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THE PLASTIC JUNGLE

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HEARINGS

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BEFORE THE

COMMITTEE ON POSTAL OPERATIONS

OF THE

COMMITTEE ON

OFFICE AND CIVIL SERVICE

HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

FIRST AND SECOND SESSIONS

ON

H.R. 13244, H.R. 14346, and other bills

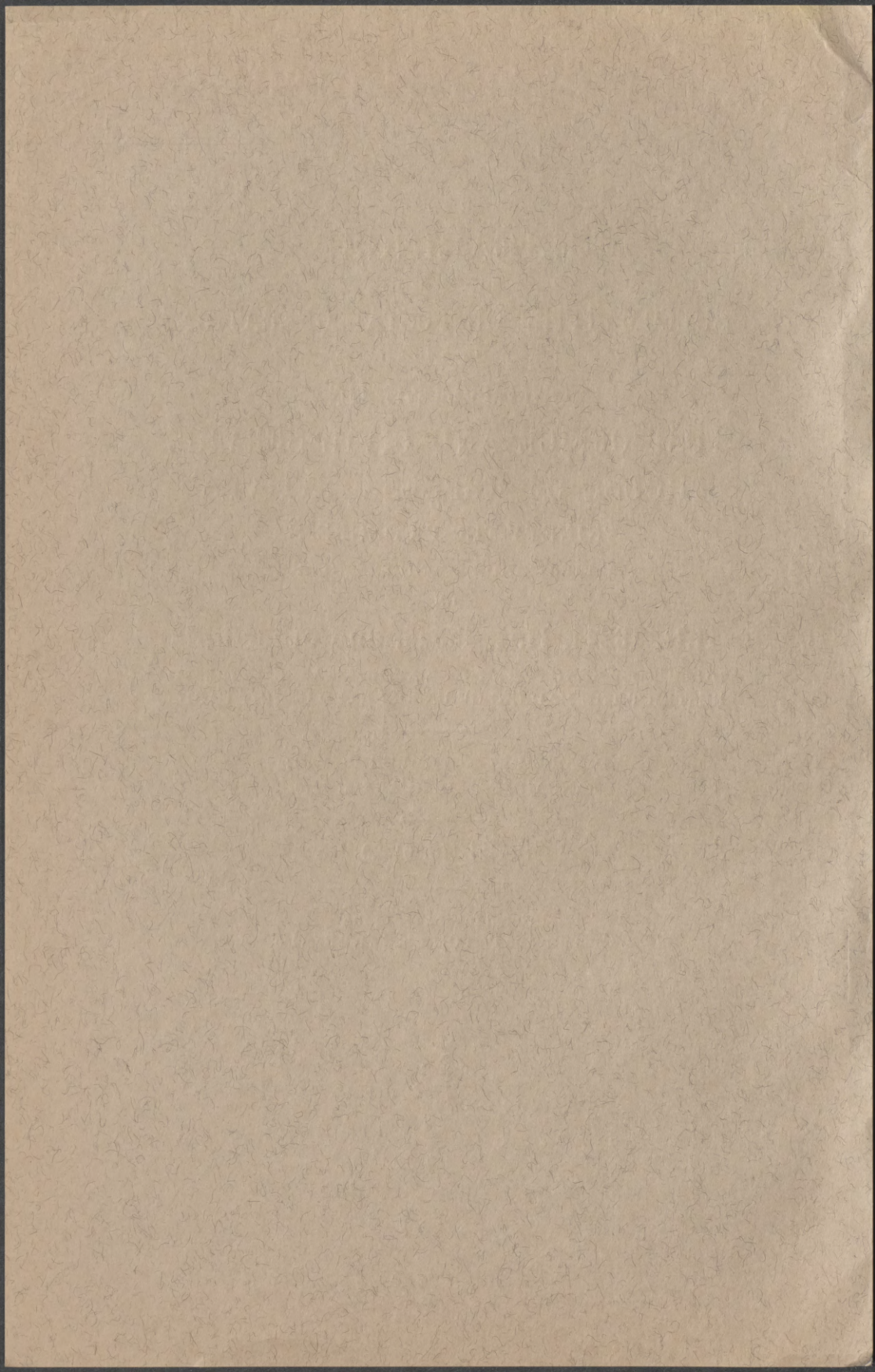
BILLS TO AMEND TITLE 39, UNITED STATES CODE, TO
RESTRICT THE MAILING OF UNSOLICITED CREDIT CARDS

OCTOBER 29, NOVEMBER 19, 1969;
JANUARY 28, FEBRUARY 4, 1970

Serial No. 91-20

Printed for the use of the
Committee on Post Office and Civil Service





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BEFORE THE
SUBCOMMITTEE ON POSTAL OPERATIONS
OF THE
COMMITTEE ON
POST OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES
NINETY-FIRST CONGRESS
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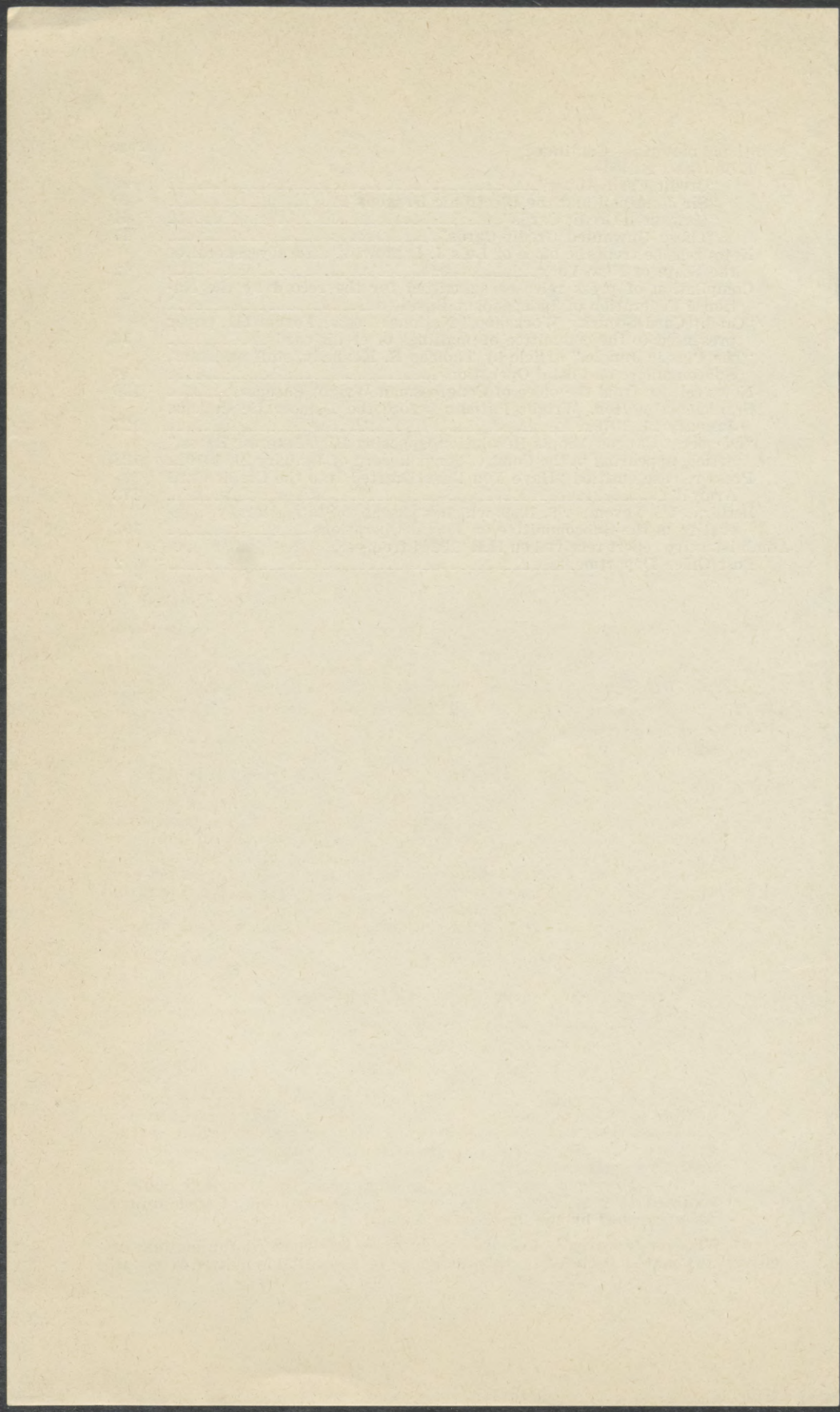
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THE PLASTIC JUNGLE

WEDNESDAY, OCTOBER 29, 1969

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON POSTAL OPERATIONS OF THE
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C.

The subcommittee convened at 10 a.m., in room 210, Cannon House Office Building, Hon. Robert N. C. Nix (chairman of the subcommittee) presiding.

(The bills, subject of this hearing, are H.R. 13244 and H.R. 14346, which follow:)

[H.R. 13244, 91st Cong., first sess.]

A BILL To amend title 39, United States Code, to restrict the mailing of unsolicited credit cards

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4001, chapter 51 of title 39, United States Code, is amended to read as follows:

“§ 4001. Nonmailable matter

“(a) Matter, the deposit of which in the mails is punishable under sections 1302, 1341, 1342, 1461, 1463, 1714, 1715, 1716, 1717, or 1718 of title 18, is nonmailable.

“(b) Except as provided in subsection (c) of this section, every credit card and every other document and device intended or adapted for the purpose of establishing the identity and credit of any person in connection with the purchase or rental on credit of goods or services, or the obtaining of loans, are nonmailable matter and shall not be conveyed in the mails or delivered from any post office or station thereof or by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postmaster General shall prescribe.

“(c) This section does not apply to credit cards or other documents or devices described in subsection (b) when mailed—

“(1) by any person other than the issuer or a person acting on behalf of the issuer;

“(2) in response to a request or application therefor;

“(3) as a replacement for a credit card or other such document or device previously used under the authority of the addressee; or

“(4) under the following conditions:

“(i) the mailing is by registered mail restricted to delivery to addressee only;

“(ii) the envelope bears the following endorsement on the face in letters not less than one-quarter inch in height ‘unsolicited credit card—addressee may refuse’ or words of similar import prescribed by the Postmaster General to make nonmailable such credit card or other such document or device; and

“(iii) the sender agrees to pay an additional charge for any mailing returned to him covering the cost to the Department of such return as established by the Postmaster General.

“(d) Whoever knowingly deposits or causes to be deposited for mailing or delivery any matter declared by this section to be nonmailable matter except in

accordance with subsection (c) of this section shall be fined not more than \$1,000 or imprisoned not more than two years, or both.

"(e) Except as provided in section 4002 of this title, nonmailable matter which reaches the office of delivery, or which may be seized or detained for violation of law, shall be disposed of as the Postmaster General directs."

[H.R. 14346, 91st Cong., First Sess.]

A BILL To amend title 39, United States Code, to restrict the mailing of unsolicited credit cards

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"(2) in response to a request or application therefor;

"(3) as a replacement for a credit card or other such document or device previously used under the authority of the addressee;

"(d) Whoever knowingly deposits or causes to be deposited for mailing or delivery any matter declared by this section to be nonmailable matter except in accordance with subsection (c) of this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

"(e) Except as provided in section 4002 of this title, nonmailable matter which reaches the office of delivery, or which may be seized or detained for violation of law, shall be disposed of as the Postmaster General directs."

POST OFFICE DEPARTMENT,
THE GENERAL COUNSEL,
Washington, D.C., November 18, 1969.

HON. THADDEUS J. DULSKI,
Chairman, Committee on Post Office and Civil Service,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for a report on H.R. 13244, a bill to amend title 39, United States Code, to restrict the mailing of unsolicited credit cards.

This measure declares nonmailable unsolicited credit cards and similar documents or devices sent to establish an addressee's credit. Violators would be punished by fine or imprisonment or both. The proscription would not apply to an unsolicited credit card if it is shipped by registered mail restricted to delivery to the addressee only: the envelop bears an endorsement that it contains an unsolicited credit card which the addressee may refuse; and the sender agrees to pay an additional charge for any such mailing returned to him.

The Department is aware that the practice of mailing unsolicited credit cards has generated considerable public protest. We recognize that a problem does exist in this area, and, while we are not in a position to endorse the specific provisions of any pending bill, we are not opposed in principle to governmental regulation of unsolicited credit card mailings.

Although some credit cards are mailed at third-class rates, a recent survey revealed that most major credit card mailers now use first class mails exclusively for this purpose. Under the provisions of H.R. 13244 the postage charge for mailing an unsolicited credit card would come to \$1.36, which in-

cludes a registry fee of 80¢ and a restricted delivery fee of 50¢. From these figures it would seem that the enactment of H.R. 13244 as a practical matter might stop the mailing of most unsolicited credit cards.

It is noted that the word "nonmailable" appearing on page 2, line 25 of the bill should read "mailable". Also H.R. 13244 as written has the effect of repeal in existing law codified in 39 USC 40001 (c).

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

Sincerely,

DAVID A. NELSON.

Mr. Nix. The subcommittee will be in order.

Today the subcommittee will consider bills which will regulate the mailing of unsolicited credit cards. There has been considerable outcry against the mass distribution of this kind of junk credit. Hundreds of letters of protest have been forwarded to the Federal Trade Commission by indignant mail patrons protesting the indiscriminate and unsolicited mailing of credit cards. The public is worried about the loss of these cards and they have good reason to be.

Every year 9 million credit cards are lost, and of these at least a million are used fraudulently for an estimated loss of \$150 million. In each of these 9 million cases the burden is on the cardholder to notify the company that issued the card to protect himself. But what of the situation where the credit card is unsolicited and is stolen from a mailbox? The innocent mail patron has no way of knowing that there is a credit card outstanding in his name. His credit is under attack. He is in real trouble.

Organized crime has already seen the value of mass theft of credit cards and the easiest way to do this is to get at unsolicited credit card mailings. An Associated Press release printed in the Washington Star on July 30 described the indictment of 23 persons who organized as a ring stole 20 credit cards and ran up a \$175,000 bill. The leader of the ring was a well known gangster.

The Postal Inspection Service has been active in obtaining prosecution of this type of fraud in that they obtained 300 convictions in fiscal 1968 and 342 convictions in fiscal 1969, and they now have 746 cases on hand. The number of mailed credit card fraud cases has soared 700 percent in the last 4 years.

An advertisement pamphlet put out by the American Express Co. describes credit cards as the "new money." A more accurate description would be "funny money." Credit card plans account for well over \$13 billion in outstanding debt. Retailers pay from 3 percent to 5 percent for the service of having their bills collected by the big credit card companies. Consumers pay on the average of 18 percent a year for credit card debt. This is highly expensive borrowing. How then is credit card borrowing so widespread? One answer is the indiscriminate use of unsolicited mailed credit cards. You get a credit card whether you want it or not. If debts are run up against you, you are subject to losing your credit rating if you don't pay up.

