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**UNFAIR COMPETITION AND DISCRIMINATORY
AUTOMOBILE MARKETING PRACTICES**

GOVERNMENT

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HEARING
BEFORE THE
SPECIAL SUBCOMMITTEE ON
AUTOMOBILE MARKETING PRACTICES
OF THE
COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETIETH CONGRESS

SECOND SESSION

ON

ALLEGATIONS MADE BY THE NATION'S AUTOMOBILE
DEALERS REGARDING UNFAIR COMPETITION AND DIS-
CRIMINATORY MARKETING PRACTICES OF AUTOMOBILE
MANUFACTURERS AND THE RELATIONSHIP BETWEEN
THE DEALERS AND MANUFACTURERS

JULY 25, 1968

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UNFAIR COMPETITION AND DISCRIMINATORY AUTOMOBILE MARKETING PRACTICES

THURSDAY, JULY 25, 1968

U.S. SENATE,
COMMITTEE ON COMMERCE,
SPECIAL SUBCOMMITTEE ON
AUTOMOBILE MARKETING PRACTICES,
Washington, D.C.

The subcommittee met at 10:30 a.m., in room 6202, New Senate Office Building, Senator A. S. Mike Monroney presiding.

Present: Senators Monroney, Moss, Cotton, and Scott.

Also present: John M. Burzio, staff counsel.

Senator MONRONEY. The Automobile Marketing Practices Subcommittee of the Committee on Commerce will be in session.

I apologize to our witnesses and to members of the committee for being late but I attended a banquet where I made a speech and I cannot be two places at once.

The Automobile Marketing Practices Subcommittee of the Committee on Commerce will begin its investigation today of serious allegations made by the Nation's automobile dealers regarding unfair and discriminatory marketing practices of automobile manufacturers. I am especially grateful to the chairman of the committee, Senator Magnuson, for reactivating this subcommittee so that another close look can be taken at the relationship between the Nation's automobile dealers and the automobile manufacturers.

Briefly, for those who are not familiar with the history of this subcommittee, it was originally established to investigate the serious situation that had developed due to the imbalance of power between the manufacturers and the dealers, which had resulted in abusive and coercive marketing practices against the dealers. The subcommittee, in conjunction with the Judiciary Committee, worked on the dealers' day in court legislation, which is generally considered the Magna Carta of dealers' rights. The subcommittee was responsible for the Automobile Labeling Act, which was of great benefit to the general public by requiring a disclosure of the factory suggested price.

As a result of the subcommittee's investigations, the automobile manufacturers offered contracts more favorable and fairer to automobile dealers than they had previously agreed to. Phantom freight was eliminated from the sales price of automobiles and an investigation into the connection between major automobile financing and insurance companies resulted in the refunding of over \$20 million in overcharges by insurance companies.

Not all of the problems have been solved, however. In recent months I have received numerous and serious allegations from automobile dealers about marketing practices engaged in by the manufacturers that are detrimental to the automobile retailing industry and indirectly to the general public.

One complaint concerns the practice of manufacturers in opening and operating retail stores in competition with their existing franchise dealers in the major metropolitan areas. By providing their own direct dealerships with special services, financial aid, and other benefits not accorded to the franchise dealer, the automobile dealers allege that the company store competes unfairly with them.

Another practice by the manufacturers that the subcommittee will investigate is the selling of vehicles directly to customers at lower prices than they are sold to regular franchise dealers. Volume sales to Government agencies and to fleet and leasing companies at lower prices than to franchise dealers is a practice which the committee will go into in depth to determine where the true public interest lies, as well as the private interests of the manufacturers and the dealers.

The subcommittee is beginning its investigation late in this legislative session and will hear testimony from representatives of the Nation's automobile dealers. The manufacturers will be afforded an opportunity to testify, should they care to do so or should the subcommittee decide after hearing the dealers that they should appear. The testimony of the dealers will provide the basis for a staff study and investigation to develop full and complete information and an analysis of the problem for the subcommittee's consideration. This will probably occur after adjournment because of the short time available and will give us ample time to give all sides of this question so the committee in the next session will have a chance to fully analyze the data that have been collected.

Senator COTTON. May I add one thing?

Senator MONRONEY. Yes.

Senator COTTON. I would like to say, unfortunately, I have to leave shortly for a Senate conference on appropriations.

One point that I trust will be covered, because the chairman will remember I was one of the small group on this committee when we set up our automobile safety standards and fought and succeeded in having the dealers represented on the advisory council, or whatever the term is. I have had the impression that that representation by the dealers has been more in name than in fact and has not worked out as effectively as some of us had hoped when we insisted on the dealers representation.

I hope some of the witnesses will cover that point and I trust I will be back.

Senator MONRONEY. Thank you very much, Senator Cotton. I appreciate it so much your being here and I apologize again for being late.

Our first witness today is Mr. Sam H. White, director and chairman of the governmental relations committee of the National Automobile Dealers Association. He is owner and president of the Sam White Oldsmobile Co. at Houston, Tex.

Mr. White, we appreciate very much your being here. We are happy to have your statement and you may proceed as you wish.

**STATEMENT OF SAM H. WHITE, DIRECTOR AND CHAIRMAN OF THE
GOVERNMENTAL RELATIONS COMMITTEE, NATIONAL AUTOMO-
BILE DEALERS ASSOCIATION**

Mr. WHITE. Mr. Chairman and members of this subcommittee, my name is Sam H. White. I am an Oldsmobile dealer in Houston, Tex., and I am appearing here in my capacity as the chairman of the governmental relations committee of the National Automobile Dealers Association.

Our association appreciates the opportunity to present its grievances to this subcommittee today.

In 1956, a subcommittee studying automobile marketing practices, chaired by you, Senator Monroney, conducted hearings which spotlighted certain unfair competitive practices by automobile manufacturers against their franchised dealers and lead to the correction of many abuses of that day.

We believe these present hearings will once again show the necessity for relief against certain unfair competitive practices of automobile manufacturers in 1968—the continuation of which, we believe, threatens the economic survival of our members and the welfare of the car-buying public.

The National Automobile Dealers Association is a national trade association representing some 22,000 franchised new car and truck dealers engaged in the retail sale of all makes of new cars and trucks, both domestic and foreign.

The franchised automobile dealers of this country are a significant factor in the American economy. Numbering some 31,100 with an average investment of approximately \$163,000 each, the total net worth of dealers is estimated to be in excess of \$5 billion. These dealers employ an average of 23 individuals per dealership for a total estimated employment of over 700,000 people. The average annual payroll of these dealers exceeds \$4 billion. The average dealer spends more than \$12,000 per year in local advertising, and the total annual advertising budget of all dealers is nearly \$400 million. The total annual dollar volume of sales of the franchised automobile dealers approaches \$50 billion. These figures do not include statistics relative to truck sales. While there is some overlap, there are approximately 24,500 truck dealers holding franchises from truck manufacturers. Simply put, the franchised automobile dealers market most of the products of what is this country's most important manufacturing industry.

The franchised dealer serves many vital functions in this industry. In addition to selling most of the new automobiles and trucks, these dealers are responsible for a large percentage of the used vehicle sales. Most of the major automotive servicing is done by franchised dealers. In the process of rendering this service, these dealers serve as the warehouses for the replacement parts essential to keeping the motor vehicles of the Nation moving. With the advent of the 5-year or 50,000-mile warranty by the manufacturers, the responsibilities of the retail franchised dealer have been greatly increased. In other words, the franchised dealer is the essential instrument of the manufacturer in implementing the warranty system, as he always has been.

With this summary of the vital role of the dealer in this industry as background, let me now point out that NADA's policy is to seek the

voluntary settlement of industry problems by negotiation with our manufacturers. However, their refusal to consider the elimination of certain practices which we believe threaten the very existence of the franchise system and the business life of our dealers has led us quite reluctantly, and as a last resort, to seek relief from the Congress.

Now, gentlemen, seated with me are witnesses who will testify before your subcommittee. On my extreme left is Mr. Judson Bryan, who is the NADA director for the State of Oklahoma and a member of the governmental relations committee; on my left is Mr. Henry Fette, a Ford dealer from Clifton, N.J.; on my far right is Mr. Charles Winterrowd, Vandenberg Motors, Sacramento, Calif.—a Chrysler dealership; and on my immediate right, and a man I will introduce momentarily, is Mr. Lyman W. Slack, a dealer in Oregon, president-elect of NADA, and our first vice president. Mr. Slack will be our principal witness. Last year he was chairman of the industry relations committee of NADA. That is the committee that deals with manufacturer-dealer problems. He is thoroughly familiar with our unsuccessful efforts to enlist the cooperation of our manufacturers in eliminating certain of their marketing practices which we sincerely feel must be curbed if our dealers are to survive in this extremely competitive industry.

I give you Mr. Lyman Slack.

Senator MONRONEY. Thank you very much, Mr. White. Would you prefer to have your witnesses testify first and then have the committee question them on their testimony or would it be better, perhaps, to have your first witness testify and then let us ask questions that the committee might wish to have in the record? I believe it would be a more orderly procedure, since we have your fine introduction and your broad-scale outline of the plan, to take each witness as he completes his testimony for elaboration and amplification.

Mr. WHITE. We would be glad to do that.

Senator MONRONEY. I would like to say in the beginning that this is a most important part of our economy—the automobile. I guess it would rank higher in volume and in relationship to our national transportation, and in regards to employment, from the manufacturer of parts to the final repair and finally the salvage of the car when finally junked, than any other industry in the country. Its health is vitally important to the Nation. Its economy is tremendously important in the use of materials, in the creation of the transportation that it furnishes, but the method of distribution which has grown up since the Stanley Steamer days is also important. The guaranteeing the automobile always has a home that it can come back to for the servicing and the parts from the dealer from which it was purchased and the stability of the franchised system and the dealerships that have passed down from father to son to grandson I think is vital if we are going to consider this as an overall important and unusual part of our great economy.

For that reason, I think it was important to have you gentlemen kind enough to come up at your own expense to outline and sketch in these closing days of Congress your problem, the problem of the car buyer—because it influences him; the problem of the service that he will receive or not receive if the traditional system of distribution is endangered or jeopardized. We thank you for coming and we would

be delighted to proceed in an orderly way witness by witness to amplify the fine statements that these men make.

So you may start, Mr. Slack, on your testimony.

**STATEMENT OF LYMAN W. SLACK, FIRST VICE PRESIDENT,
NATIONAL AUTOMOBILE DEALERS ASSOCIATION**

Mr. SLACK. Mr. Chairman and members of the subcommittee, my name is Lyman W. Slack. I am a Chevrolet dealer in Portland, Oreg.

In my capacity as chairman of NADA's Industry Relations Committee last year, it was my responsibility, along with the other members of the committee, to conduct discussions with the executives of the various automobile manufacturers in the hope of finding mutually agreeable solutions to problems in the area of manufacturer-dealer relations. NADA has long felt that such discussions are the appropriate and preferred means for resolving our differences. We firmly believe in the principle of negotiating our differences within our own family. But adherence to this principle requires negotiation—give and take—with the equities of all parties involved given complete consideration and understanding.

Our appearance before this committee today is due solely to our inability to maintain meaningful dialog with our manufacturers in two areas of our relationship—two manufacturer practices which we are firmly convinced constitute a genuine threat to the franchise system of distributing and servicing motor vehicles. These are the sale of motor vehicles to favored nondealer customers at below dealer cost and the unfair competitive practices engaged in by manufacturers who compete directly with their dealers at the retail level.

We would like to take up first the matter of sales by automobile manufacturers to certain favored customers at prices below those paid by their own franchised dealers. We might point out that these dealers have devoted years of their time and considerable investment on the assumption that their franchise would afford them a reasonable profit opportunity in the merchandising and servicing of their manufacturers' products.

Manufacturers utilize a variety of means to engage in below-dealer-cost sales to favored customers—some selling through their dealers, some bypassing them. In most cases, the sales of vehicles to these special customers are made through the franchised dealer. The dealer's pricing in such cases has little resemblance to a free and open competitive market transaction. These buyers know the dealer's cost for the vehicles involved, down to the penny, necessarily depriving the dealer of any flexibility in his pricing. Dealers are encouraged by their manufacturers to solicit and sell fleet and lease company account business on the basis that these units improve their stature with the manufacturer—their penetration figures are better, regardless of profit or lack of profit.

In the instance in which the manufacturer itself consummates the sale with a fleet or lease account or other favored customer, the dealer through whom the vehicle is delivered to the customer generally receives a very nominal fee from the manufacturer for preparing the vehicle for delivery.

Not only are dealers expected to deliver vehicles to these favored customers at a price which is extremely depressed, they are further asked to sit idly by while the manufacturers provide to fleet and lease company purchasers a myriad of plans which will cut the cost of their purchases to levels below those paid by the franchised dealers. We will not attempt to describe these plans since they differ radically from one another and are succeeded almost monthly by a "new and better" program. We have a table outlining a number of these plans which we will leave with this committee. Generally speaking, any company operating 10 or more vehicles is eligible for "favored customers" treatment. In most instances, a cash rebate is made directly from the manufacturer to the fleet or lease purchaser. In the single instance where the payment is made to the dealer, the fleet purchaser is completely aware of the rebate and demands that it be passed through to him. This demand has been translated into a practice so common that the manufacturer has offered to send the rebate directly to the purchaser in order to save the dealer the paperwork involved.

Special price concessions are made on certain types of equipment and the achievement of specific purchase quotas. Also available is a guaranteed depreciation plan which gives to these favored buyers a protection which the manufacturer will not extend to dealers or the general public.

Dealers take strong exception not only to the fact that their profit potential is determined by arbitrary factory action but also to a number of other manufacturer practices which accompany this basic injustice. The motor vehicles sold under the various subsidy plans ultimately reenter the marketplace as used units. Frequently this reentry may be characterized as the mass dumping of vehicles in certain convenient markets. The impact of such action upon the value of the existing inventory of vehicles of similar make and model in the hands of both the dealer and the consumer requires no lengthy dissertation—simply a recollection of the basic law of supply and demand.

In addition to these direct assaults upon dealer profit opportunity, we find a bonus granted to the subsidized fleet and lease company purchaser in the form of special allocations of vehicles and models at new-car introduction time. This provides delivery priorities to the favored few while thousands of dealers are unable to obtain the necessary inventories of new vehicles, especially those models in greatest demand by the general public, without undue delay. Thus, early in the new-model year when the dealer's profit opportunities are best, he is generally confronted by shortage while special customers are given preference by the manufacturer.

We have primarily stressed thus far the various plans which are made available to the fleet and lease company purchasers. In addition to these plans, there are the virtually infinite variations which exist in the dollar amounts of subsidy offered in bids at the State and local governmental level. In these instances, the amount of subsidy granted by the manufacturer appears to be limited only by the degree to which he is determined to buy this business. Subsidies granted to State and local governments appear to have no direct relationship to type of unit or even numbers involved. Neither does there appear to be any uniformity in the size of the subsidy granted from State to State.

Suffice it to say, these subsidies are generally substantial and have become a major factor in encouraging States to buy vehicles more frequently and increase their dumping activities to the detriment of the used-vehicle market.

If I may depart from my text just for a second, it is not unusual to find a State buying automobiles in large quantity at prices well below dealer cost, driving them 15,000 or 20,000 miles, reselling them to the public at auctions, frequently at prices that will be almost as good as, and in some instances better than, what they paid for them originally.

Gentlemen, we submit that the dealer has assumed a heavy financial burden in order to properly meet the market representation requirements imposed by the manufacturer. The dealer has devoted years to the developing of his manufacturer's brand in his community. Yet due to the preponderant economic might of the manufacturer, an arbitrary and discriminatory system of special subsidies and concessions has been granted to fleet, lease, and local and State government units which permits such purchasers to obtain motor vehicles at prices below those paid by the franchised dealer.

What is the extent of the subsidy problem confronting the independent, franchised dealers of the Nation? Presently, it is estimated that some 14 percent of annual new-vehicle purchases fall into this category, and it is anticipated that by 1972, 25 to 30 percent of new-vehicle sales will fall into this classification. These projections have been made by the manufacturers themselves. It should be noted in this connection that units purchased for lease and rental operations increased in the period from 1962 through 1966 by 86 percent while commercial fleets—cars and trucks—increased by 24 percent during the same 4 years.

The granting of subsidies to special customers by the automobile manufacturers, we believe, is injurious to the normal automobile purchaser.

And if I may depart a moment again, Mr. Chairman, if you own a 1966 car that you may be thinking of trading in for a new one, and we will say for the sake of argument that you understand that it will maybe amount to \$2,200 trade-in value—perhaps you have already shopped and you know that—in the time it takes you to make up your mind whether or not to buy, 400 automobiles of the same make and model are dumped in the public auction in your town. What do you think the value of your trade-in is going to be? Not \$2,200. The law of supply and demand will operate, and it may very well drop to \$2,000.

The owner of a vehicle of the same make and model which is being dumped in his market by the lease, fleet, or Government purchase will obviously find that the trade-in value of his automobile is depressed and he therefore must spend more for any new car he buys.

The consumer is further penalized at new-car introduction time to the extent that fleet and lease purchasers have been given purchase priorities which siphon off the most desirable models at a time when they are in short supply.

One of the witnesses at this table, Mr. Bryan, can give a firsthand account of this in a very interesting degree of detail. It is a survey that was made in the State of Oklahoma shortly after 1968 models were introduced last year.

According to our best estimates, manufacturer subsidies exceed \$100 million annually. Frankly, we can conceive of no reason why the new-car buyer should be asked to subsidize these favored customers. These favored customers certainly are not so poor or need that help so badly as compared with the ordinary individual car buyer.

Let me also suggest that the subsidy programs of the manufacturers are bound to be detrimental to the manufacturers themselves. These programs have progressively become more expensive both in terms of the subsidy dollars and the costs of administration. The whole scheme appears to be a vicious competitive circle from which each manufacturer fears to initiate withdrawal.

This may come as somewhat of a shock, but in the last 2 years a large quantity of cars were sold to the State of California—medium priced cars I might add—with a subsidy which amounted to a net price to the State averaging \$900 less than dealer cost, some of them as much as \$1,200 less than dealer cost. I have not had access to manufacturers' cost figures, but I am sure they do not make that kind of profit in manufacturing cars, including the highest priced ones they manufacture.

We would further suggest that a major result of this competitive subsidy struggle will be to pose a genuine financial threat to the weaker of the automobile manufacturers which can ill afford to engage in the practices of the others and yet cannot afford to be noncompetitive in all phases of the market.

Gentleman, NADA is firmly convinced that the only solution to this problem—which is equitable and will hopefully provide permanent cessation of the practices described—is legislation prohibiting the automobile manufacturer from selling to any customer—except the Federal Government—at a price below that paid by his own dealers.

Now we come to the second practice that we believe is most injurious to our industry. A second manufacturer practice which is of great concern to dealers relates to the increasing activity of the manufacturer at the retail level of the industry.

In their intrusion into retailing, the manufacturers are pursuing marketing techniques which are in many instances directly subverting the very franchise system of automobile distribution which they themselves have created. In the opinion of NADA, unfair manufacturer competition with its own franchised retail outlets poses a genuine threat to the survival of franchised dealers and of the system of distribution which has served the manufacturer and customer so well over the years.

Let me emphasize that we are talking about unfair competition. We demand that—to the degree the manufacturer engages in retail sales in competition with his own dealers—such competition be fair to the independent dealer. Unless competition is fair, there is not a single dealer in this country who could hope to match the economic power of a manufacturer who decided to enter his retail market.

Manufacturers have assured their dealers and NADA that they have no inclination or desire to supplant their franchised dealers with direct retail outlets of their own. Let me point out, however, that an alarming number of manufacturer-owned retail establishments have been set up in various metropolitan areas throughout the country. Since the great majority of new motor vehicles are sold in these population cen-

ters, the manufacturer can, by increasing his direct sales outlets, control the major markets.

They don't put huge investments in the retailing business in Sleepy Eye, Minn., or Punxsutawney, Pa. They put them in the major markets and although the manufacturer tells us they don't want to go into the retail business, at the same time they are saying it their real estate departments are busy buying real estate and making plans and many of them already are completed for erection of huge buildings involving millions of dollars for the retail business.

One manufacturer consistently says to us when we talk about this, "We will sell them to anybody that wants one." Well, that is fine conversation but they know very well that the setup is so uneconomic from a standpoint of fixed overhead the smart entrepreneur is not going to invest his money in that kind of a monument.

Even in instances in which the manufacturer may operate only one outlet in a metropolitan area in which he has a number of franchised dealers, the manufacturer can control his dealers' profits by his own sales practices. Since the manufacturer already enjoys a manufacturing profit on every vehicle sold, the retail profit margin which he finds acceptable can be so low as to eliminate from the market the dealer who operates on his own capital.

Why do we object to the manner in which manufacturers compete at the retail level? Simply because there is no way that a dealer can successfully compete with a manufacturer in the retailing of a product if the manufacturer is willing to sacrifice a part or all of his retail margin to accomplish his sales objectives. He can well afford to lose money in the retail operation. He still has his manufacturing profit to fall back on.

Manufacturer-owned outlets apparently do not share with their independent franchised dealer competitors the same cost structures and thus are in a position to set market prices below those determined by normal retailer activities and cost. Factory stores, we understand, are frequently the beneficiaries of special advertising and promotional allowances not available to the independent dealer. Subsidies in the form of low rental expense provide the factory store with low price stimulation.

Another area in which independent retailers have had considerable difficulty with their manufacturers has been that of having their claims for warranty reimbursement honored. Factory claims procedures are costly for dealers to comply with, and frequently dealer claims are denied. Dealers tell us that factory stores do not have a serious problem in this regard. Dealers are also subject to audits and chargebacks on their warranty claims. This at times involves prolonged presence of factory personnel seeking errors in the dealership warranty claims files. We are told such investigations, which are disruptive and expensive to the dealer, do not take place in the factory-owned store.

Factory-owned outlets also appear to have few problems in obtaining an adequate supply of vehicles at new model introduction time. Not only do these outlets appear to be adequately stocked with new units on a numerical basis, but the product mix; that is, a good selection including "hot" models—is also present. The average dealer does not find himself in a similarly advantageous position to serve the general public.

Another device which has been utilized by certain manufacturers is that of granting franchises to dealers on a basis referred to in the industry as an escrow dealership. In this situation, a dealer is required merely to put a token amount of capital into an escrow account. The manufacturer actually provides the facility, working capital, inventory and, for all practical purposes, the management. Should the escrow dealer become disenchanted with the arrangement, he merely withdraws his escrowed funds and departs. Prior to his departure, however, the escrow dealer generally engages in selling practices which would not be feasible were his own funds involved; and the market in which he has operated is left in chaos and confusion and the remaining dealers have been forced into pricing practices which have deprived them of legitimate and reasonable profits.

Let me emphasize that NADA does not refer here to the various bona fide plans which our manufacturers have utilized over the years to assist capable young men to enter the retail motor vehicle business. These plans incorporate a requirement for substantial private franchise investment.

We do take strong objection, however, to any program which does not to a substantial degree involve the funds of the franchisee. We do object to the experimental escrow-type of dealership where the cost of experimentation is really borne by his competitors—the other franchisees risking their own capital and time.

A third major area of manufacturer direct competition with its own outlets is in the sale of trucks. We recognize the desirability and even the necessity in limited instances for direct manufacturer operation of such stores. The fact, however, remains that with the advantages of more rapid delivery of units to the factory store, accessibility to larger inventories, ability to absorb substantial retail losses in the sale of trucks, the manufacturer provides market domination rather than market competition since, under these circumstances, real competition cannot exist.

The dealer selling trucks is thus often placed in the position of plowing the ground and planting the seed but finding the dollar crop harvested by his manufacturer. We believe that where manufacturers do operate wholly owned outlets at the retail level in the sale of trucks, they should be required to operate in a manner identical to their independent franchised dealers or to provide to these dealers the same services and assistance, financial or otherwise, which they make available to their own stores.

Franchised dealers are required by their sales agreement to provide service facilities, parts, and personnel for the repair and maintenance of the manufacturer's product. Dealership service represents an important portion of the overall dealership operation, accounting on the average for 15 percent of total sales. According to an NADA survey, about one-third of all U.S. auto dealers have built new facilities or engaged in major expansion programs during the last 4 years in an effort to provide the quantity and quality of service demanded by their manufacturers and customers.

Despite the obvious dealer willingness to meet the increasing need for automobile service, an effort to bypass dealers in this area is being made in the establishment of factory owned and operated diagnostic centers. This factory intrusion into retailing, while still in a so-called experimental stage, reflects a basic flaw in the manufacturer attitude toward

his dealers. While much is made by the manufacturer of the partnership relationship between the manufacturer and the dealer, it appears that whenever the manufacturer finds it to his advantage the partnership is modified at least to the extent that permits the senior partner to gain his objectives with little concern for the equities of the junior partner—the dealer.

Probing by manufacturers for areas at the retail level which they may wish to enter is continuous. While making increasingly greater demands upon their dealers for market penetration, sales and service facilities and the necessary investment, they seem to be determined to foreclose by direct and unfair retail competition increasingly larger segments of dealer profit opportunities.

Only the individual manufacturer has in his possession the necessary data relating to our various contentions with respect to the unfair competition our dealers suffer from factory or factory-dominated stores selling cars and trucks and operating diagnostic centers. The manufacturers alone have the data to show the sacrifice of retail margin by such factory stores, the special advertising and promotional allowances which they obtain, their lesser problems with respect to warranty claims and the many other special unfair advantages they receive. We are confident that after you secure such data through your subpoena power, it will be found that there is substantial justification for the consistent pattern of complaints received from dealers.

It is our earnest hope that this subcommittee will initiate legislative relief against the unfair competitive practices I have enumerated. If these practices are continued and expanded by our manufacturers, they will threaten the very survival of every franchised dealer. The inevitable consequence of this would be the extension of control by manufacturers over every segment of the retail automobile industry, to the obvious detriment of the car-buying public of this country.

Mr. Chairman, this completes my statement and we will be glad now to answer any questions you may have.

