is basically dishonest not to do so.

After investigation, the Federal Trade Commission closed its files on grounds of no jurisdiction. We have had to inform these little jewelers that, at this time, there is no effective solution for the harm being done to them. In such gross situations, we believe that S. 3066 can help to balance the scales.

We are ordinarily somewhat reluctant to talk publicly about our work, for fear that publicity will exaggerate the extent to which jewelry is misrepresented in this country and undermine the very confidence we wish to protect. Most jewelers, throughout the industry, are honest businessmen. Most of the jewelry products are sold honestly.

But because of the very nature of our merchandise, dishonesty by only a few, if not quickly checked, can have a terrible impact. For this reason, the Jewelers Vigilance Committee, Inc., feels it to be a duty as well as an honor to support this legislation.

Senator BREWSTER. The committee stands adjourned. The record will be kept open for 10 days for additional statements to be filed.

WRITTEN STATEMENTS, LETTERS, AND ARTICLES

Statement of Representative Seymour Halpern, of New York, Protecting the Consumer From Deceptive Sales Practices

I would like to thank Chairman Magnuson and the other distinguished members of the Consumer Subcommittee for affording me this opportunity to present my views on the bills currently before this Subcommittee: S.J. Res. 130, to authorize the Federal Trade Commission to investigate unfair or deceptive practices in the home improvement industry, and S. 3065 and S. 3066, to amend the Federal Trade Commission Act by providing for temporary injunctions or restraining orders for certain violations of that act.

Mr. Chairman, I strongly support this legislation. I have, indeed, introduced identical measures into the House and intend to work vigorously for their adoption by that body. I hope this Subcommittee will similarly see the great merit in this legislation, and report favorably on S.J. Res. 130, S. 3065, and S. 3066.

The consumer desperately needs this legislation to protect him from the deception and fraud which seem increasingly to infect the home improvement industry in particular and the consumer sales sector of our economy in general. Our knowledge of, and legal preventive mechanisms against, such deceptive practices are currently inadequate to assure our citizens sufficient protection from the many predatory merchants in operation today.

With consumer needs, ignorance and gullibility operating in their favor, dishonest merchants beguile customers by offering apparently attractive products on seemingly reasonable terms. Once having signed on the dotted line, the consumer finds himself, in possession of shoddy merchandise and contracted to pay sums far beyond the cost originally claimed by the salesman. The cost to the consumer of fraudulent practices in the home improvement industry is often his very home itself.

The procedures followed by these predatory merchants often involve deception every step of the way. The average consumer, who is fundamentally honest, is no match for the unprincipled salesman, skilled in the art of deceiving potential customers.

Customers are led to believe that used merchandise is actually new, or that cheap new merchandise is considerably more valuable than it actually is. They are induced to sign contracts which they have not read, or which contain blank spaces related to payment terms which are filled in after the customer signs, with prices much higher than those initially quoted.

Merchants often claim the right to repossess all merchandise sold to a customer if he fails to meet scheduled payments on only one purchase. Furthermore, payments are often deliberately scheduled so that the final installment is considerably larger than the others; if the customer is unable to meet this large final obligation, he will lose the item as well as all his previous payments.

Having obtained a written contract from a consumer, merchants will often sell these contracts to collection agencies or banks; these agencies and banks will insist on complete adherence to repayment terms but are not legally required to accept responsibility for the performance or condition of the product purchased.

Victims of home improvement frauds often belatedly discover that, in return for very modest, and often unsatisfactory, construction or repairs performed on their homes, they have unwittingly signed not merely repayment contracts but substantial second mortgages as security of their debt. Should they miss any payments on these home improvement services, they might well end up losing their homes.

A distressingly long list of examples can be cited to document these consumer and home improvement frauds.

One of these cases involved a couple with an income of around $350 a month, who purchased a series of articles on credit from one store. Having already paid

the store $460 for the articles purchased earlier, they missed a payment on a $449 convertible sofa (which had a wholesale value of $131). The store not only repossessed the sofa, but also reclaimed the other items, on which they had already paid almost $500.

Typical victims of a home improvement fraud were the retired couple in their 70's who ended up with $15,000 in mortgages after they agreed to have a home improvement company make some minor repairs on their home and pay off a previous mortgage of less than $5,000. Should they miss any payments to the home improvement company, payments unconscionably larger than the company's services might justify, this couple would quickly find itself dispossessed from its home.

Mr. Chairman, our consumers have the right to protection against the sort of deception and fraud I have just described. The major victims of these practices are the poor and less educated of our population; however, no group has really been immune, particularly to the deceptions involved in the home improvement frauds. Further victims of these practices are the great majority of merchants, particularly in the $15 billion home improvement industry, whose enterprises are completely honest and respectable, but who suffer from the adverse publicity which has arisen from the fraudulent activities of the minority.

The two essential problems which confront us today are the need for greater study of this issue (with a view toward formulating permanent regulations), and the interim need for additional federal power to curb these practices.

The measures before this Subcommittee would serve to resolve these problems. S.J. Res. 130 would provide, first, for a comprehensive investigation to be undertaken by the Federal Trade Commission into the practices of members of the home improvement industry. Such a study is essential for the promulgation of appropriate legislation and regulations to curb fraudulent activities.

S.J. Res. 130 would also empower the FTC to seek temporary injunctions against the perpetrators of deceptive home improvement practices; such powers are important in order to halt home improvement swindles quickly, to allow these frauds to be continued, and to harm other consumers during the lengthy court proceedings and delays that often ensue before these activities can be stopped permanently by the courts.

S. 3065 would extend these injunctive powers to deceptive sales practices in areas other than the home improvement industry, and would obviously afford the same benefits in these other sectors.

S. 3066 would not only provide the injunctive powers contained in S. 3065, but would also broaden the jurisdiction of the FTC so that its enforcement activities are not limited only to respondents *directly engaged* in inter-state commerce, but can be applied to cases in which interstate commerce is *affected.*

Mr. Chairman, let me reiterate my strong support for the bills before your Subcommittee at this time and my earnest hope that this Subcommittee will recognize the need for, and the merits of, this legislation and will pass favorably upon it.

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
San Mateo, Calif., April 3, 1968.

Hon. WARREN G. MAGNUSON,
Senate Office Building, Washington, D.C.

MY DEAR SENATOR: The enclosure is going to all Members of Congress, and it will be mailed and otherwise circulated into all parts of the country, because I believe the Bill you have prepared is one of the most necessary pieces of legislation 'affecting' commerce that has come before the Congress.

As noted in the beginning of my broadcast, the idea to include the word affects" in Section 5(a)(1) of the Federal Trade Commission Act, resulted from a conference in the office of Paul Rand Dixon, FTC, in which our Director of Legislative Activities, Mr. George S. Bullen, Washington Office, National Federation of Independent Business, participated.

Judge Dixon was so positive over the inability of FTC to correct deceptive practices that were intrastate in nature, that I am amazed at his recent suggestion at the hearings, that what he seemed to think was so necessary at that time is now of secondary importance.

We lost over 40 dairy plants in three years in Dayton and Cincinnati (Ohio) because FTC lacked the power to end the dastardly practices of a few chains and discounters in using milk as a bait—a practice which is destroying countless thousands of dairy plants, millions in investment, and heaven only knows how many jobs.

This condition laps over into almost every field where the chains and discounters are operating, and it is economic murder to let them go their way.

I would greatly appreciate any comments you care to make on the broadcast, on this letter, too, and I assure you that no stone will be left unturned by this office to keep the "affects" commerce proposal in the forefront of our activities.

With all good wishes.

Sincerely,

ED WIMMER.

WEEKLY RADIO COMMENTARY BY ED WIMMER

FORWARD AMERICA BROADCAST #27 SERIES 68

SUPPORT, A REVOLUTIONARY PROPOSAL—DECEPTIVE SALES ACT "AFFECTING" COMMERCE

WEDNESDAY, 6:15 P.M. OVER RADIO STATION WPFB—910 ON AM DIAL 105.9 ON FM DIAL

Thank you, and again, ladies and gentlemen, may I please have your attention for the next few minutes, to discuss a problem and objective which, if the problem is solved and the objective reached, can bring a revolutionary change to every sector of our national economy.

The objective of this discussion is a little two-letter word that has cost our nation countless thousands of businesses and jobs, and I believe we can prove in the next few minutes that changing this two-letter word to a nine-letter word, or keeping them both in a new proposal coming up for hearings in Congress, can open uncounted opportunities for our youth as well as a new era of fair competitive practices, with untold benefits.

The two-letter word is "in"—and the nine-letter word is "affecting".

It all came about one afternoon in a conference with Paul Rand Dixon, Chairman, Federal Trade Commission, and some of his aides including Rufus Wilson, head of the legal department. My son, Ed, Jr., was present, and George S. Bullen, Director of Legislative Activities for the Washington offices of our National Federation of Independent Business. The subject was predatory business practices, and the failure of the Federal Trade Commission to give more help when markets become so bad that saving independent business is an impossibility. In desperation, I asked: What is behind it all? Why are we losing out on so many fronts when the Federal Trade Commission is supposed to be the agency created by Congress to treat and end the worst competitive practices, especially those tending to create monopoly?

Mr. Dixon answered by taking a copy of the Federal Trade Commission Act from his desk, and literally slamming it down before me, pointed a finger at the two words, "in commerce", written into a provision that authorizes the Commission to take action against any method of competition "unfair or deceptive to the consumer". "If the word 'in' had read 'affects commerce', or if the word 'affecting' had been added, your dairymen and the other people you are talking about would be in business today." He explained that the term "in commerce" covered only those acts that were interstate commerce, while the words "affects commerce" would empower the Commission to act in a case that was strictly intrastate.

Immediately upon our return, I wrote letters to Senator Sparkman, Chairman of the Senate Select Committee on Small Business, to Congressman Wright Patman, Chairman of the House Select Committee on Small Business, to Senator Proxmire, Congressman Gross, Vice President Humphrey, and numerous other officials and key men in Congress, and a report on the conference with FTC was sent to organizations all over the nation, and the whole subject fully explored by the National Federation of Independent Business.

The wheels began to turn. Senator Sparkman wrote Mr. Dixon asking for a full explanation of the desired strengthening of the Federal Trade Commission Act, and the Department of Justice was asked for an opinion. Senator Sparkman wrote that the idea had tremendous potential, and should be cleared up in Congressional hearings. Congressman Patman felt the same way.

Let me give you an example of what this conveys. When the FTC sent investigators into our local area to explore damaging effects of the use of milk as a bait by the discounters and chains, they found dairy plants going broke and jobs being destroyed but since the violations were intrastate, under the interpretations of the Federal Trade Commission Act, officers were powerless. The result

was that our dairy plants went down to a handful of operations in the whole Greater Cincinnati-Greater Dayton areas, and in nearly all the markets across the country the same situation existed.

If the words "affecting commerce" had been written into the Act, our dairy plants would be very probably be in business today.

On February 29 of the year, Senator Warren G. Magnuson (Washington State) introduced Senate Bills 3065 and 3066 to be known as the Deceptive Sales Act, which, if passed, will empower the Federal Trade Commission to act in the public interest, and seek an injunction in Federal Court against any person or corporation believed to be engaged in an unfair deceptive act or practice "affecting" the consumer and harmful to small business.

Senator Magnuson told the Senate that this action was long overdue. He pointed out that all too frequently persons engaged in schemes in violation of the Federal Trade Commission Act can defraud the public and go on defrauding for two years or more, killing off weaker competitors, before officials can bring about relief, and all this time the consumer is deceived.

The Senator said: "There is no excuse for perpetuating this gaping loophole in Commission procedures. In sending this draft to Congress, President Johnson has spotlighted an extremely important area for immediate Congressional action." Senator Magnuson promises the earliest possible time will be set for a Senate Hearing, which, in this commentator's opinion, will be one of the most important ever held on business practices.

I want to explore these proposals and the possible threat of a further invasion of the Federal power, but before I do, it should be noted that Congressman William Cahill (Republican from New Jersey) introduced a bill, H.R. 15038, which, like Senator Magnuson's proposals, go beyond the recommendations of President Johnson. Both bills would give FTC the authority to ask for preliminary injunctions against a suspected unfair practice that is shown to be harmful to areas of the economy not necessarily related to immediate harm to consumers. Congressman Cahill, for example, wants to close any loophole at all that would give violators an opportunity to escape punishment.

Now let us see why you as a consumer, a small businessman, a clergyman, a youth who seeks to enter the market place, a labor leader, economist, legislator, homemaker or anyone else who believes in competitive honesty and fair play should support this change in our laws.

Ben Alterman, a former chain operator on the West Coast, made the statement at a convention:

"Forget your campaign to save small business. You are wasting your time. We are now in the age of dog-eat-dog competition, and the little guy isn't going to make it."

Another supermarket chain operator said:

"Competition is no longer between supers and the corner store, it is between wolves. There are too few chickens to worry about."

Better Business Bureaus all over the nation made frantic attempts to meet this condition. In Akron, Birmingham, and too many cities to mention, the BBBs have pleaded for cessation of what was considered deceptive advertising and bad practices.

The Christian Science Monitor says if we cannot bring ethics back into the market place, the free enterprise system is doomed. Ann Rand, author of Atlas Shrugged and the Fountain Head said (Atlas Shrugged): "Honesty and integrity is a recognition that neither love nor fame or cash is a value if obtained by fraud. Any attempt to gain value by deceiving the minds of others makes you a pawn of their blindness. A dependent upon the stupidity of others is a fool whose sense of values is the fool you succeed in fooling."