This seems to be a proposition where the public always loses. It is a loss to individuals when the good name of our citizens are used to obtain credit for organized crime; it is a loss to credit standing of families when unsolicited credit cards are mailed to youngsters. In one recent case a 9-year-old boy received a bank credit card in Marblehead, Mass. Something needs to be done, and soon. We intend to act.

This subcommittee intends to vigorously pursue this subject to a constructive solution.

Our first witness today is Hon. Wright Patman, chairman of the House Banking and Currency Committee, one of our outstanding members of this body who has done a great service in this particular field. I am personally delighted, Mr. Chairman, to have you appear here today. You may proceed, sir.

TESTIMONY OF HON. WRIGHT PATMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, ACCOMPANIED BY PAUL NELSON AND CURT PRINS

Mr. PATMAN. Thank you, Mr. Chairman.

First I want to congratulate you on that fine statement you just made. It is wonderful, and I think something should be done about this, and I think this Hanley bill is a novel approach, and I think it is worthy of great consideration.

I appreciate the opportunity to appear here today to testify on H.R. 13244, introduced by Congressman Hanley, and on the general subject of credit cards, particularly bank credit cards.

There are a number of problem areas that arise in connection with the use and distribution of credit cards. But perhaps the most important question that needs to be explored is the reliance upon unsolicited credit card mailings, a tactic which is increasing at an alarming rate.

In 1967, I introduced legislation to curb the unsolicited distribution of bank credit cards. Hearings were held on this legislation before the Banking and Currency Committee in November of that year. Unfortunately, we were unable to take action on the legislation because the three bank regulatory agencies—the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation—all opposed the legislation, even though Miss Betty Furness, Special Assistant to the President for Consumer Affairs, strongly supported the legislation and said that the bill “would make a major contribution to a secure consumer marketplace.”

The bank regulatory agencies, although admitting that there were problems with bank credit cards, did not feel that the problems were significant enough to call for legislation. Nearly 2 years have passed since that initial hearing on credit cards and still we are without legislation in this vital area. But at the same time, the problems and abuses of credit cards have continued to mount. Recently, the Federal Trade Commission held hearings on credit cards because it too was concerned about the problems that have arisen with the plastic phenomena. However, the Federal Trade Commission does not have jurisdiction over the banking industry and several other industries such as the airlines. Since that hearing, a representative of President Nixon's administration has suggested that all credit cards should be regulated and I strongly endorse such a proposal. No sooner had the Nixon administration proposal been made than the Federal Reserve System made it clear that it would not go along with any proposals that in any way would regulate bank credit cards. In a speech before

the Seattle Clearinghouse Association on September 23 of this year, Federal Reserve System Governor Andrew Brimmer said:

Furthermore there appears to be no reason to change the Board's position that the System has adequate supervisory power governing the development of bank credit card programs and does not see any necessity for special legislation to limit or control bank credit cards.

Of course, it is not unusual for the Federal Reserve System to operate on a course different from that of the administration in power and, once again, we are seeing why the independence of the Federal Reserve System is a major deterrent to an effective government.

We know that the Federal Reserve System wants no change in the present handling of credit cards. But the Federal Reserve System, it must be remembered, speaks only for the bankers, mostly big bankers. Since I introduced legislation to regulate bank credit cards, I have received numerous letters from consumers supporting the legislation. I have not received a single letter from a consumer group or an individual consumer opposing the legislation. In fact, virtually every consumer group that I can think of favors Federal credit card legislation.

The Federal Reserve System also does not believe that credit cards are responsible for financial difficulties such as the marked increase in personal bankruptcies. The Federal Reserve System is thus in sharp disagreement with Royal Jackson, Chief of the Bankruptcy Division, Administrative Office of the U.S. Courts. Testifying before a credit card hearing in the Senate, Mr. Jackson said that a prohibition against sending unsolicited credit cards would reduce the rate of consumer bankruptcies. Mr. Jackson made this statement more than a year ago. Before appearing here, I had my staff check with Mr. Jackson to see if there had been any change in the effect of credit card use and personal bankruptcies.

Mr. Jackson said that there still is a direct correlation between heavy credit card use and personal bankruptcies. He added that bankruptcy referees around the country are more concerned about the problem now because of the continued increase in personal bankruptcies. He added that the problem will not be solved until legislation or regulation controlling the distribution of credit cards is enacted.

I am impressed by Mr. Jackson's statement and I feel that the first step towards correcting the problem would be the enactment of Congressman Hanley's bill. According to the Federal Reserve, some banks have adopted the policy of sending credit cards via registered mail—a procedure which would be required under the Hanley bill. The main objection to the use of registered mail appears to be the cost. According to Governor Brimmer, one bank is reported to have spent an average of 80 cents per mailing to distribute its cards by registered mail. Perhaps the Federal Reserve System feels that an expenditure of 80 cents per card is prohibitive but actually it is a very small expenditure when compared against the profit potential of the card.

For example, at the end of July 1969, there was \$1.7 billion outstanding in bank credit card plans. And during the period from January to July of 1969, there was an average of \$1.4 billion outstanding during any given 30-day period. The banks charge the credit card holder 1.5 percent a month on the unpaid balance, or a total of 18 percent a year annual interest charge, as brought out by Chairman Nix.

Not only do the banks collect from the purchaser but the bank also acts as a double tollgate operator and also collects from the merchant in the form of a discount which ranges as high as 7 percent of the purchase price. Thus, if a merchant sells a \$100 item to a customer who uses a bank credit card to pay for the item, the bank will reimburse the merchant for only \$93, keeping the \$7 as its discount fee. The bank is collecting 18 percent from the consumer and 7 percent from the merchant, or a total of 25 percent in the form of interest or discounts.

It is the only case, I guess, where the banks are on both sides of the street. They collect from the man who sells the item in the store and they collect from the other side, too—the buyer. Lawyers cannot represent both sides of a case. A realtor cannot represent both sides of the case in the sale of a piece of property. But this is one case where the big banks have gotten into a situation where they can collect on both sides.

The 25 percent collection on \$1.4 billion, the average monthly balance during 1969, comes to \$350 million. It would appear to me that with this kind of a profit picture, the banks, or for that matter any credit card distributor, could easily absorb the cost of processing credit card distribution through registered mail.

The other objection that the Federal Reserve has against using registered mail for distribution purposes is one of the most unrealistic that can be imagined. This is what Governor Brimmer had to say about the distribution of credit cards through registered mail:

Since registered mail must be accepted by a responsible person at the address indicated, in many cases this means that the potential card holder must make a special effort to pick up the letter at his post office. Not infrequently this means taking time off from work (many times without pay); incurring transportation costs and other inconveniences. Consequently, the actual cost to potential card holders may be substantially greater than that borne by the sending bank * * *

If this subcommittee accepts Governor Brimmer's premise, it should immediately take action to do away with all registered mail since it is Governor Brimmer's contention that registered mail works a great hardship on the recipient and may be even a major factor in lost man-hours in the work force.

Mr. Chairman, we must work our way through the smokescreen being laid down by the Federal Reserve System and take action on the credit card problem. Day-by-day, the use and abuse of credit cards increases.

On September 30, 1967, there were only 197 banks with credit card plans and the total outstanding in this area amounted only to \$633 million. But on June 30 of this year, 699 banks had established plans and the amount of credit outstanding has more than doubled to \$1.7 billion. We cannot hope to control spending as long as credit card regulation is lacking. Nor can we have an effective bank supervision and regulation without adequate safeguards.

We are in one of the most inflationary periods in our history and spending at all levels must be reduced if we are to find an end to inflation. But we will never solve that problem if credit card operations, particularly banks, encourage widespread, unlimited credit card expenditures. A few months ago when they were claiming to be cutting down on credit and reducing credit, they were sending out credit cards by the millions, unsolicited.

Congressman Hanley has said that "credit card convenience has become a credit card menace." And he has aptly described the situation. The banks are not offering a convenience—they are selling debt and they are packaging debt in a highly attractive form that not only has helped the banking industry to collect record profits but to drive personal bankruptcies to an alltime high.

There is another point, Mr. Chairman, that has not been brought out. You do not know whether a bank is solvent or not if they have issued credit cards by the hundreds and thousands and millions and offered to give free credit up to not only several hundred dollars but sometimes several thousand dollars to people whom they do not know. The banks have not looked into their records for paying their bills, have no records on them at all. They set the names from the telephone books or any other place where a list of addresses is assembled. So there is no way to determine whether that bank is solvent.

It occurs to me, of all people who should be looking after this, it is the regulatory agencies over banks, the Comptroller of the Currency, the FDIC and the Federal Reserve. But they are all supporting it. It is a very dangerous thing.

Interest rates were kept down because the banks were not sure that if interest rates went up, whether their big bond portfolios would naturally go down, in value, including their tax-free municipal bonds, Government bonds and all the rest. But when they had assurance that they would still be allowed to carry these bonds at cost or par, why, then, of course, they were ready to make interest rates very, very high. And they have. And the bonds have gone down in value. And the banks have billions of dollars of losses right now if true values were required to be indicated when their assets are determined in order to determine solvency. But they are not required to do that.

Therefore, the banks are in a hazardous position. And the regulatory agencies should look after it in two ways:

One, the credit card is no way to keep up the solvency of the bank when they have an unlimited number of credit cards outstanding; and there is no way to keep up with the solvency of the banks if interest rates keep going up and the bonds keep going down in value. A substantial part of the capital stock structure of many banks have been down substantially, much greater than we would like. And this is an added case where the banks are more in jeopardy for their own solvency. Something should be done about the credit cards now.

In closing, Mr. Chairman, let me reiterate my support for the Hanley bill and suggest an amendment to preclude banks or any other credit card distributor from sending unsolicited credit cards. If a person wants a credit card badly enough, he will ask for it, but we should not be a party to a temptation that only leads to tragedy.

And furthermore, Mr. Chairman, there is a price increase required on credit cards because when the merchant only gets \$93 for a \$100 suit of clothes, that is going to be made up somewhere. And when the buyer has to pay up to 18 percent interest, then that comes out of the person paying it; that is going to be made up in some way. So that is in higher prices.

If you stop these cards you are making a giant step in the direction of holding down prices at a time when they should be held down.

Thank you, Mr. Chairman, for allowing me to appear.

Mr. Nix. Thank you, Mr. Chairman. I want to say that not only am I deeply appreciative of your presence here because you are a recognized and outstanding authority in the field of finance, but I am further deeply grateful because of the fact that as chairman of the Banking and Currency Committee you have an unusually heavy load of work, and yet despite that, you have come here to give us the benefit of your thinking. I am deeply grateful, sir.

Mr. PATMAN. Thank you.

Mr. Nix. Mr. Cunningham?

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

I, too, want to compliment the witness. I, too, have had quite a bit of bad experiences with this credit card business.

One thing that worries me—and I have heard you speak of it—is that our consumer debt is one of our most serious and major problems facing our economy today. And the way it is going, due primarily to the promiscuous use of credit cards I am fearful of a terrible collapse in the not-too-distant future.

When I was a youngster, my father was a poor plumber and he insisted when we purchased anything it had to be paid for with cash. He knew if we purchased something on time, we would have to pay for it eventually, and then we would have all of these terribly high charges that go along with the extension of credit when you make a purchase. He taught me his philosophy and I have followed it all of these years. I will not use credit cards. I keep getting them in the mail and sending them back.

I recall not too long ago I had written two letters to a company and I said, "Do not send me these." I got another one. I called up the head of that company and said, "I want my name taken off of your list." You know, that took over 3 months for them to locate my name because everything is computerized nowadays. I had a dickens of a time getting my name off. So I do pay everything by check.

As you know, that is almost the most difficult thing in the world to do today. We live over in Virginia near Hecht's Parkington department store. We do a lot of shopping there, and I pay by check. It is our regular sergeant at arms check and I have my regular congressional identification, and they will not take that congressional identification. They would rather take your driver's license, and that takes about 15 or 20 minutes to check out by the manager. I think it is an insult to the Congress that when you show them your identification, with your picture and everything on it, that it is not respected by them.

I do not know this is true in many of the other stores, but it certainly is true at the Hecht Co.

I am all with you on this, and with Mr. Hanley. I certainly hope something can be done because I am very disturbed with the tremendous consumer debt that has been run up in this country. The day of reckoning is going to come.

I certainly appreciate your testimony, Chairman Patman.

Mr. PATMAN. May I make just one observation? I wish we had a campaign for people to pay their debts and get out of debt. They talk about the dollar being worth so much less. Use those depreciated dollars to pay debt; that is a good way to do it; and every dollar of our money is worth a hundred cents to pay all debts and taxes; and we have a tremendous debt, public and private, of over \$500 trillion. So now is

the time I wish the people would consider paying more of their debts.

Mr. CUNNINGHAM. I certainly agree with you, Mr. Chairman.

Mr. NIX. Mr. Wilson?

Mr. WILSON. Thank you, Mr. Chairman.

I want to apologize to the chairman for not being here at the beginning of his statement. I have had an opportunity to glance at it, and I want to compliment you on a very fine statement before the subcommittee this morning.

Mr. NIX. Mr. McClure?

Mr. McCLURE. Thank you, Mr. Chairman.

I want to join with the other members of the subcommittee in thanking you for your appearance and your comprehensive statement. It is a pleasure to hear from you because you are an expert in this field.

I am particularly impressed by the addition you made to your statement and comments on the solvency of the banks because I think you are particularly knowledgeable in this area, and it will be particularly helpful to us.

Mr. NIX. Mr. Ford?

Mr. FORD. Thank you, Mr. Chairman.

Mr. Chairman, I am sorry that I was not here for the first part of your statement, but I will go over it in the record. I have long been an admirer of your courage when dealing with the special interest groups that now seem to be bent on gutting Mr. Hanley's bill. Although this could be taken as partisan cynicism, it might seem, with the assistance of the administration, that they will reconsider the first tentative steps they have taken in this direction.

Mr. NIX. Thank you very much. It is a pleasure to have you here.

Our next witness is one of our distinguished colleagues who is a member of this subcommittee, Hon. James M. Hanley, Member of Congress from the State of New York.

We are particularly proud to have you appear before us. You may proceed.

TESTIMONY OF HON. JAMES M. HANLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. HANLEY. Mr. Chairman and gentlemen of the subcommittee, I want to first comment on your excellent statement, Mr. Chairman, with regard to the essentiality of the legislation which I have introduced. Certainly your remarks have been a source of great encouragement to me.