Senator MONRONEY. Thank you very much, Mr. Slack. I think for the record it might be wise at this point to consider the dealer-factory relationship as to the responsibilities that the dealer assumes when he takes over the franchise requirements of a certain make of automobile.

You are not allowed, are you, as a franchised dealer of X car to handle a competitive car in the same price category?

Mr. SLACK. Well, the answer to that is that we are allowed to, so far as our sales contract is concerned. There is no prohibition. However, it is pretty well understood when the dealer signs the selling agreement between himself and the franchise order, assuming a market adequate for the recommended investment it will be an exclusive representation.

Senator MONRONEY. This is almost universal in the automobile field?

Mr. SLACK. That is right.

Senator MONRONEY. It may be termed an unwritten law that the franchise can be withdrawn for any reason found fit by the manufacturer and not by the dealer?

Mr. SLACK. In substance; yes, sir.

Senator MONRONEY. In other words, you are a captive seller by choice, of course, of the specific representation in your specific sales area?

I am not trying to say that you could not, in an adjacent area, have the franchise for another car, but you would not intermix them?

Mr. SLACK. That is right.

Senator MONRONEY. It would be disadvantageous to say the least. Therefore, they exercise, do they not, some control even over location of your salesroom? If the town has gone into an urban sprawl—we'll say—you might find yourself with a ranch-type operation or outdoor salesroom and all at the behest of the factory on their so-called market penetration to show a greater degree than if you were left in the congested and deteriorated downtown area?

Mr. SLACK. That is right.

Senator MONRONEY. You are not—in other words, when you buy the car at wholesale from the manufacturer, you are not exactly a free agent as if you bought a nonbranded refrigerator or a piece of furniture or an item of that kind?

Mr. SLACK. That is right.

Senator MONRONEY. It is traditional. It is historical. It takes the force and effect of contract without being, perhaps, so reduced to writing?

Mr. SLACK. We have no particular quarrel, Mr. Chairman, with that phase of it at the moment. What you say is true, though.

Senator MONRONEY. I am merely trying in this way to outline the understood responsibility that you have in accepting an almost family relationship with that particular brand identified through father and son and grandson oftentimes.

Mr. SLACK. Right.

Senator MONRONEY. And your location as well as the service of the cars that you have sold is of concern to the factory representatives. The numbers of cars, of course, is obviously of their concern that you must sell in order to continue your business relationship. Your advertising is surveyed and determined to be sufficient to promote the merchandising of that product in the community in which you are so franchised?

Mr. SLACK. That is right.

Senator MONRONEY. What I am trying to say is there is a good deal of control of the factory to give to the dealer some equal opportunity rather than a below-cost selling of the product of which you have been given representation in that community?

Mr. SLACK. True.

Senator MONRONEY. For that reason it takes on a different aspect from a merchant in the grocery business, you might say?

Mr. SLACK. It is a pretty tight marriage.

Senator MONRONEY. Yes, sir.

Mr. SLACK. Not much wandering.

Senator MONRONEY. To have a free and open relationship in his supply, his supply is determined by the manufacturer's willingness to: No. 1, allow you to merchandise the product under the trade name; No. 2, to handle his parts, and I presume you are not allowed to offer substitute or lower grade parts even though you would not—but I mean, it would be a serious consequence if you were to install substitute parts made by some mail-order house or something of that kind in your own service department?

Mr. SLACK. They check us frequently to find out the degree of our loyalty in buying parts.

Senator MONRONEY. So I think what we face here is the additional situation, that disruptive practices and merchandising does not help

the public. In fact, it braces off from the price of the public because the loss that is taken in the manufacturer's production and sales of the car to fleet owners or public bodies has to be made up somewhere on the cost of the car to the general public?

Mr. SLACK. Right.

Senator MONRONEY. And it has to come out of that price. Is this primarily because of the pride in the so-called mystic word of penetration in the area?

Mr. SLACK. Coupled with the word leadership.

There is no more highly competitive business, I guess, in the American economy than the automobile industry and the greater the volume the greater the manufacturer profit will be. This is not necessarily true for a dealer, but certainly in the case of the manufacturer, the profits go along with the volume pretty much in direct relationship.

Senator MONRONEY. Could you give us kind of a rule of thumb on the sale of any 10 automobiles, the number of trade-ins that would be involved in consummating the 10 sales?

Mr. SLACK. Well, if a fleet buyer came in to buy 10 units—

Senator MONRONEY. I am talking now about the private—the individual sales.

Mr. SLACK. Well, it is about two to one, two used cars for each one new car.

Senator Monroney. In other words, you have to take in a used car on every new car you sell and then you have to take in a trade-in on every used car you sell?

Mr. SLACK. That is right, about two to one.

Senator MONRONEY. And that latter part of the sale is usually probably the least profit bearing of any?

Mr. SLACK. That is right.

Senator MONRONEY. So the concern in merchandising is there.

Now, the sales are made to fleet buyers or the public at a discount then, affecting not only the higher price for the new car, because it is being sold to a fleet buyer at a rate less than you can buy that car for, but also when that car is dumped as a used car. Many of them are dumped twice a year as I understand it by some of the large fleet owners. Your used car prices and your used car sales then become more difficult and the profit margin is almost nonexistent because you have had to make your trade-in on the price that the individual buyer generally has paid for and that reflects it adversely when a man has bought the car at a substantially lower price and dumps large quantities on the market, is that right?

Mr. SLACK. That is true. The law of supply and demand operates and where you have a bigger supply than you have demand, obviously the price is going to be depressed.

Senator MONRONEY. I think you sketched out wisely in your statement about the timing of sales and the untimeliness of dumping, that this is also a severe problem to the individual dealer who must look to the individual buyer largely for his profit.

Mr. SLACK. Right.

Senator MONRONEY. In other words, you do not have the supply of cars at the peak sales period to meet the choice of the buyer in the models, the colors or engine styles and various things of that kind?

Mr. SLACK. I think that ought to be answered in some detail by Jud Bryan, who has that survey he would like to comment on, Mr. Chairman.

Senator MONRONEY. We will get to that. He may cover that in his statement because I know Mr. Bryan very well and he is a very thorough man and I did not want to impinge on any other testimony. These were just things that I think are of interest.

Now, you mentioned the sales below the dealer's cost from the factory. In other words, the fleet owner who might buy—what is the definition of the fleet owner?

Mr. SLACK. Their definition currently, I believe, is anybody who buys—any company or organization that buys 10 or more cars in a year. That does not necessarily mean 10 cars from one company. They could be 10 cars from four different manufacturers, but that's what they classify now as a fleet buyer.

Senator MONRONEY. Now, the price below the franchised dealer who perhaps would buy 200 cars, there is no relationship to quantity involved in this discount that you are told to give or offered a chance to give?

Mr. SLACK. Let Mr. White, if I may, answer the detail on some of these.

Mr. WHITE. Well, the subsidy varies, of course, by manufacturer. One manufacturer, for instance, Senator, if they buy 10 or more units they automatically get \$50. If a unit has air conditioning they get another \$75. If it has whitewall tires, another \$35 or \$40. Then if a unit is traded in or replaced before April 1 of any year and a second unit bought of the current model and kept until the next new model announcement day, there is another 5 percent on top of that. So you would be talking anywhere from \$150 to \$300 in total subsidy—below the cost to the dealer.

Senator MONRONEY. Where he may buy 200 cars for the individual sale that the preferred customer who buys 10 cars or more would enjoy—well, on three items, that would be \$1,965 on the white sidewalls and air conditioning and this would be rather standard in this day and age, and then on top of that a 5-percent discount from the probable—

Mr. WHITE. It would probably average \$3,000—another \$150.

Senator MONRONEY. So they would be buying the cars for less. Now, if the percentage of cars, as you sketched out in your statement, is now at about 20 percent of the cars and predicted to go—

Mr. SLACK. About 14 percent now and predicted to go to 25 or 30 percent.

Senator MONRONEY. Thirty percent. You would have nearly one-third of all cars sold at below the cost of production and the general public, people in this room or the people in Oklahoma or the people in Missouri or any place else would be paying the penalty of a higher individual price because they are not so favored as this special group of buyers are on the disposal. As I understand the thrust of your statement, having been bought at something like \$300 or more below the dealer's cost, these cars are then dumped twice a year in perhaps rather new condition—some under 10,000 miles, which is just a good break-in of a car and a debugging of it really—then these cars would knock down the value of all of the cars being traded in by the customer of a

new car by that amount because certainly you cannot sell an older car with more mileage and used 12 months against a car with low mileage and used 6 months, and for that reason your offering to the individual buyer will have to be that much less?

Mr. SLACK. That is right.

Senator MONRONEY. So he pays a greater price, first on the forced depreciation or accelerated depreciation on his used car and still is compelled to pay the price based on one that has raised your cost by \$300; so he loses at both ends, does he not?

Mr. SLACK. That is right.

Senator MONRONEY. And they would not let you have a standing—a paper leasing firm to which you would sell on a, shall we say, a note that is understood to represent the cost of these cars and sell it to them? That would be an act that would be frowned upon, I'm sure, by the factory representatives but you could not have a fictitious leasing company in order to effectuate the very thing that they deliberately and consistently do under the guise of penetration or whatever that means?

Mr. SLACK. Well, it is very unrealistic for the dealer who has his own leasing company and/or his own renting company to be buying cars from himself, from the dealership, for these other companies at a lower price than he pays to retail cars from individual customers. That just doesn't make any kind of sense.

Senator MONRONEY. And this estimate of the increase to 25 percent or 30 percent by 1972, is that a progressive increase that is determined by actual figures of the sales in this sort of shadow item?

Mr. SLACK. The marketing people of the various manufacturers have volunteered that is the way the trend is going and it is their estimate of where they will be by 1972, progressing each year from where it is now.

Senator MONRONEY. You mentioned subsidy to State and local governments. Is this greater than that allowed to leasing firms?

Mr. SLACK. Oh, infinitely greater. I mentioned the case of the one order for cars in California that ran as much in some instances as \$1,200 lower than the dealer cost.

Senator MONRONEY. \$1,200?

Mr. SLACK. \$1,200.

Senator MONRONEY. On what price car?

Mr. SLACK. Olds 88, to be specific.

Senator MONRONEY. What would that be in dollars, roughly?

Mr. SLACK. Are you talking about the retail, ordinary retail?

Senator MONRONEY. Normal price that an individual buying a car from the dealer.

Mr. SLACK. Here's a man from California, Mr. Chairman, who can give you a first-hand account of that purchase.

Mr. WINTERROWD. These were Olds 88's and they were sold to the State of California with much special equipment on them for a price very close to \$2,100.

Senator MONRONEY. What would the normal list price be on the car?

Mr. WINTERROWD. I would have to estimate because I was not an Oldsmobile dealer, but I would say in that price category, that car would probably sell in the neighborhood of \$3,500.

Senator MONRONEY. What would that cost you as an automobile dealer?

Mr. WINTERROWD. As an automobile dealer, you would be paying approximately \$2,900. It is very difficult because police cars have so much special equipment that it is hard for me—an ordinary Olds 88 is in the neighborhood of \$3,600 or \$3,700. With the special equipment it could go much higher.

Senator MONRONEY. And their price was \$2,000?

Mr. WINTERROWD. Slightly over \$2,100.

Senator MONRONEY. So the price has to be made up generally in the law of economics. I'm sure, there is not that much manufacturing profit in the car—by a front-end load, should we say—on the cars that they sell to millions of individuals who buy them and are not entitled to the fleet owner discount, is that correct?

Mr. WINTERROWD. That is right.

Senator MONRONEY. You are not required to give any service to these cars, these fleet cars? Are you expected to carry parts adequate to service them?

Mr. SLACK. Well, the dealer who is the conduit—if I may call it that, who takes the State bid—is required to prepare the cars for delivery upon receipt from the assembly plant. He also must be prepared to handle the warranty involved. At that time, of course, it was a shorter term and shorter mileage warranty, but if they were sold today it would be on a 5-year or 50,000-mile warranty basis.

Senator MONRONEY. Is that reimbursable by the factory?

Mr. SLACK. If the claim is approved, Mr. Chairman, and sometimes they aren't, and that's another subject.

Senator MONRONEY. Do they lay out the services and maintenance on bids?

Mr. SLACK. They put the parts requirements out on bid and that generally is resolved by a competitive bidding between dealers. It is a question of who will cut the price the most and be satisfied with the least margin. So parts are handled pretty much on the same basis as the cars themselves.

Senator MONRONEY. But these favored fleet buyers have the advantage not only on the cost of the car but also their ability to sell on the used car market, at a distinctly lower price, than the private buyer. The servicing of the car by wholesale requests for bidding on the parts and that car, as I gathered from your testimony, would not bear the normal service charge that the individual would have to bear. So, the cost of your overhead and the service and parts is again borne by the private buyer instead of the community, whether it be local or State?

Mr. SLACK. That is right.

Senator MONRONEY. This is largely due to the magic word penetration?

Mr. SLACK. That is right.

Senator MONRONEY. But the load falls on the individual car buyer?

Mr. SLACK. John Public.

Senator MONRONEY. Senator Scott?

Senator SCOTT. I have just a few questions. How many direct retail outlets do manufacturers have?

Mr. SLACK. That varies from month to month and I cannot give you an accurate count, Senator. I would not know except that we hear one of the major manufacturers has over 100, that another one has

somewhere around 18 or 20. It varies from month to month depending upon the new acquisitions that they have on their program.

Senator SCOTT. And do all domestic manufacturers have such direct retail outlets?

Mr. SLACK. To the best of my knowledge, all perhaps have them, but only two have the maximum activity in that connection. I believe American Motors might have one. I'm uncertain about the smaller of the four.

Senator SCOTT. How does the number compare to 5 or 10 years ago?

Mr. SLACK. Substantially greater, of course; substantially greater.

Senator SCOTT. What is your biggest source of difficulty in the field of warranty reimbursement?

Mr. SLACK. Do you want to answer that, Sam?

Mr. WHITE. What was the question?

Senator SCOTT. What is your biggest source of difficulty in the field of warranty reimbursement?

Mr. WHITE. Well, Senator, we get a claim allowed or approved and in many instances it is impossible to have a representative of the factory there when a dealer must OK a warranty claim and go ahead and repair the unit for the customer. I would say this is the greatest problem.

Senator SCOTT. Does the factory-owned stores have significant problems with respect to warranty claims on its charge backs, if you know?

Mr. WHITE. I couldn't answer the question because I don't know. We never operate them—

Mr. SLACK. We hear they don't have much trouble and that would be understandable for the reason it's their own money. In other words, which pocket will it go into? One of the things that concerns us most about the warranty problem is the fact that there are more and more dealers who are being subjected to audits by the factories, who come in and will go back as far as 3 years in their auditing claims which once were approved by factory people and paid and now are disallowed—disapproved and the dealer's parts account is going to be charged back for the amount of disallowed claims.

Senator SCOTT. One of the major automobile companies finances dealers through its motors holding division of operation. If you are familiar with that organization, do you have any—are you raising any objection or criticism of dealer financing in that area?

Mr. SLACK. That is the area where I made the observation in my statement that we have no quarrel with a good bona fide plan that has been in existence for a great many years, where the dealer himself is required to make a minimum of 25-percent investment and many of our best dealers today got their start with the assistance of motor holdings division.

Senator SCOTT. That's the way to get businessmen to own their own businesses, as I understand it?

Mr. SLACK. Right.

Senator SCOTT. Now, in the case of car rental business customers, I assume it's true that they expect to drive new cars as soon as possible after the new model announcement time. Is it an advantage to the dealer if new cars are being driven for demonstration purposes? Does that help you sell cars?

Mr. SLACK. The fact that a rental company or a leasing company has one of the current "hot" models, you mean?

Senator SCOTT. Yes.

Mr. SLACK. Well, if there is any advantage it is to the manufacturer, not to the dealer who may have people standing in line to buy one of the "hot" models and he cannot get them.

Senator SCOTT. I have some difficulty with another aspect of the problem, which is the fact that some years ago, as Chairman Monroney recalls, we had a good deal of discussion regarding price fixing, when the price of cars was allegedly fixed by the manufacturer which resulted in a general change in the relationship with the public where a suggested retail price was substituted for a fixed selling statement. In your statement on page 9, you make the suggestion that legislation would be helpful prohibiting the automobile manufacturer from selling to any customer except the Federal Government at a price below that paid by his own dealers. This worries me a little because doesn't that get us back into the price-fixing field?

Mr. SLACK. Well, it sets a floor on the price, from that interpretation, I would say. You put a floor in to provide some sort of assurance for the small businessman staying in business.

Senator SCOTT. I think that is all I have, Mr. Chairman, except to say I think I am required to make a disclosure here, although it is a very minor one. I own no shares in the automobile industry except 100 shares of General Motors stock, three-fourths of which I inherited from my father 16 years ago. I intend to dispose of it, hopefully at a price slightly above the present market. I do not think it affects my judgment but I feel obligated to make this disclosure.

Mr. SLACK. I do not have any idea that this is going to influence you in your decision.

Senator SCOTT. I wouldn't think so, but we are very much aware of Mr. Drew Pearson's disclosure.

Senator MONRONEY. I think I should, too, because I have the vast amount of 10 shares of Ford Motor Co. stock, which I bought when they went public.

Mr. SLACK. I am glad you disclosed it. Now we are not worried about you.

Senator MONRONEY. I think we ought to amplify one of the Senator's questions. What you are asking for is the selling price to the dealer. They do not wish anyone to buy in the leasing firms or in the State competition below dealer's price. This has nothing to do with the list price or suggested selling price?

Mr. SLACK. No.

Senator MONRONEY. As a matter of fact, since evidently the dealer's price from the manufacturer is raised enough to cover the nonprofit or the unprofitable sales to the fleet operators it does automatically raise the cost to the dealer which is reflected in the trade-in, again the trade-in is affected by the product of the below-cost original sale to the fleet owner. So what I am trying to analyze is the effect on the ultimate average purchaser who drives most of these cars and buys them and has to sell their used cars as they make a trade. I think the consumer gets hit at both ends by the fact that the market operation in this particular business is such that it would diminish. It would raise his original—the private purchaser's original cost, at less than his trade-in because

of the dumping twice a year of these fleet cars. Is that customary in the rental business? It is almost mandatory today?

Mr. SLACK. Yes, what one does the other does.

Senator SCOTT. I was certainly raising the question, Mr. Chairman, because I did not want us to run afoul of Senator Hart's committee on antitrust. I never know when we are getting into the antitrust field and when we're not.

Mr. SLACK. Isn't the farmer guaranteed a floor for the price of much of his product?

Senator SCOTT. There you may run into some dichotomy between the Senator from Oklahoma and myself. I am generally against the farm subsidies.

Mr. SLACK. I'm sorry I brought it up.

Senator SCOTT. I hope we will have no further discussion on that point.

Senator MONRONEY. Our problems are great in the automotive business but the farmer complains about the cost of the tractor and I don't think many of you are in the business of trucks and tractors—but as the price of trucks and tractors has gone up the price of wheat has gone down.

Senator SCOTT. If you want to make an impassioned speech on behalf of the Department of Agriculture I will be glad to hear it.

Senator MONRONEY. We have enough problems here.

Mr. SLACK. Could I suggest that we hear a little bit about the factory-store competition?

Senator MONRONEY. That is right. This is particularly true in the truck field.

Mr. SLACK. Not as much as in cars, though in many cases cars and trucks are combined in their operating a retail store.

Senator MONRONEY. Why don't we proceed with the other witnesses and then briefly interrogate them on questions and then come back to general discussion.

Mr. SLACK. I would suggest, then, that our next witness be Mr. Winterrowd, from Sacramento, Calif.

**STATEMENT OF CHARLES R. WINTERROWD, VANDENBERG MOTORS,
SACRAMENTO, CALIF.**

Mr. WINTERROWD. In order to identify myself, I would like to read a very short statement which will tell you who I am.

Senator Monroney and committee members, I appreciate the opportunity to attend this hearing. I am from Sacramento, Calif., where from 1953 until this year I was a Chrysler-Plymouth dealer.

I sold my dealership interest as of January 1, 1968. My decision to retire as a dealer was voluntary and based primarily on the fact that over the last several years our sole supplier had also become our chief retail competitor.

In the process of establishing their multimillion-dollar investment in retail facilities in Sacramento, Chrysler failed to adhere to their selling agreement with us or to their often-stated market realignment policy begun in 1965, but openly discussed as long ago as 1962.

My decision to retire my investment rather than to pursue a cause of action through the courts was on advice of counsel. To pursue a legal

course under present laws would be so subject to delays, appeals, and expense, that the losses I could suffer before the matter was ever adjudicated might well be beyond my financial capabilities.

A large manufacturer would not knowingly disregard portions of their selling agreement written by them in its entirety and modify their previously stated realignment policy with no prior notification to their dealer involved, without the confidence that the dealer's recourse is so severely handicapped as to be foolish to pursue. To continue as a Chrysler dealer I would have had to make long-term financial commitments which, in the face of Chrysler's dominant investment in the Sacramento retail market, I felt was unwise.

To protect their investment at the expense of mine and at time of stress, Chrysler could merchandise new cars to the public through just one controlled retail outlet at or below their price to us. Using just a portion of their manufacturing profit in this way would break me quickly.

Since our business has been established primarily through service to the customer, rather than through mass advertising, Chrysler's intrusion into the retail market, I felt, would weaken our ability to adequately continue our method of emphasizing service to gain sales.

I have with me correspondence between myself and Chrysler, sales figures and copies of factory reports on our operations, that show the dealership performance by any yardstick of the business, including service to the public was, by Chrysler standards, outstanding. Our dealership over the years won many awards from Chrysler for sales, service, and community relations. Several of our personnel were cited by Chrysler and the National Automobile Dealers Association for their achievements. I will welcome the opportunity to present whatever papers I have here to you, Senator, if you wish, and will furnish whatever additional information you may desire as to my personal history or that of the dealership.

All of the dealerships selling Chrysler Corp. products in Sacramento, except the one that I retired from, are owned by Chrysler. One of them is operated by Chrysler as an escrow dealership. I felt that over the years my opportunity to progress would be so severely limited by such a large investment by my supplier that I had better get out while I still had something left.

(The above-mentioned material was subsequently submitted and is in the committee files.)

Senator MONRONEY. What is the population of Sacramento?

Mr. WINTERROWD. Within the city limits it is approximately 500,000.

Senator MONRONEY. And in addition to your dealership, the Chrysler Corp. has how many agencies there?

Mr. WINTERROWD. In Sacramento there are three Chrysler-Plymouth dealerships.

Senator MONRONEY. That is exclusive of the one which you disposed of?

Mr. WINTERROWD. No; it is included.

Senator MONRONEY. I see.

Mr. WINTERROWD. There are two Buick, two Oldsmobile, three Chevrolet, three Ford, and two Mercury dealerships. Chrysler is the only medium-sized car with three dealerships.

Senator MONRONEY. As I understand, you sold yours—

Mr. WINTERROWD. I sold my interest in it.

Senator MONRONEY. And was it taken over by Chrysler?

Mr. WINTERROWD. No.

Senator MONRONEY. It was taken over by a private entrepreneur?

Mr. WINTERROWD. The procedure was that when Chrysler installed a dealer, which they had stated they were not going to do and we found out about it at the time the signs were going up, we offered our dealership to Chrysler—offered to sell the dealership to Chrysler. Since they already owned the facilities of all the rest of them we felt that they would be the only logical buyer. They did not wish to buy it. My partners were not in the same position I was and they decided to continue even under these circumstances, since it was not likely that we could ever find a private buyer who would be interested in entering the market under such conditions.

Senator MONRONEY. Then the other two, one is in escrow, you say?

Mr. WINTERROWD. Yes; the term was mentioned in Mr. White's testimony.

It was a factory operated store and recently I understand that the operator, who was a former Chrysler employee, has deposited money in an escrow account and it now is classed as an escrow dealership.

Senator MONRONEY. I see. But it came about through the opening of it as a Chrysler fully financed dealership?

Mr. WINTERROWD. Senator, according to the papers, it is a \$1.3 million establishment. It was originally built for a multiple operator of Chrysler dealerships who got into a false and misleading advertising controversy with the attorney general of the State of California and signed a consent decree and under those circumstances left the business and that left the property in Chrysler hands and it became a factory store.

Senator MONRONEY. I see. And the other one isn't a factory store?

Mr. WINTERROWD. At the other Chrysler dealership the real estate is owned by Chrysler—the dealer is an independent dealer and I have been told he is an independent dealer with a capital loan from Chrysler Credit Corp.

Senator MONRONEY. This, however, is not uncommon, is it? I mean, of factory financing of dealerships or of new locations?

Mr. WINTERROWD. Yes, sir; it has become very common with Chrysler.

Senator MONRONEY. And, I think, others, to a certain extent.

Mr. WINTERROWD. I don't think yet to the extent that Chrysler has entered it.

Senator MONRONEY. No trucking operation then?

Mr. WINTERROWD. Not in ours; no.

Senator MONRONEY. Do they handle at the discount cost some of the State business of California since that is the State capital?

Mr. WINTERROWD. Yes.

Senator MONRONEY. On the sales to the fleet owners, public owners, below the dealer's cost?

Mr. WINTERROWD. Yes. For a number of years, except for the case that we have cited of Oldsmobile, the California highway patrol cars have been Dodge and they have been sold to the State for substantially less than a dealer could buy them.

Senator MONRONEY. In other words, if they were not in Sacramento they would have less bidding opportunity to bid the State business and now they have all the dealerships, at least their money is in all of them and they would enjoy even a more preferred position in getting the price below the normal cost that the general public is paying for its automobiles?

Mr. WINTERROWD. It would be very difficult for a Dodge dealer outside of Sacramento to bear the delivery cost and the preparation cost to deliver the cars to the State capital that a dealer in the capital could do it for.

Senator MONRONEY. Do you have any idea or estimate of the volume of the automotive business that the State of California does with the Sacramento dealers, not only Chrysler, but others?

Mr. WINTERROWD. On the highway patrol, it runs about 800 cars a year.