Miss Rand would not approve the proposal to write "affects commerce" into the FTC Act, but suppose the states never get around to correcting the evils that are now closing one door after another to our youth, and making a mockery of the term "fair and free competition"? The function of Congress and several agencies of government was created to uphold the antitrust laws, laws governing the marketing of securities, food clothing or anything else to preserve private enterprise by preventing the few private enterprisers who live by deceit and deception from destroying the system. Predators are not going to voluntarily set limits beyond which they will not go. Human predators are no different that the mountain lion that eats his fill of sheep, and then goes of killing until he is exhausted. This is why we have shepherds to protect the flock.

Last year I received a letter from Governor John Burns, Hawaii. He deplored what was happening to small business in the Islands, but admitted he knew of

no effective aid to halt their demise. . . . . A representative of the Gold Bond Stamp Company, stationed in Japan where trading stamps and monopolistic practices are sweeping over Tokyo and other Japanese cities, stated that the small stores are on their way out in that country. He said the stamp bonanza rested in the supermarket field. At the same time, the Governor of Tokyo said in an interview, that big business is running everything; that if small business goes down in America, it would go down in his country—which would mean Fascism, although he preferred socialism as the alternative to monopoly.

The whole problem of stopping the few from taking over the business of a country is a world-wide problem, the solution of which I believe rests on what we in America are able to do to FREE our market place of the unmoral, unethical, monopolistic, deceptive practices which one merchandising expert declared would lead, ultimately, to 50 big distributors in control of everything.

This past year we have witnessed passage of packaging laws and the rise of consumer groups all over the nation, and if we fail to recognize the meaning and danger of it all, we are in trouble.

To me the proposed change of the word "In" to "Affecting," or the use of both in legislation, will do to the tricksters, deceivers and predators of the market place what traffic signals have done to safeguard the lives of motorists. It is one of the most hopeful signs that have appeared on the legislative free, private enterprise horizon in least 25 years.

We urge you to write for further information, ladies and gentlemen, and thank you for listening. Our mailing address: P. O. Box 1776, Covington, Kentucky 41012.

STATEMENT OF GEORGE S. BULLEN, LEGISLATIVE DIRECTOR, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

The National Federation of Independent Business appreciates the opportunity to submit this statement in *support* of S. 3065.

The National Federation of Independent Business, founded twenty-five years ago, currently represents more than 245,000 independents. This means that approximately one out of every twenty small businesses in the country is a Federation member. Our membership is representative of all facets of the business spectrum. A check of membership percentages in each business category shows that the composition of the Federation falls within a very few percentage points of the national makeup of the entire small business community. Therefore, we feel that we can reasonably say that the views expressed by our members represent a valid cross section of the views of all 4.7 million small businesses.

The legislative policies of the Federation are determined by the direct vote of the membership, using the Mandate ballot.

While the Federation has not polled its members specifically on S. 3065, we did present to them in August, 1965, an issue almost identical to the provisions of S. 3065. By a substantial majority the members voted in favor of such legislation. The following shows our poll of the bill:

4. H.R. 49: This bill would authorize Federal courts to issue temporary stop orders against alleged unfair competition while investigations and trials are in progress (Cong. Patman, Tex.)

Following are brief arguments "For" and "Against" which our members were asked to read before voting:

4. Argument for H.R. 47

Unless some way is found to speed up investigations and trials in cases of alleged unfair competition, thousands of independents are doomed to bankruptcy. Consider the many cases of misleading advertising. By the time the Gov't gets around, through normal methods, to issuing orders the ad campaigns are over, the damage done. The same goes for cases involving unfair price competition. Some of these stretch out for from five to ten years. When orders are issued the damage is done. This bill seeks to solve this problem.

4. Argument against H.R. 49

Just another invitation to delay . . . that's what this bill is. Before antitrusters could get a "stop order" on alleged unfairness, they would have to go to court. Certainly they'd be fought tooth and nail. And maybe the courts wouldn't grant them their desires. More than this, what justice it there in forcing a firm to stop a practice just because it is suspect of unfairness? Suppose a "stop order" were to be issued, and then the courts find "not guilty"? The results: a firm could be stopped from conducting a perfectly legal sales program.

The results of the poll were:

4. H.R. 49. Allow courts to issue stop orders in unfair competition cases: For, 60%; Against, 31%; No vote, 6%.

It is not at all surprising that majority of Federation members are in favor of this legislation. Although the stated purpose of S. 3065 is to widen the authority of the Federal Trade Commission by empowering it to seek preliminary injunctions against those whom it believes are engaged in unfair or deceptive acts or practices in order that the consumer might be better protected, we must bear in mind the fact that the smaller businesses of America, while serving as suppliers to the general public, are themselves consumers in their dealings with larger business concerns.

Time after time small business has found it necessary to go to the Federal Trade Commission to seek relief from the unfair and deceptive practices of their larger competitors, and even in cases where the Commission has found in their favor, years go by before the matter is settled. During this prolonged period, respondent is allowed to continue his operation without any change in policy, and the complaining small businessman, not being able to operate at a loss for an extended period of time often finds that he is forced to close his doors and cease doing business before his ultimate relief from the situation can be realized.

For the above reasons and in keeping with the majority opinion of our members, the National Federation of Independent Business wholeheartedly supports the provisions contained in S. 3065 and urges prompt enactment of this bill.

The Federation would also like to take this opportunity to comment briefly on S. 3066 which your Committee is considering along with S. 3065. Since this particular legislation has not been subjected to our members for a policy vote, we are not in a position to support it officially, but we can say that we are very interested in the bill. In fact, Federation officials have discussed this type of legislation with the Chairman of the Federal Trade Commission in the past and generally agree that such widening of the Commission's authority would prove beneficial.

STATEMENT BY ARNOLD WITTE, GENERAL MANAGER, COMMERCE AND INDUSTRY ASSOCIATION OF NEW YORK, INC.

The Commerce and Industry Association of New York represents some 3500 business firms located principally in the New York metropolitan area. These concerns cover virtually the entire spectrum of business enterprise in product, type and scale of size, including the service, manufacturing and distribution industries, running from the smallest shops to the largest national and international enterprises which have their headquarters in New York City.

S. 3065

Certainly no responsible business organization today objects to the enactment of a deceptive sales act such as S. 3065 authorizing the Federal District Courts, upon application and a proper showing of the Federal Trade Commission, to grant temporary injunctions against acts or practices which are unfair or deceptive to the consumer. Such powers already exist in limited measure with respect to the dissemination of false advertising in the food, drug and cosmetic field.

We do suggest, however, the need in the proposed legislation of a clarifying amendment which would add a dimension of meaning to the words "proper showing". Such clarification is necessitated by a conflict of judicial interpretation in this regard.

One set of rulings apparently holds that all that is necessary for the issuance of the injunction is for the Commission to make a pro forma showing that it has reason to believe that a violation has been or is about to be committed. The contrary view expressed by another federal court is that "it was hardly the intention of Congress to require a district court, in exercise of the extraordinary remedy of injunction, to proceed affirmatively on the basis of the reasonable belief of the administrative agency".

In effect the court has said here that it doubts that Congress ever intended that the courts should become rubber stamps for the administrative agency.

It is recommended therefore that the next to the last sentence in Section 2 of the bill be amended to make clear that the granting of a temporary injunction or restraining order shall be "on such terms and conditions as the court in its sound discretion may deem just and equitable under the circumstances".

Without such qualification it is wholly possibly that the Federal Trade Commission would in effect be given a breath of injunctive power beyond that of any other agency of government and, in fact, barely distinguishable from earlier legislation proposing to give it the right to issue restraining orders on its own initiative and in its own name.

S. 3066

S. 3066 goes several steps beyond S. 3065 and (1) makes similar intrastate acts affecting commerce unlawful; (2) appears to authorize issuance of injunctions not only with respect to activity directly affecting the consumer but also to "unfair methods of competition"; and (3) provides for the imposition of criminal sanctions for *any* violation of Section 5 of the Federal Trade Commission Act.

This Association rejects the principle of further extension of the criminal law into what is basically a matter of civil regulation; and opposes the enlargement of federal power in this area of local concern. Finally, the bill's phraseology is unclear in several respects. Of most concern in this connection is its application of injunctive powers to unfair methods of competition and the implications as to whether any given defendant might not be subjected simultaneously to Commission proceedings, injunctive actions and criminal prosecution.

If we can be of any further assistance to the Committee in its deliberations, we are delighted to offer the services of our Association.

ROGERS HOGE & HILLS,
New York, April 10, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Consumer Subcommittee, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am instructed by The Proprietary Association, to which I am General Counsel, to submit for your consideration, and for inclusion in the record of hearings, this statement of position on S. 3065 and S. 3066 on which hearings were held by your Committee on March 27 and 28.

The office of The Proprietary Association is at 1700 Pennsylvania Avenue, N.W., Washington, D.C. The Association is unincorporated. Its members are manufacturers and distributors of proprietary medicines. These are medicines which are not required by law to be sold on prescription; are sold over-the-counter in drugstores and other stores which handle packaged medicines. They are advertised direct to the public by newspapers, magazines, television, radio, and otherwise.

The products of the members of the Association include most of the well known packaged medicines. All of the members of the Association are subject to the jurisdiction of the Federal Trade Commission and would be affected by the amendments to the Federal Trade Commission Act proposed by these bills.

The Association supports—with a clarifying amendment—the enactment of S. 3065. We ask that the bill be amended by revising the next to the last sentence in Section 2 thereof (page 2, lines 18 and 19) to read as follows:

"Upon proper showing the court, in its sound discretion, may grant such temporary injunction or restraining order, without bond, as shall be deemed just in the premises."

Section 13, as it presently appears in the Act—without the enlargement proposed in S. 3065—should have the clarification which our amendment would supply. Section 13 is now limited to false advertisements of food, drugs, devices, and cosmetics. The bill would extend its application to all commodities except those which are by the statute excluded from the Federal Trade Commission Act. This is a vast expansion. It would enlarge Section 13 to include "any act or practice in commerce within the meaning of Section 5 which is unfair or deceptive to the consumer."

This importance of clarification is underscored by the fact that there is no clear statement in the statute or in the case law as to the meaning of the words "proper showing." Therefore, in any case under Section 13 the vital, and first question is what is the "proper showing" which the Commission must make to obtain a temporary injunction or restraining order. To emphasize and compound the matter, there exists in the cases a division of authority.

In *Federal Trade Commission* v. *Rhodes Pharmacal Co.*, 191 F.2nd 744, the Seventh Circuit in 1951 held:

"It is true that there is nothing in the Act or its legislative history to indicate what should be considered as a 'proper showing.' We think, however, that it is fair to say that all the Commission had to show was a justifiable basis for believing, derived from reasonable inquiry or other credible information, that such a state of facts probably existed as reasonably would lead the Commission to believe that the defendants were engaged in the dissemination of false advertisements of a drug in violation of the Act . . . This is to say . . . The court had only to resolve the narrow issue of whether there was 'reasonable cause' to believe that the alleged violation had taken place." (pp. 747, 8)

This interpretation of "proper showing" is quite favorable to the Commission. In fact, it can be interpreted to mean that the court's only function is to determine if "the Commission had reason to believe" that a violation has been committed. This would exclude from the court's determination the question of whether the court *itself* thought there were reasonable grounds for such belief and indeed, would exclude all the usual equitable considerations as to whether the injunction would preserve the status quo, whether the Commission could show a probability of ultimate success, etc.

The court in *Federal Trade Commission* v. *National Health Aids*, 108 F. Supp. 340 (D. Md. 1952) sharply disagreed with the implications set forth in *Rhodes*. The Commission contended that "the proper showing that is required is merely the existence of a reasonable belief on the part of the Commission." (p. 346). The court rejected this, saying:

"[I]n view of the nature of the subject matter it was hardly the intention of Congress to require a district court in exercise of the extraordinary remedy of injunction to proceed affirmatively on the basis of the reasonable belief of the administrative agency." (p. 346)

The court concluded: "The reasonable belief of the Commission is sufficient to warrant its application for the injunction, but the action of the court should be based on the general considerations that properly apply in the issuance of preliminary injunctions." (p. 346)

Most recently, the issue arose in the case of *Federal Trade Commission* v. *Sterling Drug Inc.*, 317 F. 2d 669 (2 Cir. 1963). There, the district court's denial of a preliminary injunction was affirmed by the circuit. On appeal, the Commission argued that the district judge had improperly "balanced the equities" in denying the injunction. The Commission argued that "matters usually considered in the traditional equity suit are irrelevant" (p. 678) once the Commission has shown its "reason to believe" and the "interest of the public." The Second Circuit acknowledged the split of authority but avoided the issue by ruling that the Commission had failed even to show its "reason to believe."

In view of these cases and the Commission's position, there is a clear danger that if the identical language is adopted now by Congress, covering far broader areas than Section 12 violations, then if later decisions follow the *Rhodes* case, the Commission may be getting far greater injunctive power than has any other agency of government.

The need for clarification, and the propriety of accomplishing it by the amendment here proposed should be clear without further discussion. The Association earnestly hopes that the Committee will be disposed to accept this request for such clarification and to act upon it.