I was delighted to have the opportunity to listen to the testimony of a true expert in this field, Chairman Wright Patman.

I want to express my deep appreciation to you and the committee for calling these hearings and for the opportunity allowed me today to present my case to your committee.

It is a distinct pleasure to appear before your subcommittee today to discuss the growing menace of unsolicited credit cards—what I call the plastic money menace—and to examine my bill, H.R. 13244 which would place a number of reasonable restrictions on this situation.

Your subcommittee is to be commended for holding hearings on this most important subject. I feel that strong legislation with teeth

in it is badly needed and is needed now. The work of this subcommittee will, I am sure, go a long way toward protecting the American consumer against the incursions and temptations of unsolicited credit cards.

Many phrases have been coined to describe the historical period we are now going through. Depending on your outlook and interests, we live in the atomic age, the computer age, the age of student rebellion, the age of the cold war, and so on. I would suggest that we also live in the credit card age.

In the not too dim past, Mr. Chairman, all but the largest family purchases were made with cash. Credit was something which was to be used only in great emergencies or for buying homes. The breadwinner who could say "I have no debts" was a proud man indeed.

Today, almost the opposite situation prevails. Largely through the proliferation of credit cards since World War II, consumer debt now exceeds \$100 billion, certainly an astounding figure. And I might add that this does not include home mortgages.

We hear a great deal about the impact of Government spending and Government debt on the economy. We hear all too little, however, of the impact of consumer debt. By encouraging individuals to make credit purchases which they otherwise probably would not make, the senders of unsolicited cards contribute significantly to the inflationary spiral.

To be sure, this is not a one-sided affair, however; the explosion of short-term credit has had its beneficial effect on our economy. It has contributed greatly to the phenomenal expansion of our gross national product during the past 20 years. It has allowed families with the prospect of growing incomes to make essential purchases. And, to a certain extent, the use of credit cards has assisted many families in establishing sound budget practices. In short, we have found that the judicious use of credit should not be feared, and that, in fact, it can be most beneficial.

But in the past few years, Mr. Chairman, we have seen the credit card business move in a new direction, a direction which, in my opinion, is unwise and injurious to both the public at large and to thousands upon thousands of unwitting individuals. I am referring to the proliferation of unsolicited credit cards—and particularly to those unsolicited cards sent through the mail.

Over the past 3 years, millions upon millions of credit cards have been mailed to unsuspecting consumers by oil companies, banks, and countless other businesses. These credit cards are often not welcome, are frequently unwanted, and at best are considered a nuisance by many who receive them. Businesses mailing credit cards claim that there is only a 1- or 2-percent return rate. However, they do not have figures on how many people simply destroy or ignore the cards. And they gloss over the deleterious effects which unsolicited credit cards can have on a family's budget.

I am basically opposed to this practice for three reasons: (1) The wide distribution of unsolicited credit cards encourages families to go too deeply into debt and adds to the inflationary spiral; (2) the receipt of these cards constitutes an unwarranted invasion of privacy; and (3) the massive influx of credit cards sent through the mails encourages criminal activities.

In 1968, Senator William Proxmire's Subcommittee on Financial Institutions conducted hearings on this important problem. During those hearings, it was made patently clear that unsolicited credit cards are a factor in the alarming growth of personal bankruptcies in the United States. In 1968, there were 197,811 cases of bankruptcy in the courts, and 91.6 percent of these were nonbusiness cases. For comparison, in 1958, or 10 years previous, there were 91,668 bankruptcy cases, of which 87.6 percent were nonbusiness.

The lack of consistent nationwide data on bankruptcies makes it difficult to pinpoint the role of unsolicited credit cards. But there is little doubt among bankruptcy referees. For example, a referee from Wisconsin wrote that whenever he asked a bankrupt individual about credit cards:

Without exception each testified that the card came to him unsolicited in the mail. Most, if not all, of them were already seriously overextended in consumer credit, and receiving this card in the mail was somewhat like a gift from Santa Claus. They proceeded, without hesitation, to use the card. The amount of debts incurred with the use of the credit card ranges from two or three hundred dollars up to as much as twelve to fifteen hundred dollars in each case.

Another referee cited some unfortunate examples and concluded that:

These instances . . . are but a few of the many cases coming before this referee in which the debtors who are already financially overburdened receive this unsolicited credit card. Subsequent purchases by them with the use of this card only help to shove these overburdened debtors into the pits of personal financial disaster.

Apparently, these unsolicited credit cards are sent promiscuously to individuals without any regard whatsoever as to past or present credit standing.

These are not my views, Mr. Chairman. These are the considered views of experts in the field—experts who have seen and felt the personal tragedy of men and women who have been led into bankruptcy partially through the ill-conceived and ill-considered practice of mailing these unsolicited cards.

The sadness of the effect of these cards on many individuals is matched only by the irony, tinged perhaps with cynicism, of the heavy participation of banks in this practice. We are all aware of the bite which inflation is taking out of our pocketbooks. And the leaders of those allegedly trying to stem the inflationary tide are the banks. Interest rates have never been higher, and bankers tell us that money is tight. Yet, on the other hand, banks have mailed millions of unsolicited credit cards which encourage and entice consumers to go more deeply into debt, thus fanning the inflationary fires. And all of this at 18 percent a year and more in interest charges. This fact alone should cause us to seriously doubt the wisdom of this practice.

The mailing of unsolicited credit cards is also an unwarranted invasion of privacy. An unsuspecting individual can be seriously damaged if the credit card intended for him is lost or stolen in transit. I have heard numerous examples of people who were completely unaware of the credit card they were supposed to receive until bills began to arrive in the mail. The individual then has two alternatives: either pay the bill, or fight it out with the company issuing the credit card. As Miss Betty Furness has pointed out:

If a card is stolen in transit before it reached the addressee, the would-be card owner may find himself getting bills for something he never saw, from someone

he never knew, because of a credit card he never had. Even though he is eventually absolved of liability for these bills, he may be ensnared in expensive and time-consuming litigation during which time his credit rating is all but destroyed.

This type of situation, I am sure you will agree, is intolerable. I feel that it is incumbent upon us in Congress to protect American citizens from this invasion of privacy which at best is annoying and at worst can seriously jeopardize an innocent family's finances and credit rating.

Finally, Mr. Chairman, I think that we must address ourselves to the problems which unsolicited credit cards cause for our law enforcement officers. The black market for credit cards is a lucrative one indeed. Lost or stolen credit cards command prices from the underworld of up to \$500. These credit cards are then used by seasoned criminals to charge thousands of dollars worth of goods in a brief period of time.

Chief Postal Inspector William J. Cotter has reported that investigations of alleged credit card thefts have increased over 700 percent in the past 4 years. This startling fact was included in a recent Post Office Department announcement of the indictment of 30 persons in Chicago in a scheme to illegally use the mails in a massive credit card fraud. The loss reportedly ran into millions of dollars.

In my own State of New York, Mr. Chairman, a Brooklyn grand jury recently indicted 17 men and women on charges of using stolen credit cards. These individuals allegedly used 20 Mastercharge credit cards to defraud the First National City Bank of \$175,000. The credit cards had been stolen by five post office employees.

While this specific case did not involve unsolicited cards, Brooklyn's District Attorney, Eugene Gold, has left no doubt as to where he feels the fault lies. He attacked the "helter-skelter indiscriminate distribution of credit cards," and has called for strong laws to prevent the distribution of unsolicited cards.

I might add here that both Mr. Gold and New York's Attorney General, Louis Lefkowitz, have personally written to me to endorse my proposals.

Given the profitable nature of this illegal traffic, unsolicited credit cards sent through the mails provide a severe temptation to the postal employees who handle them as well as to the general public. The number of postal employees who steal credit cards from the mails is minute. But even this small number can cause a great deal of damage. We can reduce this temptation to crime by severely restricting the distribution of unsolicited cards.

I feel that my bill would reduce this growing credit card menace. H.R. 13244 would prohibit the mailing of unsolicited credit cards unless:

1. They are sent by registered mail;
2. The envelopes are clearly marked as containing credit cards; and
3. The sender agrees to pay return postage.

Violation of these terms could bring a fine of \$1,000 and a prison term of 2 years.

I was somewhat disappointed in reading earlier this morning a letter over the signature of William McChesney Martin of the Federal Reserve Board in which he suggests the position of the Board in this matter. It was somewhat dismaying and annoying to me to have

the Board state that "it would recommend favorable consideration of H.R. 13244 if certain conditions suggested by the Board prevailed." The condition simply would gut the bill.

They are suggesting that we delete the requirement that unsolicited credit cards be sent by registered mail. So in essence we are right back where we started from.

It is of concern to me, and certainly evidences great inconsistency on the part of Chairman Martin. I have had the occasion to exchange dialog with him on this subject in the Banking and Currency Committee where both of us expressed great concern about the extension of consumer credit at an 18-percent rate, and he agreed with me in Banking and Currency that we have got to move in the direction of restricting, imposing restrictions, doing something that is going to tone down the promotional devices utilized by the banking fraternity.

Yet, on the other hand, in this letter Mr. Martin states that, and apparently approves—"banks have found the most effective way to obtain customers for a new credit card plan is to mail a large number of unsolicited cards." And he further goes on to state—and I do not mean to take this out of context, but I am getting to the meat of the matter here—"If this method of card issuance was prevented, banks would then be seriously hampered in launching credit card plans. This procedure would be costly to the issuers."

So my question to Mr. Martin is this: What is the responsibility of the Congress? Is the responsibility of the Congress to avoid any inconvenience to the vested interests? Or is the responsibility of the Congress to assure that the consumer is cared for in a manner appropriate?

So I am disappointed in the content of his letter to the chairman. Certainly it evidences great inconsistency. And if the suggestions offered in it prevail, why, it would be better if we did not proceed any further with the bill.

In conclusion, Mr. Chairman, I would like to again commend the subcommittee for holding hearings on this subject. The floodgates are opening ever wider, and the public is suffering. Therefore, I strongly recommend that the subcommittee approve this bill in its present form.

Mr. NIX. Thank you very much, Congressman Hanley. Will you offer the letter for the record at this point?

Mr. HANLEY. I would be delighted to.

Mr. NIX. The letter from William McChesney Martin will appear in the record at this point.

(The letter follows:)

FEDERAL RESERVE SYSTEM,
OFFICE OF THE CHAIRMAN,
Washington, D.C., October 28, 1969.

HON. ROBERT N. C. NIX,
Chairman, Subcommittee on Postal Operations,
Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request of October 7, 1969, for a report from the Board on the bill, H.R. 13244, which would amend the postal laws "... to restrict the mailing of unsolicited credit cards."

The bill, in brief, would amend 39 U.S.C. 4001 to make any unsolicited credit card "nonmailable matter" unless (1) it is sent by the issuer by registered mail restricted to delivery to the addressee only, (2) the envelope is marked "unsolicited credit card—addressee may refuse", and (3) the issuer guarantees payment of return postage. The bill would not apply to a replacement for a credit

card previously used by the addressee, or to a mailing other than by a card issuer. Credit cards mailed in response to requests also would be exempt from the bill. Mailings contrary to the bill would be subject to seizure by the postal authorities. Violations also would be punishable by fine of not more than \$1,000 or imprisonment for not more than two years, or both.

The Board would recommend favorable consideration of H.R. 13244 if it were to be amended by (1) deleting the requirement that unsolicited credit cards be sent by registered mail, and (2) substituting for the requirement for marked envelopes, a required procedure that, as described below, would convey the same notice to addressees, while appropriately protecting cards sent by issuers and returned to them through nonregistered mail.

The Board is more familiar, of course, with the credit cards issued by banks than with the cards of other issuers. Banks have found that the most effective way to obtain customers for a new credit card plan is to mail a large number of unsolicited cards. This procedure resolves simultaneously the problem of having enough merchants signed to participate in the bank's plan to make the card useful to customers, and of having enough cardholders to make the plan attractive to merchants. Although the unsolicited mailing of credit cards by banks has involved some problems, there have been no developments to date that, in the Board's judgment, would warrant preventing this method of card distribution. If this method of card issuance were prevented, banks would be seriously hampered in launching credit card plans, thus giving those banks already in the field a protected position that would discourage competition.

H.R. 13244, of course, would not prohibit unsolicited mailings of credit cards. However, the requirement of the bill that unsolicited cards be sent by registered mail, in addition to being costly to issuers, would subject many intended cardholders to a substantial burden. Registered mail (even if not restricted to delivery to the addressee only, as would be required by the bill) must be accepted by a responsible person at the address indicated. This would mean in many cases that the intended cardholder, with no idea of its contents, would have to collect the letter from his postoffice. Not infrequently this would involve expense and other inconvenience.

The Board, therefore, believes that the requirement for registered mail in 39 U.S.C. 4001(c) (4) (i), as set out in the bill, should be eliminated. In keeping with this suggestion, the Board would recommend further that section 4001 (c) (4) (ii) be changed so that, in lieu of requiring envelopes marked "unsolicited credit card—addressee may refuse", issuers would have to use unmarked envelopes enclosing (1) an unmarked return envelope containing the card, and (2) a statement notifying the addressee of the contents of the return envelope and that the card may be refused merely by depositing the unopened return envelope in the nearest post office or letter box. The use of marked envelopes would seem clearly to involve the risk of increased security problems that would outweigh the anticipated benefits either to card issuers or the addressees.

Your Subcommittee may also wish to consider substituting for the language "or the obtaining of loans" in 39 U.S.C. 4001(b) as contained in the bill, the language "or the obtaining of cash advances." It is believed that the suggested change may be more appropriately descriptive of the cash advance feature of certain bank credit cards and of bank check-credit plans that utilize cards.

Sincerely yours,

WM. MCC MARTIN, JR.

Mr. NIX. I want to say that you are to be complimented because it is through this legislation proposed by you, H.R. 13244, that will enable us as a subcommittee to come to grips with this extremely important issue as quickly as we can.

I personally am grateful to you for having brought this very vital subject to the attention of the Congress.

Mr. CUNNINGHAM?

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

I certainly commend Congressman McClure for the work that he has done in this field. He was here when I responded to Mr. Patman so I will not repeat myself.

I did want to ask one question, Congressman Hanley. On page 2 of your bill, on line 23, in one of the exceptions it says "unsolicited

credit card—addressee may refuse.” Now, of course, an addressee may refuse anything under today’s postal regulations, although I do not think that the majority of the people know this. In your statement on page 7 you say “the number of postal employees who steal credit cards in the mails is minute”—and I agree with that—“but even this small number can cause a great deal of damage”—and I agree with that.

If there could be stricter language beginning on line 23 of page 2—because if I receive a credit card and I write that this is unsolicited and that I refuse it, it may never get back to the sender. There may be somebody in between that will get hold of that, and that might be a loophole we might want to give some consideration to.