Senator MONRONEY. They change every year?

Mr. WINTERROWD. I don't think they replace their entire fleet but they usually purchase about 800 cars a year for the highway patrol itself. For the rest of the State business in Sacramento, I would say it would probably average in the neighborhood of an additional 3,000 cars.

Senator MONRONEY. This would affect the individual owner's trade-ins because these cars would be traded in by a below-cost buyer to a factory-financed store for sale on the used car markets?

Mr. WINTERROWD. No; they are not traded. State cars are not traded. They are auctioned off.

Senator MONRONEY. Would they stay in the neighborhood—would they stay in the neighborhood of Sacramento?

Mr. WINTERROWD. Oh, yes.

Senator MONRONEY. You would have quite a supply.

Mr. WINTERROWD. Naturally, a great number of them do. Many are shipped all over the State.

Senator MONRONEY. In fact, dealers in Sacramento or other dealers—Chrysler and otherwise—would have to handle these below-cost cars from individuals as trade-ins or new cars at a depreciated value. This could be a figure of 800, 5,000, 10,000, or 50,000 automobiles.

Mr. WINTERROWD. Senator, the ex-police cars are very easily recognizable driving the streets of Sacramento.

Senator MONRONEY. Hot rods?

Mr. WINTERROWD. Well, they are pretty powerful automobiles.

Senator MONRONEY. Souped-up engines and high speed?

Mr. WINTERROWD. Yes.

Senator MONRONEY. They would enjoy a certain amount of distinction, particularly among the young.

Mr. WINTERROWD. Plus the fact that the price is so cheap that the younger element can afford to get them.

Senator MONRONEY. In the automobile business that is the No. 1 problem?

Mr. WINTERROWD. Yes, it is.

Senator MONRONEY. The price of the product—and this is such a standard among all of the main lines—is the least thing that affects a large spread area in the trade.

Mr. WINTERROWD. Senator, during the time that I was a dealer, I had occasion to sell a number of fleet units and I would like to relate one instance which might be of interest to you.

I sold to the Yellow Cab Co. in Sacramento for many, many years, and the competitive price that I have used to sell them is \$75 over our cost, which includes the preparation of the vehicle. Now, I can't charge more than that because I will lose the business. Once the car is delivered and the Yellow Cab Co. in Sacramento has completed their orders for a year, they send a form to Chrysler and receive a check back for each one of those cars for \$183. The dealers as a group are buying 80 percent of the cars; why weren't we fleet buyers? We could certainly pass that saving on to our customers and compete actively. There would be no question but what we would have to be competitive.

Senator MONRONEY. But that would remove the competitive advantage of the market, which is now obtained as these sales are spun off in the used-car market?

Mr. WINTERROWD. We don't even see the money that is sent to fleet buyers.

Senator MONRONEY. But you have to service the cars on delivery?

Mr. WINTERROWD. Yes, and through the warranty.

Senator MONRONEY. Well, am I correct in the assumption that oftentimes you are required—the dealers are required to deliver the cars, prepare them for delivery at a cost as low as about \$10.50, is that correct?

Mr. SLACK. It depends on how hungry the dealer is to get some volume through his place of business.

Mr. WINTERROWD. On a volume-Valiant bid we sold to Sacramento County, we delivered the cars to Sacramento County at \$5.45 over the low bid price submitted by Chrysler to us, in order to protect our penetration in the market so that we would not be subject to factory pressure.

Senator MONRONEY. What did you have to do for that \$5?

Mr. WINTERROWD. The cars were supposedly preserviced by the factory. We had to wash them. We had to put 5 gallons of gas in them. We had to check them for safety and had to physically deliver them to the county yard.

Senator MONRONEY. If you were doing that commercially for an individual buyer, what would the cost have been relatively?

Mr. WINTERROWD. It would cost me my business—do you mean what is our average cost?

Senator MONRONEY. I am trying to compare.

Mr. WINTERROWD. About \$67.

Senator MONRONEY. Sixty-seven dollars?

Mr. WINTERROWD. Per unit for a year's time to service and pay that portion of the warranty that falls upon us.

Senator MONRONEY. I see. And you received a little over \$5.

Mr. WINTERROWD. \$5.45.

Senator MONRONEY. Thank you very much for your courtesy in coming here and for giving us the valuable information.

Who is your next witness, Mr. White?

Mr. WHITE. I think I will call on Mr. Judson Bryan, from Oklahoma, at this time.

STATEMENT OF JUDSON BRYAN, DIRECTOR, NATIONAL AUTOMOBILE DEALERS ASSOCIATION, BRYAN MOTOR CO., INC., STILLWATER, OKLA.

Mr. BRYAN. Senator Monroney, in January of this year, in fact under the date of January 17, the Oklahoma Automobile Dealers Association mailed a questionnaire to all the dealers in Oklahoma and they asked this question, "Have you suffered a loss in allotments in 1968 products as compared to 1967?"

Then they asked the question underneath that if the answer is yes and what make and so forth and if the answer is no and what the number of cars were—less or more. This return from this survey was the largest that we have ever received in Oklahoma from any survey made.

In fact it was a 45-percent return. As I stated it was the largest response that we had ever received. Nearly all reported deficiencies for the year as compared to the previous year. Some reported as much as 80 percent.

This was basically among the General Motors dealers. Now, this average did not include Ford dealers since Ford was on a strike at that time.

The overall average of all dealers was 30 percent less in 1968 against 1967.

Senator MONRONEY. I didn't get that. The loss of those responding to the questionnaire—30 percent of those responding suffered losses?

Mr. BRYAN. The average number—the average loss was 30 percent less on 1968 models than 1967 models.

Senator MONRONEY. That was a diminishment of the business?

Mr. BRYAN. That is correct. Now, this covered the period—the questionnaire was, "Have you suffered a loss in allotment in 1968 products as compared to 1967?" And it was covering the period from announcement day to January 1, which is normally about the first 90 days of production. Announcement day is around the last week in September or the first week in October. Now, then they asked the question, "What do you attribute this loss to?" Eighty-one percent of the dealers reporting claimed priority allowed to fleet and leasing outlets on pre-announcement and first-order postannouncement cost.

In other words they got their cars first and the public had to wait. As a result of this survey, the Oklahoma Automobile Dealers Association had a board meeting and adopted the following resolution:

Whereas the franchise new car dealers have always been a most important equal counterpart in the process of delivering the finished product of the automobile to its ultimate owner, the American consumer, and whereas during the first three months of the model year there exists an imbalance in the delivery of the fleet replacement units in relationship with dealer units for general consumer. This affects the dealers' responsibility to their customers who are being deprived of the vehicle used as a result of depreciation of the new models by as much as 25 percent, and

Whereas the consumer is affected economically since he cannot realize the full monetary value of the new model, and the early release of used fleet units depresses the immediate possible model used car market to the extent that it lowers the value to the consumer.

This increases the cost to the consumer in purchasing a new car and whereas the above practice has forced the American consumer to underwrite and subsidize major and corporate purchase unwillingly.

The customer trading value is lowered with the practice of manufacturers selling to major fleet buyers at prices far below those offered to the American public: Now, therefore, be it

Resolved, That members of the Oklahoma Automobile Dealers Association urge the manufacturers to exercise orderly distribution of fleet sales particularly the important first three months of the new model year; and be it further

Resolved, That the Oklahoma franchise new car dealers contact their respective manufacturers and urge them to act on the requests listed in this resolution and place the franchise back with the dealer so he can act as the sole distributor at the retail level. Dealers contact dealers across the nation to act immediately on this request; and be it further

Resolved, That a copy of this resolution be forwarded to the President of the General Motors Corporation, Chrysler Corporation and American Motors Corporation, Automotive Trade Association Magazine and the National Automobile Dealers Association.

This resolution is hereby adopted by the Board of Directors of the Oklahoma Automobile Dealers Association at a special meeting called this 30th day of April, 1968.

Mr. BRYAN. Senator, it was unanimously approved.

Senator MONRONEY. In other words, these are hard statistics of the operation resulting from replies to your statewide questionnaire and those will be incorporated completely in the record.

Mr. BRYAN. That is right.

Senator MONRONEY. And the below-cost sales at the introduction of the new models makes you the low man—the dealer is the low man on the totem pole. You wait until all the loss leaders or so who are the favored customers or to the States or to others before you can even get in the highly competitive automobile business at the beginning of new model season.

Mr. BRYAN. Well, that is true, Senator. But the public is being deprived of the privilege of trade too because they cannot obtain the vehicle because the dealer doesn't have them.

Senator MONRONEY. And no matter how hard you try these deliveries come out first to the preferred but lowest paying customers?

Mr. BRYAN. That is correct.

Senator MONRONEY. Is this on account of market penetration too?

Mr. BRYAN. To a degree. In my little town it isn't, but in the metropolitan areas it is. Of course, being from a small town, as you know, 28,000 or 30,000, I am not in the fleet and leasing business. But recently I signed a contract to purchase cars to put in daily rental service. And by so doing and signing up for this between June 15 and July 15, I am going to receive \$125. This is \$125 less than I buy my same car to put on my floor to sell to you, the public, but I put them in daily rental service.

Senator MONRONEY. You have to rent these cars?

Mr. BRYAN. I put them in daily rental service.

Senator MONRONEY. The factory would consider it bad faith if you signed up for 1,000 cars, supposing that was the number you sold each year and said they go to Judson Bryan Rental Co. and then proceeded to drive them around the block and say they are used cars and then dispose of them?

Mr. BRYAN. Yes; that would be bad faith. And we would be checked on it. But the surprising thing about it was I got my notification back from the office that I am going to get these four cars in the month of

October which is the first month following new car announcement day where I wouldn't get them to sell to the public or consumer.

Senator MONRONEY. Now how long is a rental car a rental car?

Mr. BRYAN. Normally on daily rental cars they are turned over every 4 months. You replace them every 4 months so that would give you two cycles and you could dispose of the used car while it is still a current model automobile and it can be sold at far less, and again that affects the consumer because it sets the value of his car if he has one of the same make and model.

Senator MONRONEY. Let's get down to the practical merchandising and buying which I was familiar with when I was in the furniture business which required, as I understand it, that factory sales had to be on the same basis to all, that you could not lower the price for one and raise it for another for a particular quantity.

Now, this seems to me to be a matter of concern because I don't believe the automotive business is exempt from the Robinson-Patton Act. And what we are doing is permitting 10 cars to be sold for less than 200 cars. We will say that will be offered to the legitimate dealers for trade with the public. So the public is being denied in 200 purchases the advantage of the factory make available to certain preferred classes of buyers and a certain preferred class of retail automotive men if they choose to enter that deal.

I just wonder if there is a discussion with the factory representative as to whether it falls under this category.

Mr. BRYAN. Well, I am sure Mr. Slack could answer that. He is the man who has been discussing it with them. Of course, the factory says you don't have to give this away.

Mr. SLACK. I think it is a matter of classification as far as their interpretation is concerned, Mr. Chairman. They will give the same price to all rental people and all lease people.

Therefore, they are not in violation because they have a classification of people. They are not consumers in the sense of the word that an ordinary John Doe of the public is a consumer.

All dealers are offered the cars the same car at the same price. So you have got—now that is what I am told. I am not a student of the Robinson-Patton law. Let me read the law. This is section 13(a) of the act, June 19, 1936. U.S. Code, title 15. It reads:

It shall be unlawful for any person engaged in commerce in the course of such commerce to be a party to or assist in any transaction or sale or contract for sale which discriminates to his knowledge against competitors of the purchaser in that any discount rebate allowance or advertising service charge be granted to the purchaser over and above any discount rebate allowance or advertising service charge available at the time of such transaction.

The said competitors in respect to sale of goods of like grade, quality, quantity, to sell or contract to sell in any part of the United States at prices lower than those exacted by said person elsewhere in the United States for the purpose of destroying competition or eliminating competition in such part of the United States or to sell or contract to sell goods at unreasonably low prices for the purpose of unfair competition.

Senator MONRONEY. Do your attorneys—have they briefed out your rights under this act?

Mr. SLACK. I think the word "competitor" is the key word, Mr. Chairman. You can't call the dealer per se a competitor of a fleet buyer, or even a daily rental car company. The word "competitor" is the key word there.

Senator MONRONEY. But in other words, the terms of sale which would go into the numbers of 10 or more I believe under the fleet definition, that you could sell—through a dealer from the factory, through a dealer to this fleet buyer at a price lower than that which you as the distributor can sell to an individual.

So whether the law encompasses that it is certainly in effect a discrimination between two buyers.

Mr. SLACK. I agree 100 percent.

Senator MONRONEY. But your rate has to be on the basis of your purchase contract at wholesale from the manufacturer and I don't know—I doubt if there is any discrimination between a 100-car buyer and a 5,000-car buyer, is there?

Mr. SLACK. That is right.

Senator MONRONEY. So you are all on the same basis.

Mr. SLACK. In one other facet I think—say I get an invitation to bid for a 500-car sale to the State of Oregon, and my factory says we will give you *x* numbers of dollars assistance on this bid. They will make the same bid assistance through any other dealer who is interested in buying that business in the State of Oregon. Therefore, there is no discrimination.

Senator MONRONEY. And no unfair competition between the dealers?

Mr. SLACK. That is right.

Senator MONRONEY. But there is unfair discrimination per se in the quantity and value of that car which again becomes in the public market the price discrimination that is the result of this action.

Mr. SLACK. I might add that when the bids are let to the successful bidder, the newspaper picks the story up right away and advises my customers and my prospective customers the price of identical cars that they may be interested in buying from me and at what price the State of Oregon is buying them. And they don't like it.

Senator MONRONEY. I don't blame them.

Mr. SLACK. I don't blame them.

Senator MONRONEY. I think a car is a car, is a car, is a car. And you just—there is a decidedly psychological effect in making you a profiteer when they read that a car is sold at somewhere around \$1,000 or thereabouts below what the same car would cost them off the dealer's floor. And they can't conceive that it is the factory that is selling this car and buying its place in this magic word "penetration."

Mr. SLACK. The dealer is the villain.

Senator MONRONEY. Mr. Bryan, do you have anything further?

Thank you very much for your testimony.

Mr. WHITE. I would like to call on Henry Fette from Clifton, N.J., who is a Ford dealer. I think he has some very interesting comments to make.

Senator MONRONEY. Mr. Fette?

STATEMENT OF HENRY FETTE, OF FETTE FORD, CLIFTON, N.J.

Mr. FETTE. Mr. Senator, I have three phases, if I may. I am a Lincoln-Mercury dealer in Clifton; I am a Ford dealer in Clifton; and I am also a superduty truck franchise dealer, supposed to be servicing three different counties in New Jersey exclusively.

Referring to a comment made a moment ago about people and customers getting a lower price than other people, I have before me

proof—in fact it's proof positive. I have a check here dated May 14, 1968, voucher No. 127366, check No. 22873 for \$200 made payable to Edward Zimmerman, 60 East 12th Street, New York, N.Y.

This is a 1968 New York taxi program. We sold this man this taxi for \$75 over our invoice. We paid our salesman \$25 commission, leaving a \$50 gross. For that we had to service the car, polish it, and so forth. We took it in trade, in which we lost \$25. So we have a total gross of \$25 profit, with a \$70 per car overhead to process this car. We were really in the red.

Now, this \$200 rebate for the New York taxi, I think, is the most unethical thing I have ever heard in all my life. And this man is an individual taxicab owner. He is not a fleet owner. He is an individual taxicab owner in New York City.

Why is he entitled to a \$200 special price concession as an individual taxicab owner?

When the franchise came out on superduty trucks, I was one of the first to sign up. I pioneered the superduty truck business in New Jersey, lived with all its problems—and there were many.

I have been a superduty truck dealer for about 3 years. There is Ward Ford Co. in Newark, N.J.; there is Pasquin Motors in Rutherford, N.J.; and myself in Clifton, N.J. The farthest one from my establishment is about 12 miles, the nearest one being Mr. Pasquin, which is about 4 miles.

After pioneering this truck business and really getting it off the ground, after 3 or 4 years we began to see the light and started to make a few dollars.

In fact, they saw fit to open a factory store, called Turnpike Motors, in Secaucus, N.J. This operation is stuck between the three of us. We talked about these things that the factory should not go into this business over there and we—Ward, Pasquin, and myself—wanted to buy out the facility before it got started, and if it did get started, we would buy them out and run it so we wouldn't have a factory store to contend with.

Well, they went ahead with it anyway, and it's still a factory store today. They have hired my sales manager, and naturally he knew all my customers. And my sales went down.

In 1963—now I'm talking about superduty trucks. These are the big jobs.

Senator MONRONEY. That is the tractor of the truck?

Mr. FETTE. Yes, that's right. They run about \$22,000 each, some more and some a few dollars less.

In 1965, my sales on the big job were five; and in 1964, in May, were four; and in May of 1968, zero. Plus we sell a lot of other trucks. But we are talking about the big jobs.

Now, my investment in the superduty truck parts is well over \$100,000 that I have to carry to service these trucks. Furthermore, it was only last year that my neighbor and the people that I pay rent to for storing our new cars on their lot—he is in the trucking business and I pioneered that—they used to use GMC trucks, and I got them to buy Ford products. And I developed this business and it took a lot of money to develop it too, you can rest assured.

So they bid on about 30 units, and they just outbid us by—well, I just had to lose \$200 each, if I wanted the business. And I sure don't want it that bad.

They bought the trucks from the Turnpike Motors, and I wind up servicing them because they are right next door. Now, this is what I call unfair competition, because I cannot compete with the factory.

Just as late as last Friday, I was informed in a roundabout way that Ford Motor Co. was looking for another outlet because the present Chevrolet dealer is building new facilities on Route 46, and they called the owner of the property to see if that would be available as soon as the new facilities were finished, if that would be available for an agency. Now, that is right in my own town, right in my backyard.

The company also looks at dealership responsibility to their customers.

I have also before me a 6-month complaint rate record per hundred vehicles sold. My dealership is 3.8 percent; the district average is 8.9 percent; and the national average is 5.4 percent. So I'm well under customer complaint letters, far under anybody else. So we must be doing a good job as far as customers are concerned.

I don't know where the factory is going to go, but I mentioned to them many times that if they continue with this type of operation, "You come and buy me out, and I'll step out of it," because I cannot afford them as my competitors any longer. It gets to be absolutely ridiculous. That is my story, Senator.

Senator MONRONEY. Thank you very much for that very helpful testimony, sir.

Do they give you a choice on establishing a factory outlet on a thruway, such as you are on? Have you located out here on this super highway—if you don't do it well. Is that it? Have you ever had that put up to you?

Mr. FETTE. No, Senator, I haven't. Because both of my operations are right on—one is right on Highway 46, which is the busiest highway there is, and the other is on Route 3. So there is no reason for that at all. But it's the dealer adjoining me in Passaic which is 2 miles away. They went bankrupt four times already. They are different dealerships, and they went bankrupt four times one after the other, and I told them at that time that the place should be closed because all he does is just kill the area around because it's not their money, and he just goes on.

This is the dealership that they are talking about moving into Clifton. And they certainly don't need another dealership in Clifton. The population is around 80,000.

I was the former president of the chamber of commerce, so I'm pretty familiar with it.

Senator MONRONEY. How many jobs are at stake in your business?

Mr. FETTE. How many what?

Senator MONRONEY. Jobs. What is your employment total?

Mr. FETTE. The employment, it's hard for me to tell, but we have the largest amount of any various industry that I know of in the whole entire area. There are small businesses. There are large ones. And it's just about—let me say it's about 50-50; 50 percent in population and 50 percent in factories, and so forth.

Senator MONRONEY. I mean the employment of your business.

Mr. FETTE. Oh. How many people do I employ?

Senator MONRONEY. Yes.

Mr. FETTE. Oh, I would say about 75 or 80.

Senator MONRONEY. Seventy-five.

Mr. FETTE. Yes.

Senator MONRONEY. And in the sales with this decline in your big size trucks, where has that business gone?

Mr. FETTE. Well, it has gone to Turnpike Motors. I can't even hire a salesman because they don't want to work for me because the Turnpike Motors is always underbuying us. We don't have a chance to make the sale. That is the big problem.

Senator MONRONEY. And they are able to offer a better deal because of factory participation?

Mr. FETTE. Well, they put these used trucks in at a certain price and then every 2 or 3 months they write them down, and how are you going to write them down if there is nothing to write down? But they can afford it. I can't.

Senator MONRONEY. Is this a direct factory store?

Mr. FETTE. This is a direct factory store; yes, sir.

Senator MONRONEY. A direct factory store. And they do not sell taxicabs, did you say?

Mr. FETTE. No, they don't sell taxicabs. Just trucks.

Senator MONRONEY. Heavy-duty trucks?

Mr. FETTE. Yes.

Senator MONRONEY. This is more than \$22,000. This is a pretty big unit of sale.

Mr. FETTE. Yes, it is. But if you're going to work on \$100 over your cost, and then go overboard on the trade and you lose money on the trade, you have nowhere to go.

Senator MONRONEY. That's correct. Thank you very much.

Have you another witness?

Mr. WHITE. No. That is all the witnesses.

Senator MONRONEY. Well, thank you very much, Mr. Slack, Mr. White, Mr. Winterrowd, Mr. Bryan, and Mr. Fette, for your appearances here.

We are in a little bit of a bind. We have a bill on the floor. How long will your testimony be, Mr. Cohen?

Mr. COHEN. I will limit it to any time you give me, sir. I will not read my statement, but I will highlight it if you would allow me to.

Senator MONRONEY. Let me make a telephone call and we will proceed.

Mr. WHITE. Thank you very much, Senator.

Senator MONRONEY. We welcome Mr. Raphael Cohen, chairman of the executive committee, Metropolitan Independent Dodge-Chrysler Dealers Association, Inc., of Ridgewood, N.J.

STATEMENT OF RAPHAEL COHEN, CHAIRMAN, EXECUTIVE COMMITTEE, METROPOLITAN INDEPENDENT DODGE-CHRYSLER DEALERS ASSOCIATION, INC., RIDGEWOOD, N.J.

Mr. COHEN. Actually, sir, that is our mailing address, but we are located in New York City. We use that for a post office box mailing address.

Senator MONRONEY. I see. Are you a franchise dealer in Ridgewood?

Mr. COHEN. My name is Raphael Cohen, and I am the franchise Dodge-Chrysler dealer in Yonkers, N.Y. We have been Dodge dealers for 27 years. It's a family operation. It started with my father, who is still active in the business, and has continued with me. I have been active for the last 21 years.

May I proceed?

Senator MONRONEY. Yes, you may proceed with your statement.

Mr. COHEN. Thank you, Senator. Instead of reading my statement in its entirety, I felt that I would touch on the highlights only.

Senator MONRONEY. We don't wish to cut you off. Unless the bells ring, we have time.

Mr. COHEN. I recognize that, Senator. And knowing all the important legislation and the rush of the Senate at this late time, I would ask that the chairman make my statement part of the record and allow me to highlight the statement instead of reading it.

Senator MONRONEY. Your complete statement will be printed in the record. You may highlight it, and we will give you all the time you need.

Mr. COHEN. Fine. Thank you, sir.

I thank you for allowing me to appear here on the part of the Metropolitan Independent Dodge-Chrysler Dealers Association, Inc.

Briefly, we are a group of Dodge dealers in some 40 States. We are Dodge and Chrysler dealers in some 40 States who formed because we saw a major intrusion by the retail—by the wholesale manufacturer into the retail marketplace.

Very briefly, it was done in three different ways. One, by the wholly owned factory branch; two, by the dealer investment, small investment on the part of the proprietary operator, and also by the larger investment on the part of Chrysler Corp.; and the third, the escrow deal which was basically the straw that broke the camel's back in forming our organization.

I'd like to point out an example in Pittsburgh, Pa., of Vern Staley on Baum Boulevard, testifying in a lawsuit between Mount Lebanon Dodge and Chrysler Corp. The following facts were elicited from Vern:

Vern Staley started operations in 1961 after Staley had put \$8,000 into escrow. As a contractual operator, Staley was paid a salary of \$2,000 a month, plus 25 percent of the profits. The escrow funds have since been returned. The dealership lost \$10,000 in its first full month of operation. Price blitz, and a budget, which has reached \$90,000 a year, helped Staley deliver 870 new cars in 1962, which was twice his minimum sales responsibility, which is one of the major causes of termination of a contract. But he still managed to lose \$54,000.

For 1963, sales totaled 1,171 cars, and he lost \$57,000. In the year 1964, his sales went down a little, to 1,113 cars, while he lost \$51,000. But this was brought about by a rather strange circumstance.

Staley actually made a net profit of \$4,300, and for this the manufacturer rewarded him with a \$55,000 bonus. That is \$55,000 for a \$4,300 profit. And that is good money in anybody's books.

At this point, Chrysler Corp. gave Staley the proprietary enterprise deal. This is where he puts up his own investment. And this was the investment that he put up in May 1965, which was \$53,800. The Corporation capitalized it at \$216,000, which means that the greater portion of the contribution was theirs. In fact, the total contribution was theirs, because we can see that \$53,800 comes pretty close to the \$55,000 bonus they paid him to go in.

This agreement was made retroactive to January 1, 1965. But, despite all capital contributions from Chrysler, one of which totaled \$80,376, in October 1963, Staley just couldn't stem the losses. In 1966, with

Staley's volume up, losses continued high. He was so attractive that the Ford Motor Co. offered him a dealer development deal in the North Hills section of Pittsburgh. Chrysler agreed then, in attempting to keep Staley—which they eventually did—to buy back Staley's stock for \$38,000 and give him a new contractual deal. He now receives \$2,000 a month, \$18,000 a year bonus, and 25 percent of any nonexistent profits.

Lex Insurance Agency, which he owns, handles Staley Dodge credit insurance, which returns him \$1,000 a month in fees.

So, Mr. Staley no longer takes losses. He has the cake and eats it also.

Staley Dodge continued to lose money last year, and Staley testified, "That despite retailing of 906 cars, it's very tough to make out on Baum Boulevard in Pittsburgh." I'd say that is the understatement of the year.