With respect to S. 3066, our understanding is that it is not presently under further consideration and that any discussion of it is not now necessary. We may say for the record that our position on it is one of opposition. Our reasons can, and will, be specified and discussed in the event the bill is further considered.

Respectfully submitted.

JAMES F. HOGE.

[From the Saturday Evening Post, July 21, 1956]

BEWARE OF HOME-REPAIR RACKETEERS—IF YOU OWN A HOUSE, YOU'RE A LIKELY TARGET FOR THESE SKILLFUL FLY-BY-NIGHT OPERATORS WHO MUSCLE THEIR WAY INTO YOUR LIVING ROOM AND CHEAT YOU OF $500 MILLION A YEAR

(By Stanley Frank)

You're too smart to fall for the phoney schemes con men have been pulling on suckers since the gold brick was invented, of course. Only yokels are taken in by such moth-eaten swindles, you say. Maybe so, but if you own a home there is a strong possibility that you have been hooked recently by the "suède-shoe boys,"

a new species of racketeer who makes the old-time bunko artists look like amiable amateurs.

The suède-shoe boys are gouging naïve victims throughout the country in every branch of home repairs—electrical, heating and plumbing installations, painting, roofing, siding, storm windows and light construction. These vultures, who feed on ignorance and cleverly planted fears, have been cheating the public out of more than $500,000,000 annually in the last few years. Victor H. Nyborg, president of the Association of Better Business Bureaus, warns that the gyps threaten to make a more staggering haul in 1956 by latching onto Operation Home Improvement, the biggest peacetime promotion ever sponsored jointly by industry and the Federal Government.

Operation Home Improvement is a commendable campaign to spruce up the weather-beaten faces of American communities and sustain property values. The vast majority—perhaps 99 per cent—of the participating contractors and dealers are ethical craftsmen, but the chislers endanger the entire project. It will be a gravy train for the suède-shoe boys unless homeowners are on guard against the model-house scheme, bait-switch advertising, the tear-down-furnace dodge, scare sales talks stressing the danger of fire, fake contracts and other common frauds we will outline presently.

Abuses in home repairs are the No. 1 racket in the United States today, according to the Better Business Bureau. In 1955, in the home field alone, it received 174,175 complaints[1] and inquiries concerning misrepresentation of materials and workmanship—and officials of the organization admit their statistics may reflect no more than 1 per cent of the national total. Local fly-by-nights originally were the chief source of trouble, but there is mounting suspicion now that criminal syndicates have invaded the home-improvement field.

"The Mickey Cohen gambling mob is behind a lot of funny stuff going on in Chicago and Detroit," says Cyrus B. Sweet, assistant administrator for FHA home-improvement loans. "We also have good reason to believe organized gangs are operating in New York, Philadelphia, Los Angeles, Cleveland, Atlanta and, for that matter, every large city."

People who answer bait ads for one phony product generally are approached by sharpshooters in other lines, a clear indication that shady outfits exchange sucker lists. During the Senate investigation of the FHA scandals in 1954, documentary evidence was presented proving that schools for training salesmen in fraudulent propositions had been set up in all sections of the country. "I have heard everything now," commented Sen. Homer E. Capehart, chairman of the committee.

It's small wonder the underworld has muscled into home improvements. This is no petty, two-bit shell game. Twelve billion dollars are spent annually for refurbishing and modernizing American homes, and the bulk of the money is poured out in large lump sums. A man who spends $500 to $2000 on home repairs must depend upon the manufacturer's reputation and the contractor's integrity, for he has no way of checking or testing adequately the quality of the products he buys.

But the uninformed customer is only one of the cushy angles working for the suède-shoe boys. They are virtually immune to jail sentences or even stiff fines because gathering iron-clad evidence of fraud is a long, difficult process. A roof guaranteed for twenty years may spring a leak after two weeks, and the first rainstorm may wash off a "lifetime" coat of paint, but by the time an indictment is drawn the defendant invariably is operating in another state. Even cease-and-desist orders issued by the Federal Trade Commission against manufacturers of phony products are not always effective. The culprits simply continue in business under new names.

For thirty years authorities in ten states have been trying to break up the notorious Williamson gang, a fantastic tribe of 100 families, all double first cousins. Like gypsies, the Williamsons never marry outsiders and instruct their children from infancy in shoplifting, con games, fake accident claims and palming off cheap domestic fabrics as expensive imports. When apprentices are ready for the big leagues, they are given post-graduate courses in home-repair rackets, the Williamsons' stock in trade.

The customary procedure is to "blitz" a town by saturating it with radio, TV and newspaper ads offering roofing, siding and painting jobs at prices far below the rates quoted by legitimate dealers. This gambit is followed up by aggressive door-to-door solicitation that frequently terrorizes housewives into hiring the

[1] 240,000 in 1967.

cutthroats. Their materials and workmanship are so shoddy—they reroof a fair-sized house in an afternoon—that the property is turned into an eyesore.

A renegade Williamson, the first one ever known to turn square, revealed that two kinfolk cleaned up $28,000 in Iowa and Minnesota during the summer of 1954. Among other things, they made a profit of $700 on lightning rods that cost forty dollars. An elderly, half-blind couple paid $250 for a few pieces of metal worth three dollars.

In May, 1955, the Boston Better Business Bureau broadcast a bulletin, "The Terrible Williamsons To Invade New England," reminiscent of the alarms spread by vigilantes after the Civil War warning Middle Western towns of impending raids by the Jesse James gang. The alerted FBI and state and local police made two arrests, but were unable to secure convictions. That was one of the rare instances the Williamsons ever were inconvenienced by the law.

The suède-shoe boys' old, reliable meal ticket is the model-house scheme, which has been flourishing since man emerged from the cave. This is how it works: A homeowner is approached by an "executive" of a company manufacturing, let's say, a new plastic siding guaranteed against cracking and discoloration. The prospect is told the company is so impressed by his standing in the community and the location of his charming house that it has been selected to introduce the siding at a special offer of $795, $545 or whatever the gyp thinks the chump will go for. The price deliberately is pegged high to soften up the sucker for the lowering of the boom.

The owner says that kind of money is far beyond his reach. The gyp looks over his shoulder furtively and confides he is so eager to use the house as a model that he will make a deal which must be kept in strictest secrecy. He will pay fifty dollars for every prospect the owner refers to the company. Surely the man knows a dozen people who take pride in their homes. That's 600 bucks right there. Think of the inquiries from admiring passers-by. In no time at all the owner will get back his outlay and wind up with a nice profit. If the gyp encounters resistance, the bonus is hiked to seventy-five dollars or $100. Any figure mentioned is immaterial, of course. The owner never sees a red cent after he signs up for an outrageously overpriced job; he is stuck for the full bill.

If it is inconceivable to you that an adult possessing all his marbles can fall for such a brazen swindle, you're underestimating the persuasiveness of the peddler of spurious merchandise. He once worked side streets and carnivals, but today, as Broadcast Magazine points out, "television has brought the pitchman off the streets and into the parlor."

Edward S. Silver, district attorney of Brooklyn, sums up the situation more succinctly, "The bum hasn't got the guts of a burglar. He insinuates himself into your home instead of breaking in."

The current furor over misleading TV advertising stems mainly from the huckstering of combination storm windows, the suède-shoe boys' pin-up item today. The cheapest storm window on the market cannot be bought by a dealer and installed for less than twelve dollars, yet the gyps quote prices ranging from $7.50 to $8.95. Since they are not in the habit of losing money, it is obvious they have no intention of doing business at the advertised price.

A salesman responding to an inquiry leads off showing the cheap window—for which he gets no commission—then artfully switches the customer to a much more expensive product by plugging its superior quality. The difference between the advertised and switch prices is split down the middle by the promoter and the salesman. This is known in the trade as the "par deal," the basic setup for conniving in home repairs.

A fascinating wire recording of the shrewd psychological tricks used in storm-window switches was made recently by Walter J. Glennon, an investigator for the New York Better Business Bureau. Glennon had the recording device concealed on him—never mind how—when he posed as a switch specialist in applying for a job with a gyp outfit. Following are verbatim excerpts from his interview with the boss, whom we will call Mickey.

MICKEY. What have you sold before?

GLENNON. Ladies' shoes and vacuum cleaners. I started with a $29.95 machine and worked up to one that went for $139.

MICKEY. H'm'm—that's a pretty good jump. We advertise windows for $7.77 and $9.79 and our step-up is from $28 to $46. Besides getting half of everything you sell over the base price, you get a bonus of fifty bucks if you get rid of fifty windows a week, plus a dollar for each one over that.

GLENNON. What does the average sale come to?

MICKEY. You can figure on fifteen windows at $36 apiece. Last Saturday after-

noon a guy made $370 on commissions. The law of averages says you got to find one mooch (sucker) a week in twelve or fourteen leads.

GLENNON. Is your product any good?

MICKEY (*sharply*). I'm surprised at an old switch man asking that.

"I almost queered the show with that question," Glennon admits, "but I wanted to record the answer for possible legal action."

After the interview, Glennon went out with Al, an experienced salesman, on actual calls. "The trick is not to pull the switch too fast," Al explained. "The papers have raised such a stink about storm windows the last few months that everybody's suspicious. Sell the advertised item at first and give it a good buildup. After you've clinched the sale, show the better window, stress its good points, and the customers themselves will knock the window they've just bought."

The first call was on a family in Brooklyn. Al had the $7.77 window and a more expensive one in the car, but he took only the cheap item into the house. He gave a straightforward spiel and quickly sold ten windows, amounting to $80.03 with the city tax. As he pocketed the order, Al casually told the wife the aluminum frames of the windows had to be wiped with steel wool once a week to prevent pitting and blackening. The woman, visibly upset, protested to her husband that she would have to lean dangerously far out of the second story to reach all parts of the frames.

"I know it's an awful nuisance," Al nodded sympathetically. "I wouldn't have said anything about the steel wool if I just wanted to make a sale. But I can tell you keep a nice house and I know you don't want to spoil its appearance, especially with an outside fixture your neighbors can see."

Al gave Glennon the high sign to bring in the second window. "You've got a very good buy in the window you ordered. Of course, it isn't made with the high-grade stainless aluminum in this one. You can't expect that at the price you paid. . . . No, madam, you never have to wipe this other window—after it's installed. The weatherproof frame is guaranteed not to pit or discolor. Apart from that, the window I sold you is perfectly satisfactory. It will serve your purpose almost as well as this more expensive article. Yes, the screen and glass in this one are better and the parts move easier, but you've got to pay more for those extra features."

For two hours Al stoked the debate between the husband and wife as they anxiously discussed the advisability of buying the better window. The upshot was that the couple went from a purchase of $80.03 to $279.44.

The next call was on a Puerto Rican supporting a wife and six children on seventy-six dollars a week. The man, embarrassed by his halting command of English, agreed with everything Al said and bought six windows for $48.02. He did not bite, though, at the steel-wool bait until Al played his ace as he was leaving.

"When are you selling the house?" Al asked.

The man was startled. He said the house was not up for sale.

"Oh, excuse me," Al blurted. "I thought you're fixing up the place to make it look a little nicer. Had I known your family was going to stay here, I would've shown you the window that belongs in a fine house."

Snob appeal is an irresistible lure in every income bracket. The poor Puerto Rican was stuck, but good, by Al for $249.86.

When the suède-shoe boys hawk services rather than tangible commodities, their tactics often are about as subtle as a section of lead pipe over the skull. An old trap certain to be sprung with the approach of cold weather is the tear-down-furnace racket, a vicious skin game that can cost the dupe a year's savings. A gyp posing as a city inspector gains entrance to a house while the husband is at work by telling the wife he is making a routine check on the safety of the furnace. The woman lets him in and attends to her chores, but an hour later she wonders what in the world can be keeping the man. She goes to the basement and is appalled to find the furnace dismantled, with parts strewn all over the floor.

Shaking his head gravely, the gyp reports he has found a very serious defect that can cause fire, explosion or carbon-monoxide poisoning. Fortunately, he knows a good repairman who can make the necessary adjustments immediately. The husband, informed by telephone of the emergency, tells his wife to sit tight until he comes home. By that time the frantic woman has visions of the family being burned to death, blown to bits or asphyxiated in their sleep. In the confusion, there is no heat or hot water, and roughing it no longer intrigues the kids. If the husband insists on calling in another consultant, the gyp refuses to reassemble the furnace on the ground that it is a fire or health hazard. Putting it together—and restoring strategic parts that have been swiped—runs into so much money that the husband may decide to replace a perfectly good heating unit with a new one.

The scare technique also is used by thieving electrical contractors. Again, a phony inspector casts a fishy eye over the wiring, outlets and fixtures, and scribbles furiously in a notebook. He has no trouble convincing the nervous wife who believes every entry is a violation, the house is a firetrap. For an added fillip, the husband is told his insurance policy will not be valid if the faults are not corrected. By another happy coincidence, the inspector knows an electrician who can rewire the place. He neglects to mention that the house will be stripped practically to the foundation after his crony has finished tearing down walls and ceilings.

Another variation of this dodge is to inform a homeowner his chimney is giving off noxious fumes or is about to topple. A few months ago two elderly sisters in Boston paid $420 to a crew that went through the motions of poking poles down the chimney for two hours and slapping a little cement on it.

A prime example of the pitfalls confronting consumers with no technical knowledge for evaluating materials is the mastic-paint racket. Until storm windows shot up into first position, mastic paints had the dubious distinction of being the biggest headache in home repairs. Authorities estimate gullible customers were taken for $6,000,000 in Southern California alone during the first six months of 1954 on this new product developed in the last decade.