I do not know the answer, but I think when we get into executive session, with your vast knowledge in this field, we might try to strengthen this somewhat.

Could you say just exactly how you arrived at this language?

MR. HANLEY. If I may, Mr. Cunningham, I believe that the possibility of this problem is taken care of by the registered requirement, where the person, as you know, would have to sign; and of course, upon refusal, that the sender would assume the financial obligation for its return in the mail.

MR. CUNNINGHAM. Then you would answer, as I understand it, that this language would apply to this registered letter?

MR. HANLEY. That is right.

MR. CUNNINGHAM. In that event, then, I feel that maybe we would not have that loophole that I thought we might have.

Thank you, sir.

MR. HANLEY. Thank you, Mr. Cunningham. I appreciate your support.

MR. NIX. Mr. Wilson?

MR. WILSON. Thank you, Mr. Chairman.

I want to compliment you on this legislation, Mr. Hanley. It is a very fine bill. I think the difference between your bill and Mr. Scott’s bill is the fact that you do require the cards to be sent by registered mail and the envelopes be marked, and then the return postage paid by the sender. This is a stronger bill. And certainly if we are going to pass something, it should have these provisions in it, in my opinion.

I am not one who is opposed to credit cards. I count 24 in my pocket at the present time, and the only reason I do not have 44 is because my wallet will not hold any more.

But I think this problem of the unsolicited card is certainly a most serious one and something should be done to protect the public.

MR. HANLEY. Thank you, Mr. Wilson. As I tried to express in my testimony, the credit card certainly has served its place in our economy. It has been a great convenience and a great accommodation, and we certainly in no sense of the word want to deter the opportunity for any consumer to enjoy the accommodation associated with the credit card that he or she wants.

We are simply saying that this should not be imposed upon the individual.

MR. NIX. Mr. McClure?

MR. MCCLURE. Thank you, Mr. Chairman.

I think your last statement in conjunction with the prepared statement you presented to the subcommittee is very significant because

much of your prepared statement went to the problems of consumer credit generally, which I recognize.

I too want to compliment you on your initiative in this field and, again, you have made a contribution which is very significant in bringing it before the Congress, because a great many people have been talking about it, but you have done something about it, and I commend you.

I am concerned about this problem, but I think you would agree, would you not, that dealing with the mailing of the credit card is only one of the aspects of the problems in the credit card legislation?

Mr. HANLEY. Of course. If I may, Mr. McClure, the mail is the only artery which the sender can employ to implement his marketing program.

Mr. McCLURE. And if we deal with the problem of mailing of unsolicited credit cards, which is the area to which your bill addresses itself, we are dealing with one of the major aspects of the problem. But there are others, too, in which, for instance, the problem of defense against charges made by someone who has stolen the credit card and run up a bill, without the fault of the credit card holder or, in these instances, even before he ever had it. There might have to be other legislation in other fields as well as that which affects mailing; would you not agree?

Mr. HANLEY. I would agree. I look upon this as a deterrent and we can expand upon that as we go along, perhaps not necessarily in this committee.

Mr. McCLURE. Yes. And I think that we should recognize that with the passage of this bill—which I hope will come about—that there will still remain some unresolved problems in the credit card field as well as the consumer credit field generally.

Mr. HANLEY. True.

Mr. McCLURE. I have been concerned for quite some time with the cost of consumer credit. I am not at all satisfied in my mind that it is a healthy thing for our economy in which interest charges on any kind of an account can run to the extensive 18 or 20 or 22 or 24 percent as we have seen it grow in recent years; and it has had a profound effect on merchandising in this country, in which the costs of credit become a very real cost of doing business.

So I think that we may be faced ultimately with some kind of a national usury law that has real teeth in it. I do not believe we can do it any longer on a State-by-State basis.

I might point out that in Idaho recently we have seen the advent of a lawsuit by the attorney general against the banks for violating the usury law through the use of the credit card, in spite of the regulations which were issued last year in which it is claimed by the Comptroller of the Currency that the banks are not—nationally chartered banks—are not bound by the State usury laws so far as the credit cards are concerned, and it was completely gratuitous on his part that they can come under the small loan statute of the State which permits up to 36 percent per year on small loans.

I am watching this with a great deal of interest, and I hope the attorney general of my State is successful in establishing that the State law in regard to usury does apply.

I am certain that there is a great deal of interest in this, and I once again want to commend you for your initiative in bringing it

to the fore, and perhaps providing us with the vehicle by which we can take some action.

Mr. HANLEY. I appreciate your comments, Mr. McClure, specifically with regard to the usury problem. To cite the problem in my home State, New York State, where, for instance, we have a ceiling on home mortgages of 7.5 percent—it is virtually impossible to get a home mortgage in that State. On the other hand, the lending institutions through this device, that of the credit card and other promotional and marketing devices, actually have a rope and a lasso out bringing the consumer in, in essence saying: "Although we do not have money for the home mortgage at 7.5 percent, we do have virtually unlimited funds and we will give you up to \$5,000 for a home improvement loan, or we will give you \$2,000 to go out and buy consumer products—which are automobiles, radios, televisions, and so forth.

Of course, the only difference here is that the lending institution is going to enjoy the 18-percent-plus rate. So this is another side of the coin, actually, unrelated to the jurisdiction of this committee.

I know of Mr. Patman's interest in this, and I feel certain that his committee is going to move in the direction of hopefully alleviating this usury problem.

I appreciate your comments, Mr. McClure.

Mr. McCLURE. Thank you very much.

Mr. NIX. Mr. Ford?

Mr. FORD. Thank you, Mr. Chairman.

Mr. Hanley, I am very happy to have the opportunity to hear your testimony this morning. I am also very pleased that you have introduced this bill. I intend to introduce a companion bill to demonstrate clearly my support for the approach you take.

I have discussed the problem of unsolicited credit cards with the members of our State legislature and with our attorney general in Michigan and with other people who are concerned about trying to solve this problem at the State level.

I want to also join with you and Mr. Wilson in making assurances that I do not regard this as anti-credit-card legislation in any sense at all. I am sitting here with a pocketful of them, too. As a matter of fact, I have solved the problem of too many of them which Mr. Wilson has. I have a separate container for all the gasoline credit cards that I try to keep in my automobile, and another package of them back in Michigan for the gasoline companies we do business with back there.

We found that as a result of unsolicited credit cards we were in the interesting position in our office of actually paying the same oil company on three different accounts for a period of time because the cards were just around and somebody in the family was using them. It did not cause me any particular trouble, but I can understand where it could lead to troubles with teenagers in a home when these cards come in an unregistered letter and just lie around.

One of the things that really impresses me about all three of the requirements contained in section 4 of your bill is that they would actually make it possible for a State like my State of Michigan to enforce the laws that they are now considering.

The real problem in passing a State law without the cooperation of the conduit providing interstate transport of credit cards is that

there is not any very real way in which you can enforce the State law.

I noted, in looking at the journal of bills before the Michigan State Legislature, that in the present session there are at least four major pieces of legislation dealing with unsolicited credit cards. They range from making it a misdemeanor to improperly use a credit card, to making it a misdemeanor to send one to someone unsolicited, to destroying the effect of the credit card by saying that an unsolicited credit card does not constitute valid evidence of credit unless it is expressly accepted by the receiver, and so on.

This word "acceptance" has been at the center of a good many law-suits already. I think that we should not do anything that impedes commerce, that makes it difficult to carry out commerce in traditional ways. In the uniform codes adopted by the States we have generally tried to make it as easy as possible for people to enter into routine business type relations without a lot of formality and exchange back and forth of formal agreements. Therefore, the question of when a person has accepted responsibility for the credit extended is one that has been decided in different ways under different circumstances in the several States.

Your requirement for a registered letter to the addressee and a warning on the outside of the letter that it contains such a card would provide a device to protect the consumer against what can be an unwitting acceptance of the card. You know that you cannot tear these things up like a piece of paper. I have tried. You have to get a pretty good set of shears and chop them up that way. Most of us do not have good shears handy, and it is very easy to just throw unsolicited credit cards in a drawer or put them someplace else where they can get in the wrong hands. So I suspect there are a large number of them around.

It would be much easier and much more practicable if you saw what was in the envelope and had an opportunity to send it back when it was presented by the mailman. Certainly we have precedent in our laws for the provision in your bill that would put the burden of the return postage cost on the sender. I believe that the most recent precedent is Mr. Cunningham's very fine action in his continuing war on unsolicited pornography going to people's homes.

I am not sure of the title, but we do have an old law that was passed many years ago to get at the bootleggers and gamblers and worse. This law makes it a felony under the Federal law to travel in interstate commerce for the purpose of violating a State law. Although it is not within the province of this committee, I know some people are considering the possibility of using this device to support those States that are trying to deal with the problem by making it a Federal offense to use the mails or any other form of interstate commerce to transport unsolicited credit cards when they are issued or received in violation of a State law. There is quite recent precedent for that in some of the legislation on gun control. And certainly we all want to do whatever we can to support the rights of the States to exercise their police powers.

I am very much surprised by Chairman Martin's attack on the provision of your bill dealing with the registration. Clearly it is the one mechanical requirement coming within the jurisdiction of this committee that could be put into a piece of legislation that would give it

practical and immediate effect. I cannot understand how that would create any burden at all on the normal commerce or the normal trade in credit cards for which application has been made and which were received in response to an application since you expect that kind of a mailing from the requirement for registration.

As I read your bill, the only person who would have to register a letter enclosing a credit card is someone who clearly knew it was being sent to a person that did not ask for it; is that correct?

Mr. HANLEY. That is correct.

Mr. FORD. It is very difficult to see how that conceivably could affect the normal extension of credit cards.

I would like to ask you whether or not you have had an opportunity to determine what success the States have had in enforcing the laws that they have passed against unsolicited credit cards?

Mr. HANLEY. It is my understanding that the States have had very little success in their efforts to thwart this problem. A number of versions of restrictive legislation have been introduced in various State legislatures, but with little or no success.

I have cited the case in Illinois. I have cited the one in the State of New York. In both instances the attorneys general of these States are extremely desirous and have tried within their jurisdictions to encourage the State legislatures to do something about it. But up to this point they have been unable to develop a device that would be restrictive to the extent that the problem—

Mr. NIX. May I interject this: Mr. Hanley, in those State cases, there must have been basic objections to the statute. Are you in a position to say what those basic objections were that were advanced by those who opposed the legislation in the State legislatures?

Mr. HANLEY. I am not sure that the legislation was actually opposed in the legislature. I think the problem was the inability to develop a vehicle that would be appropriate.

Mr. NIX. What you are saying is they did not get to the point they could be opposed. There was nothing to it.

Mr. HANLEY. True. And it seems to me the simple approach to alleviating the problem is national legislation in accord with the language of this bill which provides an umbrella restriction.

Mr. NIX. That makes it even more incumbent upon the Congress of the United States after study and analysis to present the kind of legislation that is needed.

Mr. HANLEY. True, because many of these are issued perhaps out of the State of New Jersey and may flood the other 49 States in addition, and this is the way that it works. So as I see it, I can only conclude from my studies that national legislation is the answer, and I think that every one of the State legislatures would applaud the efforts of the Congress in this matter.

Mr. FORD. I believe you indicated in your testimony that the Chief Postal Inspector said that this is a major problem for his Department in terms of the number of complaints they have to investigate. What was the figure that you had?

Mr. HANLEY. Well, the problem has increased 700 percent in the period of the last 4 years in thefts of credit cards in the mails.

Mr. FORD. I wonder if we have any idea what that is costing the American taxpayers in terms of the additional people required to investigate these complaints?

Mr. HANLEY. Well, this is a point to be considered. And another related point here is that losses sustained by the senders are actually built into their overhead. So, again, the consumer picks up the cost of this loss as opposed to the senders. He will calculate a percentage loss and then build it into his overhead and pass it on to the consumer. So he can afford to take the risk because in the long run he is not going to pay the shot. The consumer is.

Mr. CUNNINGHAM. Will the gentleman from Michigan yield for a moment?

Mr. FORD. Yes.

Mr. CUNNINGHAM. I want to reiterate my strong support of this legislation, but I am due at the Rules Committee in 5 minutes on a piece of legislation that has come out of the other committee on which I serve, Interstate and Foreign Commerce. I am sorry I will not be here to hear Mr. Dixon of the Federal Trade Commission, or my colleague, Mr. Scott, but I will read their testimony carefully. I just want to make this statement because I am vitally interested in this, but I must go to the other committee.

I thank you for yielding.

Mr. McCLURE. Will the gentleman yield for one more question?

Mr. FORD. I have finished.

Mr. NIX. All right. Go ahead, Mr. McClure.

Mr. McCLURE. I have just one question. I understand that your bill does not in any way affect the mailing of promotional literature which would solicit an application for a credit card, but applies only to those mailings which enclose the credit card?

Mr. HANLEY. That is right. The sender can continue to use the device encouraging the consumer to make application for a credit card. For instance, if the sender should write the consumer advising the consumer of the availability of this accommodation and the consumer then would apply in the traditional manner that we used to use, well, we are not doing anything here that is going to jeopardize the procedure. We are simply zeroing in on the unsolicited cards.

Mr. McCLURE. Thank you very much.

Mr. NIX. Before I call the next witness, is there objection to the statement of Congressman Benjamin Rosenthal, who could not wait because he had to appear before the Foreign Affairs Committee, being printed in the record at the conclusion of the testimony of Mr. Hanley?

The Chair hears no objection. It is so ordered.

It was a great help to have you here, Mr. Hanley.

Mr. HANLEY. Thank you.

Mr. NIX. The statement of Mr. Rosenthal will be made a part of the record at this point, as though read.

TESTIMONY OF HON. BENJAMIN S. ROSENTHAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. ROSENTHAL. Thank you for inviting me to testify this morning on legislation to regulate the mailing of credit cards. On Monday, I introduced legislation which would ban the mailing of unsolicited credit cards and require that all requested credit cards be sent by certified mail. My bill, H.R. 14527, marks the first attempt to pro-

vide protection against the loss or theft of all credit cards sent through the mails.

The unparalleled boom in the mailing of unsolicited credit cards is much more serious and sometimes more unsettling than pornography. The unsolicited credit card is far more costly to the recipient and to the Nation than other forms of unwanted mass mailings. To the individual it can mean high interest payments, an incentive to live beyond one's means, and one more neurosis—the fear that the card may be lost or stolen.

If this is the toll “plastic credit” takes on the individual the toll on the Nation may be even greater. For spending with credit cards cancels out the effects of existing anti-inflationary restraints on our economy. And the annual interest rate on unpaid goods and services which ranges from 18 to 50 percent is itself an important factor in spiraling inflation.