Big price-leader ads soak up ad outlays, soak up his ad budget. And from Staley, "At least one advertised stripped model in stock at all times." Staley was asked by Attorney Glassco, "Could any independent Dodge dealer survive unless Chrysler underwrote the losses like they do for you?" He replied, "Frankly, no."

In 1960, the Dealer Enterprise Division of Chrysler Corp. had .09 percent of the market in Allegheny County. As of last year, they had raised their percent to 44.6. So the factory was either directly owning or directly involved monetarily with cash investment, and had 44.60 percent of the market.

Another rare display of the same techniques was used in White Plains, N.Y., where Irving Edman—and that is spelled E-d-m-a-n, I made a mistake in my typing—became a proprietary DE operator in 1959. By the middle of 1962, he lost his total investment, and he was informed that there would be a board of directors meeting the next day. The board of directors was comprised of two Chrysler Corp. employees and Irving Edman. The meeting was held. He was voted off the board, and out of the dealership. And by 9 p.m. that evening, they had changed all the locks on all the doors.

White Plains continued to lose money from 1961 through 1964. They lost a total of \$187,984. For the come-back years of 1963 and 1964, they lost \$79,448.

The new operator was then a direct employee of Chrysler Corp. He blitzed the papers with all types of false and misleading advertising, of which I have brought a few examples. An ad in the July 25, 1963 edition of the New York Daily News showed Dodge Darts for sale at \$1,774, which is just about, or slightly above, dealer invoice. It also claimed 585 cars must go. At the time his inventory did not closely approach 585 cars, nor did he have available to him in the market as of July that type of an inventory that is being advertised. He starts off on the banner headline saying, "New York's largest volume Dodge dealer." Well, the New York largest volume Dodge dealer in 1963 lost money, and that is not saying much for the people in his area who must compete with him.

To digress for just one moment, to take a little more of your time, in the corner of this ad it says, "People travel 100 miles for our deals." You must recognize that when a new car is sold, it is a completely different sale than any other commodity in this country. A warranty is

issued, which may be used in any area, and must be adhered to by any dealer. On this basis, the volume sold a hundred miles away is then—the warranty costs are then heaped on the shoulders of the dealer in that area, because the customer is not going to return a hundred miles to get his warranty service done, and he is going to put up quite a fuss if he is made to.

White Plains Dodge ran the following ad on March 19, 1964. You will notice that they advertise a 1964 Dodge Polara, two-door, hard-top at \$2,277. In the lower righthand corner they advertise a 1963 Dart model 270, four-door sedan, for \$1,677.

Mr. Martin Frankel, owner of Tremont Dodge in the Bronx, sent the following wire to John J. Riccardo, general sales manager, on March 19, 1964:

Dealers whom I represent on advisory council have been calling me all day in regards to our conversation in my office on your last visit subject unfair prices by factory dealerships. Today in New York Daily News March 19, 1964, page BW13, Bronx Westchester section White Plains Dodge offers new 1964 Polara \$200 below factory cost. How do we compete. Advise.

Now, dealers use the words "factory costs" to mean factory invoice, what we pay them for the car.

Mr. Riccardo replied on March 20:

I am advised that the Regional Office is investigating the matter covered in your telegram to me today.

On March 23, 1964, the following ad appeared, which corrected the initial ad. It says: "We regret that the cars listed below were mistakenly advertised as new cars in the March 19th issue of this paper. They should have been listed as 1963 low mileage and executive model used cars."

The 1964 Polara turned out to be a 1963 used Polara, although it is identified in the picture, even in the corrected ad, "This is a 1964 Polara." The 1963 Dodge Dart in the right hand corner turned into a 1963 Valiant.

I might point out that this error was not made by the newspaper. The second ad was fully paid for by the dealership, and therefore the intent is quite obvious.

Shortly after the correction ad, operator Bill Walsh was removed. He was too hot a piece of merchandise. And factory personnel let the news be spread that he had been dismissed, but his true punishment was being given another dealership in Springfield, Pa. When we complained about difficulties in the New York market, we were constantly told by our manufacturer that the New York market is quite a difficult one and an unusual one, and they don't get these complaints any place in the country.

So I have managed in my records to save a few articles out of Automotive News, which is one of the publications used in our industry, and one of the leading ones I might say. And this is from Missouri: "Missouri Dealers Irate: Factory Retailing Blasted."

From Virginia: "Three Maker Practices Fought in Virginia."

From Nebraska: "Nebraskans Deliver Ultimatum on Fleets and Factory Stores."

From North Carolina: "North Carolina Dealers Hit Factory Subsidies."

So you see we have recently had the borders of New York expanded, and we take in a great deal of the rest of the Nation, according to our manufacturer.

Two other practices of White Plains Dodge—two other examples of practices of White Plains Dodge—is a copy of a check here that I have from Benno Bernkopf with the endorsement on the back. And, by the way, I will give the committee all these papers for their records.

Mr. Bernkopf had shopped many dealerships, including mine; he finally decided on White Plains Dodge, because they were the lowest priced car he could buy. However, upon getting home, he decided to examine his contract because it was too good to be true. And he found that the automatic transmission had been left off.

When he called back to say they had left the automatic transmission off the order, they told him he never ordered it. A conversation pursued, in which he demanded his deposit back, received the same check back the next day, and he ordered the car from us.

But, Senator, you will never know how many times people will shop for a car, light in one dealership, place an order for a car where they have been intentionally deceived, and then when they find it, go back and dispute the fact, but instead of going through the whole process of buying the car all over again, they will make some kind of compromise.

And, therefore, this type of systems selling, or method selling which it is called in our industry, has taken a lot away from us. And this is the type of thing that is going on in a factory-controlled and factory-operated dealership.

We also have a contract from a Mr. Carl Duboff, who contracted to buy a vehicle for \$70.12 over dealer invoice. When adding the \$25 cash incentive award being paid during this period by the manufacturer, and the 2-percent cash holdback of \$39, the gross profit before any expenses was \$134.12.

I know from 21 years' experience that no dealer can possibly afford to sell cars at \$134.12 over invoice, show any kind of profit, and perform the services as established and as represented in the manufacturer's warranty to the consumer.

Everything I have brought up to this point directly affects your consumer. These practices are practiced on the consumer. And the cost of the car is constantly going up.

The Senator was instrumental—in fact, we called the sticker the Monroney label, the sticker on the side window of the car to put the list price so the customer could be guided as a suggested retail price from the manufacturer. This has been a great contribution.

However, it does not tell the full story. For, in 1960, when the manufacturer came out with compact cars, he lowered the dealer's discount. So instead of the normal 22 percent and 2-percent cash holdback, he was given 19 percent and 2-percent cash holdback.

This was further done to cars that were then called intermediates in 1965. But the intermediates of 1965 are the same full-sized cars of 1961 and 1962. The discount was lowered. So when the manufacturer announced at announcement time that he had not actually raised the price of the car, sub rosa he had. Because the cost to the dealer was elevated, and therefore the price to the consumer would be elevated,

since most dealers work on so much over invoice after figuring the actual wholesale value of the trade-in.

Today the smaller dealer is being eliminated. He provides probably the finest service at competitive and most realistic prices. But the volume-crazed manufacturer is replacing him with factory stores, DE outlets and facilities, with capital loans from Chrysler's own finance company.

The method in which they are being removed is a contractual obligation called minimum sales responsibility, which has been termed "arbitrary, unfair, and coercive," by Federal District Judge Humbert L. Will. In *Madsen Motors, Wheaton, Illinois v. Chrysler Motor Corporation*, in the U.S. district court, northern district, December 7, 1967, Judge Will's decision stands as a landmark.

However, because of the great disparity of size between the litigants and Chrysler taking this to appeal, it was necessary for Madsen to withdraw his suit and settle with Chrysler.

In testimony before the U.S. Senate Subcommittee on Antitrust and Monopoly, Mr. J. J. Ricardo, now group vice president, United States and Canadian Automotive, stated that the selling agreements of auto manufacturers afford dealers many benefits. In 1960 they paid us \$1 for removing our Plymouth franchise. This was when they decided to go single line. Forty-five percent of our business was taken away and had to be rebuilt.

In 1964 they had some dealers sign off their truck franchise for \$1. This was because they wanted to open, and have opened, a wholly owned truck branch in Queens. They also paid \$1 for this.

So if we were to extend it, and they were to take our Dodge franchise today, we would say that the total value after 27 years is really \$3.

While speaking of signing off Dodge trucks, two dealers refused, one in Brooklyn and one in Queens. The one in Brooklyn was a father-and-son operation, in which the father had been ill for a protracted period of time. The son ran the business on a day-to-day, month-to-month, year-to-year basis, and the dealings of the manufacturer were with the son and not with the father.

However, upon the death of the father, they had to re-sign a new agreement with the son. This agreement deleted trucks. He had the choice of signing it or going into costly litigation. He chose to sign it.

I received a call last week from the State of Oregon, from a dealer who related to me that when placing their 1969 orders, they had gone to a motel where the district manager had set up quarters to take announcement orders. He took the announcement orders of one dealer and then put the addendum agreement—which I have here and will include in the records, the \$1 agreement—in front of him to sign. He said he was not desirous of doing it, and he was told he would have difficulty getting his 1969 automobiles.

He stormed out, called his attorney, his attorney got in touch with the zone office and I truly believe now he has an opportunity to get his 1969 automobiles.

To show the arrogance of power displayed by the manufacturer, one would only have to go to Newburg, N.Y. Anthony De Carlo was approached by the factory to move from upstate New York to Newburg. He was told that Waldon would be closed and he would get the same full franchise in Newburg. He was induced to erect a build-

ing at some cost of \$100,000, going into heavy debt, borrowing from family and other members and opened this dealership.

Instead of giving him his agreement, he was offered a 2-year term letter. Upon protesting, he was told that is all that was being written. And furthermore, he could take this or he would get nothing. Upon advice of his attorney, who said he was so heavily in debt now he had no choice, he signed.

At the end of the 2 years, they actually harassed him for minimum sales responsibility during this 2-year period of time. At the end of the 2 years they offered him a new 1-year agreement but had upped his capitalization and upped his sales responsibility. He refused to sign. He threatened litigation.

So they again sent him an offer of a 1-year extension of the present agreement, which he accepted. But when the agreement was presented and checked by his attorney, it was the same agreement with upped capitalization and upped minimum sales responsibility.

De Carlo decided to sue, and his case is now in litigation.

The signs on the building belonging to Chrysler Corp., De Carlo claims to have never signed an agreement for, and therefore he owns. Chrysler attempted twice to remove these signs during the daylight hours. De Carlo called the local police and they asked the sign company and the attorneys for Chrysler Corp. to leave the property.

The net result is that one night, in the middle of the night they came, took down the signs and when De Carlo returned in the morning it was a *fait accompli* and he is now suing on that, too.

To conclude, we ask you gentlemen of the U.S. Senate to stop this economic juggernaut from making a captive out of the consumer. And in this we mean that when they get full control of the retail marketplace, they will then be able to fix the retail price to the consumer in the same fashion as they fixed the retail price to us. They could charge one consumer in one section of the country one price and another consumer another price. But this will be basically price fixing.

We have gone to the FTC twice: once in 1964, and we were then told to go to the Hill. We were advised that the FTC has a limited budget and must take cases on priority. They would evaluate our facts and then make a decision. The decision was that they were not going to handle it at that time.

We have again gone to the FTC and have a paper in preparation for them in which we have asked them to intercede because we agree with the remarks of the Senator earlier in this investigation. Our attorneys find that this is a violation of the Robinson-Patman Act. But we have no sufficient resources—as well financed and as well established as we are—to tackle the No. 1, 3, and 5 corporate entities in the world. So we look to this Senate, and we look to the Federal Trade Commission and all those who may be interested, to come and assist us.

One more point that I would like to bring out on the *Madsen* case, I would like to enter also in the record the judge's decision when he found it unfair and arbitrary, and Madsen's resignation of the franchise and the Ed Brown Newsletter, which is a publication of the Atlantic Commercial, New York, N.Y.

That is the finish of my testimony.

(Mr. Cohen's complete statement follows:)

STATEMENT OF RAPHAEL COHEN, CHAIRMAN, EXECUTIVE COMMITTEE, METROPOLITAN
INDEPENDENT DODGE-CHRYSLER DEALERS ASSOCIATION, INC.

We, the Metropolitan Independent Dodge-Chrysler Dealers Association, Inc. welcome the opportunity of appearing before this committee today.

We are a group of Chrysler Corporation dealers in some forty states, who are deeply concerned with the elimination of competition in the retail auto industry. We hope that by the end of our presentation you will share this concern with us and aid in taking whatever measures necessary to insure that the consumer will not be left in this position.

Very briefly, allow us to explain what the MIDCDA is and the purpose of its formation. It is an organization of privately capitalized Chrysler Corporation dealers whose cash investments are in no way connected with the manufacturer. That is to say that its moneys are provided by the franchisee and not the franchisor. There are those franchises which are wholly owned branches of the manufacturer and others that begin with large cash investment by the manufacturer and much less substantial investment on the part of the so-called "operator". The dealers in our group felt the heavy hand of our supplier taking substantial portions of our retail market, lessening and endangering our investments. By underwriting losses in these retail dealerships, the manufacturer was able to eliminate dealers it desired without actually resorting to termination. By underwriting the large losses brought about in the initial and formative stages of these special franchises, the manufacturer is able to transfer large segments of the retail market from one operator to another. In many instances initial operators fail even with the special advantages, and after these poor sheep lose their entire investments and even a small or large portion of the franchisor's investment, a fresh operator is then brought in and the franchise is recapitalized. Dealer Enterprise, Chrysler Corporation, in fact, started a unique practice of escrow deals. In this type of set up the appointee need only put cash in escrow as proof of his interest and intent and the entire investment was put up by the manufacturer. This would allow the manufacturer to find people who were not firmly convinced that the franchise was a good deal, but assure them many benefits in the way of salary, cars for themselves and their families, and expense accounts, that they did not have in their present employment. Everything to gain, nothing to lose, for anybody but the surrounding independent dealers who were having their retail market siphoned away. This type of deal was essentially the initial rallying point that formed our organization.

An example of this type of deal is Vern Staley Dodge on Baum Boulevard in Pittsburgh. Testifying in *Mt. Lebanon Dodge v. Chrysler Corporation* in Federal Court, the following facts were elicited from Vern Staley, the operator of Staley Dodge.

(1) Vern Staley started operations in 1961, after Staley put \$8,000 into escrow. As "contractual" operator Staley was paid a salary of \$2,000 a month plus 25% of the profits. The escrow fund has since been returned.

(2) The dealership lost \$10,000 in its first full month of operation. Price-blitz and ad budget which has reached \$90,000 a year helped Staley Dodge retail 870 new cars in 1962, twice dealership's minimum sales responsibility, but it still lost \$54,000 that year. For 1963 sales totalled 1171 cars and loss \$57,000. For 1964 sales dipped to 1113 while loss was \$51,000, after bonus to Staley of \$55,000 because he managed to show a net profit of \$4,300. That's right, \$55,000 for making \$4,300.

(3) At this point, Chrysler gave Staley Dealer Enterprise-type "proprietary" contract in place of "contractual" operator's agreement. In May, 1965, Staley invested \$53,800 in Staley Dodge which DE capitalized at \$216,000. This agreement was retroactive to January 1, 1965. Though volume was fairly steady, losses remained high and this time Staley was losing his money. Not even three capital contributions from Chrysler, one of which totalled \$80,376 in October, 1963, could stem losses.

(4) In 1966 with Staley's volume up, losses continued because of high overhead. Ford offered him a dealer development deal in the North Hills section of Pittsburgh. Chrysler agreed to buy back Staley's DE stock for \$38,000 and give him a new contractual deal. He now receives \$2,000 a month salary, \$18,000 a year bonus and 25% of any profits. Lex Insurance Agency which he owns, handles Staley Dodge credit insurance which returns him \$1,000 a month in fees. No more losses, no more stock; both the cake and the eating it too.

(5) Staley Dodge continued to lose money last year and Staley testified that despite retails of 906 units, it is a tough road to hoe on Baum Boulevard. Big price-leader ads soak up ad outlays but he tries to keep "at least one advertised stripped model in stock at all times." "Could any independent Dodge dealer survive unless Chrysler underwrote the losses like they do for you," Staley was quizzed by attorney Glasse? He replied, "Frankly, no." In Pittsburgh where Chrysler Corporation's DEism took hold in early 1960, DE sold .09% of all Dodges in Allegheny County in 1961. Last year, they sold 44.6%. But underwritten losses, special bonuses to operators and capital contributions, all available to factory subsidized outlets but not to private franchisees, fill weeks of Mt. Lebanon transcript.

Another display of the same techniques were used in White Plains, New York. Irving Edman became a proprietary DE operator in 1959. By the middle of 1962, he had lost his total investment and a good part of Chrysler Corporation's. He was informed by telegram from Chrysler Corporation that a board of directors meeting had been called in White Plains, New York, the following day. The board comprised of two employees of Chrysler Corporation and Irving Edman. At the meeting he was voted off the board and out of the dealership. By 9:00 P.M. that evening, Chrysler had changed all the locks on the doors.

White Plains continued to lose money. From 1961 through 1964 they lost a total of \$187,984. For the come back years of 1963 and 1964 alone, they lost \$79,448.

The new operator was a direct employee of the corporation. He blitzed the papers with all types of false and misleading advertising. I have brought some examples for you to examine. An ad in the July 25, 1963 edition of the New York Daily News showed Dodge Darts for sale at \$1774. This figure closely approached dealer invoice. I am certain that a very minimum of these models were actually on hand. At the time White Plains advertised 585 cars, their inventory did not closely approach this, and the potential of securing them is highly questionable. You may further note that they advertised as New York's largest volume Dodge dealer and still they managed to lose money.

The same operator ran the following ad on March 19, 1964. In this he advertised a 1964 Dodge Polara at \$200 under dealer invoice. Mr. Martin Frankel, owner of Tremont Dodge, Bronx, New York, sent the following wire to John J. Riccardo, General Sales Manager on March 19, 1964:

"Dealers whom I represent on advisory council have been calling me all day in regards to our conversation in my office on your last visit subject unfair prices by factory dealerships. Today in New York Daily News March 19 1964 page BW13 Bronx Westchester section White Plains Dodge offers new 1964 Polara \$200 below factory cost. How do we compete. Advise."

Mr. Riccardo replied on March 20th:

"I am advised that the Regional Office is investigating the matter covered in your telegram to me today."

On March 23, 1964, the next ad appeared. It apologized for having made an error and admits that it was really a used 1963 Dodge Polara for sale. Besides that error, the 1964 Dodge Dart turns out to be a 1963 used Valiant. These were not errors by the newspaper. If this is the type of dealership the factory runs, what can its independents do to compete?

Shortly after the correction ad, the factory operator, Bill Walsh, was removed. Factory personnel let the news spread that he had been dismissed. But, his true punishment was being given another dealership in Springfield, Pennsylvania.

When we complained to our manufacturer, we were assured that New York was a difficult market and this situation would straighten itself out. They could not really understand our complaints since they did not have this problem in any other section of the country. For the record, I would like to insert the following copies of articles that appeared in Automotive News, one of the trade publications in our industry.

Two other examples of practices at White Plains Dodge is a copy of a check of one, Benno Bernkopf. He shopped many dealerships and found White Plains Dodge to be the lowest. Fortunately, he re-examined his contract upon arriving home, and found to his chagrin they had left off the automatic transmission. When White Plains insisted that he had not purchased the vehicle with an automatic transmission, he cancelled his order and his check was returned. How many dealers lose business because this method of system selling usually will work and the consumer, rather than starting all over again, will pay for

the deleted equipment. One more example of White Plains Dodge is this order of Mr. Carl Duboff. He contracted for a vehicle at some \$70.12 over dealer invoice. When adding the \$25 incentive award being paid during this period and the 2% cash holdback of \$39, the gross profit before any expenses was \$134.12. This is considerably below the cost any dealer can sell a car unless receiving some special subsidy.

Today the small dealer is being eliminated even though he provides some of the finest service available at competitive and realistic prices. The volume-crazed manufacturer is replacing him with factory stores, DE outlets and dealers in factory owned facilities with capital loans from Chrysler's own finance company. The method in which they are being removed is a contractual obligation called minimum sales responsibility which has been termed "arbitrary, unfair and coercive" by Federal District Judge Hubert L. Will. In *Madsen Motors, Wheaton, Illinois v. Chrysler Motor Corporation* in the United States District Court N.D. Illinois December 7, 1966, Judge Will's decision stands as a landmark.

Because Chrysler was going to appeal and Madsen was not able to continue the cash expenditure necessary, he accepted a settlement. We will never know what the settlement was. We do know that Chrysler is still terminating dealers under this same clause. For a more detailed explanation of Judge Will's decision, we enclose Car Dealer News Letter, published by Atlantic Publications, New York.

In testimony before the United States Senate Sub-Committee on Anti-Trust and Monopoly, Mr. J. J. Riccardo, now group Vice President, United States and Canadian Automotive, stated that dealer selling agreements of auto manufacturers afford dealers many benefits. In 1960 they paid us \$1 for our Plymouth franchise. In 1964 some dealers signed off their truck franchise for \$1. If one were to receive one more \$1 for their Dodge franchise, this would make a total value of the franchise \$3.

While speaking of signing off Dodge trucks, two dealers, one in Brooklyn and one in Queens, refused to sign. The Brooklyn dealer was a father and son operation. The father was seriously ill for many years and all factory business was conducted with the son on a day to day, month to month, year to year basis. Upon the death of the father, the only way Dodge offered to continue the agreement was without trucks. Instead of costly litigation, the son finally acquiesced. We have just learned that the same situation is now taking place in the State of Oregon. One dealer when placing his 1969 sample orders was asked to sign this addendum or not receive his cars. He left the room, contacted his attorney, then contacted the zone office. We believe he will receive these cars now.

To show the arrogance of power displayed by the manufacturer one would only have to go to Newburgh, New York. Anthony DiCarlo was approached by the factory to move from Walden, New York to Newburgh, New York. He was told that Walden would be closed and the same full franchise agreement he held, written in Newburgh. But, after erecting a building for some \$100,000, he was then only given a two year term letter. DiCarlo objected but was told this was the only agreement being written. He then reminded the factory personnel that he had been promised a full agreement. He was then told he would accept this or nothing else would be offered. Some two years later, when the agreement expired, he was offered one additional year, increasing necessary capitalization and increasing his minimum sales responsibility. Upon refusing to sign this, he then threatened litigation. He then received another offer to renew the agreement. He accepted. However, it was not the same agreement. This case is now in litigation.

The signs on the building belonging to Chrysler Corporation DiCarlo claims are his. Chrysler attempted to remove the signs twice during the daylight hours and when local law enforcement officers were called, they left without their signs. However, they returned some time in the middle of the night to trespass on Mr. DiCarlo's property and removed the signs. This too is now in litigation.

To conclude, we ask you gentlemen of the United States Senate to stop this economic juggernaut from making out of the consumer a captive, and out of the dealer, a serf. The consumer is now paying dearly in service and in price, for the unsatiable appetites of profit-hungry manufacturers. We believe in a competitive society. We believe in a profit and loss economy. However, the vast economic

powers being wielded by the three giant corporations portends nothing but economic totalitarianism for our country.

We have gone to the F.T.C. and asked them to help. In 1964 we were told that there was nothing that could be done, and to go to the hill. In 1968 we now have another appeal. We will shortly present a paper to the Federal Trade Commission outlining the abuses and the violations of the Federal Trade Commission Act. We have been told on two occasions that the Commission's budgetary limitations do not allow them to pursue all cases, but they must choose carefully from the most important ones.

If you are to serve the total society, it behooves you to respond to our appeal.

Senator MONRONEY. Thank you very much, Mr. Cohen.

I was interested in your cases, particularly their claims in Federal court under the "Dealer day in court" provision of the act, which was passed, and I had the pleasure of participating in its passage some years ago.

Now, is the case you cite, the *Illinois* case, decided December 7, 1966 by Judge Will's decision—did he deny damages because he found no loss in the termination of the contract of Madsen Motors?

Mr. COHEN. In the Madsen Motors case the judge found for Madsen. It is one of the few, it is one of the few examples of the working, of the positive working of the Good Faith Act as it is called in the industry.

Unfortunately, this act, no matter how well intended it was, has not functioned well for the dealer. The proofs necessary, and the burden of these proofs, with their large economic burden, almost makes it impossible.

So although the dealers have felt that there was a protection in the books, as bad law keeps being handed down from one judge to another, the Good Faith Act today is practically of no use to the dealers whatsoever.

Senator MONRONEY. Well, how many make use of it? You cite one case. I am interested to know why you haven't been able to recover demonstrable damage for failure of the factory in good faith to provide the relief, if the factory's action results in the dealers being forced out of business.

Mr. COHEN. Well, Senator, when these dealers go out of business, they are generally in not very fine financial straits. In fact, if anything, they are in poor financial straits.

There are very few altruistic attorneys around who are willing to handle these things with the disparity in size of the litigants, and, therefore, the chance of using this act in court in any positive fashion is negated.

And although the act, as I said, was well written, it failed to take into consideration the disparity in size and the proofs necessary.

Senator MONRONEY. Well, before the court your attorney being of equal capability, you are the same size as General Motors. They may take it to the Federal court, from the Federal court to the Supreme Court.

Mr. COHEN. That is where we are not the same size then. That is where we lose our dimension.

Senator MONRONEY. But I still feel it is a very useful instrument—if it is not, then all has failed—if the law is written properly.

I wonder from what you say in the case—and we took this into consideration in the debate—where neither was financially solvent, there was very little that could be done to save you. You can't make a factory continue to sell and carry a load if the dealer is not able to pay cash on delivery.

Mr. COHEN. I firmly agree with that comment. However, we must take into consideration, for example, a fellow who would be in the vicinity of White Plains Dodge when they were carrying on this activity. This activity would possibly force him into a bankrupt position.