Mastic paint, which is made with a resin or plastic base, forms a coat four times thicker than ordinary paint and is guaranteed by the gyps to stand up twenty years or more in any climate. The claim is substantially true—under very limited conditions. Mastics do last indefinitely when applied with an air gun to thoroughly dry masonry. The catch is that they do not adhere properly to wood and, worse still, ruin it. The United States Department of Agriculture explained in a recent bulletin that wood deteriorates quickly under mastics because the thick coat retains the moisture which condenses on side walls during cold weather. Good exterior paint is supposed to chalk, or wear off gradually, to give the wood underneath a chance to dry out.

When a sharpie rubs the surface of a frame house and shows the chalk dust on his hands, anyone who does not understand why it is given a relatively thin coat of paint is halfway sold on mastics. If he goes overboard for the spiel, his house presently begins to blister and peel like a third-degree sunburn.

Apart from the money the public is losing, the most aggravating aspect of the suede-shoe boys' activity is the monkey wrench it may throw into Operation Home Improvement—the long-overdue effort to protect the capital investment of $235,000,000,000 in 50,000,000 American homes. Each year, 1,000,000 neglected dwellings are sucked into encroaching slums. Every city is pockmarked with depressing neighborhoods that once were desirable residential sections.

A catchy slogan ("'56, the Year to Fix") is not needed to underscore the fact that millions of homes built after World War II with substitutes for scarce materials are ready now for rehabilitation and expansion. Bandboxes that were adequate for newly married couples ten years ago hardly are suitable for raising families. It may be corny to remark that children derive important social and moral benefits from a comfortable, attractive home, but corn happens to contain the kernels of enduring truths.

Real-estate specialists say 5 per cent of a house's value should be reinvested annually for repairs and improvements to prevent depreciation. In sharp contrast, a Federal Reserve Board reports that 20,000,000 homeowners did not shell out a dime for maintenance last year and 15,000,000 spent less than $300 apiece. Moreover, 30,000,000 houses have not been painted in ten years and 13,000,000 have no bathtub or shower.

There's always something demanding attention in a modernized home. An accurate barometer of our rising standard of living is the consumption of electricity, which has doubled in the last decade. During that period the average middle-class family has acquired a TV set, a freezer, a larger refrigerator, a score of appliances and lighting fixtures that take 150-watt bulbs—but when did a licensed electrician last examine the wiring in your house? The General Electric Company found in a 1955 survey that nearly half the homes in the country are wired inadequately, and overloaded current lines are a definite fire hazard.

Paradoxically, the easy availability of loans to homeowners with whopping bills for major repairs is an open invitation to skulduggery by the suede-shoe boys. Any responsible party can go to a private bank and borrow up to $2500, discounted at five dollars per $100 and repayable within three years, for an improvement that "adds to the basic utility or livability of a home" under Title I of the FHA. The Government guaranteed the full amount of the loan until two years ago, but the warranty since has been reduced to 90 per cent for reasons that will be apparent in a moment. Homeowners are such good risks—the default

rate on 19,000,000 Title I loans made since 1934 is less than 2 per cent—that commercial banks now extend credit for repairs without the Government security.

On the surface, Title I loan seems to be a splendid example of private capital and progressive government teaming up to promote the general welfare. The homeowner can maintain the value of his property by getting a helping hand in a tight spot and the lender is assured of a reasonable profit. Further, the program is no drain on taxpayers who do not participate in it. In fact, the FHA has piled up a reserve of $67,000,000, in addition to amortizing an original appropriation of $8,500,000, on premiums of .65 per cent collected from banks as insurance on the loans.

In actual practice, crooks exploit to the hilt a weakness in the Title I setup that makes homeowners sitting ducks for fraudulent contracts and once-over-lightly work. The trouble is that the FHA does not—repeat, does not—evaluate the cost of a job, inspect the materials used or check on a contractor's honesty and competence. The bank issuing the loan is assured of its money and, as a consequence, seldom processes a Title I application as carefully as a transaction involving private capital. The borrower is strictly on his own in negotiating a home-improvement loan, and too often is taken for a ride by gyp operators.

Although the FHA scandals of 1954 focused the spotlight on windfalls in new construction financed by the Government, it also uncovered shocking laxity and irregularities in the supervision of home-improvement loans. William F. McKenna, a special investigator, testified that the FBI had referred 163 cases of flagrant abuses to the FHA in the two previous years, but action was taken on only nine. Following the disclosures, the FHA cut the guarantee on Title I loans to 90 per cent in an effort to make banks exercise more caution in approving applications, but the suède-shoe boys' killings are bigger than ever. On February 20, 1956, five weeks after Operation Home Improvement was launched, bankers again were urged "to be alert to the menace of unscrupulous exploiters of the American public" by Albert M. Cole, Administrator of the Housing and Home Finance Agency.

The FHA often is criticized for being tougher on citizens who default on Title I loans than it is with racketeers. The Justice Department vigorously prosecutes debtors and eventually collects the money owed, but the crooks merely are placed on a precautionary list. This means that banks in the area are required to witness the signing of contracts and inspect every third job for $500 or less and every job for more than $1000. The whole thing is as ineffectual as a wet match because the gyps move on and set up business under another name. There are some 5000 fly-by-nights on the list and it is significant that 2000 have been put on in the last two years.

"The precautionary list isn't much of a deterrent to racketeering," FHA's Cy Sweet admits. "We can't take stronger action, though, unless we have airtight evidence of fraud, which is almost imposible to get. Why don't we screen the loans? We'd be buried under red tape. By the time we processed an annual load of a million and a quarter applications, seasons and emergencies would come and go and people wouldn't get the money when they needed it. Besides, the cost of an army of appraisers and investigators added to the interest charges would make the loans too expensive."

Since no immediate relief is in sight, homeowners must protect themselves, especially when signing legal papers and loan applications. This is the start of most phony deals, for the contractor is not paid until he shows the bank a signed completion certificate attesting that the work has been done satisfactorily. Gyps resort to a variety of ruses to get the certificates endorsed before they even begin a job. Housewives who are too busy to read the fine print in documents are high-pressured into signing certificates which they believe are price estimates. A certificate may be slipped into a sheaf of application blanks. Trick clauses obscured by legal gobbledygook are inserted into contracts binding the client to exorbitant prices and stipulations. When all other flimflams fail, the gyp sometimes forges a signature to a certificate.

It always comes as a shock to find that such subterfuges hold up in court, except when forgery or bare-faced fraud can be proved. That's only half the story. A job that was overpriced in the first place may have to be paid for twice if the gyp skips town before settling his bills with a subcontractor or a supplier of materials. In that event, the creditors can get a mechanic's lien against the victim's house and collect from him. People have been taking a frightful beating from this form of double jeopardy for several years in the Far West, the favorite stamping ground for itinerant crooks. Liens were slapped on fully 28 per cent of

the new and remodeled homes in Los Angeles County during the first three months of 1956 and the figure ran to an incredible 48 per cent in Clark County, Nevada.

Comes the recurring question: How can a homeowner keep out of the clutches of the suède-shoe boys? We can offer a number of tips, but the best advice is to deal only with reputable local tradesmen. They intend to stay in business for a long time; they'll be on hand next month or next year to correct faulty installations and materials. Reliability is the soundest staple you can buy in home repairs because you can't climb to the roof to make sure a man is putting on asbestos shingles instead of cardboard, and even if you watch a plumber poke around the basement, you don't know what he's doing.

Just to keep on the safe side, the following pointers also are recommended:

Don't be stampeded into major projects. It's unlikely a door-to-door solicitor will discover a defect that is an immediate danger to you or the house.

Before awarding a contract, get several estimates and make certain they are based on identical specifications.

Demand positive identification before letting an inspector from the city or a utility company into your house.

Steer shy of lifelong guarantees. No reputable company gives an unconditional warranty because so many variables affect a product's durability.

Read the fine print in all documents and contracts you sign, then get duplicate copies.

Don't be tempted by "amazing" bargains. Offers of $100-discount certificates for identifying a picture of the Empire State Building or for naming Yankee Doodle as a "mystery" tune are blatant come-ons used only by gyp outfits.

Skilled labor and top-grade nationally known materials may seem expensive, but it's infinitely cheaper in the long run to have a job done properly than to hire an itinerant or a handy man.

Keeping these tips firmly in mind will save you from getting trapped into new, burgeoning rackets. Right now, a lot of folks who contemplated spending a pleasant summer in their back yards are blowing gaskets over concrete-lined holes in the ground that are incompleted swimming pools. Deceptively low prices quoted for the pools did not include pumps, filters, chlorinating equipment and plumbing costs for hooking up to water lines. In many communities, local ordinances requiring constant changes of fresh water make the pools prohibitively expensive.

Another season, another dodge. Next winter the suède-shoe boys will be pushing the Heat Saver, a $250 gadget attached to furnaces which supposedly cuts fuel bills 40 per cent by reclaiming the hot gases that go unused up the flue. That's where the $250 goes too. The National Bureau of Standards reported, on January 20, 1956, that only 4 per cent of the heat is recovered under ideal conditions and that economy is nullified by the release of sulfurous acid which permanently damages chimneys. New York City banned Heat Savers in March because escaping flue gases in a building "seriously imperil the health and lives of the occupants."

A bait-switch item getting a heavy play is the conversion of bathtubs into stall showers. The job is advertised at nineteen to twenty-nine dollars, but hidden charges boost the final cost to eighty dollars. Fly-by-nights are making fast fortunes selling $600 automatic-fire-alarm systems on the model-house scheme. Two-legged vermin in the exterminating business examine a house and throw the owner into a panic by showing him a piece of wood crawling with termites. The termites come from a bottle the gyp carries in his kit.

There is no end to the gimmicks people dream up. Cy Sweet swears a fellow walked into a Jacksonville, Florida, bank a few months ago and said he wanted a Title I loan to get a divorce. When the stunned banker regained his aplomb, he replied that the FHA does not disburse money for such purposes.

"I've read the law and it says loans are given for anything that adds to the livability of a house," the man argued. "If you don't think getting rid of my wife will make my house more livable, you're crazy."

ASSOCIATION OF BETTER BUSINESS BUREAUS INTERNATIONAL,
New York, N.Y., April 11, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: I have copy of your March 25 letter to Kenneth Willson of the National Better Business Bureau and, copy of his recent response advising that your request had been transmitted to this office. As Mr. Willson advised, the ABBBI recently conducted an informal spot check with 10 carefully

selected Better Business Bureaus seeking current information regarding recorded advertising and selling practices pertaining to the "home improvement field."

The responses have been reviewed by Thomas C. Roberts, our Vice President in charge of our Office of National Affairs, located in Washington, D.C.

It appears to me that we can be most useful in response to your query by following Mr. Roberts' suggestion as in his memo to me dated April 10 (copy attached).

Thus, I am enclosing the original responses which Mr. Roberts will hand deliver to you. We shall be pleased to discuss these materials or related matters with representatives of your office at a mutually convenient time.

Kind regards.

Sincerely,

VICTOR H. NYBORG.

APRIL 10, 1968.

MEMORANDUM

Re Better Business Bureau survey on home improvement problems for Senator Magnuson's Commerce Committee.

To: Victor H. Nyborg.

I have reviewed with interest the replies received from the ten local Bureaus cooperating in the Association's survey on Home Improvement problems. The information provided, and particularly the observations and comments made by the individual managers, is such that I feel we should send the original materials, as received, to the Senator rather than attempt a compilation or synthesized report. I believe the original materials would provide his committee with a better picture of conditions as reported than perhaps would otherwise be the case. If you agree, I would be pleased to hand-deliver the replies to him and offer our further cooperation to the Commerce Committee, as we may be able, in its study of the Home Improvement field.

THOMAS C. ROBERTS.

HOME IMPROVEMENT SURVEY

The following questions were asked of ten Better Business Bureaus. These Bureaus range in size from small to large and represent a cross-section of the country.

1. What are your (BBB Manager) reactions to Home Improvement problems in your area?

2. What were the areas of concern? For example: Swimming pools, roofing and siding, patios, attics, kitchens, playrooms, windows, etc.

3. Do the complaints relate to a few specific companies or are they about the entire industry and all companies.

(a) Are consumer complaints about: Advertising? Sales pitch? Financing? Workmanship?

4. What can you tell us about the people who make complaints. Poverty segment? Low income? Middle income? Upper income?

Better Business Bureaus surveyed: St. Louis, Columbus, Ohio, Baltimore, Knoxville, San Antonio, Pittsburgh, Oakland, Providence, R.I., Phoenix, and Miami.

BETTER BUSINESS BUREAU OF SAN ANTONIO, INC.,
San Antonio, Tex., March 22, 1968.

Mr. WILLARD M. ZURFLIEH,
Vice President-Internal Affairs,
Association of Better Business Bureaus International,
New York, N.Y.

DEAR WILL: Reference is made to your telephone call of March 19th in which you requested some specific answers to four questions regarding this Bureau's thinkings on home improvement problems.

Question 1. What is your reaction to the Home Improvement Problems in your area?

Answer. My reaction is one of frustration as our criminal laws are not satisfactory in prosecuting criminals. Therefore, we have attempted to license these people, and at present have a bill being considered by the legislature of Texas, and an ordinance which will soon be introduced to the San Antonio City Council.