Credit cards can be useful tools for consumers. After all, credit cards enable people to be flexible in purchases—buying products as they are needed and, ideally, when they are on sale.

Credit cards relieve individuals from having to carry around large sums of money.

But the question at hand is not whether credit cards are used wisely by people but whether unsolicited credit cards constitute an invasion of privacy, an unfair burden on the recipient, and a menace. If the credit card is lost or stolen—the fate of 1½ million of them each year—the intended recipient may be involved in costly litigation to disprove his responsibility for incurred charges. Credit card fraud losses amount to more than \$100 million each year.

The Federal Trade Commission held hearings in September on a proposal to ban the mailing of unsolicited credit cards by companies under its jurisdiction. Even if this rule were adopted, however, it would exclude transportation companies and banks. The outstanding credit under bank cards alone, much of it unsolicited, was \$1.3 billion at the end of last year.

With 300 million credit cards in circulation in the United States and 100 million being added each year, curbing credit card abuses is no easy task for law enforcement agencies and is a serious burden on the consuming public. Businessmen, which indiscriminately distribute plastic credit cards to the nonsoliciting, unsuspecting public, have abdicated responsibility to consumers.

The only solution I believe acceptable is one which provides adequate protection for consumers against the hazards of unrequested credit cards. By combining both a ban on the mailing of unsolicited cards and a requirement that all other cards be sent by certified mail, my bill protects the consumer against the hazards he might encounter in receiving credit cards he asked for as well as ones he did not request. Obviously, requested credit cards can also be lost or stolen through the mails and the consumer needs protection against losses resulting from the fraudulent use of these credit cards as well.

Businesses which zealously bombard the public with credit cards will not be more discriminating until legislative action is taken. My bill will not cure all of the problems associated with credit cards but it will put an end to a few Excedrin headaches.

Mr. NIX. The next statement before the subcommittee is from Hon. Edward J. Patten, a Representative from the State of New Jersey.

**TESTIMONY OF HON. EDWARD J. PATTEN, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. PATTEN. Mr. Chairman, I am most grateful for this opportunity to express my wholehearted support of the legislation this committee is considering to ban the mailing of unsolicited credit cards. I recognize as well as anyone, I believe, the importance of consumer credit in the American economy and the convenience that credit cards offer to shoppers, motorists, tourists, and others. However, recognition of the merits of these cards in no way minimizes my grave concern about the increasingly prevalent practice of unsolicited mailing, often on a very indiscriminate basis, of credit cards. There are three fundamental objections that I should like to stress, objections which in themselves are more than enough to warrant passage of legislation to ban such mailings. First, they are clearly an invitation to theft and misuse. Second they are an even more blatant invitation to unwise when not downright harmful overextension of spending. Finally they are clearly opposed by a growing number of our citizens. Let me deal with each point in turn.

When credit cards are mailed on an unsolicited basis, it is patently easy for a thief to get hold of such cards at various points from the actual mailing origin, through several postal facilities, and most of all at the point of destination. Time and again it has happened that the first time an innocent householder knew of a credit card was when he was billed for a purchase made on that card. The difficulties of proving innocence in this age of computerization are enough to frighten even the most sophisticated businessmen, let alone the average housewife. It is entirely unfair to place an individual in this predicament.

Even more serious in the aggregate, I believe, is the temptation such cards offer to individuals to become hopelessly overextended in their credit purchases. A credit card, for all too many of us, is simply an invitation to spend, and spend, and spend, without being remotely aware of the ultimate consequences. It leads to making purchases without adequate investigation of their cost, the snowballing of debts, and all too often extreme deprivation as the bills become due, or outright bankruptcy. Thousands of merchants likewise suffer because of the inability of consumers to pay for goods which they in an ebullient or carefree mood committed themselves to, with the lure of that shiny credit card. It is one thing when an individual requests a specific credit card to facilitate his purchases of goods and services which he knows he is going to need and the payments on which he is able to budget sensibly. It is an entirely different matter when credit cards are thrust into the hands of those inexperienced in budgeting, often with incomes that at best are hardly adequate to meet everyday current expenses. It is in fact a blow to the economy, to the small businessman who is stuck with losses, and to the consuming public to be subjected to the kind of unwise extension of credit which is inescapable in the unsolicited mailing of credit cards this legislation is designed to stop.

Finally, as the practice of such mailings, becomes more and more widely publicized, the dangers and risks involved are becoming more and more generally realized and appreciated. In my own State of

New Jersey this kind of mass mailing of credit cards was recently opposed by the overwhelming majority of businessmen polled by the National Federation of Independent Business, 87 percent favoring the restriction of the mailing of unsolicited credit cards, only 9 percent opposing the restriction, and 4 percent undecided.

As a representative of these people in New Jersey, and as a member of Congress eager to help protect the American consumer against the risks of fraud, theft, and careless use of credit, I am delighted that this legislation has been introduced and I strongly urge its passage as rapidly as possible.

Mr. Nix. Our next witness is a distinguished member of the full Committee on the Post Office and Civil Service. He has made many contributions on the subject matter under discussion before this committee and has been a most valuable help to the full committee in the Congress of the United States.

It is a pleasure to welcome Hon. William Scott, Member of Congress from Virginia.

You may proceed.

TESTIMONY OF HON. WILLIAM L. SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Scott. Thank you, Mr. Chairman.

I appreciate the committee making this time available. I might mention that I received a letter today that was somewhat enlightening from a constituent with regard to the unsolicited credit card. She said she had received two recently, or two had been received in her household, one addressed to her 10-year-old son and the other addressed to her husband who had been deceased for 2 years.

I think this very well illustrates the indiscriminate mailing of credit cards. There is no doubt in my mind that credit cards do serve a useful economic purpose in our society and provide the consumer with a convenient service. This advantage, however, can be outweighed by the haphazard manner in which some cards are mailed to potential users.

In a report dated July 1968, prepared by a task group for the Federal Reserve, it was brought out beginning on page 73 that in a large midwestern city five banks entered the credit card field at the same time. They each embarked on a large unsolicited mass-mailing of cards to attempt to capture a predominant share of the market.

The dumping of millions of credit cards in a market was too much of a temptation. Security procedures were not carefully developed. Cards were placed in a postal system already burdened with Christmas mail and staffed by large groups of temporary workers. Criminal groups systematically picked up cards in multifamily housing units and apartment houses.

In isolated cases, participating merchants cooperated with improper cardholders to bill large quantities of merchandise until the card appeared on the "hot card list" and then turned in the card and split the "hot card" reward with the improper holder.

The banks moved vigorously to meet these problems, but not before estimated total losses were several millions of dollars. Fortunately, as far as is known, no individual was held responsible for the

charges made by persons not authorized to use his card, but not before many letters had been written, phone calls made, and other inconveniences to the innocent targets of this unsolicited mailing.

It seems to me, Mr. Chairman, that it is high time for the Congress to order a halt to this unsolicited mailing. Not only is it a serious invasion of individual privacy, but the recipient may be subjected to undesirable legal expenses and the unsolicited mailing with insufficient inquiry can result in an unwise extension of credit.

You can't just throw a credit card in the wastebasket as with junk mail; if it gets into the hands of an unscrupulous person, you may be caused considerable trouble and legal expenses.

These mass mailings are an invitation to fraud, especially when the envelope has printed thereon in large letters: "This is your lost credit card."

I'm sure the committee will agree that crime is one commodity already in oversupply in America, and I see no reason to add to our crime statistics by indiscriminate mailing practices.

The unlucky consumer, whose name is on a stolen card, often finds himself engaged in long-drawn-out litigation to prove that he never received his unsolicited card and cannot be held responsible for its misuse in the hands of the thief or fraud ring.

Let me quote from a letter recently received from a constituent:

DEAR MR. SCOTT: A few weeks ago we received a notice from ——— (name of the credit card which I will not repeat here) that we had run up bills totaling \$699 and they were reminding us that \$600 was the limit.

Since we had never seen a ——— credit card, we were profoundly shocked. Apparently they took our name from the Richmond phone book or some list, but we had moved from Richmond * * *

Mr. Chairman, I received a followup on this particular letter from a constituent, and I would like to read this. I think it should be of interest to the committee. It is dated October 24:

DEAR CONGRESSMAN SCOTT: The credit card representative, a Mr. ———, came to see us today. After we had told him all we know about the misuse of the unsolicited credit card that was issued in our name, he left, but returned in about an hour with the Sheriff. Now I am accused of having used the card. Mr. ——— claims that he saw me in Fredericksburg, but I have not been in Fredericksburg since 1927. Mr. ——— had obtained a description of the woman using the card which vaguely fits me—middleaged, somewhat overweight, salt-and-pepper hair—a description which would literally fit millions of women.

This would be funny except that they took 3 hours of my time today. I was offered the choice of criminal prosecution or making a trip to Waynesboro—I do not even know where Waynesboro is—to be reviewed by clerks who gave the description. I was also asked to sign a waiver. What it is a waiver of, neither my husband nor I know. Naturally I refused to sign anything.

The Sheriff, Mr. Cameron, gave me several very nice opportunities to confess and offered to let me pay off the \$3,000.

Mr. Chairman, the amount charged has gone from the \$699 mentioned in the previous letter to \$3,000, in some way or another.

Probably charging me 25 to 30 percent interest in the meantime. I agreed to go to Waynesboro if it would not cost me anything.

Then she added a note on Saturday morning:

I have now decided I will not go to Waynesboro. I tried to get the Sheriff to consider the signatures on the card and compare it with mine, but he refused. The cards were signed Mrs. Haven B. Perkins. I always sign either Clara Perkins or Clara Mae Perkins. I have offered to sue them for \$150,000 for defamation of character. I read to them from my diary about what I was doing on those days

the cards were used. It was used in Fredericksburg, Waynesboro, and Arlington. I have never been to Waynesboro or Arlington. I lived in Fredericksburg from 1925 to 1927.

If this comes to court action, I shall plead as a pauper, require the State to furnish a lawyer. This experience could be a real disaster to someone less arrogant than I am.

Mr. Chairman, another constituent writes:

* * * I received an unsolicited credit card from the ——— organization last year. I was under the impression that they were a reputable firm and I was interested in using their services. However, as you can see from the attached copies of letters that I have been forced to exchange with them, they are totally unresponsive when it comes to answering simple questions concerning my account. I seem to be getting nowhere with them. As I have stated to them repeatedly, I am most anxious to pay my just due debts, but I cannot determine from them what that amount should be * * *

The individual then attached seven letters written between March 24 and October 15, 1969, including one he sent by registered mail trying to get erroneous charges signed by another person removed and trying to get a statement other than the terse notice that his account was overdue a certain amount. The material is not presented for the record, because I dislike the thought of singling out one organization for criticism when mailing of unsolicited credit cards is so widespread.

I might say, Mr. Chairman, if the staff would like to look at these files, they are most welcome. We do have a considerable amount of correspondence from our constituents, but I would imagine that each member of your subcommittee received similar mail.

Mr. Nix. Thank you, Mr. Scott.

Mr. Scott. Until some legislation or regulations are established limiting both the unsolicited mailing of these cards and the liability of the consumer for the unauthorized use of his unsolicited card, this situation will continue much to the dissatisfaction and frustration of our consuming public.

The committee may want to consider whether unsolicited mass-mailing of credit cards is in the best interests of the consumer and our current inflationary economy.

A past congressional hearing has shown that a connection more than likely exists between the expanded use of credit cards and the rising number of consumer bankruptcies.

It is not hard to envision a particular consumer's temptation to spend when all his credit sources have long since dried up because he has overextended himself and he suddenly receives an unsolicited credit card—an invitation to further spending.

My own two sons receive these cards, even though they are both in law school and without private funds of their own. Perhaps they are placed on mailing lists because they are recent college graduates.

In addition to the invasion of a person's privacy, it seems to me that this marketing practice does not foster the informed use of credit cards or help promote consumer discipline where it is most needed.

For the sake of economic stability and to dampen inflationary fires, more care and discipline must be exercised when mailing credit cards.

In my opinion, Mr. Chairman, Congress has an obligation to the people to maintain the integrity of the consumer credit market. It seems reasonable to provide that credit cards are nonmailable matter, unless they are mailed by someone other than the issuer, are in response to a

request or application, or are sent as a replacement for a card previously used under the authority of the card holder.

Appropriate penalties are provided for violations of the proposed law. These are all provisions of H.R. 14346 which I introduced but I would hope that the committee will also review the various bills now pending before the Judiciary Committee which parallel the measures before you.

Mr. Chairman, it was a privilege to follow Mr. Hanley, because he introduced what I consider a very fine bill and I modeled my own bill after his.

I might mention that Mr. Wilson compared the two bills to an extent, and I did not use the paragraph Mr. Hanley used about the registered mail, because I was told by my staff that a registered letter of this sort costs somewhere in excess of \$1, and it did not seem to me that anyone would use mass mailings in which they had to pay over a dollar for sending registered mail.

I know that his bill provides for a statement on the outside saying: "This is your credit card," and I would think this is unwise unless it is registered. And the cost of registration being more than a dollar, it seems to me that that is tantamount to barring the sending of the unsolicited credit cards.

I support Mr. Hanley's bill but do have this reservation.

My bill also provides for a maximum of 1 year jail sentence, thereby keeping it within the misdemeanor class. I think that this is a very bad practice, but I do not think it should be a felony to send unsolicited credit cards.

Mr. Hanley's bill does provide up to 2 years' penalty. These are the only two differences between our two bills.

Mr. Chairman, it is good to be here and to testify before your subcommittee.

Mr. Nix. Thank you, Mr. Scott.

Once again I want to thank you for a most critical and informative contribution to what we are seeking to do in the subcommittee.

Mr. McClure?

Mr. McClure. Thank you, Mr. Chairman.

I want to commend my colleague for the statement that he made. Once again, as a member of this committee, he has made a very great contribution to the matter that is before us, as he usually does.

I would judge the difference between your bill and that introduced by Mr. Hanley is that yours is simply a flat prohibition of the mailing of unsolicited credit cards; is it not?

Mr. Scott. Yes, it is.

Mr. McClure. Whereas his provides it can be mailed if it meets the standards set forth in the bill?

Mr. Scott. Yes. Mr. McClure, as I indicated, his would permit the mailing of unsolicited credit cards, but I just cannot conceive of somebody in business for a profit sending it by registered mail. I think the cost would be prohibitive. So I think the practical effect would be the same.

I have no objection to his paragraph, but I do think that it would not happen. You would not have any mass mailings on which you would have to spend over \$1 per card for sending it by registered mail.

Mr. McCLURE. So the reason why you left it out was not any basic disagreement, but you just regarded it as being a surplusage?

Mr. SCOTT. It would be impractical. It is just my own judgment.