I know that the Senate or the legislators cannot protect the citizens who go bankrupt for fighting these large corporate entities in court. And I did not mean to be particularly critical of the legislation.

Senator MONRONEY. I was trying to be critical. We have no pride of authorship. What we are trying to do is find a solution that the law needs amending.

Mr. COHEN. If you would amend the law to recognize the disparity in size and have the burden of proofs put upon the manufacturer instead of the burden of proofs put on the dealer, this would in some way equalize the size of the opponents, and would not in any way negate the effectiveness of either side, and would not be preferential treatment to the dealer but would just be a recognition of the facts as they exist.

Senator MONRONEY. Well, I would think that in a good case—at least the lawyers in Oklahoma are hungry enough, to sue on any claim in which the dealer has been prejudiced in his treatment or suffered a financial loss regarding the termination of a dealer relationship.

Certainly I am sure you have antitrust lawyers in White Plains that sued the Pennsylvania Railroad Co. and New York, New Haven & Hartford, and they are pretty big. But I am personally not a lawyer, but I do feel we made a great step forward. I am sorry that it hasn't resulted well.

On your area protection, I have been through your beautiful city. I compliment you on your marvelous urban development.

Mr. COHEN. Thank you.

Senator MONRONEY. But you can't go 5 miles without getting into another town.

Mr. COHEN. That is correct, sir.

Senator MONRONEY. And this is probably one of the complex things, that the hot-shot hot-rod dealer advertising comes under the freedom of the press, and if he wants to be fool enough to go bankrupt, as they apparently have, and have only the pleasure of selling a heck of a lot of cars at no profit, it is kind of hard for a committee in Congress to protect against economic insanity, we'll say.

Mr. COHEN. I agree with you.

Senator MONRONEY. In other words, the old fellow who said he bought a hundred pigs for \$500, was asked, "Well, what did you sell them for?"

He said, "I sold them for \$450. It was sure a good deal."

He said, "Why?"

"Because I had the use of the pigs for 6 months."

But these fellows had the use of the cars on the lot and the biggest name in the paper—I have seen it.

I have been in the furniture business, and if you think the automobile business is tough on these hot shots that come in and try to take over the market, it is just not exclusively a problem with the automobile industry.

Mr. COHEN. Yes. But could I make a comment on that, Senator?

Senator MONRONEY. Yes.

Mr. COHEN. If an independent dealer, independently franchised with his own money, desires to commit economic suicide, I don't think there is anybody that could protect anybody against that. However, when this is the supplier and the manufacturer, this is a completely different story.

And when we talk of White Plains Dodge, we talk of a wholly owned outlet of the manufacturer with no cash investment.

So, therefore, I am not speaking of competing against the dealer 5 miles away or a hundred miles away, but I am speaking about competing against any manufacturer who in essence is selling to himself cheaper by underwriting the losses in his dealership.

Senator MONRONEY. We are concerned, genuinely, with factory owned, factory operated or clandestinely financed in the whole or in substantial part.

I was trying to follow you. You were skipping over so many places. Which were the actual factory outlets that you are complaining about which you can say were—

Mr. COHEN. White Plains Dodge. I'm sorry, Senator.

Senator MONRONEY. Well, I couldn't tell. You started with a man who kept losing \$50,000 and was refinanced.

Mr. COHEN. That was Vern Staley Dodge in Pittsburgh. And that started out as an escrow deal. They gave him that \$55,000 bonus so he could buy in after making the \$4,300. He then bought in and then continued to lose. They took the deal back. And this was always a factory-owned dealer. So the factory was involved all the way through.

In White Plains, N.Y., it started with the proprietary operator who is Irving Edman. He went broke. They then took the facility over completely and then they managed to continue to take these enormous losses and do this tremendous amount of advertising.

So I am sorry if I have sort of skipped from place to place, but it was an attempt to not hold the Senator any longer than I had to.

Senator MONRONEY. You have been very considerate with us, and I am glad to clear this up.

For the record, let's detail the various ownerships of the White Plains Chrysler agency.

Mr. COHEN. Fine.

Senator MONRONEY. This is the same agency which changed hands two or three times and changed forms two or three times.

Mr. COHEN. It changed forms twice. It started out as a proprietary dealer enterprise deal. This is a deal where the small cash investment is put up by the operator as capital and Chrysler Corp. provides the remainder. He then loses money.

Senator MONRONEY. The name of the man now?

Mr. COHEN. Irving Edman.

Senator MONRONEY. OK.

Mr. COHEN. It then became a wholly owned factory subsidiary. Bill Walsh was the factory manager. He was employed by the manufacturer. And this was a completely factory-owned deal.

Senator MONRONEY. No camouflage or anything?

Mr. COHEN. Oh, no.

Senator MONRONEY. And these ads that you complain about—the below-factory cost, and so on—were run by the manager, the executive of the factory-owned plant in White Plains?

Mr. COHEN. Right.

Senator MONRONEY. One other question, and then I will let you go.

You mentioned the warranty, that anybody can drive a Chrysler into any agency and you have to supply the warranty service.

Mr. COHEN. Correct, sir.

Senator MONRONEY. That costs you some money, doesn't it?

Mr. COHEN. It costs us a lot of money, and this is another cause of current investigation on the part of the Federal Trade Commission.

Senator MONRONEY. Well, how do you make any money? In other words, if a large dealership in White Plains could sell, could put in circulation in that area 1,000 cars, they would all bring them to you for warranty service if they wanted to. Is that correct?

Mr. COHEN. That is correct, sir.

Senator MONRONEY. Don't you get rebated for any of that?

Mr. COHEN. Yes. We certainly do on their own prescribed formula. I might leave for you our records for your perusal later on—a report from Booz, Allen & Hamilton. This was done for the Ford dealers, there in Houston, Tex., three in the Newark zone, and two others. These were all profitable dealers, and it showed that the dealers were subsidizing the warranty.

In other words, we repair cars at an under-factory warranty at figures substantially less than it costs us. But this is part of our franchise. And we have no way of appealing this, Senator.

Senator MONRONEY. But the customer doesn't pay it, but they rebate you for the scheduled charges?

Mr. COHEN. That's correct.

Senator MONRONEY. And you claim the scheduled charges are below cost.

Mr. COHEN. I certainly do. And as an example, there are three dealers in the Bronx, N.Y. Their manufacturers paid labor rate is at retail what they are reimbursed after warranty, \$6.50 an hour for one and \$7 for the other two. Now, you know even in Oklahoma—if it's a substantially less cost State, which I am not familiar with, quite frankly—it is impossible to perform services for \$6.50 an hour with the cost of doing business in Bronx, N.Y. And therefore, every time that dealer touches a car under warranty, he is taking a loss.

Senator MONRONEY. It is \$6.50 an hour?

Mr. COHEN. That is correct.

Senator MONRONEY. What is the going rate of service?

Mr. COHEN. The retail labor rate?

Senator MONRONEY. Yes.

Mr. COHEN. It varies from \$10 to \$12 an hour.

Senator MONRONEY. It does?

Mr. COHEN. Yes.

Senator MONRONEY. I wish I had been an automobile mechanic.

Mr. COHEN. Well, if you heard the mechanics kick about their pay scale, Senator, I think you would just as well stay a Senator.

Senator MONRONEY. I am trying to.

Mr. COHEN. And I certainly hope you do.

Senator MONRONEY. Thank you very much for your testimony, Mr. Cohen. We are delighted to have it. If you have an extra copy of the rates, we will print it in the record.

Mr. COHEN. I didn't make any copy of the rates.

Senator MONRONEY. Will you send us a Xerox of it?

Mr. COHEN. I certainly will.

Senator MONRONEY. We will appreciate it very much.

Any other witness to be heard?

Mr. COHEN. Senator, one of my members is here, and if I could just take one moment more of your time?

He went through a great deal of difficulty in having this made up. And I think it will graphically show what the problem is. And it is the profit comparison between the manufacturer and the dealers, and it goes from 1963 to 1966, and it shows that while the manufacturer worked on 15.5 percent return of sales, the dealers worked on 1.9 in 1963; 14.7 in 1964, as opposed to 1.8; 15.2 as opposed to 2.1; and 12.2 as opposed to 1.8 in 1966.

So if the manufacturers find it is rather difficult to find candidates to enter this business, and therefore necessarily have to go to these types of practices, I think this chart clearly illustrates the reason.

Senator MONRONEY. This is profit comparison expressed as percentage in sales?

Mr. COHEN. Right.

Senator MONRONEY. There is a dealer profit in this table which is very illuminating. Does it include their entire operation, or only to the sales of new cars?

Mr. COHEN. No; this is the entire operation.

Senator MONRONEY. This is your—

Mr. COHEN. Parts, service, and everything; that's right.

Senator MONRONEY. Now, would you give me the name of the gentleman who is submitting this, or would you submit it?

Mr. COHEN. I will submit it on the part of the organization.

Senator MONRONEY. That will be published in the record.

Mr. COHEN. Thank you very kindly, Senator.

Senator MONRONEY. Thank you very much.

I will place the information that you have submitted in the record at this point.

(The following information was submitted by Mr. Cohen:)

DAILY NEWS, THURSDAY, JULY 25, 1963

NEW YORK'S LARGEST VOLUME DODGE DEALER

WHITE PLAINS DODGE INC.

155 GROVE STREET

WHITE PLAINS, N. Y.

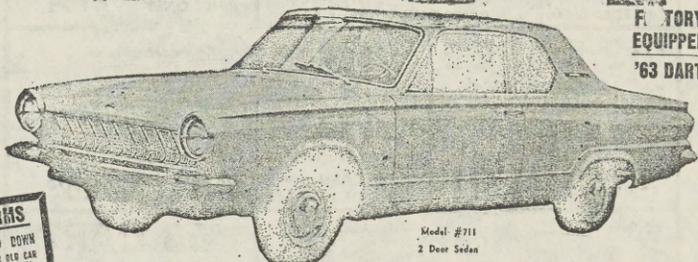
PHONE: WH 9-8787

3 DAYS ONLY!
FRIDAY!
SATURDAY!
MONDAY!

ABSOLUTE! MADNESS!

585 CARS MUST GO!!!

\$1774



F. TORY
 EQUIPPED
 '63 DART

Model #711
 2 Door Sedan

TERMS
 \$195 DOWN
 OR YOUR OLD CAR
 MAY COVER IT!
 \$47 PER MONTH
 FOR 36 MONTHS

**Largest Inventory On East Coast
 Creates These Incredibly Low Prices!!**



**THIS IS THE UNBEATABLE DEAL PLUS
 FABULOUS CHRYSLER 50,000 MILE
 OR FIVE YEAR GUARANTEE AND
 UNSURPASSED DODGE DEPENDABILITY**

WHITE PLAINS DODGE, INC.

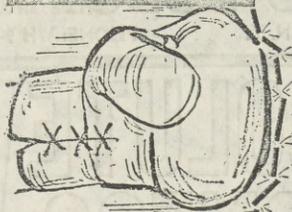
155 Grove St., White Plains, N. Y.

WH 9-8787

**PEOPLE TRAVEL
 100 MILES
 FOR OUR DEALS**

DAILY NEWS, THURSDAY, MARCH 19, 1964

WHO'S THE GREATEST? WE ARE! Yeah, Yeah, Yeah!



WHITE PLAINS DODGE KNOCKS DOWN CAR PRICES

HONEST!
WE ALWAYS SELL FOR LESS!

JUST LOOK AT THE PRICES ON THESE NEW CARS . . . WE MUST BE THE GREATEST! WE ARE LOADED WITH BRAND NEW 1st DODGES AND DARTS. NOW YOU CAN OWN THE CAP OF YOUR DREAMS AT NEW LOW-LOW PRICES . . . AND YOU CAN GET IT NOW WITH POSITIVELY

NO CASH DOWN!

LOW BANK RATE FINANCING

If your present car payments are too high trade-in now. We will pay off the balance.



'64 POLARA 2-DR. HARDTOP
RADIO • HEATER • SEAT BELTS • S.V.M. • BUCKET SEATS

NO CASH NEEDED List Price \$3521.70 **OUR SALE PRICE ONLY \$2277⁴⁰**

'64 DODGE

440 4-DR. SEDAN
BACK UP LITES—WSW TIRES
NO CASH NEEDED
List Price \$2646.40

OUR SALE PRICE ONLY \$2184⁴⁰

'63 DODGE

330 4-DR. SEDAN
HEATER • SEAT BELTS • BACK UP LITES
• WSW • TIRES

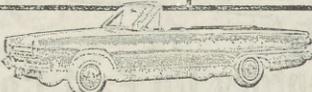
NO CASH NEEDED
Orig. Price \$2943

OUR SALE PRICE ONLY \$1775



'64 DART 170 4-DR. STATION WAGON
145 H. P. ENGINE • RADIO • HEATER • SEAT BELTS

NO CASH NEEDED List Price \$2369.75 **OUR SALE PRICE ONLY \$2226⁷⁵**



'64 DART CONVERTIBLE
TORQUEFLITE • HEATER • BACK UP LITES • WHEEL COVERS

NO CASH NEEDED List Price \$2729.55 **OUR SALE PRICE ONLY \$2354⁵⁵**

'63 DART

MODEL 270 4-DR. SEDAN
AUTO. TRANS. • RADIO • HEATER • WSW TIRES
POWER STEERING • SEAT BELTS • BACK UP LITES
NO CASH NEEDED
Orig. Price \$2784

OUR SALE PRICE ONLY \$1677

PICK YOUR DODGE... PICK YOUR PRICE... SAVE THE DIFFERENCE AT

LARGEST DODGE DEALER IN NEW YORK

WHITE PLAINS DODGE

65 Grove Street, White Plains, N.Y. 10606 WH 9-8787

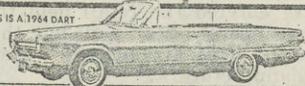


OPEN BREAKFAST TO BEDTIME • YOU TAKE THE PARKWAYS—WE PAY THE TOLLS

DAILY NEWS, MONDAY, MARCH 23, 1964

CORRECTION

We regret that the cars listed below were mistakenly advertised as new cars in the March 19th issue of this paper. They should have been listed as 1963 low mileage and executive model used cars.

NO CASH DOWN!		If your present car payments are too high - trade-down now!
LOW BANK RATE FINANCING		We will pay off the old balance!
<p>THIS IS A 1964 POLARA</p>  <p>We have for sale '63 USED POLARA 2-DR. HARDTOP (Radio • Heater • Seat Belts • S.V.M.)</p> <p>NO CASH NEEDED OUR SALE PRICE ONLY \$2277⁴⁰</p>	<p>'63 DODGE 440 4-DR. SEDAN Back-up Lites, WSW T</p> <p>NO CASH NEEDED</p> <p>OUR SALE PRICE ONLY \$2184⁴⁰</p>	
<p>'63 DODGE 330 4-DR. SEDAN Heater • Seat Belts • Back-up Lites • WSW Tires</p> <p>NO CASH NEEDED</p> <p>OUR SALE PRICE ONLY \$1875⁰⁰</p>	<p>THIS IS A 1964 DART</p>  <p>We have for sale '63 USED DART 170 4-DR. STATION WAGON (145 h.p. Engine • Radio • Heater • Seat Belts)</p> <p>NO CASH NEEDED OUR SALE PRICE ONLY \$2226⁷⁵</p>	
<p>THIS IS A 1964 DART</p>  <p>We have for sale '63 USED DART CONVERTIBLE (Torqueflite • Heater • Back-up Lites • Wheel Covers)</p> <p>NO CASH NEEDED OUR SALE PRICE ONLY \$2354⁵⁵</p>	<p>'63 VALIANT MODEL V200 4-DR. SEDAN Auto. Trans. • Radio • Heater • Seat Belts.</p> <p>NO CASH NEEDED</p> <p>OUR SALE PRICE ONLY \$1677⁰⁰</p>	
PICK YOUR DODGE...PICK YOUR PRICE...SAVE THE DIFFERENCE AT		
LARGEST DODGE DEALER IN NEW YORK		
WHITE PLAINS DODGE		
155 Grove Street, White Plains, N.Y. • WH 9-8787		
		

OPEN BREAKFAST TO BEDTIME • YOU TAKE THE PARKWAYS—WE PAY THE TOLLS •

[Automotive News, June 15, 1964]

MISSOURI DEALERS IRATE: FACTORY RETAILING BLASTED

(By Jack Bernstein)

EXCELSIOR SPRINGS, Mo.—Sharp criticism of auto makers for “unfair competition” in new-car retailing highlighted an 11-resolution program adopted by the Missouri Automobile Dealers Assn. here.

Some 400 persons, convening at a 25th anniversary meeting, also asked that factories reduce some financial burdens now borne by dealers and voiced extreme concern over warranty problems.

In other resolutions, the Missouri dealers asked that carryover rebates be moved up and granted at the end of normal model-run production, and blasted leasing rebates, direct factory leasing and subsidized sales to governmental agencies.

“This is the highest number of resolutions approved by any convention and indicates real concern over future survival,” Ralph J. Kalberloh, executive vice-president, told Automotive News.

In addition, the association amended its bylaws to reflect the new “Code of Ethics” with teeth in it. Text of the code appeared April 6 in Automotive News.

A legislative program recommending compulsory motor vehicle inspections by the Highway Patrol and strengthening the dealer license law was also indorsed.

Text of resolutions follows:

I. Whereas, due to the increase of warranty work performed by dealers resulting from extended warranties provided by the manufacturers for the benefit of retail customers:

Now, therefore, be it resolved that manufacturers:

1. Will not determine the warranty labor rate they pay dealers by formulas developed in central offices, and will pay the same labor rate for warranty work as the dealer's customer labor rate.

2. Will increase the markup on warranty parts to retail list price.

3. Will allow dealer reasonable time allowance for diagnosis.

4. Will simplify warranty claim procedures to eliminate 90 percent of dealer processing of paper work and payment of claims to be made to dealer within 30 days.

5. Will review the full warranty and policy procedure program to clarify and eliminate inconsistency, confusion and misinterpretation of warranty work to be performed.

6. Will install a warranty procedure that is administered exactly the same in each zone or region.

II. Whereas, there is a difference of opinion between manufacturers and dealers on flat rate schedule and constant disagreement between both parties;

Now, therefore, be it resolved that the manufacturers:

1. Should recognize a flat independent rate manual such as Chilton's or Motor's to compute flat rate schedules to be used for warranty.

III. Whereas, all manufacturers agree that it is in the best interest of the public and manufacturer that motor vehicles be distributed through the independent franchised dealer systems, and

Whereas, some manufacturers have entered the retail field through factory owned dealerships of which most are operating at a deficit thereby creating unfair competition to the independently owned franchised dealerships:

Now, therefore, be it resolved that manufacturers:

1. Will cease and desist to own and operate any retail auto dealership and/or facility and

2. That additional franchises not be issued to individuals unless the individual's capital investment equals or exceeds 25 percent of total investment.

IV. Whereas, some manufacturers are emphasizing, sponsoring and helping some dealers to use price, misleading, and bait advertisements at the expense of other dealers and

Whereas, there is an apparent lack of communications between the factory and their zone or regional offices on these subjects:

Now, therefore, be it resolved that manufacturers:

1. By zone and regional offices immediately stop all factory sponsored advertising programs which carry price, bait and/or misleading advertising.

V. Whereas, leasing is nothing more than another way of selling motor vehicles or transportation which is a function of the franchised dealer:

Now, therefore, be it resolved that the manufacturer :

1. Will not offer a rebate, extra discount, or price concession to leasing companies who use their products ;
2. Shall not engage in direct or indirect leasing.

VI. Whereas, manufacturers continue to sell their regular automotive products to Government agencies and political subdivisions less than dealer cost ; and Whereas, this information is published as a public record and is harmful to franchised dealers' operations ; and

Whereas, it is the manufacturers' business to manufacture cars and the dealers' business to sell manufacturers' products at retail ;

Now, therefore, be it resolved that manufacturers :

1. Will cease and desist to sell their regular automotive products to the Federal Government agencies and political subdivisions.
2. Will cease and desist to offer special price concessions to governmental agencies and subdivisions.

VII. Whereas, it is the responsibility of the franchised dealers to sell the manufacturers' motor vehicles, and

Whereas, the manufacturers' practice of selling company-owned cars to individuals is detrimental to the franchised dealer :

Now, therefore, be it resolved that :

1. The manufacturers cease and desist to sell company owned cars except to franchised dealers.

VIII. Whereas, it is in the factories' best interest that dealers' inventory be depleted prior to the announcement of the new model :

Now, therefore, be it resolved that the rebate which is normally allowed the dealers at new model announcement date be granted at the end of normal production of that model in order that a more effective cleanup can be achieved for both dealer and manufacturer.

IX. Whereas, every mail order house customer receives a catalog detailing the items available to them ; and

Whereas, this has been proven over many years to be a valuable sales tool in the sale of their merchandise listed in these catalogs ; and

Whereas, the automobile dealership is the prime outlet for the manufacturers' parts and accessories and the sale thereof results in profit to the manufacturer :

Now, therefore, be it resolved that it is ridiculous that automobile dealers are required to purchase parts books, supplements and revisions which the manufacturer should provide at no cost to the dealer.

X. Whereas, bin label changes are necessary only because of the manufacturers' change in parts numbers and prices ;

Now, therefore, be it resolved that parts bin labels should be provided to the dealer at no cost.

XI. Whereas, sales albums are a necessary tool of every retail salesman and it has been the manufacturers' practice to require the dealer to pay for sales albums :

Now, therefore, be it resolved that every bona fide salesman of a franchised dealer be provided a salesman's album at no cost.

In addition, the association reaffirmed a previous resolution against pre-announcements an apparent slap aimed at the leaking of some 1965 information and pictures which appeared recently in the *Wall Street Journal*.

Text of the MADA Legislative Program follows :

1. Compulsory motor vehicle inspection performed by the Missouri Highway Patrol be established as a long-range legislative goal.

2. Amend the present registration law to require motor vehicle registration within 30 days or subject the owner to an administrative fine of \$5 per month with a maximum fine of \$25. This same bill was almost passed in last session of the Legislature.

3. Support passage of the Vehicle Equipment Compact which would require Missouri to join a national Vehicle Equipment Compact composed of like states. This group would recommend safety equipment changes on motor vehicles to the state Legislatures and thus speed up the adoption of such things as dual headlights, turn indicators and amber turn signal lights. The bill is sought by manufacturers to eliminate possible federal control.

4. Strengthen the dealers license law and require dismantlers and rebuilders to comply with same requirements. The committee recommends that it strengthen the dealers license law by changing the annual certification of dealers license applications from the chief ranking peace officer in the jurisdiction to the Mis-

souri Highway Patrol and requiring all dealers to be bonded and retain such bond for a period of one year after discontinuing business operations.

5. Cooperate with the Missouri Retailers Assn. in its attempt to correct the sales tax brackets and that they will produce a full 3 cents on the dollar rather than the 2.4 percent or 2.6 percent under the present system. The retailer must make up the loss in sales tax revenue under present brackets.

6. Initiate legislation that would require a lien to be shown on the title of a car before the lien is valid.

The association voiced its opposition to any attempt to legislate one type of safety glass over another; and insurance agent's qualification bill and licensing of mechanics.

[Automotive News, May 4, 1964]

THREE MAKER PRACTICES FOUGHT IN VIRGINIA

RICHMOND, VA.—The Automotive Trade Assn. of Virginia has voted unanimously to ask a committee of the National Automobile Dealers Assn. to oppose "certain weaknesses" in the manufacturer-dealer relationship.

At its annual convention here last month, association members agreed to ask NADA's Industry Relations Committee to oppose three specific practices:

1. Introduction by manufacturers "of new lines at arbitrary trade discounts not uniform with those prevailing in the rest of the line . . . causing confusion in the public's mind and making ethical and standard trading practices impossible."

2. Direct selling by car manufacturers to political subdivisions, leasing firms and fleet owners at prices less than dealer cost.

3. Establishment of factory-financed and operated outlets "in direct competition with its own independent franchised dealers."

Virginia's dealers are primarily concerned about the lower trade discounts on smaller cars. They believe that it is difficult to explain to customers the difference allowable on trades for models of different lines by the same manufacturer. And, they agreed, the practice also creates accounting problems.

They are also seeking the authority to handle all sales to federal, state and local governments themselves. They also want to handle all fleet and leasing firm sales. No sales would be at less than cost.

Finally, they believe that competition by factory outlets "is a dangerous threat to the franchise system and is penalizing the independent dealer."

Approximately 400 persons attended the three-day meeting.

At the final session, Douglas B. Fugate, Virginia's new highway commissioner, asked the association's support in getting more money for the state's arterial highway system.

Virginia's automobile dealers provided much of the opposition to a proposed 2 percent titling tax introduced at the biennial session of the state's General Assembly early this year. The proposal, which was a major part of a package plan designed to raise 25 million dollars annually for highway building, was killed.

Fugate told association members that construction of a 1,670-mile arterial network linking state cities with four-lane highways will be greatly delayed unless additional funds are forthcoming.

"We will undoubtedly have to stretch out the length of the construction program past 1976 unless the next General Assembly provides new sources of revenue," he said.

Fugate may well find association support imperative if he is to get substantial increases of highway funds approved by the 1966 Assembly session. Opposition to the recent proposals was widespread, and the auto dealers were among the most vociferous foes.

At the same closing session, Harold Heishober, a Portsmouth dealer, told the group that "leasing is a reasonable extension of the sale of automobiles."

As dealers, he said, "we are in the transportation business. Leasing is an important part of that business; we therefore must be in a position to offer this service or our customer is going somewhere else to get it."

Heishober said long-term leasing is definitely preferable to short-term leasing for dealers because it "is a logical extension of the franchised dealer's operation."

He outlined the advantage of long-term leasing as an adjunct to normal operations: (1) Vehicles are available at the best possible cost; (2) service and parts are already available; (3) returned vehicles can be disposed of as used cars with available facilities; (4) financing can be handled through channels already developed, and (5) insurance can be arranged with agents already handling the dealer's business with volume discounts probable.