Question 2. What were the areas of concern? (Roofing, siding, painting, patios, attics, storm windows, swimming pools, etc.)

Answer. Our main areas of concern are roofing, siding, foundations, and extermination.

Question 3. Did the complaints relate to a few specific companies or were they about all companies? What were the complaints about?

Answer. These complaints relate to a few specific companies operating in this area. The complaints are normally for overcharging, poor workmanship, misrepresentation as to condition of home and out-and-out swindling.

Question 4. Can you tell us something about the people, who were they? (Poverty, low-middle-upper class or elderly).

Answer. The majority of the victims of home improvement racketeers who usually lose their life savings as a result of these swindles are the elderly and senile people. In very few instances have the illiterate people been victimized as usually they don't have any money to make it worth the conman's time.

Please keep me informed as to the results of your investigation.

Yours very truly,

G. W. SEFFEL,
Executive Vice President.

BETTER BUSINESS BUREAU OF MARICOPA COUNTY, INC.,
Phoenix, Ariz., March 27, 1968.

Mr. THOMAS C. ROBERTS,
Vice President and Director,
Association of Better Business Bureaus International, Washington, D.C.

DEAR TOM: Pursuant to Will Zurflieh's request, enclosed please find the information for your report.

We followed Will's general outline and I believe you will find the report as complete as we can establish.

I sincerely hope the hearing will be beneficial to the Better Business Bureau. If you need additional information, please let me know.

Sincerely,

JIM C. WHITE, *Secretary-Manager.*

HOME IMPROVEMENT STUDY

Purpose: The purpose of this study was to determine the number and nature of complaints during 1967 in the Home Improvement Industry of Maricopa County as reflected in the files of the Better Business Bureau of Maricopa County.

Scope: A survey was taken covering four major areas of home improvement:

(1) General Home Improvement Contractors.
(2) Swimming Pool Contractors.
(3) Roofing Contractors.
(4) Siding Contractors.

Method: A survey of the Bureau files was taken on each company listed under the above categories in the 1968 Phoenix telephone directory.

The income group of the complainants was determined by checking the address in the 1967 Coles Directory for the Phoenix area.

RESULTS

	Number of companies surveyed	Number of complaints	Income group	Causes (approximate percentage)	Disposition of complaints			
					Adjusted	Unadjusted	Continuing	Unjustified
General home improvement contractors.	95	[1] 17	Medium	70 percent, guarantee not fulfilled; 30 percent, various.	7	6	2	2
Swimming pool contractors	22	7	Medium high	60 percent, promised adjustment not fulfilled.	2	1	0	4
Roofing contractors	60	4	Medium	Various	2	1	1	0
Siding contractors	9	0						
Total	185	28	Medium		11	8	3	6

[1] 6 complaints on a single firm.

BEREAU COMMENTS

The Bureau files do not reflect any particular problems in the home improvement industry with the exception of a large percentage of complaints in the General Contractors caused by failure to honor a written guarantee.

Among the swimming pool complaints, there were four (4) unjustified complaints which resulted from the customer not understanding the terms and conditions of the contract.

The population of the Phoenix area is in excess of 906,000. The number of companies surveyed total 185. Approximately 90% of the companies surveyed had no complaints during 1967, and of these, better than 50% have never been a source of complaint to the Bureau.

In our opinion, the complaints presented to the Bureau during 1967 are minor in comparison to the population and the number of companies in the Home Improvement Industry. We feel the complaints in our file are the natural result of intercourse between business and consumer in a free enterprise system. This intercourse is documented by the fact that during 1967 the Bureau received 687 inquiries regarding home improvement firms.

JAMES R. BADE,
Trade Practice Consultant.

BETTER BUSINESS BUREAU OF BALTIMORE, INC.,
Baltimore, Md., March 27, 1968.

Mr. WILLARD M. ZURFLIEH,
Vice-President, Association of Better Business Bureaus International, Inc., New York, N.Y.

DEAR WILL: The following is in reply to your March 9, 1968 telephonic request for information concerning home improvement complaints.

The Baltimore Bureau received 678 complaints regarding home improvement companies during 1967; it is significant that a large number of these were considered to be unjustified.

This survey consists of an analysis of 142 justified complaints selected at random from the files of 80 contracting companies in the following categoreis:

General home improvement	36
Roofing	30
Siding	6
Storm windows, doors, and awnings	6
Waterproofing	2
Total	80

The enclosed chart reflects a breakdown of each of the 142 complaints. Although it was possible to identify the cause of complaints and categorize the areas of concern, insufficient information was available in the files to characterize the complainant.

During your telephone call you asked whether complaints related to a few specific companies or to home improvement companies generally. The answer to this question tends to provide a false conclusion since it is difficult to ascertain the precise volume of business conducted by any one concern. However, although many companies will have occasional complaints, a minority will have a large number.

It is interesting to note that our analysis disclosed that a large number of the complaints reported were adjusted after processing by the Bureau.

Although not included in the survey figures, one group of itinerants which passed through the Baltimore area during 1967 was the cause of over 50 complaints which were not adjusted. The group representing themselves as "Protective Coatings." offered to waterproof roofs with a silver liquid spray which was later found to be grossly inferior to the quality represented.

As a matter of interest, the Maryland Home Improvement Commission, a State agency which licenses all contractors who perform work for fees in excess of $200.00, has done much to curb fraud in this area. We enjoy excellent working relationships with the Commission and frequently exchange information of mutual interest.

From our experience in Baltimore, we cannot say that there is an excessive number of problems in the home improvement field, and, from the adjustment record, it would appear that most firms are cooperative.

It is hoped that this survey will assist you in your presentation; however, if more information is needed, please call me.

Sincerely,

EDWIN M. LOCKHART,
General Manager.

Areas of Concern: Siding, 10; painting, 4; roofing, 51; driveways and patios, 0; interior remodeling, 21; aluminum windows, doors, and awnings, 24; plumbing, 6; electrical, 2; exterior remodeling, 21; masonry, 1; waterproofing, 1; and furnace, 1.

Complaint involved: Advertising, 0; selling procedures, 2; financing, 3; workmanship, 48; contract not fulfilled, 13; service, 54; and guarantee not honored, 22.

Disposition of complaints: Adjusted, 92; adjustment offered, 0; disputed, 20; unadjusted, 15; and no reply, 15.

BETTER BUSINESS BUREAU OF CENTRAL OHIO, INC.,
Columbus, Ohio, March 26, 1968.

Mr. WILLARD M. ZURFLIEH,
Vice President, Association of Better Business Bureau International,
New York, N.Y.

DEAR WILL: In responding to your telephone call on March 19, 1968, in regard to certain questions on home improvement companies in our area, I would like to preface our report with the fact that we do not have any local or state licensing laws pertaining to this industry. There has been such a bill calling for licensing and bonding of home improvement companies introduced in the present session of our State Legislature. However, to date there have been no committee hearings to my knowledge. This particular bill is being promoted by NERSICA.

I am told that several years ago NERSICA had a local chapter which has been described by some as merely a social club. A little over a year ago a new NERSICA chapter was formed for central Ohio. It is still in existence but experiencing difficulty in securing support, especially from our more reliable home improvement dealers, suppliers, and lending institutions.

We have to base our reaction to home improvement problems in our area on the statistics we have recorded for the past few years, and I believe the statistics for 1967 will be sufficient. For example, we received more inquiries (9726), with more instances of customer relations (4145), and more complaints (599), pertaining to home improvement companies than any other business classification. In fact, the 599 complaints recorded in 1967 represented 16% of the total number of complaints recorded in our office on all business classifications. Therefore we are of the opinion that the problem involving home improvement companies in our area is more serious than it should be.

In answering your second questions as to the areas of concern, we have to differ with the ABBBI statistics, because swimming pools created very few consumer complaints. We believe that the majority of complaints in this area resulted from room additions, recreation rooms, and aluminum siding.

I doubt if we had any consumer complaints involving national firms and for the year 1967 the complaints were in regard to several of our local companies. Going back a few years ago, however, the statistics would indicate that the number of complaints involved a few companies as we concentrated on such companies. In other words, we feel that the complaints are against many more companies at the present time, perhaps due to our exposure of a few companies a year or so ago. Naturally we have several firms that have not been the subject of any consumer complaints.

We believe that misleading advertising is the cause of many complaints and we have at least three or four firms that continuously use "bait and switch" advertising. Poor workmanship definitely causes many complaints, as well as misrepresentation used by salesmen. Vague contracts are also the cause of consumer complaints in our area.

It is most difficult to identify the social and/or economic status of the complainants. However, if we were to answer your question, we would have to report that in our opinion the majority of the complainants would be in the middle income class—definitely not the poverty group.

I trust that the above will assist you and we would be interested in the results of the overall survey you are conducting on this subject.

Best regards.

Sincerely,

EDWARD L. HUGHES,
President and General Manager.

BETTER BUSINESS BUREAU OF GREATER ST. LOUIS, INC.,
St. Louis, Mo., March 27, 1968.

Mr. WILLARD M. ZURFLIEH,
Association of Better Business Bureaus,
New York, N.Y.

DEAR WILL: Here is the development of our statistics for 1967 having to do with the remodeling business. You will note from the attached that siding problems and furnance problems were the areas of greatest concern, and that these problems were caused by only a tiny minority of the number of companies we have in each business in our area, and that middle class people encountered the most difficulty, followed by elderly people, who felt they were victimized.

I hope the information as developed proves helpful.

Cordially,

JOHN L. O'BRIEN, *President.*

LARGEST PROBLEMS IN THE HOME IMPROVEMENT FIELD IN 1967—ALUMINUM SIDING AND FURNACES

	Siding	Furnace companies
What categories did most complaints fall into?		
(a) Advertising?	38	
(b) Sales pitches?	108	72
(c) Financing?	33	18
(d) Installation?	60	92
Who are the victims?		
(a) Elderly people?	19	51
(b) Poverty people?		8
(c) Middle class?	100	75
(d) Foreign born?		

How many companies in the area caused problems?

SIDING COMPANIES	FURNACE COMPANIES
Crescent Builders	Standard Furnace Company
Varn Company	St. Louis Heating Service [1]
Interstate Aluminum Company	AALCO Furnace Company
Solmica, Inc.	Central Heating Company
U.S. Home Improvement Company [1]	Better Homes Furnace Co.
Triangle Aluminum Discount	Fiber-Lum
(Out of approximately 55 siding contractors in the St. Louis area.)	United Heating Service [1]
	(Out of approximately 280 heating contractors in the area.)

Total complaints: Siding, 119; furnaces, 134.
Total of all activity in home improvement field in 1967: 15,355.
Inquiries and related services: 14,757; complaints: 598.
Total St. Louis Better Business Bureau traffic, all categories, 1967: 123,262.

BETTER BUSINESS BUREAU OF GREATER PITTSBURGH, INC.,
Pittsburgh, Pa., March 26, 1968.

Mr. WILLARD M. ZURFLIEH,
Vice President—Internal Affairs,
Association of Better Business Bureaus,
New York, N.Y.

DEAR WILL: This is in answer to your telephone call of March 19, 1968 regarding the Home Improvement Field, and is an answer to your questions, not numerically or perhaps not in the order of importance.

[1] Out of business.

1. I am very proud of the home improvement field in the Pittsburgh area at the present time. Much has been accomplished through the local branch of NERSICA which we know as the Approved Modernization Contractors Association (AMCA). There are some fast buck operators in this field and some are members of the Association. The Association will be the first to admit it. We feel that the Association is making a sincere effort to improve advertising, selling practices and to upgrade the image of their industry. It is possible that the home improvement field in this area obtained a slight push along these lines through the passage of the Pennsylvania Home Improvement Finance Act (copy enclosed) which made certain operations illegal and which gave advertising media the right to unequivocally eliminate certain bad advertising practices.

My report on 90 percent of the inquiries we are presently receiving is that the company is perfectly capable of doing a job in a workmanlike manner and if the customer will insist that everything the salesman says is written into the contract, that their copy of the contract is readable and that if the customer does not sign a completion agreement until the work is done according to the terms of the contract, the customer should have no difficulty.

There is no question that when their salesmen go into the outlying areas they will use every sales pitch they think will be them a contract, model homes, one-half price and all the rest. But I am getting a little fed up with the fact that the average consumer is insisting that we hold their hands during every sales presentation after years of trying to educate them that you do not very often get something for nothing.

2. In answer to question 3, the complaints fall into three categories.

First, the occasional complaint lodged against 90% of the companies which when referred to the companies, are promptly adjusted if justifiable. These do not reveal any specific pattern but, generally speaking, refer to poor workmanship or delay in completing the contract. In some instances the complaints state that salesmen have made exaggerated claims or promises which are not true i.e. all you have to do to clean the siding is to hose it off—oral guarantees—finance charge will be X number of dollars and the finance charges turn out to be much higher.

Secondly, there is the condition where a large number of complaints are received against a few companies. These are very high volume companies which do a great deal of sub-contracting and apparently do not much care who they hire. An analysis of the 30 complaints received in 1967 against one such company reveals that the majority were about leaky roofs and poor furnace installations, but covered nearly every other possibility including the fact that the back door did not lock after an addition had been built on to the house. The amount of cooperation these companies afford the Bureau varies, but in most instances corrections are obtained although sometimes after considerable delay.