Mr. McCLURE. I think the statement you have given to the committee and the letters upon which the statement was based are a very clear indication of some of the problems that have come about as a result of some of the practices followed in industry today.

I think again it brings up the fact that if business embarks upon a practice which has proven harmful to a great number of people, that they can have the opportunity to self-regulate or ask for some additional regulation by Government.

Mr. SCOTT. Well, in this connection, Mr. McClure, I did notice in the paper issued by the Post Office Department just a few days ago that the Deputy Postmaster General was meeting with a group of people, or attended some sort of meeting that they held with regard to credit cards, and I think there is some effort being made to have the industry in some manner regulate itself. But I would hope that that would not deter the subcommittee, because it seems to me that behind self-regulation, if there is a lag, we probably should have a law.

I still think there is a need for the law.

Mr. McCLURE. If there is self-regulation, it undoubtedly would not be in any degree hampered by this law.

Mr. SCOTT. I would not think so.

Mr. McCLURE. Because this proposed law would seem to be a minimal attempt to meet the problem, rather than being an overreaching attempt to meet the problem.

Once again, let me commend you for your statement and thank you for the contribution you have made to the subject matter.

Mr. NIX. Mr. Wilson?

Mr. WILSON. Thank you, Mr. Chairman.

I too, Mr. Scott, would compliment you on your statement. It is a frustrating thing for anyone who has to deal with a computer these days. I know Mr. Bingham has a tale of woe he is going to tell us and I can certainly appreciate the feelings of the lady you made reference to. I wish there was something more specific that we could do to assist people in problems like this.

I am a little surprised, however, at your reasoning on not including the registered mail concept. I thought the very purpose was to try and prevent the mailing of unsolicited credit cards. You say that you do not include this in your bill because this would make it impossible to send things through the mail because of the economics involved?

Mr. SCOTT. My bill does absolutely prohibit and make it a criminal offense, a misdemeanor, to mail unsolicited credit cards. I have said, Mr. Wilson, that in my judgment this paragraph is not unnecessary; it is still surplusage, in my opinion.

Certainly the committee will exercise its own judgment and work its own will. But it seems to me that for practical purposes, if the cost per letter is in excess of \$1, that it would not be economically feasible to do it.

I have no objection to the paragraph. I think it is surplusage.

Mr. WILSON. Then you and Mr. Hanley are in agreement on the legislative goals we are trying to achieve?

Mr. SCOTT. That is right, sir.

Mr. NIX. Mr. Ford?

Mr. FORD. Thank you, Mr. Chairman.

I would like to join my colleagues in complimenting our colleague, Congressman Scott, for being a leader in this fight. I am happy to see that we are in agreement on the objectives.

I would like to suggest, however, Mr. Scott, one other possible reason why there is wisdom in having the Hanley provision in the bill.

Even when we attempt to adopt a law that absolutely prohibits the dispensation of pornography through the mail, we get into all kinds of trouble. What we want here is a law that will be enforceable because the machinery is present in fact to make it effective. The requirement of the registration, the warning to the recipient, and the requirement for the absorption of not only the cost of the registered mail but of the return mail are things that would tend to be self-enforcing.

A second reason is that an absolute prohibition against the mailing of an unsolicited credit card might be subject to a constitutional attack on the ground that it violates the impairment of the obligation of contract clause and interferes with the rights of people engaged in a lawful business. There is no presumption involved any place here that a credit card is, on its face, a moral risk, that it violates any health regulations, or violates any other laws of the country.

In the absence of such a presumption, for example, the presumption that lies behind laws prohibiting the mailing of a gun, I would be fearful of having this law struck down if it constituted an absolute prohibition against engaging in a type of business which is legal on its face—

Mr. SCOTT. Mr. Chairman, if I might comment, I think certainly that credit cards are much a part of American life, and I have no opposition at all.

I am somewhat like Mr. Cunningham; I do not have credit cards, and I do not use them. But I understand other members of the committee have a great number, and I think this is something that is part of our lives, and certainly a very legitimate business.

I have no objection at all to the use of credit cards.

The only thing is, should they be sent to an individual who has not asked for them and who does not want them; and should he be compelled to find some means to destroy them? Should the burden be put on the individual by the person who sends the cards?

I think it is a very bad practice. But my bill, as I am sure Mr. Hanley's is, is aimed only at the unsolicited credit cards, with the recognition that the use of credit cards is an entirely legitimate business. I do not think that we should discourage the use of credit cards.

Mr. FORD. Well, I agree with what the gentleman has said, and I just repeat that I think that the Hanley language is essential from the standpoint of providing a law that does not prohibit an otherwise legal activity, but makes it economically unfeasible.

You indicated sending a registered letter costs \$1. I am surprised we are making that kind of money in the Post Office Department.

This law would probably go into effect very much quicker than if we had injunctions filed across the country against enforcement pending a decision from the Supreme Court.

I can see great motivation on the part of the lawyers representing people who wanted to continue to engage in the business to use the

avenue of the courts to avoid effective enforcement of the law for quite a prolonged period of time if we don't avoid the constitutional question.

Mr. SCOTT. Mr. Chairman, might I just emphasize that I do not have the slightest objection to this paragraph. It is just a matter of judgment as to whether it should be included in my own bill.

I do feel rather strongly, however, about making this a felony rather than a misdemeanor, and I hope that the committee will give consideration to this element of penalty in whatever bill that is adopted by the committee.

Thank you, Mr. Chairman.

Mr. WILSON. I wonder if I might just make a very brief observation. I hope it will not be considered a partisan statement. But Mr. Scott said that he, like Mr. Cunningham, does not use credit cards. I thought it was interesting that my Republican colleagues are able to get by without using credit and the Democrats are so completely dependent on credit.

Mr. SCOTT. Mr. Chairman, in response I would say that if somehow that expanded the amount of money I could use, I would join the gentleman in the use of credit cards. But I do not find it makes any more money for me.

Thank you.

Mr. NIX. Thank you, Mr. Scott.

Our next witness is another distinguished Member of the Congress, a member of the Foreign Affairs Committee, on which I also have the honor to serve. I want to welcome on behalf of the subcommittee Mr. John Bingham, Congressman from the State of New York.

TESTIMONY OF HON. JONATHAN BINGHAM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. BINGHAM. Thank you, Mr. Chairman and members of the subcommittee.

First of all, I would like to say how pleased I am that this committee is holding these hearings, and I would like to compliment you, Mr. Chairman, in this regard.

I would also like to compliment my colleague from New York, Mr. Hanley, for his leadership. I am, as I will indicate later on, in support of his proposed bill. I have introduced an identical bill.

Since I have the opportunity, I would like to indicate to the committee my experience with these problems. As often happens, personal experience is the most vivid instructor. Mine is a sad tale of man against the computer or, more properly, of man against the unresponsive and irresponsible corporation.

I am particularly glad—even somewhat relieved—to be able to speak here, where there is a combination of concern about the problem of the unsolicited credit card with the power to do something about it.

I would like to say, with Mr. Wilson, although I do not have a large number of cards, I have no prejudice against credit cards. I have one and I use it constantly. But for much of this year I have felt like a voice crying in the wilderness. Last February, I brought to the attention of the House an incident which made me realize that the unsolicited credit card situation was a potential nightmare for the con-

sumer. I had previously deplored the practice of tempting unwary consumers with an unsolicited line of credit, but this incident brought home to me the frustration and anger that many victims of these unscrupulous companies must feel.

What happened was this: I received last February a credit card, known as the Bank Americard from the State Street Bank & Trust Co. of Boston, issued to me—with my name slightly misspelled—at my home address in New York City. I promptly returned the card with an angry note saying I did not want it. Next I received a computer-issued statement showing a balance due under the credit card account in the amount of \$10.79 for a purchase my wife had made by mail from S. S. Pierce & Co. of Boston. Oh, woe, that such a fine old firm should lend itself to these monstrous practices. This was annoying enough. What made it worse was that my wife had already paid by check for the item ordered. I returned the statement with another angry note. I made sure to write the note on congressional stationery. "That ought to make them sit up and take notice," I thought. What naivete. The computer was wholly unimpressed. Then I received a second statement, showing \$10 of the \$10.79 as past due, with a 16-cent interest charge added to the balance, and two increasingly sharp "reminders" that my account was overdue. I felt like a character in a Kafka novel.

Finally, after many months, the bank apologized. But my case was unusual, for it got a great deal of publicity. I introduced legislation. I made a speech on the floor. The matter received a fair amount of attention in the press. I also was on the "Today" show on the subject. In addition to all that, a friend of mine who had had an identical experience with the same bank and the same company had written to the president of the bank calling attention to the matter, and he happened to be a personal friend, so his letter got through.

I might say parenthetically that I have heard that people have various means of getting the computer to pay attention when they want to communicate with it. One of them is to write to the president of the company, which sometimes has results. Another is to punch additional holes in the cards to confuse the computer. Another is to put staples in the card, which short circuits the computer. And a human eye then has to look at it.

But, while I was able to get attention, I am not so confident that my fellow victims get anything for their pains but more dunning notices and threats of suit. In any case, although my statement did not solve my problem, I received several hundred letters from people reporting their own annoyance, several of which I would like to append to my remarks. I would like to submit a number of these for the record.

Mr. NIX. Without objection, they may be incorporated in the record.

Mr. BINGHAM. Thank you.

In my search for a remedy, I have introduced H.R. 6945, which would require greater standards of care in the issuance of unsolicited credit cards, and would limit the liability of consumers for the unauthorized use of credit cards. A little later, I introduced H.R. 8920, which would prohibit federally insured banks from making unsolicited commitments to extend credit.

But this has the disadvantage of being limited to banks and, of course, there are many commercial companies particularly the oil companies, as I understand it, that engage in this practice also.

I have testified before the Federal Trade Commission, which has proposed a regulation prohibiting the sending out of credit cards by businesses unless the cards were requested by those to whom they were sent. Unfortunately, the proposed regulation would not apply to banks, which are a major source of unsolicited credit cards. At last count, 975 U.S. banks offered credit cards. Consequently, I urged the FTC to consider claiming regulatory power over banks. But there is some legal doubt as to whether they have the jurisdiction to do that. The regulation is still pending.

I have urged the Federal Reserve Board and the Federal Deposit Insurance Corporation to impose restrictions under their broad powers to regulate banking practices. The response was that the Board regards the annoyance to the consumer to be insufficient to justify restrictions, and that the primary concern of these agencies is the impact on the safety and stability of the bank, not upon the interests of the consumer. In addition, the Federal Reserve Board not only questions its own authority to regulate bank mailing of unsolicited credit cards, but also opposes legislation which Senator Proxmire and I have both introduced, to give the Board specific authority in this area.

I was interested to hear Congressman Hanley say that he had had similar correspondence from Mr. Martin, the former Chairman of the Federal Reserve Board.

Now, Mr. Chairman, and members of the committee, I don't feel so lonely any longer, nor do I feel that I am fighting in a losing cause, for I believe that Mr. Hanley has hit upon a method of controlling unsolicited credit cards that is both simple and effective. By requiring that unsolicited credit cards be sent by registered mail, or not at all, H.R. 13244 would place an economic burden on the issuer that would, I think, effectively limit the practice of sending them out indiscriminately, as so many banks and other corporations now do.

I have introduced an identical bill, H.R. 14239. I must say that I do think that Mr. Hanley's approach is preferable to the approach suggested by Mr. Scott in that while not prohibiting the practice absolutely, it would make it uneconomic to do it. I think there would be fewer legal questions raised about this.

Although I have consistently believed that nothing less than a full prohibition against unsolicited credit cards would solve the problem adequately, I now feel that Mr. Hanley's proposal is more easily enforceable and more manageable. I therefore support it wholeheartedly.

I would like to add one or two additional comments. The matter has sometimes been mentioned that to impose a restriction now on the use of unsolicited credit cards would be unfair to those companies that have never done this since there would be no retroactive penalty for those banks and others that have engaged in the practice. But I do not think that should deter the committee from recommending suitable legislation.

If something is wrong and is a bad practice, it should be stopped and it should not be allowed to go on. I noted the other day with pleasure that the Buffalo Evening News had an editorial specifically supporting this position and indicating support for the fact that to allow an objectionable practice to continue simply because it has been allowed in the past is a wrong approach.

It is also worth pointing out that it is very simple for the banks and others to comply with a reasonable practice. All they have to do is to send out a notice to their lists saying that these people have been approved for credit cards and enclose a return card or something of this sort to request its issuance. I do not think that anyone could object to that.

That practice may have some of the consequences that were referred to earlier in that it encourages additional credit, but I do not see how we could legitimately object to it. I am told that it is far less successful from the point of view of the banks than sending out the unsolicited cards.

Mr. Chairman, as I indicated earlier, I would like to submit for the record a number of items including editorials from several newspapers around the country in support of the position that I have taken for the prohibition of credit cards, a report issued by the Committee on Federal Legislation of the New York County Lawyers Association which specifically recommends approval of H.R. 13244, and a selection of letters that I have received.

I would like to just call attention, if I may, to two of those letters. One of them is from Mr. Eliot Janeway, a distinguished columnist in the financial field, and he points out that the type of credit represented by credit cards is something that could be kept quite separate from the problem of an unsolicited card and the danger of fraud.

There is also a letter included here from Mrs. Bernard DeVoto, the widow of the noted writer, and this was a case where 14 years after his death an unsolicited credit card was sent to him at her address and, of course, she found this a very offensive thing to have happen.

So I would like to submit these various items for the record.

Mr. NIX. Without objection, the exhibits mentioned by the witness may be printed in the records as an adjunct to the statement presented to him.

Mr. BINGHAM. Thank you, Mr. Chairman. That is all I have to offer at this time, Mr. Chairman, and again I would like to say I appreciate the opportunity of appearing before your committee.

Mr. NIX. It is a pleasure to have you, Mr. Bingham.

Mr. McClure?

Mr. McCLURE. I want to compliment the gentleman on his statement. I think the action he has taken already in dramatizing the issue on the floor and in the public press has enhanced the forward progress of this measure.

I also wish to thank you for appearing before the committee and giving us the benefit of your own experience as well as your own thoughts on the matter.

You did comment in regard to the distinctions between the Hanley and Scott bills. Do you have any feeling concerning the matter which Mr. Scott mentioned with respect to the penalty as to whether it should be a misdemeanor or a felony?

Mr. BINGHAM. I would think that of the two it should be a misdemeanor. But I would think that the effectiveness of the requirement for registration would really avoid the necessity of criminal prosecution. I doubt very much that there would be violations.

These cards are, after all, issued by reputable firms and banks and firms with reputations that they want to uphold, and if they find that

it is uneconomic to do it, that will be the end of it. I do not think that the criminal penalties will be needed.