[Automotive News, Apr. 13, 1964]

NEBRASKANS DELIVER ULTIMATUM ON FLEETS AND FACTORY STORES

OMAHA.—The Nebraska New Car Dealers Assn. has threatened to enlist the aid of the State Legislature unless its demands on factory stores and below-cost fleet sales are met by the manufacturers.

At their convention here, association members passed strongly worded resolutions on both subjects.

In each case, the dealers invoked the help of the National Automobile Dealers Assn., but the Nebraskans made it clear that they aren't relying solely on NADA.

Their factory-store and fleet-sales resolutions concluded: "Be it further resolved that if the practice is not discontinued, the members of the Nebraska New Car Dealers Assn. strive to effect the passage of legislation that will prohibit such practices."

Factory stores, the Nebraska group declared, create a special problem where private capital is available or where additional dealerships are not needed. In the factory store category, they included "factory-owned or factory-controlled dealerships and service centers."

In the fleet sales resolution, the dealers condemned special discounts that "often put the vehicle in the hands of the fleet purchaser at less than a cost available to the dealer."

The Nebraskans also adopted resolutions calling for a 25 percent discount on all new cars and urging the manufacturers to straighten out the extended-warranty problem.

Neither of these resolutions, however, was accompanied by the threat to go to the Legislature.

The dealers complained that factory advertising of warranties has "confused all concerned and has resulted in bad customer and dealer-factory relations." They recommended that the warranty be limited to the original owner.

The resolution urged the Automobile Manufacturers Assn. to seek a standardization and clarification of warranty terms.

It also requested a survey pointed toward a clear, simplified handling and paying of labor and parts involved in warranty work, as well as the clarification or enactment of a Warranty Code of Ethics for the industry.

Keith Andresen, Nebraska association manager, said the state's dealers face serious problems.

"We're being squeezed on price by the customer," he said, "and this, plus a unique time-sales problem in our state, has put most dealers in jeopardy. This, plus a three-way squeeze from the manufacturers and continued pressure in various ways by the government, has us seriously concerned."

Andresen sees customer-relations problems in the warranty field unless the factories back the dealers on questionable second and third-owner claims.

"We don't believe it should be up to the dealer to distinguish between valid and invalid warranty claims on cars with turned back speedometers still in the warranty time period," he said.

"It won't take many factory claim refusals to make a real shambles of the extended warranties, and they should recognize it now."

Andresen termed below-cost fleet sales "an unhealthy situation at best," and he asserted that the "establishment of factory stores and service centers in areas where they are clearly not needed could be the last straw."

"Automotive history isn't so ancient that a lesson so clear should be forgotten so quickly," Andresen declared.

"And that lesson is that the manufacturers with poor, under capitalized dealers are soon going to be in trouble. If the varied pressures we face in Nebraska aren't relieved, a serious situation could soon be critical or worse."

Officers elected were Clemmy K. Holmes, Nebraska City, president; Thomas Kokjer, Sidney, first vice-president; Gene Jacobson, Omaha, second vice-president; J. W. Mowbray, Lincoln, secretary-treasurer, and W. N. Neff, Fremont, director to the National Automobile Dealers Assn.

Richard E. Kinman, Grand Island, is the immediate past president.

Howard Burnett (Chevrolet-Oldsmobile), Hebron, received the NNCDA Distinguished Service Award. Burnett is a past president of the association and has held all other elective offices in the association.

The convention, April 2-3 in Omaha, drew 150 persons.

Speaking at a luncheon on the closing day, a General Motors executive told the dealers they face a five-point challenge if they expect to keep pace with the growing automotive markets of the future.

The speaker was Patrick J. Crowley, director, dealer relations section of GM's Marketing Staff.

He said there was increasing competition for the consumer's dollar, that markets will require modern and efficient dealer facilities, that customers will become more demanding, the need for better trained mechanics will be a continuing responsibility and increased management efficiencies will be required in all areas of business.

Crowley said: "Anyone in this business or any other business who neglects complete satisfaction on the part of the buyer is doing irreparable damage to his future market."

Properly trained sales people, efficient and knowledgeable mechanics, modern and adequate dealer facilities and a strong owner relations program can meet the challenge only, he said, if dealer management itself is alert and ready to accept these responsibilities.

Other speakers were Milton C. Denbo, Washington special counsel for NADA, and Verne W. Jones, Nebraska City plant manager for Ocoma Foods Co. Denbo spoke on the subject "Wage and Hour, Walsh-Healey and You," Jones spoke on "Profit Making Is Not Profiteering."

[Automotive News, May 18, 1964]

NORTH CAROLINA DEALERS HIT FACTORY SUBSIDIES

PINEHURST, N.C.—A resolution expressing strong disapproval of factory subsidies of sales to fleet and leasing buyers was adopted by the North Carolina Automobile Dealers Assn. at its 29th annual convention here.

The resolution stated, in part:

"Whereas, it appears that some automobile manufacturers are engaging in the practice of subsidizing certain individuals, firms and other agencies by selling them automobiles at a price less than the price charged their franchised dealers; and

"Whereas, such subsidies to other than franchised dealers constitute the granting of an unfair advantage and curtail the competitive market of the dealer;

"Now, therefore be it resolved by the board of directors of the North Carolina Automobile Dealers Assn. . . . that it record its disapproval of such unfair trade practices and strongly opposes any form of price subsidy by any automobile manufacturer to any person, firm, corporation, leasing concern or governmental agency, other than an authorized franchised automobile dealer."

The dealers elected E. B. Gamble, Highland Motors (Cadillac-Oldsmobile), High Point, as president for the coming year. Also elected were W. A. Raney, Raney Chevrolet, Wilmington, vice-president; George O. Stovall, Stovall-Wolfe Motor Co. (Ford), Albemarle, secretary, and Odell Matthews, Odell Matthews Motors (Plymouth), Winston-Salem.

James M. O'Mara, Hutchinson, Kans., National Automobile Dealers Assn. secretary, gave the dealers an idea of what to expect in the future in a speech entitled "Quantity, Quality PLUS Profits."

O'Mara estimated that in 1970 the number of franchised dealers would still be at around the present level—about 33,000—while new-car sales will increase to about 9 million units.

This, he said, means that in 1970, average sales per dealer will be around 273, a 25 percent increase over 1963.

In addition, the number of passenger cars in use will increase to more than 84 million, a 33 percent increase over 1963, and that service sales per dealer will increase 44 percent over the 1963 level.

The increase would indicate that many dealers will have to expand their present facilities in the next few years, he said. He added that these predictions have been reinforced by recent announcements from auto makers of the largest expansion program in Detroit's history.

"In the future, you can count on quantity," O'Mara said. "Quality and profits may elude you, but quantity will be your faithful, constant companion."

He said that dealers have a right to be proud that 1964 will go down as a high-quantity year. He said dealers have been credited with pushing retail sales to new, seemingly unattainable heights and, in so doing, helping to push industrial production and gross national product to record levels.

"Dealers have contributed in a spectacular manner to the longest peacetime expansion in American history and have established new records for the manufacturers," he said.

O'Mara also said that dealers have reasons for regret—"the dealers' failure to make more money on the volume of 1964 models sold and the lack of enthusiasm for and reluctance of members to endorse and abide by the 7 C's of Quality as espoused by the NADA Task Force Committee."

O'Mara said NADA has observed that more and more factory people have become conscious of the importance of dealers earning greater profits. One of the reasons, he said, is the value of their franchises and the franchise system itself.

"Dealer, factory and consumer are in agreement that the franchise system is the best system that can be devised for the distribution of our products," he said.

"It is our joint responsibility to protect the franchise system and not bring it into disrepute. To this responsibility, NADA is determinedly dedicated and NADA believes that the value and permanency of the system can best be preserved by quality dealers making top profits."

Arthur E. Summerfield jr., Flint, addressed the dealers on the aftermarket. He said that many dealers were letting more and more aftermarket sales go to outsiders every year.

He stressed that aftermarket sales are an important part of a dealer's business and gave this example:

"Truck sales of one of the major truck lines dropped alarmingly seven years ago. Despite the fact that during these past six or seven years, sales for this line remained at a very low figure, the truck population in operation in America for this line remained in excess of 900,000 units and only last year began to decline slightly for the first time.

"The parts needed to keep these trucks on the highways remained steady and profitable and were the one bright thing in an otherwise unhappy sales situation."

Summerfield said that in 1953, parts sales by franchised dealers totaled about \$2 billion. By 1963, he said, the franchised dealers' parts sales had reached \$2.8 billion.

"But the most important fact is that our percentage of the total aftermarket sales has dropped from 48 to 36 percent," he said.

"Our competitors are well on their way to doing twice as much aftermarket dollar volume as do we dealers who create this aftermarket by virtue of the product we sell."

Summerfield said that the growth of a parts department should be based on a three-point program: Adequate facilities, complete inventory and service.

"The dealer has a tremendous future in the aftermarket," he said. "No one is in a better economic position to capitalize on the automotive aftermarket than the franchised new-car dealer."

Thomas C. Todd, Chicago Chevrolet dealer, told the dealers that leasing is an important part of a dealer's business and that it will become more significant in the future.

He said that in his own dealership nothing that has been done has contributed as much to the improvement of net profits as has its leasing operation.

"A good leasing business helps you stabilize your dealership operation, because you exercise greater control over more of your customers," Todd said.

[Car Dealer Newsletter, Dec. 12, 1966]

FEDERAL JUDGE RULES CHRYSLER SALES QUOTA "ARBITRARY, UNFAIR AND COERCIVE"

"This is obviously a far-reaching decision wherever there are DE deals in competition with Chrysler product dealers," an attorney knowledgeable in dealer problems said in reaction to the decision handed down in Chicago by Federal District Judge Hubert L. Will, who ruled that Chrysler Corporation's sales quotas for dealers is "arbitrary, unfair and coercive." Judge Will has enjoined Chrysler from canceling Madsen Motor Sales, Inc., of Wheaton, Ill., a Chrysler-Plymouth dealer. An injunction is expected on this action soon, and, as one Dodge dealer told the Newsletter: "This injunction could well be the bill of rights for the dealer in his dealings with the factory."

The Judge ruled that the Chrysler minimum sales responsibility standard as calculated by the company "is an arbitrary, unfair and coercive standard of adequate performance, which would enable (the company) to cancel between one-third and one-half of its dealerships at any time."

This particular decision hits at the very base of the DE problem which has concerned Chrysler dealers so vitally over the last few years. The Newsletter has learned that Madsen "was being treated as a good and satisfactory dealer, allowed to expand facilities, etc., even though he was below his sales quota, until Chrysler decided to establish a DE deal in his town." The attorney quoted above offered the opinion to the Newsletter that: "The ruling of the court is obviously based in substantial part upon the fact that the MSR formulas are arbitrary, where you have DE dealers in the same area whose sales are subsidized by the company, while the dealer's MSR is increased."

One of the charges Madsen had brought before the court was that after the company had remodeled its facilities, Chrysler decided to build the company-financed outlet near him. Judge Will said in his 57-page decision that the intention to terminate the deal's franchise was not based on the performance of Madsen or lack thereof, "but the (company's) desire to establish a new, large dealership in Wheaton and eliminate (the dealer) as economically as possible."

The Newsletter has learned that Chrysler bought property for the dealership they had intended to establish in Wheaton, but held up any further action pending the outcome of this suit.

"The fact that Chrysler thought that another type of operation would produce better results obviously does not create the right to terminate an existing dealership on a forced basis," the Judge stated. He continued that Chrysler failed to show that the sales quota was a franchise agreement, since Chrysler treated the quota more as a performance goal than as a condition of the franchise. "The purported termination on the ground of failure to meet the minimum sales responsibility, in this instance, is a breach of franchise agreement," the Judge ruled.

At press time, a spokesman for Chrysler said the company had not yet received the Judge's decision, and would have no statement to make until they had had an opportunity to study it. The company has 30 days from final judgment on this case in which to appeal the decision. There is some confusion over whether this thirty days begins with the enjoinder action or when the injunction is finally handed down.

Ray Cohen, Chairman of the Steering Committee of the Metropolitan Independent Dodge Chrysler Dealers Association, a group of Chrysler product dealers across the country who have formed to seek redress of their grievances with the company told the Newsletter: "This is the first time that dealers have ever received favorable action in a court of law. We have contended all along that MSR fair share and market planning were illogical and could not be upheld in any court in the land. As long as we have non-exclusive franchises, where there is no area responsibility, we have contended that these things were unfair to the dealer."

"This is the first positive step to sustain what we have been saying through our Association," Cohen continued. "It will certainly have a bearing on certain courses of action Chrysler is now taking against dealers. I think 50% would be more like the figure for dealers who are under their MSR. When you have this kind of sword over your head, it certainly acts as a kind of coercive factor in any decision you are forced to make in dealing with the factory. This will give the dealer the feeling that he can make intelligent management decisions on his

own. It won't hurt Chrysler, it will probably help because it will give them a stronger dealer body," he concluded.

At NADA, Executive VP Jim Moore told the Newsletter: "The use of the arbitrary and formula determined planning potential in deciding whether or not a dealer has done a creditable job in representing his manufacturer is completely unrealistic in too many cases. I am happy to see the use of this criterion brought to serious question as grounds for terminating a dealership. Local economic conditions and the peculiar circumstances in each dealer's case should and must be considered in determining the quality of a dealer's performance. While NADA recognizes that yardsticks have to be provided, for both dealer and manufacturer use, such yardsticks cannot be arbitrary in either their determination or application."

San Francisco Dealers Hit Bank Ad Campaign: Car dealers in the San Francisco Bay Area have been up in arms over the advertising of one of the major San Francisco banks with which many of them have been doing business. First Western Bank touched off "a barrage of complaints" by a six column full page illustrated ad in two newspapers. Among other things, the ad declared that: "the first rule if you want to beat the cost of interest is not to get your car loan through a dealer. The dealer is a middleman," the ad continued, "when it comes to loans and the customer pays the mark up. If money means nothing to you, forget all this and get your car loan from the dealer. But if you are careful with your money . . . etc."

Stephen F. Snow, general manager of the Northern California Motor Car Dealers Association, Inc., told the Newsletter that "we have instructed our legal counsel to express our protest to this bank and dealers are expressing themselves directly." Reports to the Newsletter since this incident erupted about four weeks ago, indicate that some of the wording of the ad has been modified, but the "implication" remains that it is economically wasteful to buy money through the car dealer.

Import Digest: Dealers are talking about: "The heady independence of Volvo and Mercedes-Benz factory people, which is due to their success in this market right now. Guess you can't blame them, but their often arrogant attitude towards us dealers is difficult to stomach. Someday they are going to need our good will again." . . . The new Renault R-10 which a dealer called "a good hot car, with little or no warranty or service comebacks. I'd almost say they had a winner, but I think I'll reserve that opinion for a while."

The sudden downturn in "sports car sales. Since February there's been damned little business around sports car showrooms," a distributor told the Newsletter, "and most of it can be attributed to the fact that there are so few young people around to buy these cars now. And the ones who are around aren't taking on any long term commitments. Insurance is a problem too." . . . VW dealers "are happy again, because they've been making money in the last two months again. I guess the factory is aware of it, but I think damned few of these dealers have any conception of the competition they can expect soon from the Japanese." . . . "You can expect a VW automatic in the not too distant future. They aren't telling anybody about it yet, but it will be along before most people believe."

The overseas delivery business is growing by leaps and bounds for some. VW, Mercedes-Benz and Volvo have "it pretty much to themselves. Look at the M-B figures and you'll see that about 4,500 of their sales this year have been to tourists overseas. Good business for the dealer too. Volvo is going to raise their overseas delivery prices pretty soon. Probably right after the first of the year." . . . One of the Japanese manufacturers "is having quite a bit of trouble with his new automatic burning out on him. They are trying to keep it quiet, but it just hasn't been able to take the loads put on it in this country. But don't count them out. They will make quick 'in-line' changes to correct the problem, and no one will be hurt."

The International Automobile Show comes to New York again for the eleventh straight season on April 1, 1967. . . . And a dealer asked the Newsletter: "Is it possible that a small importer like SAAB with its 'lifetime warranty' on its Shrike engine points the way to the future? That's okay if they can all build something as indestructible as that, but how many can." . . . A Volkswagen gray market dealer told the Newsletter: "I don't bother to get my cars in Europe anymore, I can do better here."

Some Good News: A recent check of Buick dealers in most metropolitan areas indicates that volume is good. A Midwestern Buick dealer told the Newsletter:

"As far as we're concerned, sales have been better during October and November this year than we have ever seen before. Grosses are something else again, but then that's a dealer competitive situation that we can't really control. But sales have held up well, until we hit December. But we always expect a fall back at this time." This is typical of the opinions received here.

Recently, the Newsletter reported efforts to form a cooperative ad group for Buick dealers. The Newsletter has learned that two groups have been successfully formed in the New York metropolitan area, which may well be pilot programs for the rest of the metropolitan areas of the country. A dealer who is participating in this program told the Newsletter: "We felt for a long time that with the successful ad programs organized by the Ford and Dodge dealers, that they were out competing us, and that we had to do something about it. At last we have managed to organize our groups for advertising at the local level. We have to do something about getting the exposure those other two groups are getting."

[Car Dealer Newsletter, May 15, 1967]

MADSEN RESIGNS FRANCHISE

The court action which was termed "the bill of rights for the dealer in his dealings with the factory" became a moot point a few weeks ago, the Newsletter learned, when Madsen Motor Sales, Inc., of Wheaton, Ill., a Chrysler-Plymouth dealer, resigned its franchise with the Chrysler Corporation. The court action was a decision handed down in Chicago last December by Federal District Judge Hubert L. Will, who ruled that Chrysler Corporation's sales quotas for dealers are "arbitrary, unfair and coercive." The judge had ruled that the Chrysler minimum sales responsibility standard, as calculated by the company, "is an arbitrary, unfair and coercive standard of adequate performance, which would enable the company to *cancel between one third and one half of its dealerships at any time* (emphasis added)."

Subsequently, an injunction was handed down, following which Chrysler appealed the case. Now, however, with the resignation of Madsen Motor Sales as a dealer, the appeal has been dismissed, the Newsletter learned, and the injunction decree was vacated.

An attorney familiar with the Dealer Good Faith Law, as originally passed by Congress, told the Newsletter: "Of all the 30 cases which have come to court under this law, this is the first one that had a chance of succeeding all the way up to the Supreme Court. The lawyers who handled this case did a masterful job of analyzing the law, and understanding the intent of the law. The 30 cases which preceded this one, all of which were decided against the dealer, have in effect amounted to the courts overruling the statute, in effect amending Congress.

"This was the first case," he continued, "in which the lawyers did not try the case on the conventional courtroom basis of 'you hit me, I cried.' This time the case was tried on the theory that a particular contract signed by Chrysler was illegal. I think one of the most telling comments in this whole case was made by Judge Will himself, who ruled in this case, when he said from the bench: 'I am unimpressed with all the other cases (the 30 decided against the dealers) because they seem to have been made by judges who are providing simple answers for complicated problems.'"

"After all," the attorney told the Newsletter, "Congress deliberated and passed a law, obviously intending to give the dealer some relief. Each and every court, up until the Madsen case, kept saying 'no' to dealers in such a way that, before this, any dealer was precluded from getting any relief under a law designed specifically to afford this kind of relief. Also there were some equities going in this case that did not pertain to the others. Madsen was not selling just 10 cars a year, he was actually increasing and improving his position at all times. This built a better case for the action taken, and would have meant more to the dealer body if it had been adjudicated further. This was really the right case, at the right time, in the right place. Every lawyer dreams of the perfect case for Supreme Court review, and frankly I think these guys had it this time."

Another attorney, who is a student of the "Good Faith" law told the Newsletter: "This is a sad occasion for the dealer body. This was a perfect case, and the dealer body would have been the beneficiary of this well conducted case. The dealer body had won, and I personally feel that Chrysler was very foolish to have appealed it. Taken to the Supreme Court, there is no doubt in my mind that this case would have been decided in favor of Madsen. As it turned out, cir-

cumstances worked in Chrysler's favor. This is the one case that dealers have been waiting for for years, and NADA, unfortunately, didn't recognize it for what it was.

"If you look at facts as reported in all the other cases which have come up before a court of law, this was the one case where it was possible to show that the quota or sales responsibility of the dealer, as established by the factory, was just a sham and a device used to terminate a dealer for other purposes. This was the one case where the court had actually concluded that the quotas were 'coercive' and 'unrealistic' after very extensive analysis, over some 20 pages or more, of sales quotas imposed on the dealers in the area, and the sales performance of those dealers in relation to those quotas. This was the first thoroughgoing analysis of the meaning and function of quotas. All the other cases weren't presented with the material.

"As it stands," this attorney said, "this is the one case that met the issue and met it full square in favor of the dealer. All the others have failed on the basis of a lack of any evidence that could cause a judge to say 'Hey, these quotas are unfair, or unrealistic, or high, or arbitrary.' In this particular case the judge did use the golden word 'coercive.' This is the one case that came out right, and it was fortified by the extensive evidence that the company was using quotas to get Madsen out, not because he wasn't performing, but because they wanted to put in a factory point. The thing was airtight from the dealer point of view."

The attorney continued: "If this had reached the Supreme Court, the Court would have established general principles, which would have turned the Good Faith Law around and would have made it a meaningful law for the protection of dealers."

Why did Madsen resign? The Newsletter has endeavoured to get an answer to that question, but none is forthcoming. At this writing, Madsen himself is not available for comment. The lawyers involved in the case are constrained not to discuss it. There have been more conjectures from people close to Madsen and the lawyers. One man told the Newsletter: "Madsen actually resigned for personal reasons not connected with this case." Another man conjectured: "How long can anyone act as Joan of Arc in a situation like this." Another man said: "I think it is understandable that the man just got tired of all the pressures and, in consultation with his partners, decided to give it all up. I don't blame him. I think I'd have done the same thing." And yet another observer of the scene said: "Look, it is possible that someday, somewhere, the man will want to return to the automobile retailing field. You can't do that, if you are known as a factory baiter. He carried a lone crusade too long. In spite of all their fine protestations, NADA is the one who should bear the brunt of this victory for Chrysler by default. They too long ignored the issue, and obviously never understood what was implicit in Madsen's original win. Do you know that they never once contacted him. They went to the courts and got information that way. I'm afraid NADA is a long way from understanding what is actually here. They're like some men on Mars, just getting to earth and trying to understand what is going on. That's great for the factories."

TADA Grievance Committee meets: At last week's Texas Automobile Dealers Association Convention, the Grievance Committee, set up to look into the ground swell of dealer complaints about factory coercion, unfair cancellation, unethical advertising and factory warranty policies, met in closed session. The Newsletter has learned that "more than 300 dealers had written to the Committee about their problems with the factory. Another 50 appeared before the Grievance Committee in person." Three of the complaints placed before the committee dealt directly with factory coercion, and two dealt directly with unfair cancellation. For obvious reasons these names are being held in strictest confidence.

In reality, this meeting was of an educational nature. A spokesman for the Association told the Newsletter: "Many of our dealers are unaware of the possibilities open to them, if we should pass a factory-dealer licensing law in this state. They are unaware of how a state commission could help to regulate the automobile business so that a more equitable treatment is available to dealers. There is much explaining for us to do, and a great deal of education involved in our efforts."

No action was taken at this particular meeting, aside from hearing the reports, and agreeing to meet in July in Austin, at which time more dealers will be heard from and, it is expected, fuller documentation will be forthcoming "since dealers have a clearer idea of what we are trying to do, and what we need in order to be eminently successful in our efforts." It is anticipated that meetings on a local **area basis throughout the state will be held every 90 days.** "I think the informa-

tion we collect will become more meaningful, as dealers become more aware of what we need, and how this can help them in their business," an Association spokesman told the Newsletter.

This is a two pronged drive. The information collected by the TADA will be used within the state and will, in addition, be forwarded to NADA as additional documentation for the latter's efforts in its 7-point program for improving dealer-factory relations. As reported in last week's Newsletter, the factories have asked the TADA to furnish them with information relative to the problems dealers are having in the areas mentioned above, and the factories have promised to work those problems out, without resort to legislation of any kind. The TADA still intends to proceed along this route, before going to the legislature.

An observer of the Texas scene told the Newsletter: "I think the Association is moving very wisely. They aren't moving too fast. They are collecting their information in a careful manner, aimed at documenting very carefully for presentation to the legislature, if it goes that far, the need for a dealer-factory licensing law. You can't hurry something like that, or you find the kind of debacle that occurred in New Mexico where, when the problem came before their legislature, there wasn't enough concrete evidence to convince the legislators that the need existed. On the other side of the fence, in my discussions with the factory it is evident that they are not terribly concerned about the licensing law, except for the one provision which would prevent coercion. This is the one area in which they are sensitive. If coercion could be proved at any time, they could conceivably lose their license to do business in the state, and obviously this is untenable for them."

"At this particular meeting," an observer told the Newsletter, "the heavy preponderance of material presented by dealers consisted of warranty complaints. The consensus was obviously that the factories must step up to the problem of payments. Right now, according to the dealers, the failure of the factories to compensate at the customer retail labor price is working a real hardship on them. This theme seemed to be reiterated over and over again. Dealers are obviously, according to this meeting, beginning to feel the pinch of the extra warranty work, and they are looking for some kind of relief from a policy they were not responsible for."

He continued: "This is the area dealers are most cognizant of because it touches their business every day, and it is also the one area that appears to lend itself to the quickest improvement. But, as we get further into the other problem areas, I think dealers are going to realize the erosion that is taking place underneath the structure of their business that is even more important than warranty."

INDUSTRY TRENDS

Chevrolet considers double franchise arrangement: The Newsletter has been told that Chevrolet is giving very serious consideration to a dual franchise arrangement, obviously based on the Ford and Dodge arrangement, which would set up exclusive super size truck dealers separate and apart from the car franchise. As currently being considered, it would mean a separate franchise and separate facilities for both vehicles.