Thirdly, there are a few companies or individuals who are out and out crooks. They still use every trick in the book, bait and switch, model homes, advance signatures on completion agreements, poor workmanship and in some instances no workmanship at all. These individuals continuously violate our excellent Home Improvement Finance Act which only goes to show that you can't legislate against a crook. Congress take heed.

3. As you said we do not have any record as to whether the complaints were from people in any specific income group. However, most home improvement salesmen are not interested in selling that category of consumer whose income is so low that they cannot obtain financing for the deal. The elderly are always suckers for the smooth talking salesman who flatters them and jollies them along. They are always subject to fast sales pitches for everything from hearing aids to new roofs.

4. Number 2 is probably the most difficult to answer. At the moment swimming pools are coming to the fore and, for the next 10 weeks will be a particular problem as far as advertising, bait and switch, failure to deliver, etc., are concerned. This is certainly not a low income problem. The furnace repair racket is of a year round concern. We again feel that legislation in this field cannot be enforced. This has been actually proven to be a fact on a local level in the Pittsburgh area. On the other hand extensive exposure has been very effective.

Finally, although many of our outlying Boroughs have extremely stringent "Green River Ordinances" the most effective preventative against the itenerant home improvement repairman i.e. driveways, roofs, etc., has again proven to be continuous publicity.

We hope this may be of some help and will go into much greater detail if you feel the need.

Cordially,

VERNER S. GAGGIN,
Vice President in Charge of Operations.

THE BETTER BUSINESS BUREAU OF RHODE ISLAND, INC.,
Providence, R.I., March 26, 1968.

Mr. WILLARD M. ZURFLIEH,
Vice President-International Affairs, Association of Better Business Bureaus, International, New York, N.Y.

DEAR WILL: At your request, we have conducted a review of complaints involving home improvement repairs received by this Bureau during the calendar year 1967.

During 1967, a total of 2,519 complaints were handled by this Bureau—of this amount 311 involved home improvement repairs. This was approximately 12% of the total volume of complaints received and was the largest number of complaints reported against any business classification.

Question 1. What are your reactions to home improvement problems in your area?

Answer. Although, the home improvement field is the source of numerous complaints, locally, considerable improvement is being made. The problem is a serious one, but one that I believe can be minimized and controlled through a continuing and positive program of consumer education. In most instances, the problem could have been avoided if only reasonable caution was exercised.

Quesion 2. What were areas of concern?

Answer. Complaints regarding siding application including storm window installation were the primary problems. These were distributed almost evenly between siding and windows. Following these were complaints involving roofing repairs and gutters.

Question 3a. Did complaints relate to a few companies or to the broad spectrum of companies?

Answer. Although, there were several instances of a firm generating a large volume of complaints—generally the complaints were distributed among many firms.

Question 3b. What were complaints about?

Answer. The primary cause of complaint was poor workmanship. This was by far, the most prevalent complaint. Next were complaints regarding contracts—e.g. verbal promises not included in contracts, grade or quality of material specified in contract not used. Following this were complaints regarding incomplete or unfinished jobs.

Question 4. What can you tell about the people who made the complaints?

Answer. This is perhaps the most difficult question to answer, since our Customer Experience Report forms only require the complainant's name, address, and telephone number. However, based upon our personal contact with the complainants, we can arrive at the following generalization—economically the majority of complaints were made by persons from the low-middle to middle class—the mid-segment of our society. The poor and the more affluent were not represented to any large degree. Age—a large percentage of the complainants were elderly, retired people and in this category there seems to be a very high incidence of women—either widows or spinsters.

Will, I recognize that this information is not conclusive—but I hope it will be of some value to you.

Very truly yours,

A. MICHAEL MARINO,
Vice President and General Manager.

BETTER BUSINESS BUREAU OF SOUTH FLORIDA,
Miami, Fla., March 25, 1968.

Re home improvement business in south Florida

Mr. WILLARD M. ZURFLIEH,
Vice President—Internal Affairs,
Association of Better Business Bureaus International,
New York, N.Y.

DEAR WILL: Home improvement is a very active business category in South Florida because there are a great many home owners and a great many new arrivals including many senior citizens. When I say active, I mean, of course, active in all categories including primarily inquiries. During 1967 on categories 36 and 36A of the Actvity Report (home improvement and remodeling and home maintenance) total contracts were 6,483 of which 5,676 were inquiries and 490 were complaints.

Some years ago we participated in a series of meetings with the Home Improvement Council of the South Florida Home Builders Association for the purpose of eliminating consumer problems in the home improvement field. A major result of those meetings was the simple set of advertising standards which we promulgated and which we still use in checking advertising. A copy of these standards is enclosed. As a result of these efforts, home improvement advertising in South Florida is very seldom the subject of criticism. In addition to the above, I would make the following direct statements to your questions:

1. Generally speaking, I feel that the home improvement situation in South Florida, from the consumers' point of view, is a healthy one. Most of the building trades people who do home improvements are required to meet local standards for licensing and generally conduct themselves as responsible business people should.

2. Our semi-tropical climate and our proximity to salt water create serious wear problems for home finishes of all kinds, especially roofing, painting and screening. Most of the complaints we have relate to those areas of home improvement and home maintenance.

3. Most of the complaints filed with the Bureau were filed against individuals rather than against the larger established companies. We have a great many one-man shops and individual operations so the 490 complaints probably involve more than 200 individual operators and mostly involve exterior finishes of one kind or another.

(a) Mostly complaints were about the workmanship although there are a few isolated incidents involving promises made orally by sales people. Failure to give prompt response under guarantees, actual or implied, are a major basis of a large percentage of the complaints.

4. The majority of the complaints come from the low income and middle income areas. There are some from the upper brackets but practically none from the poverty group.

Please advise if you need additional information.

Cordially yours,

RALPH SMATHERS,
President-General Manager.

HOME IMPROVEMENT ADVERTISING CODE, AS RECOMMENDED BY BETTER BUSINESS BUREAU OF SOUTH FLORIDA

Definitions: A home addition or home improvement is defined as a fully livable or fully usable addition or improvement, constructed and completed in full compliance with the applicable building codes; and containing all electrical, plumbing, hardware and other fittings, outlets, fixtures, etc., (excluding painting), necessary to ordinary occupancy.

The dimensions of a home addition, whether attached to an existing structure or not, shall be the exterior wall dimensions. If room dimensions are used, then wall dimensions shall also be shown in equal size and type.

Pricing: When a home addition or improvement is advertised with a price, the price shall be the full price for an addition or improvement as defined herein, or exceptions shall be prominently listed in the same advertisement.

Advertisements shall not show a down payment and/or monthly or weekly payments unless the full price or the total number of payments are also shown.

Where a price is used, with or without illustration, for a home addition, the size of the addition shall be clearly listed.

Illustrations: Illustrations shall accurately depict the type or style of construction, features, and shall not exaggerate the dimensions of the completed work.

Guarantees: If the term "Guarantee" or "Warranty" is used in an advertisement, then all conditions relating to the guarantee or warranty shall be listed.

Terminology: The terms used to describe construction, materials, design or services, credit or financing, shall be terms of general usage, which the public may be reasonably expected to understand.

Price increases: An advertiser shall not predict a price increase or a material shortage in an attempt to secure immediate business.

Discounts: Discounts shall be bona fide offers with the discount given from the regular selling price of the item or service. Inflated prices shall not be used in order to provide a false discount.

Basis for claims: Advertisers shall be prepared to prove any statement or claim made in advertising upon request by the Better Business Bureau of South Florida.

BETTER BUSINESS BUREAU,
Oakland, Calif., March 20, 1968.

Mr. WILLARD M. ZURFLIEH,
Association.

DEAR WILL: Following are our comments on the four questions relating to the home improvement industry which you posed by telephone yesterday:

1. REACTION TO HOME IMPROVEMENT PROBLEMS IN THE AREA

Home Improvement in all its constituent parts, i.e., remodeling, maintenance, supplies, continues as the top-ranked category of business demanding the most attention from this Bureau. However, the areas and causes of complaint have diminished considerably over what they were even as late as two or three years ago. The problems encountered presently are completely different to those of five years ago and involve fewer people. While the industry could stand improvement in its dealings with the public, it is obvious from our records the greatest improvement could be made by the industry, itself, in a greater and more useful public relations program (there is inherent questioning of the industry judging from the large volume of inquiry) by informing the public of its benefits and how to avoid pitfalls connected with it.

2. AREAS OF CONCERN

The greatest number of complaints reaching this office involve poor workmanship, failure to complete jobs in a reasonable length of time and questionable materials used. Most complaints are received in roofing, painting, patio covers and swimming pools in that order. Problems in siding (aluminum) have diminished almost to the vanishing point. The only area of complaint stemming from advertising is that of patio and awning jobs.

3. DID COMPLAINTS RELATE TO A FEW SPECIFIC COMPANIES OR EMBRACE THE FULL SPECTRUM?

In cases such as swimming pool construction, the vast majority of complaints were filed against one specific company, now bankrupt and criminally charged by the local District Attorney's Office as a result of our investigation in part and report to that office. In the other cases the complaints cover a wider area of company names. In patio covers and patios one or two companies are responsible for the majority of complaint.

4. WHO ARE THE PEOPLE WHO COMPLAIN?

Few, if any, complaints are reported from the so-called ghetto or poverty areas. Most come from middle, upper middle and upper class families. This would appear obvious insofar as the ghetto and poverty areas are concerned since they do not have money to spend for such improvement and generally are not home-owners and therefore have no responsibility therefor. A great deal of good is done in the areas of the emerging poverty areas through an arrangement this office has with the Oakland Redevelopment Agency. This agency

moves into residential areas which have been declared sub-standard in housing and sets minimum standards of repair in order to bring residences up to local codes—or face condemnation. The Oakland Redevelopment Agency then recommends local contractors in home improvement, i.e., roofing, electrical, plumbing, painting, etc. to home owners in the area ONLY after submitting to this office the names of the contractors in question for clearance. Neither this office nor that of the Oakland Redevelopment Agency can recall a single complaint from such residents who have used these contractors cleared by the BBB. Additionally, the Bureau works closely with Bay Area Neighborhood Development (BAND), centers partially funded by federal funds to assist poverty areas in many concerns of daily living, in protecting their people against fraud and chicanery in the industry through films, lectures, literature, etc.

In this service area which spans areas of concern from ghetto to the extremely wealthy, we find the greatest users of home improvement contractors are those in the middle to wealthy classes.

Sincerely,

B. CHARLES WANSLEY,
President.

BETTER BUSINESS BUREAU OF GREATER KNOXVILLE, INC.,
Knoxville, Tenn., March 20, 1968.

Re home improvement industry.

Mr. WILL ZURFLIEH,
Association of Better Business Bureaus, International,
New York, N.Y.

DEAR WILL: I am afraid I cannot give you the answers to all your questions you asked me yesterday, because I lost the memo on which they were listed. However I will do the best I can.

As you know the Home Improvement Industry was the source of the greatest volume of public complaint to this Bureau during 1967. We had 65 complaints, however we were encouraged in that out of 2285 instances of service, 1561 were inquiries and 659 were customer relations. I have accounted for 51 complaints—the others involve plumbing, etc.

The overall problem in the home improvement industry has been caused by itinerant gypsters using the "model re-siding racket", high pressure sales pitch and bait and switch practice.

The majority of our complaints have stemmed from the rural area in and around Knoxville. Not too many complaints come from what we would class as the "poverty area". For this reason we continue to run an ad in the papers warning the consumer of the "model" pitch as well as the bait and switch practice. I am enclosing a copy of our ad.

In checking our complaints, I believe the elderly people fall for the "model" pitch more than any other consumer.

It is our belief that poor workmanship has been the cause for complaint when doing business with our Knoxville home improvement firms. Failure to ask for a guarantee and falling for an ad which is misleading. It all boils down to misunderstandings usually arising from lack of clearcut statements of responsibility in the contract.

We have very few complaints on swimming pools. None on our home owned firms, all from itinerant swimming pool salesmen, using an answering service. These complaints have been made by consumers in the high income bracket. These firms advertised in media and then used "bait and switch." After the Bureau shopped the ads, the paper pulled the ad, however several consumers had contracted for the swimming pools.

As mentioned in the beginning of my letter, the pattern of home improvement complaints do not originate in the low income area. We have listed 6 complaints on Triangle Aluminum Company, which originated from a mass mailing out of Dallas, Texas. These complaints represent over $20,000.

I personally called on each complainant and checked the job and reason for complaint. None of the complainants were in the extreme low income bracket. I would say middle class. However two were elderly couples.

Will, in closing we had a good ending to one of our extreme home improvement complaints. A Mr. and Mrs. Beck, elderly colored couple, whom we have helped many, many times and to whom the Better Business Bureau means a place to receive help. However, this couple is not in a low income bracket—they have

money but they are old. A man approached this couple a few days ago wanting to do work on some of their property and Mrs. Beck asked him if he was registered with the BBB. He told her yes. Instead of calling the BBB she took his word and gave him $1700.00 advanced money—he was supposed to start the work the next day. In the meantime we had developed information on this man, which was derogatory and had found that he used an alias. The next day or two Mrs. Beck called us and when she was told about this man, she was pretty well upset for he had left town with her money as well as a Preacher's money, who lived in Oak Ridge, Tenn. After making an intensified investigation and working with the Attorney General, our man was picked up last night in Deland, Florida, with quite a sum of money in his possession. We feel confident Mrs. Beck will be reimbursed her $1700.00. This is a case of Mrs. Beck being old and also having too much confidence in the salesman. More education is needed.