Mr. McCURE. I think that is a generous statement on your part, after your experience, to say that they are all reputable firms who want to guard their reputations.

Thank you very much for your statement.

Mr. BINGHAM. Thank you.

Mr. NIX. Mr. Wilson?

Mr. WILSON. Thank you, Mr. Chairman.

I have no comments. I want to thank Mr. Bingham. He has highlighted, I think, the frustrations and the problems that people have with this type of situation.

I wonder, Mr. Chairman, in subsequent meetings are we going to have any representatives from any of the banks that have been sending these unsolicited cards out to try and find out what justification they can give us for this practice, and what their answer is to the problems that have arisen as a result of it?

Mr. NIX. It is our intention at the next meeting to have such witnesses present, Mr. Wilson.

Mr. WILSON. Thank you very much.

Mr. NIX. Mr. Ford?

Mr. FORD. Thank you, Mr. Chairman.

I want to join my colleagues in welcoming Congressman Bingham here and recognize once again that when he finds a problem, he generally tries to find at least three alternative answers to it and hopes that one of the alternatives will solve the problem.

That is apparently what you have done by introducing legislation that is before two other committees and then appearing before us to push for James Hanley's legislation before this committee. It is clear that you are very serious about your attack on this problem, and we are all aware of the attention you have already brought to bear on the problem. Thank you for coming.

Mr. BINGHAM. Thank you very much.

(The letters referred to above follow:)

NEW YORK, N.Y., September 11, 1969.

Representative JONATHAN B. BINGHAM,
Washington, D.C.

DEAR REPRESENTATIVE BINGHAM: Enclosed is a copy of a letter sent August 14, 1969 to the Credit Manager of E. J. Korvette's in Baltimore. As indicated in the letter I enclosed with the letter an unsolicited credit card and requested they cancel the plate and the account number and remove my name from their records. To date I have not heard from Mr. Bernard M. Fisher nor anyone at Korvette's.

Would you, therefore, please add my name to the list of those who request legislation to prevent such flagrant disregard of individual rights of financial privacy.

Very truly yours,

ANN C. THURSTON.

THE UNIVERSITY OF CHICAGO,
Chicago, Ill., September 16, 1969.

Representative JONATHAN BINGHAM,
House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVE BINGHAM: I was pleased to note your recent introduction of a bill to forbid the sending of unsolicited credit cards. I applaud your concern with protecting consumers from this practice. It occurs to me that you may be interested in a related kind of difficulty that, I am sure, many users of

credit cards have faced and for which there seems to be no effective remedy. May I illustrate with a tale?

I am a professor at the University of Chicago and have had an American Express Credit card since 1964. The bills were sent to me at my University address and I always paid on time. In May of this year, I realized that I had not had a bill from Amexco since January, although I had done a lot of travelling in the meantime. On May 14, I called their Chicago credit card office to inform them and was told that the matter would be taken care of. On May 22, I received a monthly statement, forwarded from an old residential address. (They had been informed of any current home address when I moved in 1967.) Upon inspecting the statement, the reason for the non-appearance of mail was apparent. My address was listed as: University of Chicago, 805 Trombley, Grosse Pt. Pk., Mich.

I have never had the good fortune to live in Grosse Pointe Park. In any event, as the name suggests, the University of Chicago is not in Grosse Pointe Park, but in Chicago. I immediately called the American Express office in Chicago and again was told that the matter would be taken care of. When nothing happened, I sent a registered letter to my "customer Representative" at the New York headquarters, pointing out their address mix-up. It was received on June 12. Again, there was no response.

In the meantime, there was a stream of demands for payment, all forwarded from that old address, citing my account as past due. Although I did not have the supporting statements, I was reluctant to risk an adverse credit report and paid those bills under protest.

On July 18, I telephoned the New York office and spoke to an administrative assistant to the president who assured me that the matter would be straightened out. On August 1, one Mr. D. G. Smith, Special Assistant to the Vice President of American Express, acknowledged by letter that, "there is no excuse for our taking so long to correct your address, and I am at a loss to understand why it happened."

Communications referring to the mysterious Michigan address continued to appear until late August. In early September, mail began to arrive directly at my present home address.

So the matter seems to have been straightened out—more than three and a half months after their error was called to their attention. It was a frightening experience to know that no one might intervene and their "system" might grind out an inaccurate but nevertheless almost irremediable adverse credit report. What this incident suggests is that American Express has seriously neglected to provide sufficient qualified human supervision of its volume computer operations. I am not sure that we can depend on the market to solve this problem, for there is too much risk of irremediable injury. Is there some way to bring home to such companies their responsibility to provide competent service and to correct their errors promptly? I would be interested in hearing about any remedy you might suggest for this condition, which is bound to grow with the increasing use of credit cards.

Sincerely yours,

MARCO GALANTER,
Associate Professor in the Social Sciences.

IRWIN, PA., May 28, 1969.

HON. JONATHAN BINGHAM,
House of Representatives,
Washington, D.C.

DEAR SIR: This may be belated but I listened to your interview on TV when I was in Arizona, re the credit card issue.

I and my friends and neighbors heartily endorse anything you can do to discourage, or pass legislation prohibiting issuance of credit cards that are unsolicited.

We have received cards in the mail from Montgomery Ward, Boron Gasoline and our friend received one from Pittsburgh National Bank and her son charged \$100 before she knew this had come in her mail.

Sincerely,

JANE L. MOORE.

BUFFALO, N.Y., August 7, 1969.

HON. JONATHAN B. BINGHAM,
House of Representatives,
Washington, D.C.

DEAR SIR: Although we have recently, unfortunately, had to move out of your district, I am writing you about a matter which concerns us because it pertains in this case only to the New York area. While living in New York my husband and I had our share of difficulties with the problem of misuse of credit cards. One was stolen from me under circumstances which made the immediate reporting of its loss quite difficult (and I imagine this is often the case). It was a card which had been pressed upon me and which I had never even used myself, but we paid someone else's bills for some time because of a short lapse of time between the theft of the card and our notification of the company. I have since been very wary of accepting any cards at all unless I knew I would be using it frequently enough to be constantly aware of its whereabouts.

A few days ago we received from E. J. Korvette (forwarded to Buffalo) a set of two credit cards, completely unsolicited. It is bad enough for people to be led into this hazard by cheery advertising which minimizes any mention of the risks involved, but it seems inexcusable to me to subject people to such a risk when they have no way expressed an interest in having this "privilege." If the cards had been stolen and used before we received them, the store might have had the decency not to hold us liable, but it would almost certainly have involved at least a lengthy and annoying correspondence on the subject. Until identification of the customer becomes a good deal more effective than it is at present, it seems really irresponsible to me to do business in this way.

I know you have nothing directly to do with this problem, but we hope you will pass this letter on to an appropriate person. We have heard that there is a committee investigating the credit situation but did not know who was specifically involved.

We wish you good fortune in the years ahead and are sorry that we are no longer your constituents!

Sincerely yours,

Mrs. ROBERT A. LUDWIG.

LAWTON, OKLA., March 14, 1969.

Congressman BINGHAM,
House of Representatives,
Washington, D.C.

SIR: I just witnessed your appearance on 'Today's Show' Hugh Downs. Congratulations!! Thanks.

Probably the Lord only knows how many thousands of we ordinary citizens have been recipients of this 'blind get-in-debt-please -, scheme' that is being used through the mailing of credit cards by banks, major oil companies and others. Unwanted, un-asked for and, as you so aptly described, a source of incalculable misery, frustration and trouble.

I laughed. The dang machines sure won't answer a letter of protest nor acknowledge an error. If your letter with a Congressional letterhead won't get any attention—what hope does a poor, distraught, ordinary honest person like myself have?

I now hold correspondence and data—about two inches high—with Sinclair Oil. Only in their case they got in the watch business as a sideline apparently. They have their watch back—I have a receipt for their having receiving it—still, the machines, so far have turned me over to a collection agency for about \$22.?? and I don't know how much interest and court costs will be piled on eventually.

At the time, I didn't even hold a valid credit card, though I had before held one. I wrote and told them so—they sent me a new card so that the watch might be charged against this new card—I guess,—etc. etc. For almost two years now, this foolishness has gone on. The only protection I felt I had was all this correspondence, their threats, my receipt and letters, etc. I rented a safe deposit box to keep this precious evidence in my behalf.

Don't feel too bad, Sir. After all, your case only involved an eleven dollar plus amount. Imagine how monstrous this 'thing' might be for many people.

Keep fighting in behalf of all of us. Again, congratulations!!

A tax payer,

THOMAS L. GALE.

FEBRUARY 24, 1969.

Hon. JONATHAN BINGHAM,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN: Enclosed materials speak for themselves. Originally I planned to return the entire envelope to Atlantic Richfield, including the credit cards.

"One of our Atlantic Richfield employees—an acquaintance of yours—requested the enclosed Credit Cards be sent to you.

"You will enjoy Guaranteed Red Ball Service and many other advantages—listed in the enclosed brochure—these modern, versatile cards offer.

"We are looking forward to serving you as a Credit Card customer.

"ATLANTIC RICHFIELD Co."

My friends do not have to hide—give the name!

The letter was received Feb. 15, hence I had to wait until Monday, Feb. 17, to call State Attorney General Lefkowitz's office to learn more about this kind of unsolicited, credit cards. I was told by one of A. H. Lefkowitz's assistants to destroy the credits by all means at once. Since I do not own an automobile, & people who know me know this well, the—"an acquaintance of yours"—is a gratuitous deception & legalistic ploy. All of this leads to wonder how this approach to business can be condoned & considered legal (State. Att. office is helpless—discouraged one at that because they lost a court test on precisely this kind of problem) & how long will it take Congress as a whole to introduce remedial measures to curb this kind of one-sided liability imposition? This is a truly unbelievable situation & steps should be taken at once to secure the safety of the individual's sovereignty over his purse. This hardly comes under the heading of consumer protection, but fits the heading: "Raiding the Unwary's Assets." How can one be sure that such cards will not be used against one's accounts without ever having seen the card personally?

With best regards,

Respectfully yours,

ROLF STERNBERG.

SALISBURY, N.C.,
March 5, 1969.

Hon. JONATHAN BINGHAM,
House of Representatives,
Washington, D.C.

DEAR MR. BINGHAM: Mrs. Walsh and I heartily support your stand against the issuance of credit cards except upon request.

We thank you for your courage and thoughtfulness.

Cordially yours,

DOUGLAS WALSH.

NEW ORLEANS, LA.,
March 6, 1969.

Hon. JONATHAN BINGHAM,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN BINGHAM: I enjoyed your report on BankAmericard. The same thing happened to me though mine was a bill from Brennan's Restaurant.

I hope that you and Senator Proxmire really press this legislation.

Sincerely,

BRUCE K. BROWN.

MANHATTAN, N.Y.,
March 5, 1969.

Hon. JONATHAN BINGHAM,
Congressman, 23d New York,
Washington, D.C.

DEAR CONGRESSMAN BINGHAM: The item on Wall Street Journal Editorial Page today under Notable and Quotable has been read with interest.

I cannot imagine any circumstance wherein I'd use a credit card. However, over the years I've received many unsolicited cards, more than one from the same institution, company, or however it may be classified. On receipt I destroy them.

I go along with your idea that credit cards should only be issued when requested by the intended user. But, I'd go even further in restricting them, to the extent that a credit card should not be issued to anyone with a proved income of say \$20,000 yearly.

With all the current credit cards outstanding, just what might happen in the event we have a "depression," "recession," or just plain old time "hard times." I've heard of individuals whose outstanding credit card obligations amount to much more than their yearly income. I know of no way another depression, recession or hard times can surely be avoided, and, probably the persons with the largest outstanding credit card obligations would be the first to be released by their employers, should such a condition develop.

Much success, and my best wishes.

Sincerely,

H. SMITH.

JANEWAY PUBLISHING & RESEARCH CORP.,
New York, N.Y., March 6, 1969.

Hon. JONATHAN BINGHAM,
Congress of the United States,
House of Representatives, Washington, D.C.

DEAR JONATHAN: Bully for you on the exasperated outburst which won you honorable mention in yesterday's Wall Street Journal. Wanted to be sure that you had seen it.

Great minds hone in on the same target at the same time as per the latest issue of our Service, which I am delighted to enclose with the fervent hope that you will put it in the Record and use it as a basis for the investigation you intend to make. The passage I have marked relating to the fraudulent practices invited by these excesses on the part of the banking establishment offers a particularly inviting target for investigation.

Sincerely yours,

ELIOT JANEWAY.

[From the Janeway Service, Mar. 5, 1969]

"*Consumer Credit* is the most profitable single source of business the banks have. Even at the height of the 1966 credit crunch, when Reserve city banks were worrying about their ability to meet their own payrolls, they were nevertheless continuing to rain out cash on expensive advertising to compete for new consumer credit loans. But at that time, retail credit was at least measurable as it went on the books; for the form it took was limited to the signing of notes and the writing of checks. It no longer is. And at least as fast as the Washington authorities are using their power to deliquify the banks, the banks are getting out from under by the simple device of mailing out more credit cards, each armed with a de facto overdraft with a limit (generally at the moment \$5,000). At the rate at which bank credit card money is being punched out and written into the stream, the bank issuers will be months finding out how much they have created and how much new loan demand on the growing army of retail card carriers is forcing the country's commercial system to incur.

"The success of bank merchandising in popularizing the use of instant bank credit card money serves a multiplicity of purposes. For one thing, the banks are able to build up the one reliable source of limitless business available to them which they can handle at a profitable spread over the uneconomic cost to them of the money they are borrowing. For another, the retailers of goods and services are relieved of the familiar fear of credit risk and the new fear of credit fraud. (The new headaches the banks are making for themselves in the department of fraud control by the mass circulation of bank credit money is another story; and this scenario is being activated on the law and order front rather than in the economy.) In addition, the proliferation of instant bank credit card money is reinforcing the conspicuously casual attitude of the public toward savings and intensifying its willingness to commit future income to pay off new debt."

AUSTIN, TEX., March 5, 1969.

HON. JONATHAN BINGHAM,
House of Representatives,
Washington, D.C.

DEAR SIR: I noted with interest an excerpt from the *Congressional Record*, as reprinted in the March 5 edition of *The Wall Street Journal*, concerning your support of legislation to limit unsolicited credit card issuance. I wholeheartedly agree with your efforts and the efforts of Senator Proxmire concerning this legislation and would offer this comment.

The consumer credit situation as it exists today can have a crippling effect on an individual when misused, no matter what income classification he may fall into. A computer's mistake may ruin a man's community standing, his protests having no effect, and make large purchases almost impossible for him because of his damaged credit rating. I would advocate even more stringent and far reaching measures than those as yet proposed to insure every American freedom from such unwarranted harassment and to limit the scope and power of consumer credit bureaus.