Chevrolet apparently feels the competition it is receiving from Ford in the heavy truck area, and this seems the obvious solution to that problem. It is expected that this program will be instituted with the signing of new franchise agreements in the fall of 1969, when all Chevrolet agreements come up for review. At this time there is no indication how this would come about, or whether dealers in contiguous areas would be asked to "sign-off" their truck franchise, as Dodge dealers were when the factory decided to go to super-truck centers. Depending upon the individual's point of view, this could be either a blessing in disguise, or a new opportunity.

[Car Dealer Newsletter, Feb. 19, 1968]

DEALER SUES CHRYSLER UNDER "DEALER DAY IN COURT" ACT

Anthony De Carlo, of De Carlo Dodge in New Windsor, New York, has alleged that Dodge Division of Chrysler Motors Corporation has violated the "Dealer Day in Court" act, based on what De Carlo alleges is the attempt on the part of the division to "improperly terminate" his franchise. As the Newsletter pieces the action together, De Carlo was denied temporary injunction against Chrysler in a preliminary hearing, and is now seeking a permanent injunction against

the "termination" which, in effect, would be similar to asking the court to award him the permanent franchise he claims he was denied, "plus damages."

De Carlo was a dealer in a small town in upstate New York when the factory is alleged to have convinced him to build newer facilities in the New Windsor location. Originally, the factory offered De Carlo some property which they held, but De Carlo also held some property in this same town and, after some discussion, it was agreed that he would put the new facility on his own property. It is also alleged that his franchise would be transferred from the old locality to New Windsor. Once the new facility was in operation "and De Carlo was in hock up to his neck with his local bank," an observer told us, the company is alleged to have refused him a permanent franchise, offering him a two-year agreement.

De Carlo accepted the two-year-term agreement, although both his minimum sales responsibility and his working capital requirements were both increased "considerably."

At the end of the two-year period, a letter—hand-dated November 15, 1967, and hand-delivered on that date—was received by De Carlo from A. J. Kirchner, Jr., V.P. Dodge Division, Chrysler Motors Corporation, and read as follows: "Dear Mr. De Carlo: As you know, we have discussed with you regularly during the past two years, your unsatisfactory sales performance as to Dodge passenger car and Dodge truck. On these occasions we directed your attention to the provisions of paragraph 7 of the Dodge Direct Dealer Agreement, which is incorporated into your term sales agreement, dated October the 5th, 1967, wherein you undertook to sell at retail a sufficient number of new Dodge passenger cars and new Dodge trucks to fulfill your minimum sales responsibility for these lines as defined therein."

The letter continued: "Considering your Dodge sales performance, it is obvious that your company's failure to fulfill the undertakings of your sales agreement not only in terms of per cent of accomplishment of minimum sales responsibility, but also the actual number of units by which your company failed each year to fulfill the minimum sales responsibility, has been substantial. As you know, Chrysler Motors Corporation relies entirely on its dealers to remain a viable, competitive entity in the automobile business and, as a matter of sound business practice, cannot continue to tolerate such unsatisfactory performance in your significant sales locality. Unfortunately, as the above information shows, your company has failed to provide us even with the minimum performance provided by the average dealer in your region. In this connection, your Dodge term sales agreement expired in accordance with its terms September 14, 1967.

"While we are under no obligation to do so, on several occasions we have offered to extend the term sales agreement until the introduction of the 1969 model vehicle to give you an additional period of time to qualify for a Dodge Direct Dealer Agreement. To further demonstrate our good faith in this matter, we would be willing to reinstate your term sales agreement and extend it, using our normal form of extension agreement for the aforementioned period of time, provided your company accepts this offer in writing within ten days following the receipt of this letter. If we do not receive such acceptance within this time, this offer shall be deemed rescinded automatically on such date without further notice."

De Carlo accepted the offer, but he states, "When they sent me the term letter, the conditions in the letter were unacceptable. The minimum sales responsibility had been increased again, as had the working capital. Also, at the end of this term agreement Chrysler would be left with no obligation whatsoever as it concerned me. I believed from their letter that, as they stated, 'we would be willing to reinstate your term sales agreement and extend it.' As far as I can see, they failed to send me the agreement I believed they were offering me through the letter from Kirchner."

At this writing, Dodge is not honoring orders from De Carlo, and as the Newsletter goes to press, Chrysler Corporation is examining the books and documents at the De Carlo dealership, and De Carlo's attorneys will, in turn, soon examine pertinent documents at Dodge. Following this, a court hearing is anticipated. An attorney, who has not been connected with this case but who is an expert in this area, told the Newsletter, "No one can tell at this juncture what this will develop, but there are similarities to the Madsen case which bear watching. Obviously, the minimum sales responsibility thing is a touchy subject since the Madsen case, and it will be interesting to see how both sides handle this. This could also be a case that would help strengthen the 'Dealer Day in

Court' act, but it is obviously too early to know what will happen. We must keep in mind that here we have a small man, with limited funds, attempting to get an expensive court ruling, arrayed against a giant with unlimited funds at its disposal. This always eventually becomes an all-pervasive factor in cases such as this, unfortunately."

Sales incentive programs draw dealer ire: As the industry heads for the traditional Washington's Birthday kick-off for spring sales, the incentive merchandising or sales stimulator program launched by Detroit in the recent past are drawing more and more pot shots from dealers. The Newsletter has recently received one communication after the other criticizing either the programs themselves, or their method of application. In the former case, one typical remark was, "To begin with, if Detroit has accurately forecast this market, there would be no need for these sales incentive programs. Sure, everyone needs an incentive of one kind or another, but this approach makes me believe that Detroit is all out to prove that the early forecasts for 9,000,000-plus in 1968 will be met, come hell or high water. This, if we're reading the implications correctly, is only the beginning of a hard push to get volume for the factory, the dealer be damned. And this could result in borrowing seriously from our 1969 sales. I know most of us dealers don't like what we see up ahead."

Among dealers who object to the means used for determining how the incentive programs will work was the following typical comment: "Here at Chrysler, they have taken our actual rate of travel, our planning potential, minimum sales responsibility, and thrown it up in the air, never telling us how, and come up with a fat number that we're supposed to meet in order to take advantage of their sales incentive program. The formula used to arrive at the figure we have to shoot at is something we're not privileged to know. You'd be surprised how they're using these figures to favor and help some, and to penalize others. Don't forget that the minimum sales responsibility and planning potential are figures no dealer ever really reaches. I'm willing to wager that the factory stores don't even meet their planning potential."

He continued: "This contest that we're involved in right now is based on the concept of wholesale purchase. Now, you know that has to be to their benefit and not the dealer's. You'd think these guys are playing the numbers the way they give you a sales goal in these contests. The only way I could hit their goal is if I suddenly landed a fleet of seventy-five to 100 cars. Then maybe I'd have a chance at it. Otherwise, forget it. Unless I'm willing to lay in a huge stock of wholesale cars.

"The first application of qualification in this sales contest," the dealer advised, "is the purchase of the vehicle from the company. So I have a big stock of new cars that I'm floor planning, right? Next, by a target date they set, I have to sell that car at retail or else I'm not eligible for the contest pay-out. So what happens? I'm actually encouraged to buy a fleet of cars and floor plan them. Now, if by chance I miscalculate and I can't sell them at retail, I'm ineligible for participation in the final pay-out of \$15 or \$20 per unit.

"This program is obviously aimed at relieving the factory's inventory situation, although I will admit there is some inducement for the dealer to get out his retail sales. But, and I think it's a big But, in order to participate in this program, it means the average dealer has to drain his physical and financial resources, and if you're in a metropolitan area, it can mean going outside your own dealership to find space to stock these cars. So, on top of finding warehousing for the cars in the program, we have to pay 6½% for our wholesale money today. But the time you figure the whole program out, the dealer probably doesn't end up making any money, but he probably does participate in keeping the factory profits at a high level."

Taking the incentive programs a step further, dealers tell us that they have asked over a period of years in dealer councils that the factories not "set up sales incentive programs based on a purchase objective." Generally, factory answers to this proposal have been that they "can't afford to get up sales programs unless they are going to get something out of them as well," representatives to these councils have told us. Dealers contend that the factories benefit just on the basis of extra sales generated through sales incentive programs, no matter what levels they attain. "After all, who else can we purchase them from?"

There is a good deal of dissatisfaction over the manner in which sales objectives are assigned to dealers. For instance, a dealer in a metropolitan area told us: "Within a five-mile radius of this dealership are four other dealerships selling the same make and each one, although virtually the same size with the

same potential, etc., has been assigned a different quota. Naturally, no one will tell you how these figures have been arrived at, yet it does mean that certain dealers out of that group of five are going to end up purchasing their cars cheaper than others. That to me is factory discrimination and I think it's one of the problems we must step up to." There is growing concern over the application of these programs and a growing restiveness among a number of dealers to see something done about it.

Sales bank building? The sales situation for dealers remains spotty. Many say their sales move along at a fairly strong rate. But quite a few tell us that while they're actually delivering sold orders, they're not writing as many new orders as they would expect at this time of year. A dealer cautioned: "One of my friends on the inside of the factory said that right now they're building a large bank of vehicles and that, in spite of contentions to the contrary, this bank is being built against unsold orders. Also, I know that the factory's been beating the bushes lately looking for every order we can give them. I would say that this is consistent with the sales contest programs, however."

Make sure those contests pay: We hope our subscribers will note a conversation we had with a factory man in the Central U.S. He said: "Dealers are probably the best salesmen but the lousiest businessmen, and they must be best at both. For instance, in my area one dealer last year literally threw away \$30,000 in contest money because he didn't bother to fill out the papers properly nor file them on time. Saddest part of it was, he never realized the money was due him—he never took the time to study the program as it was originally provided him. And at the factory, we were not exactly encouraged to help our dealers understand the fine points. He was no exception—I know other factory men in our area had the same experience. My advice to a dealer is: 'Study these programs carefully; even ask your accountant or lawyer to, also.' If dealers would only do that more often, they'd eventually become better businessmen—and better profit-makers for themselves."

[Car Dealer Newsletter, Apr. 1, 1968]

FOUR FORD DEALERS SUE COMPANY FOR \$80,000,000; EX-AM DEALER FILES \$3,000,000-PLUS ACTION

In separate, but coincidentally similar, circumstances within the last few weeks, four Ford dealers—acting through attorney D. Rosen—and an ex-American Motors dealer—acting through attorney Al Hammond—have sued their respective parent companies for \$80,000,000 and \$3,320,000. The four Ford dealers, located in Queens County (one of New York City's five boroughs) are Raymond Car Sales, Inc., DiBlasi Motors, Inc., La Gres Motors, Inc., and Wilford Auto Sales, Inc. In addition to Ford, the dealers' suits named as defendants six other dealers in the New York metropolitan area—which the suits allege are wholly owned by Ford. The six are Gotham Ford, Premier Ford, Ridge Ford, Parkway Ford, Grand Ford, and Banner Ford. Other defendants are Americo Realty, Ford Leasing Development Company and Auto-Lite. The ex-AM dealer, Lindenhurst Rambler, Inc., is bringing suit against American Motor Sales Corporation and American Motors Corporation.

These complaints are lodged against alleged coercion of the dealers under their franchise agreements, and against the existence of company-owned stores which they claim present unfair competition. The Ford dealers charge Ford Motors with attempting to drive them out of business in breach-of-contract suits and accuse the company of breaking an agreement to refrain from setting up any company-owned dealerships to compete against them. They also accuse Ford of stealing customers, saying the company had engaged in "a campaign to interfere with and seize sales in direct and unlawful competition with plaintiffs." The dealers further state that Ford, through brochures, advertisements and news releases, attempted to induce potential customers "to have no business relations or transactions with the plaintiffs" but, rather, to do business directly with "factory outlets and not with private enfranchised dealers."

The dealers maintain, in their suits, that they were forced to do business at prices virtually dictated by the factory. As a dealer not involved in the suits said, "In reality, Ford—through its factory-owned stores can put a ceiling on the grosses we can make on our cars. And that's what these boys are complaining about. It's price fixing, in reverse." The dealers charge that, since 1966, the de-

fendants had persuaded employees of the dealers to quit and subsequently find employment with the defendants where these employees made use of their old customer lists, etc.

Calling upon all Federal laws that would apply, the Ford dealers' suits seek a permanent injunction to restrain the parent company from competing in the sale and servicing of Ford products and, in addition to monetary damages, ask that the company be compelled to divest itself of the dealer subsidiaries named in the foregoing.

The Lindenhurst Rambler suit against AM claims that provisions of the agreements between itself and the company "constitute threats of coercion and intimidation and are illegal. American failed to fulfill its duty to act in good faith. The aforesaid contractual requirements and commitments are illegal under, and proscribed by, the Good Faith Act in that they violate defendants' duty to act in a fair and equitable manner so as to guarantee plaintiff freedom from coercion, intimidation or threats of coercion or intimidation." The suit states that "a fraudulent system of mandatory quotas" was set and that AM "operated a large retail sales branch in New York City, which branch was designed to act and acted as a stimulator dealer to lower the selling prices of cars sold by plaintiff. . . ." It claims AM "extended unlawful and discriminatory prices, payments, allowances, bonuses, benefits, privileges, services and facilities to favored dealers in the New York Metropolitan area."

From sources close to the Ford dealers, the Newsletter has ascertained that the dealers met some eight months ago with representatives of the parent company in Detroit, at which time they outlined their grievances in detail. Subsequently, they met on several more occasions and again their grievances were set forth. At each meeting, the dealers were advised that the Ford company representatives would return within a reasonable amount of time to work out the differences.

A dealer close to the negotiations told us, "After eight months, with neither action nor response from Ford, I guess these guys just got tired of waiting. They had gone the route. They had discussed these differences with Ford reps from Detroit—with their lawyer in attendance—and I guess you'd just have to say they finally, reluctantly, came to the conclusion that the factory was indulging in its usual delaying tactics, hoping they would forget the whole thing and let it blow over. Unfortunately, Detroit continues to misread dealer feelings."

From another dealer, we heard, "We all have too much at stake to permit these factory operations to continue proliferating. I, for one, admire what these fellows have done. They're each one of them good dealers. I think it's safe to say that they're profitable and, therefore, can probably afford long, protracted suits to help save the franchise system. In actual fact, these four dealers are doing more with these suits, showing more courage, than all of NADA, with its vast treasury, has accomplished. They've recognized that they can no longer wait for anyone to save them. They have to do it for themselves. Again I, for one, will contribute to any kind of fund that is put together to help them in this battle. They're the frontrunners for all of us."

A very interesting sidelight is the amount of excitement these suits have raised at the dealer level. We have learned of a number of smaller local Associations which have volunteered to help with some of the financial expenses, as well as a national association (not NADA).

An attorney, experienced in these matters, commented, "One of the greatest dangers in a situation like this is that the factories simply win by default because the plaintiffs just don't have the money to sustain a drawn-out legal battle. The factories have time and money on their side, generally." Still, in the short time since this action has become public knowledge, there have been significant quantities of help offered—which led an observant dealer to comment, "We're seeing a growing sophistication within the national dealer body. Increasingly, dealers are sitting up and asking to be heard in their complaints with the factory. Look around at the numbers of small organizations that have mushroomed to large proportions because dealers are not afraid to say 'No' to the factory any longer. Look at the number of suits being filed against factories these days. Compare the figures to ten years ago. And look at the state factory/dealer licensing laws being passed, or seriously considered. Yet the factories continue to act as they did twenty years ago toward their franchisees. They go on misreading the true temper of dealers. But there is a ground swell among dealers all over the country asking for 'action.' At this moment, I could name a suit against a factory in every section of the country . . . and if I were in a factory position, I would look on this with some alarm."

The Ford dealer actions are answerable in twenty days, while that of the Rambler dealer "demands a jury trial."

Factories clamp down even more on warranties: Another indication of how expensive the warranty problem has become for Detroit is to be seen in the virtual across-the-board restrictions being placed on dealers doing such work. For instance: several manufacturers will not permit a dealer to do any transmission work over \$10 without getting prior factory approval. The restrictions are not confined to transmission work alone. They run a wide gamut of repair jobs. One dealer posed this rhetorical question to us: "Have you ever tried to get a factory service rep on the phone for approvals of this sort? Nine out of ten times when you do get to him the customer is so angry with the delay, you've lost him as a good repeat sale."

Interestingly, the reader response to a question printed in the Newsletter two weeks ago (a dealer wanted to know how many of his fellow dealers would be agreeable to a \$25 reduction in the price of the vehicle, accompanied by a reduction in the warranty to 12 and 12), was a resounding 95% in favor of such a move on the factories' part. The other 5% of respondents said either the reduction to 12 and 12 was too drastic and, therefore, they favored a more gradual reduction; or they agreed with the dealer who said, "The problems that exist under 5/50 are exactly the same as we had under 4000/90, 12/12 and 24/24, only we're living with them longer." And a very small segment of dealers told us they favored reducing the warranty all the way back to the 4000/90 limit, accompanied by a \$50 reduction in price.

IMPORT NEWS

Imports hit 10% and Detroit ponders how to compete: History is repeating itself again. Imports have hit a whopping 10% of market penetration and, suddenly, the small car looms as a threat in the eyes of the decision makers in Detroit. John A. De Lorean, head of Pontiac, has been quoted as saying, "The industry is mighty stirred up about this import thing right now. That's too big a slice of the market going overseas." Eight years ago Detroit "crushed a similar import sales surge" by introducing compact cars, but everyone realizes that the situation was somewhat different then. Now, auto officials say "drastic action is needed" to meet the rising competition.

Consideration is being given to every avenue of hope, from offering more "captive imports" to introducing a new round of "compact" models within the next eighteen months. Meantime, however, the problem exists and it's reported "GM is thought to be considering cutting the list prices on some of its Chevy II models. If it does cut them, Ford and Chrysler undoubtedly would reduce the prices of some of their smallest cars, too." When American Motors cut its list price on cars to compete in this market, it did so by reducing the historical dealer discount. So one is left to wonder if this is the same route the Big Three will take. It was only five weeks ago that the Newsletter reported GM's chairman, James Roche, as stating GM could not absorb any more price increases and that he "clearly left the door open for . . . revisions in the dealer discount if there is a 'drastic change' in conditions—such as a willingness by dealers to accept a discount cut." One dealer succinctly remarked, "They're softening up now."

NADA AND THEIR FRANCHISE BILL

An attorney close to the National Automobile Dealers Association scene told us, "NADA is asking for everything their dealers seem to want in their new franchise bill. They're actually, I'm afraid, asking for more than they can hope to accomplish and, therefore, I don't think they'll accomplish anything." The Newsletter has heard rumors that the Newark district Ford dealers called a meeting of their own group to consider some "significant recommendations" on an extremely explosive issue. The same rumors say these recommendations were unanimously accepted.

In the wake of the bill presented to the New Jersey legislature, calling for a dealer/factory licensing law, the Greater New York, Long Island and Westchester Dealer Association's board of directors passed a resolution for the Association to get behind a similar one for New York State. Work is reported moving forward on this matter, in spite of known opposition to such a measure from the present Motor Vehicle Commission. Several other state and local associations have announced intentions to seek similar legislation, too.

There's growing concern among dealer executives about the problems caused by inefficient mail delivery. A recent communication received by the Newsletter stated, "Mail is a vital part and the life blood of any business . . . and mail delivery, as close to opening times of the individual business, is *extremely* important. Otherwise, the help that has been prepared to handle the mail and its contents must either be put on other work while waiting (a waste and costly) or a new time routine must be scheduled. This may mean ineffective competing and a possible loss of business and profit." The same writer said that unless the "slowdowns in local deliveries can be corrected, we should all pitch in and help the people who are now starting and operating a postal service in competition with the US Post Office." He was referring to an Oklahoma City company, Independent Postal System of America, which says it can "deliver advertising materials faster and cheaper than the Post Office." It is willing to back up its statement by offering to serve advertisers at a rate of \$25 per 1000, including the cost of addressing (perhaps \$7). The US Post Office's rate goes from \$36 per 1000—addressing not included—to \$40 in 1969 for bulk third class.

Fairly reliable sources tell us that once the General Motors building is completed in New York City, GM will open a salon for its cars and close its four existing factory-operated retail outlets on Broadway, once Manhattan's big-time automobile row. So this could mean that GM is actually reversing the current trend among other manufacturers to more-factory owned operations. But dealers maintain their usual "wait and see" attitude.

[Car Dealer Newsletter, June 3, 1968]

FIND WARRANTY COST AS HIGH AS \$11.08 PER HOUR

The results of the long awaited New York-Newark-Houston warranty survey are in. Thirteen dealers were surveyed. It has been determined that warranty costs run as high as \$11.08 per hour for one of the 13, which is 67% over the current warranty payment this dealer receives from the factory. Cost per hour for warranty ran all the way from this high figure, to a low of \$7.14 per hour, or 22% over the \$5.86 being paid that dealer by the factory. The average cost of warranty of the 13 surveyed was \$8.92 per hour, 32% above the \$6.79 per hour the factory is paying on the average.

According to the research firm of Booz, Allen & Hamilton, the survey covered 13 dealerships where better than average service shops were operating. Five were from Newark, five from New York and 3 from Houston. New vehicle sales in these dealerships ranged from 297 units per year to 2,926. Used cars sold at retail ranged from 266 to 2,748. The number of shop mechanics ranged from 8 to 38. All data collection and analysis was done with a view to provide realistic service costs. This meant that unusual or non-recurring expenses were deducted from actual costs; overhead expenses were spread to all departments to make the allocation to service realistic and reasonable; warranty expenses not included on 1863 forms were considered as regular overhead rather than identified as a warranty cost.

As noted in the Newsletter last week, there are four warranty surveys in the works and this Booz, Allen & Hamilton study is the first on which results have been released. Ford Motor has a survey almost ready on time studies; NADA has an all inclusive study similar to the one discussed here, and the FTC has been readying a warranty investigation for many months.

The cost to the dealer of retail labor was also studied in this current survey. It was revealed that the actual cost per hour for retail work ranges from \$9.23 to \$6.38. Of the 13 dealers surveyed, nine of them were charging the customer less than their actual cost. For instance, the \$9.23 mentioned above is actually 32% over the retail rate that dealer is charging. His charge is \$7.00. Only four of the 13 surveyed actually charged more than it cost them to do retail work. The average cost for the 13 surveyed dealerships on retail labor was \$7.96, while they charged only \$7.51 on the average which meant costs were running 6% over return.

It was further disclosed that in the average shop with 10 mechanics and where warranty was running at 33% of total work, there are some hefty losses on retail where too little is being charged. In the case of the dealer whose cost runs at \$9.23 which is \$2.23 more than he charges, the dealer is losing \$120 a day,

\$600 a week, \$2500 a month and \$30,000 a year. The average of the 13 surveyed dealers showed actual cost \$.45 over actual charge, and losses were as follows: per day \$24, per week \$120, per month \$500 and per year \$6,000.

In calculating the actual cost of doing warrantly work an "incremental cost was included, which was designed to reimburse the dealer for such things as "review of 1863's by service management; defective parts program; warranty special order work; space cost of defective parts; required additional clerical work." It was discovered that the number of dollars involved in this incremental work ranged from \$3,224 to \$28,100. The incremental cost per 1863 alone, ranged from \$1.20 to \$4.76—for an average of \$2.09. While the incremental cost per warranty hour sold, ranged from \$.45 to \$2.57—for an average of \$1.26.

A calculation was also made of the magnitude of the loss in warranty service due to the low payouts from the factory. In a shop with 10 mechanics where 33% of the work done in the shop is warranty, it was disclosed that when the dealer's cost for warranty ran \$3.73 over his factory warranty rate, the loss to the dealer was on the order of \$98 a day, \$490 a week, \$2,058 a month and \$24,696 a year. Where the cost for warranty runs \$1.65 over pay-out from the factory the loss to the dealer runs \$43 a day, \$215 a week, \$903 a month and \$10,836 a year.

This study reveals some other salient points about the increasing proportion of warranty work. First, an increase in the proportion of warranty work to retail service work results in a significant loss of mark up on labor hours as the proportion of retail service decreases. Secondly, there is a significant loss of mark up on parts sold with retail labor as the proportion of retail service decreases, because the mark up on retail parts averaged 54% while the mark up on warranty parts averaged only 25%. Finally, there is an increase in total overhead cost as the proportion of warranty work increases due to the effect of the incremental cost attributable to warranty work.

Booz, Allen & Hamilton reached two conclusions, which we quote: "Based on the analysis of the costs and the rates of the 13 dealerships studied the following can be concluded: 1. In the majority of instances, retail service work is profitable only when the profit of the parts sold along with the labor is included. 2. Warranty work has an adverse effect on dealer profits that get progressively worse as the proportion of warranty work increases."

These are only the highlights of a very exhaustive study. It is understood that the time study portion of this survey was not ready for the big mass meeting of the Newark-New York-Houston Ford dealers last week, however this information is nearing completion now and it is expected to be released soon. It is also further understood that the Ford dealers are making the full study available to dealers across the country. Now that they are armed with this study, the dealers are preparing to meet with Ford Motor Company within the next few days to show the company the results, and apparently request some relief from the very real emergency that exists in dealer service operations, as so carefully outlined in this study.

The Newsletter has also been informed that the Cleveland Automobile Dealers Association has voted to contribute a sum of money to the Newark District Ford dealers to help defray further costs of Booz, Allen & Hamilton studies. Additionally, the Metropolitan Independent Dodge Chrysler Dealers Association has also contributed \$2000 to the Newark District Ford Dealers in their efforts toward "equity in the dealer franchise."

"Stimulator Dealer" article "stimulates" reaction: Several weeks ago the Newsletter reported dealer sentiment to the effect that "stimulator" dealers "fix prices" in reverse. We quoted a General Motors dealer in the mid-West who said "GM is more subtle than the other factories. They don't need a factory store—they set up their own stimulator dealers who perform the same job for them that a factory store does for Ford and Chrysler."

Since publication of the story, we have had hundreds of calls for extra copies of the Newsletter. One General Motors dealer told us: "I need four copies of that letter please, because I want to pass them along to my local state legislators. The reason for it should be obvious. There are a number of problems in my area, with a number of dealers, that are exactly parallel, and I want my state legislators to see this information, so they will know why we are asking for protective legislation. I hope you send stuff like that along to NADA and the state associations, because they aren't helping us the way they should yet."