Sorry I have not had time to really give you as much information as I would like to give you. I have been since early morning trying to write this letter.

Incidentally, I have just had a call from an old lady who heard me speak on the "Pigeon Drop Swindle" when I was invited to speak for a Sr. Citizens group. She called and said a man representing himself as being a Federal Bank Examiner told her that her account had been tampered with and wanted her to meet him at the bank, etc. She remembered what I had told the Senior Citizen group and told him that she did not believe him and she would not meet him. This delighted me and for the past hour I have been contacting the Presidents of our banks, giving them this information, in case they use their bank.

Attached you will find a listing of complaints and cause of the complaints.

Cordially,

LILLIAN ZION, *Manager.*

P.S.—Do not overlook the fact that some of our complainants had no cause for complaint—there are some women you cannot satisfy. We are well aware of this type of complainant and go out and check the job in many cases.

Company and compliant No.	Cause of compliant	Location and income bracket
Company A (home-owned company):		
1	Bad workmanship	Wartburg, Tenn.
2	do	(Elderly couple).
3	Additional repairs	Morristown, Tenn.
4	Bad workmanship	Do.
5	do	Low-income area
Company B (home-owned company):		
6	Work not completed	Knoxville Tenn
7	Guarantee not received	
8	Misrepresentation on guarantee and contract.	
9	Bad workmanship	
10	Aluminum siding	Low income.
11	do	
12	Bad workmanship	
Company C (out-of-State company): 13.	Paid to do work but failed to show	Knoxville, Tenn.
Company D: 14	Poor workmanship	Do.
Company E (now out of business): 15	Unstisfactory installation of storm windows and doors.	
Company E:		
15	Unjustified compliant (given more than the contract called for); unsatisfactory installation adjusted.	Oliver Springs, Tenn.
16		
(Company F (home-owned company):		
17	Bad workmanship	Knoxville, high income.
18	do	Kingston, Tenn.
19	do	Knoxville.
20	do	Knoxville, medium income.
21	do	Clinton, Tenn.
22	Adjustment on doors and windows needed.	Medium income.
23	Claimed measurements were not accurate for doors and windows.	Good neighborhood.
24	Poor workmanship	Medium income.
25	do	Do.
26	do	Do.
27	Doors and windows do not fit	Do.

See footnotes at end of table.

Company and compliant No.	Cause of compliant	Location and income bracket
Company G (home owned):		
28	Unsatisfactory installation	Morristown, Tenn.
29	Referral deal—Model pitch	Medium income.
30	do	Medium income, (elderly couple).
31	do	Whitley City, Ky.
32	Poor workmanship on roof	Maryville, Tenn.
Company H (home owned):		
33	do	Low income.
34	Poor workmanship	Lenoir City, Tenn.
35	do	Medium income.
36	Poor workmanship, siding	Do.
Company H (out of State); 37	Received mailing—Bait and switch	Gate City, Va.
Company I (itinerant):		
38	Model pitch (overcharged, etc.)	Medium income.
39	High pressure—took deed to property and would not return.	Average income.
40	High pressure	High income, Gatlinburg, Tenn.
Company J (itinerant):		
41	High pressure-misrepresentation; took money and left town.	High income, Knoxville
42	do	Low income, colored, Oak Ridge, Tenn., preacher.
Company K (Triangle Aluminum Co.):		
43	Sent mailing into city advertising siding at a very low price, then used "bait and switch."	Rockwood, Tenn.
44	do	Medium income.
45	do	Do.
46	do	Do.
47	do	Do.
48	do	Do.
Company L (itinerant):		
49	Model home pitch	Low income.
50	do	Elderly couple.
Company M (itinerant):		
51	Used the sympathy pitch. Read obituary column and read about husband dying and leaving his widow quite well off (this is quite a story). We have him put away now. Worked 4 hours and charged her $2,880 and she paid him—she was in state of shock.	High income.

Note: Could tell you about others which involve itinerant home improvement salesmen, using scare tactics regarding chimney work. We checked about 10 complaints and they were all very intelligent people; however, they were all elderly with the exception of 1 high school teacher and she was terribly embarrassed.

The Knoxville News-Sentinel Tuesday, May 2, 1967



SIGN POST
In the
Market Place

by Lillian Zion, General Manager
Better Business Bureau

WARNING!
HOME IMPROVEMENTS

Beware of low priced offers for aluminum siding, roofing, carports and similar improvements. A **few** home improvement and contracting companies will try to lure you with tempting advertisements of LOW, LOW prices for improvements. Don't get hooked! Here's how they work:

BAIT. They mail offers for aluminum siding to cover your home for $299 or less, or roofing or carports installed for $99.

BITE. If you fall for this and send in a card, a salesman will come and ask for your signature on a contract. He will probably discourage your purchase of the advertised low priced job by saying the company uses scraps at this low price or he may say the material will not hold up unless it is cleaned and waxed several times a year.

CATCH. The "new" materials the company is "just bringing out" will then be offered at a special price to "introduce the product in this area." The salesman may also offer a bonus or commission for persons who see your job and buy from the company. In many cases, the purchasers do not receive commissions.
***Note: Aluminum manufacturers do NOT deal directly with homeowners and their representatives do NOT make "advertising" offers to homeowners.**

TOO LATE. You will find the "special introductory price" to be several thousand dollars (monthly payment x number of payments—i.e. $50 x 60 mos.—$3000). Your contract is sold to a finance company for cash on the line. Whether you're satisfied or not—you'll have to pay and pay. The work may be shoddy or unsatisfactory—still you've got to pay.

In the Knoxville area of 22 counties, we are fortunate in having many ethical aluminum siding dealers and contractors that are trustworthy firms. The Bureau urges that you deal with reputable firms you know or those whose reputation you can check. Investigate BEFORE you sign a contract.

This message brought to you as a Public Service by the

BETTER BUSINESS BUREAU
OF
GREATER KNOXVILLE, INC. **Ph. 522-2139**

BETTER BUSINESS BUREAU
BBB

The Knoxville News-Sentinel Wednesday, August 23, 1967

SIGN POST In the Market Place

by Lillian Zion, General Manager
Better Business Bureau



When You Buy

- ALUMINUM SIDING
- PAINTING
- INSULATION
- ROOFING
- REPAIRS
- ALTERATIONS

BEWARE OF—

- Salesmen who use the "Model Home" appeal;
- Low priced offers which are bait to sell higher priced jobs;
- Salesmen who claim to be from the factory.

TAKE TIME TO—

- Find out the reputation of the seller;
- Get estimates from other dealers;
- Read and understand the contract before signing.

HAVE YOU CHECKED WITH PRIOR CUSTOMERS?

Was any "high pressure" used to induce you to sign a contract immediately, without giving you an opportunity to investigate?

WAS THE "MODEL" JOB PITCH USED?

Did the company or salesman tell you that your home would be used for advertising purposes—as a model job, or show-house, and that you would receive "bonus" payments or commissions on every sale resulting therefrom?

INVESTIGATE BEFORE YOU INVEST!

In the Knoxville Area there are numerous supply houses and contractors which are trustworthy. They do not use the model home scheme. The fairness of their dealings with customers today will keep them in business tomorrow.

More Than 700 Reputable Firms and Professional People Are BBB Members

BETTER BUSINESS BUREAU
BBB

If Your Business Is Not a Member, But Qualifies, Then You Are Invited to be a Member Now!

This message brought to you as a Public Service by

BETTER BUSINESS BUREAU

OF GREATER KNOXVILLE, INC.

FEDERAL TRADE COMMISSION,
Washington, D.C., May 6, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: On March 27, 1968, the Federal Trade Commission submitted a report in support of S. 3065, 90th Congress, 2d Session, a bill "To amend the Federal Trade Commission Act, as amended, by providing for temporary injunctions or restraining orders for certain violations of that act."

Attached to this report was a separate statement by Commissioner Elman. Commissioner Elman suggested that both the Senate and House of Representatives versions of this bill be amended to grant concurrent jurisdiction to the Department of Justice. It is his opinion that such a change would provide a more expeditious, less complicated, and fairer process of stopping fraudulent practices. This separate statement was presented to the Commission after the Commission's morning meeting held on March 26, 1968. Consequently, we did not have sufficient time to consider it prior to submitting our report on S. 3065.

On April 25, 1968, the Commission submitted a report in support of H.R. 15354 to the Committee on Interstate and Foreign Commerce of the House of Representatives. S. 3065 is identical to H.R. 15354. Attached to this latter report was the Commission's response to the separate statement of Commissioner Elman. We are attaching a copy of this response and we request that it be included in the record as the Commission's position, not only on H.R. 15354, but also on Commissioner Elman's proposed amendments to S. 3065.

We are also attaching a brief memorandum commenting on a "clarifying" amendment which was proposed during hearings on S. 3065. We also request the opportunity to have this memorandum included in the record.

Sincerely yours,

PAUL RAND DIXON, *Chairman.*

COMMISSION'S RESPONSE TO SEPARATE STATEMENT OF COMMISSIONER ELMAN

Inasmuch as Commissioner Elman has proposed an amendment which, in the opinion of the Commission, radically alters the enforcement and effectiveness of H.R. 15354, the Commission feels it is necessary to offer the following comments on his proposals.

Commissioner Elman recommends granting concurrent authority to the Federal Trade Commission and the Department of Justice to invoke the jurisdiction of the federal district courts in consumer fraud cases where the public interest calls for immediate termination of the challenged acts or practices at the very outset of the litigation. This proposal would require that when the Attorney General is the moving party, the case would remain in the district court until final disposition, without remand to the Federal Trade Commission. The alleged adavntages of the proposal are that "it would provide a more expeditious, less complicated, and more fair process of effectively stopping fraudulent practices. . . ."

In the opinion of the Commission, these alleged advantages cannot conceivably materialize. The real result of concurrent jurisdiction in an area which the Congress has heretofore consistently insisted be placed under one agency, will be to introduce further fragmentation of responsibility and loss of effectiveness in the consumer protection field.

Commissioner Elman feels that trial by a district court would be more expeditious because the Department of Justice allegedly has far greater investigative and prosecutorial facilities than does the Federal Trade Commission. Unfortunately, this is not so, especially with respect to the handling of cases arising under the Federal Trade Commission Act, because the Department of Justice does not have an adequate staff to handle such cases. He also assumes that trials and appeals would be faster if exclusivey in the federal courts. It is apparent, however, that the United States Attorneys have the same, if not more severe, problem that the Commission's field offices have—too few attorneys to cope with an ever-increasing workload.[1] There is no information which would lead one to suspect that a court of appeals can or would decide a consumer fraud case faster

[1] 1966 *Att'y Gen. Ann. Rep.* 15–17.

because it was appealed from a district court rather than from the Commission. Furthermore, there is no evidence that our undermanned [2] and overburdened district courts [3] can conclude a consumer fraud proceeding more expeditiously than can the Commission. Neither the federal courts nor this Commission has any mandate, in the interests of speedy trial, to suspend a respondent's right to due process of law. Delays caused by complex factual and legal issues, extensive discovery, and interlocutory appeals are an inevitable result of a necessary insistence on full protection of the rights of the accused. Substituting one forum for another in the hope that the problems of delay will go away is merely wishful thinking.

An alleged problem avoided by granting the Attorney General the right to prosecute violations of the Federal Trade Commission Act is that "whenever the Commission, in advance of hearing and deciding a case on the merits, determines that the respondent's fraud is so clear and substantial that it should go into court to seek a preliminary injunction, the effect is to compromise its judicial role and impair the confidence of the public in the fairness and integrity of its adjudicatory process."

The Commission is at a loss to understand how the Commission's role is compromised, but not the role of the judge who must decide that the facts show proper cause for issuing an injunction and then preside impartially over the trial of the same facts and issues. The argument applies either to both the Commission and the courts, or not at all. We think the answer is—not all all. As the Supreme Court has said:

"Neither the *Tumey* decision nor any other decision of this Court would require us to hold that it would be a violation of procedural due process for a judge to sit in a case after he had expressed an opinion as to whether certain types of conduct were prohibited by law. In fact, judges frequently try the same case more than once and decide identical issues each time, although these issues involve questions of both law and fact."

And added the Court:

". . . the Federal Trade Commission cannot possibly be under stronger constitutional compulsions in this respect than a court." [4]

More fundamentally, we can see no useful purpose in adding additional duties to the vast responsibilities of the Department of Justice. The Federal Trade Commission, with its more limited range of responsibilities, has been able to concentrate upon, and develop expertise on, the whole panoply of deceptive practices. Concurrent jurisdiction would merely squander this expertise.

Furthermore, as the Department of Justice has stated in discussing concurrent jurisdiction under the Clayton Act:

We suggest that it should be borne in mind that, where concurrent jurisdiction is imposed and sanctioned by law, neither agency can properly abrogate its powers and agree to be bound by the action taken by the other agency. Some conflict may be unavoidable where concurrent jurisdiction exists. In fact, it may be inherent where the framers of the legislation intended that both agencies should have power to canvass the problem so that between these two guardians of the public interest no violation may escape attention." [5]

The Congress has had numerous opportunities to reconsider its decision to grant the Federal Trade Commission concurrent jurisdiction under the Clayton Act, but exclusive jurisdiction under the Federal Trade Commission Act. The fact that the Congress has thoroughly discussed this question and repeatedly enacted the same divisions of authority, indicates that the Commission's current exclusive area of responsibility was intended. The Commission believes that effective protection of the interests of the consumer requires the continuation of undivided responsibility.