From the Far West, another General Motors dealer said: "From your calls around the country you must know that dealers don't get upset until the time comes when the squeeze is being put on, and they are making less money, and it is costing much more money to do business, and you pick up year-end published financial reports from GM, Ford and Chrysler and see where they are making 12% and 13% after taxes, and dealers are struggling to make 1% or 1½% before taxes, and they have millions of dollars invested in their facilities, and you begin to understand the reason for the current state of dealer unrest."

From the South, yet another General Motors dealer stated: "The policy on the part of the factories to push fleet sales to the point that those cars are being sold for less money than the dealers can buy them, and, adding insult to injury, to have those cars dumped back on the market in great numbers and thereby reduce the wholesale price of all cars, simply means that the retail customer has to pay more for his new car because of what is being done in fleet sales. No one in Detroit seems to realize that dealers are extremely upset, because we see this as being the death of the retail franchise system as we have known it for the last twenty or thirty years. If the factory can, through coercion, force dealers to sell ever increasing amounts of fleet cars at a price of \$75 to \$125 less than a dealer can buy for we are on the way to the end of the system. This is the end result of all these so-called summer rental programs, and everything else the factories are doing in this area."

Discussing the same subject, another dealer told the Newsletter: "It is all just about this simple. If there are 100 cars sold in a community, and if on a national basis your line group gets 10% of total sales, and for some reason, you aren't getting that same 10% in your community, the factory walks in and tells you that you must take additional fleet cars, many times at a great loss to the dealer. This is how they build you to the national average. If you don't do it, they subtly threaten to put other dealers in your area. My experience shows they have done it, and this is the insidious thing that is becoming worrisome in this business."

De Carlo files second suit for \$600,000: Anthony De Carlo has filed a second suit against Dodge Division, this time in New York State Supreme Court. His first action is still pending in federal court. This latest action alleges that Dodge is "breaching" a letter of agreement extending De Carlo's franchise through the 1969 model, by "failing and refusing to supply" Dodge cars and trucks to the dealership and for "improperly and unlawfully removing signs from plaintiff's premises" and informing third parties that plaintiff is not presently a distributor of Dodge cars and trucks." De Carlo is asking \$500,000 for the breach of contract and \$100,000 for the removal of the signs. As previously reported at some length in the Newsletter, De Carlo has an action pending in federal court against the division under the "Dealer Day In Court" act.

In a letter to De Carlo from A. J. Kirchner, Jr., VP of the Dodge Division, hand delivered and dated November 15, 1967, the company offered to extend his term sales agreement until the "introduction of the 1969 model vehicle." De Carlo accepted this offer, but claims that when he got the term letter, the conditions in the letter were unacceptable. "The minimum sales responsibility had been increased again, as had the working capital. Also at the end of this term agreement Chrysler would be left with no obligation whatsoever as it concerned me." This dealer had been on a two year term assignment with the company prior to this, and using Kirchner's letter as his guide, assumed they would be extending the new agreement through 1969 on the same basis.

On the basis of this, De Carlo felt he should have a working agreement through 1969 and his current suit, relative to the refusal of the company to furnish him with cars and trucks, and the removal of his signs is based on this assumption.

Mancuso Chevrolet creates special approach to warranty problem: Mancuso Chevrolet in Skokie, Ill., has devised a special pamphlet which approaches the customer complaint about warranty from a new angle. The booklet is a straight talking piece aimed at the customer and designed to give the service manager some relief in his dealings with the public, at the same time that it talks straight to the customer and advises him of his responsibilities under the warranty arrangement. The pamphlet is titled, "How to be Nice to our Service Manager . . . and save yourself a buck or two." The pamphlet is apparently given to every customer accepting delivery of a new car, and is written in a light breezy style, approaching the entire problem with a sense of humor, but at no time does it pull any punches as far as the customer's responsibilities are concerned. For instance, one section of this little pamphlet is titled: "How to be a wiseguy" and

PROFIT COMPARISON
[Expressed as percent of sales]

	Auto manu- facturers	Dealers
1963.....	15.5	1.9
1964.....	14.7	1.8
1965.....	15.2	2.1
1966.....	12.2	1.8

Note.—Above information supplied by NADA.

(The following material was subsequently submitted by General Motors Corp.):

GENERAL MOTORS CORP.,
Detroit, September 23, 1968.

Re Special Subcommittee—Automobile Marketing Practices Hearings, July 25, 1968.

Hon. A. S. MIKE MONRONEY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: General Motors is appreciative of the opportunity afforded to us by the Subcommittee to submit a statement, for inclusion in the record, responding to the testimony presented by representatives of the National Automobile Dealers Association in the hearing before the Subcommittee on Thursday, July 25, 1968. We believe that this response can contribute importantly to knowledge of the present state of facts and evaluation of the criticisms relating to the principal issues covered by NADA's testimony, namely—

1. Manufacturer subsidies on sales to fleet and rental companies and to state and local government agencies.
2. "Company retail stores".

Since the principal witnesses on behalf of the dealer association were General Motors dealers, it might be inferred that General Motors initiated or engages in certain practices complained of in their testimony relating to the foregoing issues or relating to other issues brought up during the course of examination of the witnesses. Therefore we think it is essential that General Motors' position be understood with respect to all the important issues discussed at the hearings on July 25.

The enclosed statement by General Motors Corporation is furnished with the sincere hope that it will be helpful to the Subcommittee. Copies of the statement and of this letter are being forwarded to National Automobile Dealers Association.

Very truly yours,

H. E. CRAWFORD.

ENCLOSURE:

STATEMENT OF GENERAL MOTORS CORP.

General Motors is pleased to submit the following statement of its position relative to the issues brought up at the hearings of the Subcommittee on July 25, 1968.

FLEET SALES TO COMMERCIAL RENTAL AND LEASING FLEET COMPANIES

During the 1963 model year, sales of General Motors passenger cars by General Motors dealers accounted for 61% of industry sales to fleet users. These GM passenger car sales were made strictly on the merit of the product, i.e., styling dependability, initial cost, cost of upkeep and, most importantly, retained value at time of trade-in.

In the 1963 model year, sales to fleet users (companies purchasing 10 or more units annually) reached 6.2% of industry sales in the domestic passenger car segment of the market. By 1967, this percentage had increased to 10.4% of total domestic passenger car sales, with indications that continued growth can be anticipated.

Beginning with the introduction of 1963 models in the fall of 1962, competitive manufacturers began offering to fleet users, either directly or through their dealer organizations, special allowances designed to combat the advantages

enjoyed by General Motors products and specifically the superior trade-in value of such products. These competitors' fleet programs, which were partially effective during 1963, were broadened through the 1964, 1965 and 1966 model years. As a result, by the conclusion of the 1966 model year, the participation of General Motors dealers in industry sales to fleet users had dropped from the 61% attained in 1963 to 41.1%.

Beginning with the 1967 model year, General Motors offered its dealers a limited fleet assistance program in order to give them the opportunity to be more competitive. The fleet assistance program introduced for 1968 models, while somewhat improving GM dealers' competitive position, was not fully effective against the more liberal programs offered by competitive manufacturers. The General Motors fleet assistance programs which will be effective with the 1969 models we hope will more fully match the programs of competitive manufacturers. It is important to note, too, that General Motors fleet assistance programs are offered only through General Motors dealers who conclude each sale and deliver each unit purchased by any local or national fleet user account, and it is at the complete discretion of the dealer whether he participates in or seeks this business.

The merits of fleet assistance programs have been frequently discussed with many General Motors dealers. In general, dealers have advised General Motors that, considering the programs offered by competitive manufacturers beginning in 1963 and the resulting loss of new unit sales, it was necessary and logical that General Motors Corporation offer fleet assistance programs which would make it possible for GM dealers to compete for the growing and increasingly important sales to fleet accounts.

Many General Motors dealers have expressed their views with respect to the significant impact of fleet sales on sales generally. Sales to fleet companies often result in sales to employees of those companies. Even more importantly, new passenger cars used in daily rental service result in prompt and widespread display of new product styling and features and provide self-demonstration to potential purchasers of new cars in key markets. General Motors dealers have also emphasized that they appreciate GM's action in relying solely on its dealer organization in the competition for fleet business rather than selling or leasing directly.

FLEET USER ALLOCATIONS

During the three months following new model introduction in late September or early October, fleet user requirements as a percent of total market are at a high level. R. L. Polk registration data show that fleet purchases for the full calendar year 1966 equaled 9.2% of domestic industry; however, during the three-month period, October-December, such purchases amounted to 12.4% of total domestic industry. Similar figures for the 1967 calendar year are 10.4% for the full year and 13.6% for the October through December period.

Because of the importance of fleet user business to both General Motors dealers and GM, special divisional allocations, based on the volume of fleet sales as related to total passenger car sales and in line with availability, are provided so that General Motors dealers are in a position to meet the requirements of fleet users, such as car rental companies, who require new passenger cars soon after new model announcement.

The testimony before the Subcommittee indicated that manufacturer allocation of cars for fleet accounts during the early part of the model year was unduly increased in the 1968 model year as compared with the 1967 model year. In the case of General Motors the facts do not support such a complaint.

General Motors' total 1968 model passenger car production for U.S. domestic sales from the start of production in August through December 31 was 7.0% greater than during the same period for the 1967 model, yet passenger cars shipped to GM dealers for retail deliveries during the period increased 8.3% over the previous year. A lesser percentage of 1968 model production was allocated to fleet accounts during this period than in the preceding model year.

BID ASSISTANCE PROGRAMS TO STATES, MUNICIPALITIES, SCHOOL DISTRICTS AND OTHER POLITICAL SUBDIVISIONS

Historically the manufacturers have sold cars and trucks directly to state and local governments and their political subdivisions or have provided financial assistance to dealers bidding for sales to these accounts. During the five-year period, 1958-1963, General Motors Corporation did not make direct bids or offer

bid assistance to GM dealers on such car and truck business, however; the single exception was an assistance program on heavy-duty truck models. Competitive manufacturers, on the other hand, continued to offer various monetary assistance programs either direct or through their dealers on all lines of cars and trucks.

The sale of General Motors passenger cars to state and local governments and their political subdivisions dropped from 37.2% of industry sales to such accounts in 1958 to 13.5% in 1964. Truck sales dropped from 42.6% in 1958 to 20.5% in 1964. In the interest of both General Motors and its dealers, a limited bid assistance program was offered to General Motors dealers commencing in July of 1965.

All GM cars and trucks sold to states, counties and cities and other political subdivisions are sold pursuant to GM dealer bids and are delivered by GM dealers. With the exception of sales to the Federal Government, General Motor sells passenger cars and trucks only to GM dealers.

STATE OF OKLAHOMA—DISTRIBUTION OF NEW MODEL CARS

Mr. Judson Bryan testified before the Subcommittee concerning a survey of dealers made by the Oklahoma Automobile Dealers Association. He said that the overall average of responding dealers—mostly GM dealers—reported 30% fewer cars available for retail sale in the period from announcement through December 31 for 1968 models as compared to 1967 models. The dealers attributed this loss of retail availability to the priority given by the manufacturers to fleet company purchases. No facts were furnished by the dealers in support of their opinions as reported in the poll.

From our divisional distribution records on new cars shipped to the 283 General Motors dealers in Oklahoma from the start-up of production of 1968 models through December 31, 1967, as compared to the same period covering 1967 models produced in 1966, GM dealers in Oklahoma were shipped an additional 981 units during the initial 1968 model period. From the financial statements as submitted by reporting GM dealers in the State of Oklahoma, new passenger car sales to fleet purchasers increased only 310 units during the period October 1 through December 31, 1967, as compared to the previous year.

CALIFORNIA HIGHWAY PATROL BID

It was indicated in the testimony of Mr. Charles R. Winterowd, a former Chrysler-Plymouth dealer in Sacramento, California, that an Oldsmobile dealer was enabled to sell cars to the California Highway Patrol at a price substantially below dealer cost because of the financial assistance made available to him by Oldsmobile Division. The fact is that an Oldsmobile dealer was successful in securing this business in only one year. In all other years, at least since 1958, the business went to another competitive manufacturer. The desirability of this business is generally recognized in the industry.

FACTORY-OWNED OR FACTORY-CONTROLLED RETAIL STORES

Mr. Slack, appearing on behalf of NADA, testified that automobile manufacturers have become increasingly active in recent years in the retail automobile business. This does not apply to General Motor Corporation—a fact which has been acknowledged to General Motors by Mr. Slack and other NADA officials on numerous occasions although not made clear at this Subcommittee's hearings.

Currently General Motors owns and operates 15 retail new passenger car stores. This compares to 23 stores operated five years ago. Since 1963 the Cadillac Motor Car Division has eliminated eight retail stores, two each in Los Angeles, San Francisco, Detroit and Chicago. The 10 remaining Cadillac stores, 5 each in the greater New York and Chicago areas, have been in operation a considerable length of time—five stores since 1919, two since 1931 and one each since 1946, 1949 and 1954.

Chevrolet, Pontiac and Buick Divisions each have one retail store located on Broadway in the Borough of Manhattan, New York City, where operational costs are very high and independent dealers have not been found who are willing to make the required investment. One Pontiac and one Buick retail store are located, as they have been for many years, in Pontiac, Michigan and Flint, Michigan, the home plant cities of Pontiac and Buick respectively.

Under the General Motors procedures of operation, the General Motors factory-owned retail stores are operated the same as any independently-owned dealer-

ship; they do not receive any preferential consideration. The National Automobile Dealers Association has not provided or offered any information critical of any of the current 15 GM retail passenger car stores.

MANUFACTURER FINANCIAL INTEREST OR INVESTMENT IN RETAIL STORES

In the testimony given by NADA officials, investments by automobile manufacturers in ostensibly independent retail dealership operations were vigorously criticized. This criticism does not apply to General Motors Corporation.

The General Motors plan for investing in dealerships with qualified operators, pioneered by and administered through the Motors Holding Division since 1929, is in keeping with the Quality Dealer concept. Often capable individuals have the ability and experience but not the necessary capital to become dealers. Motors Holding Division makes available financial assistance to such individuals on a sound business basis by investing in the dealership corporation. The operator himself also makes a substantial investment in the dealership corporation and does business with the General Motors Division with which the dealership corporation has a Selling Agreement on the same basis as any other General Motors dealer. The plan does not contemplate retention of an investment by General Motors. On the contrary, it is designed to encourage the operator's retirement of General Motors' investment out of profits in the shortest possible time, General Motors takes pride in the fact that hundreds of men have achieved ownership of their own business through this plan—businesses which have made important contributions to progress in the retail automotive sales and service field.

Since 1929, Motors Holding Division has provided financial assistance to 2,040 dealerships. Currently there are 396 such dealerships. Full ownership is being attained by the operator through application of dealership profits on an average of four years and five months.

NADA has stated on many occasions that the Motors Holding plan of capital assistance is most acceptable and is a model for the industry.

EXCLUSIVE DEALERSHIPS

Mr. Slack testified concerning an "unwritten law" that a dealer cannot handle a competitive make car in the same price category. We are certain that Mr. Slack was not referring to General Motors dealers.

General Motors has no policy, written or unwritten, prohibiting any GM dealer from representing a competitive line of products. General Motors dealers are free to take on competitive franchises and do so in significant numbers.

Indeed General Motors' policy on this matter is clear and has been stated in writing to every dealer. Pertinent in this respect is General Motors most recent statement of policy referred to in my letter of April 11, 1967 to the General Sales Managers of the U.S. Car and Truck Divisions of General Motors and the implementing letter sent by each such General Sales Manager to all the wholesale personnel of his division. A sample copy of each of these letters is attached hereto. These letters constituted a reissuance of similar advice sent out on July 26, 1960 by Mr. J. M. Roche (copies attached). At that time, when General Motors introduced the so-called "compact car", charges were made by one of our competitors that certain General Motors dealers, who were also handling the product of the competitor, were coerced into terminating their franchises for the competitive make. General Motors emphatically denied such charges, and we understand that a number of General Motors dealers were questioned by agents of the Federal Bureau of Investigation, or other representatives of the Department of Justice, and they, too, denied the charges.

Based on our July 1968 records, there are 14,060 GM passenger car and GM truck dealerships. Of these, 8,032 dealerships handle a single line of GM cars or trucks only while 4,361 handle two or more lines of GM cars or trucks only. The remaining 1,667 GM dealers also represent and handle, within the dealership operation, one or more non-GM lines of automobiles or trucks. These 1,667 dealers hold 2,526 non-General Motors franchises which represent a sizable contribution to the distribution efforts and activities of the competitive makes.

Many additional competitive franchises may be handled by General Motors dealers at separate facilities and as separate operations. These would not appear in our records.

Whenever any dealer considers handling another line of cars or trucks, he must, as a practical matter, consider the additional investment necessary to promote the sales of that product and provide necessary additional service and

parts facilities for the benefit of the customers involved. The dealer, as a small businessman, is therefore confronted with the important question as to whether the profit return to be expected justifies the investment required. It is the dealer's own answer to this economic question which determines the decision made by the dealer and not any written or unwritten policy imposed by General Motors.

WITHDRAWAL OF FRANCHISE--ARBITRARY TERMINATIONS

In answering a question raised by the Committee, Mr Slack indicated that a franchise could be withdrawn from a dealer "for any reason found fit by the manufacturer".

General Motors may terminate the Selling Agreement with a dealer only for cause as specified in the Selling Agreement between the dealer and the General Motors Division. Even then, termination procedures within General Motors require a full review at several levels of divisional and corporation management of all facts warranting a termination before approval of termination is granted.

In 1956, the General Motors Dealer Relations Board was superseded by the General Motors Dealer Relations Umpire Plan under which any dealer who feels aggrieved by any final decision of a division, may appeal that decision and have it reviewed by an impartial umpire selected on the basis of special qualifications and experience. Since October 19, 1965, the position of Umpire has been held by the Honorable Charles E. Whittaker, formerly an Associate Justice of the United States Supreme Court. Mr. Justice Whittaker, whose office is located in Kansas City, Missouri, succeeded the Honorable William C. Coleman, Retired Chief Judge of the United States District Court for the District of Maryland, who was appointed Umpire in June 1956. The decisions of the Umpire are binding upon the General Motors Division but not upon the dealer, who may, if he so elects, seek legal redress in the courts.

PURCHASES OF REPLACEMENT PARTS

Mr. Slack testified, in response to a question, that "the manufacturer frequently checks to determine the degree of loyalty on the part of the dealer in the purchase of the manufacturer's parts". Because this statement by a Chevrolet dealer might indicate to the Subcommittee that General Motors forces its dealers to buy General Motors parts we asked Mr. Slack to furnish evidence concerning his statement relating to parts purchases. In reply, Mr. Slack specifically advised that he was not testifying about his experiences with Chevrolet and did not claim, nor did he have any evidence indicating that Chevrolet or other General Motors Divisions had ever engaged in such practices.

In the event NADA has any evidence that General Motors has forced any dealer to purchase General Motors parts to the exclusion of competitive parts, we would be grateful if it were produced. In 1942, the Federal Trade Commission issued a Cease and Desist Order prohibiting General Motors from requiring any dealer to buy General Motors parts. General Motors has complied with this Order and fully intends to continue to do so in the future.

In conclusion, to a very substantial degree the testimony by officers of the National Automobile Dealers Association, and other witnesses, appearing before the Subcommittee on July 25, 1968, was not applicable to the position of General Motors Corporation relative to the issues discussed. The purpose of this statement has been to clarify the position of General Motors Corporation with respect to those issues.

ATTACHMENTS :

GENERAL MOTORS CORP.,
April 11, 1967.

To General Sales Managers, U.S. Car and Truck Divisions:

Prior to recontracting in 1960, Mr. J. M. Roche forwarded a letter, dated July 26, 1960, advising each General Sales Manager to reemphasize to members of his divisional wholesale personnel the rights and obligations of the parties to the Selling Agreement.

The advice in that connection remains in full force and effect. Therefore, at this time we recommend that you again advise your wholesale personnel. A suggested letter is attached for your use.

H. E. CRAWFORD.

CHEVROLET MOTOR DIVISION,
GENERAL MOTORS CORPORATION,
Detroit, Mich., April 24, 1967.

Origin No. SM-26.

C.O. No. 67-451.

Subject: Rights and obligations of the parties to the dealer selling agreement.
To: All Chevrolet wholesale personnel.

All representatives of Chevrolet Motor Division who contact dealers in connection with the execution of Selling Agreements should reacquaint themselves with the instructions outlined below dealing with the rights and obligations of the parties. Most Chevrolet wholesale personnel are fully aware of these matters, but this outline should be helpful to them as well as more recently employed divisional representatives.

1. The wording of the Selling Agreement cannot be changed.
2. The Selling Agreement speaks for itself.
3. The Dealer has the right to accept or reject the Selling Agreement.
4. All the rights and obligations of the parties are spelled out in the Selling Agreement, and there are and should be no other conditions, understandings, or agreements.
5. The Selling Agreement covers the sale and distribution of Chevrolet Motor vehicles. In the negotiation and execution thereof, the Chevrolet representative is not to discuss, give any advice, or make any recommendations, even if they are solicited, with respect to the business activities, decisions, or programs of the dealer, relating to the sale and distribution of any other make of motor vehicle being handled by the Dealer.
6. Chevrolet representatives should confine their discussion to the Chevrolet motor vehicles covered by the Selling Agreement, the provisions of the Selling Agreement being offered, and to the negotiations of normal business matters related to the Selling Agreement, its operation, and the sale and distribution of the Chevrolet products covered thereby.

In other words, the dealer has the right to sell and distribute other products and divisional representatives should neither question nor interfere with that right. On the other hand, if the dealer's other business activities result in any failure of performance of the terms and conditions of the Chevrolet Dealer Selling Agreement, divisional representatives may discuss such failure of performance.

There must be strict adherence by all Chevrolet representatives to the instructions outlined above.

Very truly yours,

L. N. MAYS,
General Sales Manager.

GENERAL MOTORS CORP.,
July 26, 1960.

To General Sales Managers, U.S. Car and Truck Divisions:

During the ensuing weeks, members of our divisional Wholesale Organizations will be meeting with General Motors dealers for the purpose of negotiating new Selling Agreements to become effective November 1, 1960.

It is felt advisable that we should re-emphasize at this time the rights and obligations of the parties to the Selling Agreement. Therefore, we ask that you issue the attached letter to all members of your Wholesale Organization.

It has also been deemed advisable that the dealers of each Division to whom a new Selling Agreement has been offered be informed of these instructions that have been issued to the Wholesale Organization. To accomplish this, we ask that prior to August 1, 1960 (the date on which Contracting Meetings start) you mail a copy of these instructions to each dealer to whom the new Selling Agreement has been offered. In this connection we are supplying a suggested letter for your use.

J. M. ROCHE.

CHEVROLET—CENTRAL OFFICE,
DIVISION OF GENERAL MOTORS CORP.,
Detroit, Mich., August 1, 1960.

To all Chevrolet Dealers:

In the relatively near future, representatives of our Chevrolet Wholesale Organization will be meeting with you to review the provisions of a new Selling Agreement to become effective November 1, 1960.

For your information, we are forwarding you a copy of a letter of instructions issued to all of our representatives who will be handling the execution of the Selling Agreement and its operation.

Very truly yours,

K. E. STALEY,
General Sales Manager.

CHEVROLET—CENTRAL OFFICE,
DIVISION OF GENERAL MOTORS CORP.,
Detroit, Mich., July 29, 1960.

Origin No. SM-35.

C.O. No. 60-655.

Subject: Instructions for handling the execution of the new selling agreements.

To: All Chevrolet Wholesale Personnel.

During the forthcoming weeks you will be undertaking the negotiations of the new Chevrolet Dealer Selling Agreements to become effective on November 1, 1960, following the expiration of the current five (5) year term Agreements. It is particularly important, therefore, that all representatives of Chevrolet Motor Division who will contact dealers in connection with the execution of the new Selling Agreements acquaint themselves with the instructions outlined below dealing with the rights and obligations of the parties. Most Chevrolet personnel are fully aware of these matters, but this outline should be helpful to them as well as more recently employed divisional representatives.

1. The wording of the Selling Agreement cannot be changed.
2. The Selling Agreement speaks for itself.
3. The Dealer has the right to accept or reject the Selling Agreement.
4. All the rights and obligations of the parties are spelled out in the Selling Agreement, and there are and should be no other conditions, understandings, or agreements.
5. The Selling Agreement covers the sale and distribution of Chevrolet motor vehicles. In the negotiation and execution thereof, the Chevrolet representative is not to discuss, give any advice, or make any recommendations, even if they are solicited, with respect to the business activities, decisions, or programs of the dealer, relating to the sale and distribution of any other make of motor vehicle being handled by the Dealer.
6. Chevrolet representatives should confine their discussion to the Chevrolet motor vehicles covered by the Selling Agreement, the provisions of the Selling Agreement being offered, and to the negotiations of normal business matters related to the Selling Agreement, its operation, and the sale and distribution of the Chevrolet products covered thereby.

In other words, the dealer has the right to sell and distribute other products and divisional representatives should neither question nor interfere with that right. On the other hand, if the dealer's other business activities result in any failure of performance of the terms and conditions of the Chevrolet Selling Agreement, divisional representatives may discuss such failure of performance.

There must be strict adherence by all Chevrolet representatives to the instructions outlined above.

Very truly yours,

K. E. STALEY,
General Sales Manager.

Senator MONRONEY. I would like to be more definite on when we will have another session with members of the Federal Trade Commission and otherwise, but the schedule is so uncertain at this closing period, I am at a loss to give a definite date. I would not advise members from out of town to remain for further hearing, but we will give notice as far in advance as we can.

Thank you very much for your attendance. It is very helpful testimony.

If there are no further witnesses, the committee will stand in recess, subject to further call from the Chair.

(Whereupon, at 1:08 p.m., the meeting of the Special Subcommittee on Automobile Marketing Practices was recessed to reconvene upon the call of the Chair.)