Congress first granted the Commission the authority to seek a temporary injunction or restraining order when, in 1938, it enacted the Wheeler-Lea amendment to the Federal Trade Commission Act. This authority, which was not contained in the Senate bill, was added, after extensive hearings, by the Committee on Interstate and Foreign Commerce of the House of Representatives. The Committee, and eventually the entire Congress, rejected arguments that some or

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[2] See 1965 *Judicial Conf. Rep.* 47; 1966 *Dir. of Admin. Off. of U.S. Courts Ann. Rep.* 67, 70–72.

[3] 1966 *Dir. of Admin. Off. of U.S. Courts Ann. Rep.* 67–69, 86–94.

[4] *Federal Trade Commission* v. *Cement Institute*, 333 U.S. 683, 702–703 (1948).

[5] *Hearings on Activities of Regulatory and Enforcement Agencies Relating to Small Business Before Subcommittee No. 6 of the House Committee on Small Business*, 89th Cong., 1st Sess. 37 (1965).

all of the authority granted by the Federal Trade Commission Act and the Wheeler-Lea amendment should be transferred to any adjunct of the executive department.[6]

"The difference of opinion . . . is as to the agency which is to enforce the provisions of the law. The Federal Trade Commission since its inception has been charged with the responsibility of enforcing the false-advertising provisions of the law. . . ."

* * * * * * *

The House Interstate and Foreign Commerce Committee gave this matter most thoughtful consideration and finally voted overwhelmingly against dual jurisdiction and in favor of continuation of exclusive advertising jurisdiction over the advertising of all commodities, whether food, drugs, or what not, is and has been since the passage of that act in 1914. . . .[7]

The House Report stated the following:

"The Federal Trade Commission has the machinery and trained personnel to investigate in a proceeding against false advertising of all industries and all commodities. The common motive of false advertisement is the same in every line of industry, to gain an economic advantage through defrauding or misleading the purchaser. This method of protecting the public should be harmonized and unified under one organization with consistent and uniform methods of enforcement and penalization. Efficiency, uniformity, and economy suggest this course. This legislation is framed with that purpose in mind." [8]

The Commission feels that the above statement also explains Congress actions in enacting Section 7(b) of the Wool Products Labeling Act of 1939; Section 9(b) of the Fur Products Labeling Act; Section 6(a) of the Flammable Fabrics Act; and Section 8 of the Textile Fiber Products Identification Act. The same reasoning should apply to H.R. 15354.

The question is not whether the Commission should concern itself with "complex" fraud cases while the Department of Justice handles "simple" fraud. Whether the facts are simple or complicated is irrelevant. There is no necessity for introducing potential duplication, division and dilution of expertise in this area of consumer protection. Where the consumer needs the immediate protection offered by the Federal Trade Commission Act, he should get it. This can best be accomplished by enacting H.R. 15354 and continuing to make only the Federal Trade Commission answerable to the consumer and the Congress.

MEMORANDUM IN SUPPORT OF S. 3065 AS ORIGINALLY INTRODUCED

In recent testimony, it was suggested that language be added to S. 3065 to "clarify" the role of the district court in determining whether to grant or deny a requested temporary injunction or restraining order.

Lines 18 and 19 of page two of the bill read: "Upon proper showing a temporary injunction or restraining order shall be granted without bond." As we understand, it is proposed that language be added such as "in its sound discretion, the court may" grant a temporary injunction or restraining order without bond. Allegedly, this would clarify the fact that issuance by the court of such injunction or order would be discretionary rather than mandatory.

This "clarification," however, may add confusion to an area which has previously been clear. The relevant language in S. 3065 is identical with the language successfully tested and used in the present Section 13(a) of the Federal Trade Commission Act, Section 7(b) of the Wool Products Labeling Act, Section 6(a) of the Flammable Fabrics Act, and Section 8 of the Textile Fiber Prducts Identification Act.

The addition of this "clarification" may give rise to arguments that the departure from the language of previously enacted legislation imposes a different, and possibly more difficult, burden upon the Commission.

It is clear that additional language is not needed to indicate that the granting of temporary injunctions or orders is within the discretion of the court. The courts must necessarily exercise their discretion in these instances. The duty of the court will remain the same regardless of changes in langauge.

In forty-eight instances where preliminary injunctions were sought by the Federal Trade Commission under previous legislation, the courts have not inter-

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[6] See 83 Cong. Rec. 397–399 (1938) (remarks of Congressman Reece).
[7] *Id.* at 399.
[8] H.R. Rep. No. 1613, 75th Cong., 1st Sess. 5 (1938).

preted the relevant language as a mandate to issue the requested injunction. In each instance, in determining whether the Commission had satisfied the requirements of a "proper showing," the court carefully exercised its discretion, and, in five instances, refused to grant an injunction.

The Commission is not requesting and the Congress is not proposing legislation which would, in effect, make the district court a "rubber stamp" without any ability to exercise an independent judgment. It seems clear to us that preexisting cases and legislation have established the important safeguard provided by the court's discretionary powers. We believe that no practical purpose can be served by tampering with language which has satisfactorily established this useful and workable scheme.

Commissioner Elman agrees that the suggested change in language would serve no useful purpose. In his view, a "proper showing" justifying a preliminary injunction in advance of hearing would not exist in cases which are contested because the evidence of violation is in substantial dispute, or where a doubtful or unresolved question of law or policy is presented. A court would find a "proper showing" to have been made only where (a) it is reasonably probable that the challenged acts or practices will ultimately be determined to be illegal, (b) the continuing injury to the consuming public during the pendency of the litigation is manifest and substantial, and (c) the balancing of interests, public and private, tips clearly in favor of granting an interlocutory injunction.

INJUNCTIONS GRANTED UNDER SECTION 13(a) OF THE FEDERAL TRADE COMMISSION ACT

1. *FTC* v. *Allied Pharmacal Co.*, No. 20494 (N.D. Ohio, Sept. 21, 1940), 3 S&D 704.
2. *FTC* v. *Earl Aronberg*, No. 712 (N.D. Ill., July 6, 1939), 3 S&D 677.
3. *FTC* v. *Rene P. Balditt*, No. 142 (W.D. Texas, Aug. 8, 1940), 3 S&D 694.
4. *FTC* v. *Harry S. Benham*, No. 717 (N.D. Ill., July 5, 1939), 3 S&D 642.
5. *FTC* v. *Chapman Health Products Co.*, No. 20120 (N.D. Ohio, Dec. 18, 1939), 3 S&D 654.
6. *FTC* v. *Max Caplan*, No. 39 (W.D. Va., Sept. 5, 1940), 3 S&D 699.
7. *FTC* v. *J. V. Cordes*, No. 1264 (E.D. Mich., June 29, 1939), 3 S&D 635.
8. *FTC* v. *Howard Deckelbaum*, No. 128 (S.D. W. Va., July 24, 1940), 3 S&D 689.
9. *FTC* v. *Electrolysis Associates, Inc.*, No. 8–442 (S.D.N.Y., May 10, 1940), 3 S&D 681.
10. *FTC* v. *Jacob Goldman*, No. 1095 RJ (S.D. Calif., Aug. 12, 1940), 3 S&D 696.
11. *FTC* v. *Lenard and Sarah Gotlieb*, No. 104–C (N.D. W. Va., July 20, 1940), 3 S&D 686.
12. *FTC* v. *Hartman Wholesale Drug Co.*, No. 16214 (N.D. Ill., Sept. 16, 1938), 3 S&D 629.
13. *FTC* v. *E. L. Jenkins*, No. 727 (N.D. Ill., July 11, 1939), 3 S&D 649.
14. *FTC* v. *Blanche Kaplan*, No. 1194 (N.D. Ill., Dec. 20, 1939), 3 S&D 656.
15. *FTC* v. *Charles L. Klapp*, No. 290 (E.D. Mo., Aug. 14, 1939), 3 S&D 651.
16. *FTC* v. *Koch Laboratories, Inc.*, No. 3387 (E.D. Mich., May 22, 1942), 3 S&D 720.
17. *FTC* v. *Edwin Leisenring*, No. 152 (D. Colo., Feb. 13, 1940), 3 S&D 666.
18. *FTC* v. *Lewyn Drug, Inc.*, No. 315–J (S.D. Calif., Apr. 7, 1939), 3 S&D 633.
19. *FTC* v. *D. J. Mahler Co.*, No. 67 (D. R.I., July 31, 1940), 3 S&D 691.
20. *FTC* v. *May's Cut Rate Drug Co.*, No. 101–C (N.D., W. Va., May 8, 1940), 3 S&D 676.
21. *FTC* v. *May's Cut Rate Drug Co. of Charleston*, No. 98 (S.D. W. Va., May 7, 1940), 3 S&D 674.
22. *FTC* v. *Julius Miller* (W.D. N.Y., Oct. 9, 1940), 3 S&D 706.
23. *FTC* v. *George S. Mogilner*, No. 1546 RJ (S.D. Calif., May 21, 1941), 3 S&D 715.
24. *FTC* v. *National Health Aids, Inc.*, 108 F. Supp. 340 (D. Md., 1952), 5 S&D 429.
25. *FTC* v. *Robert C. Oberlin*, No. 19901 (N.D. Ohio, June 30, 1939), 3 S&D 640.
26. *FTC* v. *Omega Mfg. Co.*, No. 8–433 (S.D.N.Y., May 10, 1940), 3 S&D 679.
27. *FTC* v. *Pittsburgh Cut Rate Drug Co.* (W.D. Pa., May 4, 1940), 3 S&D 671.
28. *FTC* v. *Rhodes Pharmacal Co.*, No. 51 C 176 (N.D. Ill., Sept. 25, 1951), 5 S&D 777.
29. *FTC* v. *Sekov Corp.*, No. 806 Y (S.D. Calif., Feb. 17, 1940), 3 S&D 669.
30. *FTC* v. *Sherry's Cut Rate Drug Co.*, No. 116 (S.D. W. Va., Sept 6 ,1940), 3 S&D 701.

31. *FTC* v. *Charles Shrader*, No. 1421 (W.D. Pa., May 27, 1941), 3 S&D 718.
32. *FTC* v. *Irving Sofronski*, No. 386 (E.D. Pa., June 30, 1939), 3 S&D 638.
33. *FTC* v. *N. B. Stadley*. No. 15450–C (S.D. Calif., May 21, 1941), 3 S&D 712.
34. *FTC* v. *Thomsen-King & Co.*, No. 1247 (N.D. Ill., Jan. 11, 1940), 3 S&D 658, *aff'd*, 109 F. 2d 516 (7th Cir. 1940).
35. *FTC* v. *United Diathermy, Inc.*, No. 12–178 (S.D.N.Y., Dec. 28, 1940), 3 S&D 709.
36. *FTC* v. *Ralph Weinstock*, No. 896 (E.D. Pa., May 14, 1940), 3 S&D 684.
37. *FTC* v. *Western Chemicals, Inc.*, No. 46 (W.D. Wash., Mar. 27, 1939), 3 S&D 632.
38. *FTC* v. *Winship Corp.*, No. 66 (S.D. Iowa, Jan. 19, 1940), 3 S&D 663.

OTHER INJUNCTIONS GRANTED

39. *FTC* v. *Luxurious Woollens, Ltd.*, No. 103–37 (S.D.N.Y., Oct. 4, 1955), 5 S&D 790. (Section 7(b) Wool Products Labeling Act.)
40. *FTC* v. *Ken Whitmore, Inc.*, No. 53–22–F (D. Mass., Jan. 12, 1953), 5 S&D 784. (Section 7(b) WPLA.)
41. *FTC* v. *Martin Berdy*, No. 122–366 (S.D.N.Y., July 23, 1957), 6 S&D 905. (Section 7(b) WPLA.)
42. *FTC* v. *Kulin Waste Co.*, No. 57–707–W (D. Mass., Aug. 1, 1957), 6 S&D 906. (Section 7(b) WPLA.)
43. *FTC* v. *Irie Manufacturing Co.*, No. 124–341 (S.D.N.Y., Oct. 8, 1957), 6 S&D 908. (Section 7(b) WPLA.)
44. *FTC* v. *American Medicinal Products, Inc.*, No. 956–H (S.D. Calif., May 27, 1940), 3 S&D 230. (Section 13(a) FTC Act.)
45. *FTC* v. *Barnard Hosiery Co.*, No. 146–129 (S.D.N.Y., May 27, and July 24, 1959), 6 S&D 572. (Section 7(b) Wool Products Labeling Act.)
46. *FTC* v. *Liggett & Myers Tobacco Co.*, 108 F. Supp. 573 (S.D.N.Y. 1952), *aff'd*, 203 F. 2d 744 (2d Cir. 1953) (Section 13(a) FTC Act.)
47. *FTC* v. *Rhodes Pharmacal Co.*, No. 51 C 176 (N.D. Ill., Feb. 21, 1951), 5 S&D 262, *aff'd*, 191 F. 2d 744 (7th Cir. 1951). (Section 13(a) FTC Act.)
48. *FTC* v. *Sterling Drug, Inc.*, 215 F. Supp. 327 (S.D.N.Y. 1963), *aff'd*, 317 F. 2d 669 (2d Cir. 1963). (Section 13(a) FTC Act.)

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