Even though not a constituent, I will remain an admirer of any legislation of this nature that you may be able to promote.

Very truly yours,

Mrs. ALBERT A. KENNEDY, Jr.

WHITMAN, MASS.,
February 24, 1969.

HON. JONATHAN BINGHAM,
Washington, D.C.

DEAR SIR: Recently I read a newspaper item in which it stated you had received an unsolicited credit card from State St. Bank & Trust Co., Boston, Mass.

Not knowing the proper committee to write to I would like to bring to your attention that I also received the same from the State St. Bank and Trust Co.

This to me is an invasion of privacy of myself and family as I did not request them to check on my credit standing and I would appreciate it if you would bring this to the attention of the proper people for an immediate investigation.

Several of my friends and fellow employees have also received these unsolicited credit cards from this same institution.

Am bringing this to the attention of our State Banking Commissioner as well. Thanking you for anything that you might do on this matter, I am

Respectfully yours,

CLAUDE M. FROST.

CAMBRIDGE, MASS.,
February 24, 1969.

Representative JONATHAN BINGHAM,
House Office Building,
Washington, D.C.

DEAR MR. BINGHAM: More power to you! I have returned two unsolicited Bankamericards to the State Street Bank & Trust Company (in fragments) and have canceled a charge account with S. S. Pierce that I had had for thirty-seven years.

Sincerely yours,

Mrs. A. N. BARRETT.

DEAR SIR: In regard to the article in the Boston Globe I would like to say that Mr. Max Davis had the similar experience with the U.S. Banking Computers he read a statement from a Dr. Chefetz who he never had any business with him read a double bill for the same acct. amt twice \$50.00 and \$16.00 interest. I feel that this is not a fair way of doing business or obtaining money under false pretense. I would like you to investigate this matter.

Yours truly,

MAX DAVIS.

ARLINGTON, MASS.,
February 21, 1969.

HON. JONATHAN BINGHAM,
House of Representatives,
Washington, D.C.

SIR: I read of your troubles with the State Street Bank with deep sympathy. This callous disregard for its customers seems increasingly to be a characteristic of large corporations. In part it is due to inadequate planning and preparation for automation.

As a computer programmer by trade, I can confidently assert that such troubles are not a necessary consequence of automation. The major problem is that oversights in system design which lead to experiences such as yours do not cost the State Street Bank anything. If the State Street Bank were liable for substantial damages as a consequence of erroneous billing, you can be sure there would be elaborate safeguards.

The solution to the problem, as I see it, is legislation that enables an individual to collect substantial punitive damages from a business that wrongfully presses for payment for goods or services that it did not in fact render, or that were not in fact ordered by the individual.

Furthermore, of course, if it could be made into law that the free and unsolicited issuance of a credit card amounts to a free gift of all the goods and services that can be purchased with it, such troubles as yours would never get started, since there would no longer be such a thing as an unsolicited credit card.

Very truly yours,

JEROME T. HOLLAND.

NEW YORK, N.Y.,
February 22, 1968.

DEAR SIR: I would like to register my support of your bill against unsolicited credit cards. I have received such credit cards from certain banks and I would like their practice of sending such unwanted cards to stop.

Thank you,

MISS L. GREENE.

RADCLIFFE COLLEGE,
Cambridge, Mass., February 28, 1969.

HON. JONATHAN BINGHAM,
House of Representatives Office Building,
Washington, D.C.

DEAR MR. BINGHAM: I am enchanted with your campaign against the State Street Bank and Trust Company. Do you need any more ammunition?

Something over a year ago an unsolicited Bankamericard arrived at my house addressed to Bernard DeVoto. Since my husband died in November 1955 (a fact widely noted in the press) you can imagine my feelings—sheer fury was predominant. I wrote a lot of nasty letters in my head but never got round to sending one.

Four months later another credit card arrived for the late Bernard DeVoto. I know better than to write to computers. I always write to the president of the company. So I wrote a corker to Mr. Frederick Hagemann. I am told by those who know him that he is a blameless Harvard man and that I would like him very much.

I wish I'd kept a copy of that letter, because it worked, and I never got another mailing. I said it was a hell of a way to run a bank. I asked what earthly good was a mailing list which included a man long dead. I said I regarded credit cards as illegal and immoral, that I hoped the Mafia would take over the credit card business and that the State Street Bank and Trust would lose their shirts. I asked him to see to it personally that my husband's name was removed from that list and I suggested that an apology to me might not be amiss. I never got an apology, but DeVoto is off that list.

If you beat on the president of a company you really get somewhere. I won an absolutely abject apology from the credit department of Filenes (which said I didn't exist though I'd had a charge account there for 30 years) over a six dollar charge, by writing direct to Maurice Lazarus who is president of that great consortium of Filene, Bloomingdales, Abraham Straus and the lot.

I shall be watching your campaign with fascination.

Most gratefully yours,

MRS. BERNARD DEVOTO,
Assistant to Dean Williston.

[From the Buffalo Evening News, Oct. 9, 1969]

CREDIT CARD ABUSE

In a variety of forums, Washington is debating whether the federal government should prohibit banks and businesses from mailing out credit cards which have not been asked for by their intended recipients.

We say "intended" recipients because a chance always exists that such unsolicited cards—complete with identifying numbers, names and addresses—may go astray and fall into the hands of some irresponsible person eager for a no-charge buying spree. Even if the person whose name is stamped on the card isn't required to pay for such purchases, he may have to go to inconvenient lengths, and perhaps even to court, to prove his innocence.

The thriving credit-card industry opposes any ban on mailing out these unsolicited cards, partly on the grounds that to invoke such a ban now would give businesses which have already sent such cards out an advantage over competitors which had not.

This flimsy defense was swiftly demolished the other day, however, by a one-time victim of a strayed, unsought credit card, Rep. Jonathan Bingham (D., N.Y.). It is wholly illogical, he reasoned, "to allow an objectionable practice to continue simply because it has been allowed in the past or because others have taken advantage of it." Since the practice has been going on for some time, moreover, "any firm that desired to take advantage of it has had ample opportunity to do so."

One way or another, the mailing of these unsought credit cards constitutes an abuse of the consumer and should be stopped. Businesses can achieve the same result, with the potential customer assuming no risks or inconvenience, by sending him a letter asking if he wants a credit card.

All this would seem elementary, yet neither the Federal Trade Commission, which regulates business, nor the Federal Reserve Board, which regulates banks, has barred such mailings. If they fail to do so very soon, Congress itself should act.

[From the Montgomery Advertiser, Apr. 28, 1969]

SIR JONATHAN AND THE ELECTRONIC DRAGONS

Many citizens have lost battles with computers over small matters of personal finance.

Rep. Jonathan Bingham of New York is one of them. He found not recently that being a congressman didn't impress an argumentative computer, but the computer didn't reckon with Bingham's trump card. He is in the enviable position of being able to introduce legislation to abolish the practice that offended him.

Bingham's troubles began when he received an unsolicited credit card through the mail. He sent it back, with an angry note demanding that his name be taken off the approved charge list. No answer. Bingham thought that was the end of the matter.

Several months later, his wife ordered some goodies from an imported food shop in Boston, enclosing a check for the correct amount of the purchase. Somehow, the check was not credited, Bingham received a computer-printed bill for \$10.79, the purchase amount and the amount of the check. The bill was charged against the credit card Bingham had previously returned.

A second protest letter, this time, on congressional stationery, was ignored. A week later, Bingham got a past due notice with a late charge tacked on.

At that point, Bingham gave up arguing with the computer. He introduced legislation in Congress to prohibit the issuance of unsolicited credit cards. Chances of passage are reportedly 50-50.

Bingham's bill may solve his particular problem, but it does nothing to resolve the matter of computers which refuse to acknowledge their mail. To most citizens, that is a larger, more serious problem. The method we've adopted is simple: If a computer won't answer your letter, don't answer its.

[From the Richmond (Va.) Times Dispatch]

UNWANTED CREDIT CARDS

Convinced that they constitute a national nuisance and possibly a national economic threat, Rep. Jonathan B. Bingham (D-N.Y.) has introduced legislation to check the flow of unsolicited credit cards.

His efforts appear to be making him something of a national hero. Letters from across the nation have praised him and have condemned the practice, followed by some businesses, of sending credit cards to people who have not sought them.

Such a practice is a nuisance because, at the least, it inconveniences recipients. Those uninterested in keeping the cards they receive must either return or destroy them to make certain they don't fall into the hands of dishonest persons who would fraudulently use them at the recipient's possible expense.

And even destroying the card may not prevent trouble, since the name and number of the recipient is inside a computer somewhere and may be spewed out to erroneously charge that person with having made purchases. Or, at least, Rep. Bingham says this is what happened in his case. He has spent weeks trying to convince the computer that he never used the card.

Some critics also contend that wide, indiscriminate distribution of credit cards encourages consumer extravagance, leads some people dangerously deep in debt and contributes to inflation.

There is much to what Bingham and his supporters say. Wisely used, the credit card is a useful economic tool that facilitates transactions. Credit card users may find it unnecessary to carry large sums of money or to submit to a credit investigation every time they trade where they are not known. Still, it seems unfair to thrust a credit card upon a man and force him either to send it back or tear it up. Credit cards should go only to those who have requested them.

THOSE UNWANTED CREDIT CARDS

The phenomenal growth in popularity of credit cards has inevitably produced some abuses. One of the most exasperating is the growing commercial practice of sending out unsolicited credit cards to people who do not want them. It is indulged in even by some of our leading banks, which should know better.

Only recently the Brooklyn District Attorney, Eugene Gold, asserted that the major distributors of such cards were guilty of "helter-skelter distribution that encourages crime."

Representative Jonathan B. Bingham received and sent back an unwanted card recently, but nevertheless as a result of a computer mix-up found himself the recipient of a bill from its sender. It infuriated him so that he now has a bill pending before the House Banking and Currency Committee to forbid the practice.

Attorney General Louis Lefkowitz has announced he will ask the State Legislature for similar legislation at the next session. It is badly needed. Many unsophisticated people do not realize that if an unsolicited card bearing their names is stolen and used fraudulently they are not responsible for the debt. And, even if they are aware of their rights, they may have to pay a big court bill to defend them.

NEW YORK COUNTY LAWYERS' ASSOCIATION,
COMMITTEE ON FEDERAL LEGISLATION,
New York, N.Y., September 30, 1969.

Re: S. 721—91st Congress—1st Session.

A bill to safeguard the consumer by requiring greater standards of care in the issuance of unsolicited credit cards and by limiting the liability of consumer for the unauthorized use of credit cards.

H.R. 13244—91st Congress—1st Session.

A bill to restrict the mailing of unsolicited credit cards.

S. 721 is a proposed amendment to the Truth in Lending Act. The key provisions provide for the issuance of regulations governing conditions under which credit card issuers may issue credit cards which have not been requested in writing (Section 2); elimination of liability for unauthorized use of a credit card which has not been accepted (accepted credit card is a defined term and requires

an affirmative act of the card holder indicating acceptance) (Section 3); a limitation of liability to the sum of \$50 for unauthorized use of an accepted credit card and then only if the issuer has complied with certain minimum notice and identification provisions (Section 3).

H.R. 13244 would prohibit the mailing of unsolicited credit cards unless the mailing were by registered mail restricted to delivery to addressee only, the envelope had the following legend in ¼ inch high letters: "unsolicited credit card—addressee may refuse" or words of similar import and the sender agreed to pay such additional charges for returned mail as may be established by the Postmaster General.

S. 721 is a partial step in the right direction. The distribution of unsolicited credit cards has become a common practice and the potential for loss or theft and subsequent unauthorized use is substantial.

The unauthorized use of credit cards is of additional public concern because of the movement of organized crime into the business of the theft, sale and use of such cards.

Even the successful defense of an issuer's claim imposes an unjust economic burden on the alleged credit card user. Moreover, there appears to be no justification for not imposing upon the merchant the risk of accepting the card from an unauthorized user. The burden that would be imposed is no greater than that involved in a transaction when the merchant accepts a check.

S. 721 in its present form is an insufficient remedy. An acceptable version should contain a provision which places the total risk of unauthorized use on the merchant who accepts the card and provides full, not merely nominal, counsel fees and expenses to the card holder required to litigate the issue of unauthorized use and is successful.

H.R. 13244 would be more effective in limiting the distribution of unsolicited credit cards because of the initial and direct economic burden placed on the issuer by the registered mail requirements.

Recommendation: Approval of H.R. 13244. With regard to both H.R. 13244 and S. 721 recommend the addition of provisions (a) relating to the reimbursement of the card holder of counsel fees and expenses where he is the successful party in litigation on the issue of unauthorized use and (b) placing a duty of reasonable care on the retail merchant accepting a credit card.

Respectfully submitted.

COMMITTEE ON FEDERAL LEGISLATION,
VINCENT L. BRODERICK, *Chairman*.

Mr. Nix. At this point we will have printed in the record the news release of the Honorable Louis Lefkowitz, attorney general of the State of New York, and have it noted that he was accompanied by Mr. Getman of his office.

(The news release of Mr. Lefkowitz follows:)

NEWS RELEASE OF LOUIS J LEFKOWITZ, ATTORNEY GENERAL OF THE STATE OF
NEW YORK

The forwarding of unasked-for credit cards to many families is causing them new economic hardships. Attorney General Louis J. Lefkowitz said today in a statement prepared for presentation to the Subcommittee on Postal Operations of the House of Representatives in support of HR 13244 and other bills dealing with the mailing of unsolicited credit cards.

"My office has received hundreds of letters from residents of New York State protesting the forwarding of credit cards to them, but the most irritating complaints of consumers are those that come from families that can least afford to increase their lines of credit," the Attorney General said.

"I have had numerous letters from husbands who have said that the forwarding of these cards is nothing more than a temptation to their wives to make purchases that are beyond their capacity to pay, even over long periods of time. The continuance of such promiscuous circulation of these cards can put an even greater strain on the already overburdened budgets of families caught up in the inflationary spiral who find it hard to meet current everyday needs of their households.

"Of course, there are dangers in the unauthorized use of cards by persons to whom they are not issued. And, the theft of such cards is reported everyday. But, it is a more insidious evil to tax the credit abilities of families by offering

this 'instant cash' to them. They eventually will have to pay for whatever they buy on credit.

"Credit cards and credit itself are an important and necessary part of our American economy. But credit cards should not be placed in the mails to anyone who does not request them. And, while a consumer is not legally required under existing law to pay for goods or services purchased by an unauthorized person on an unrequested card, if the consumer is sued he will be put to the trouble and expense of proving in court that he did not seek or sign the card or did not in fact request it.

"It is my intention at the 1970 session of the New York State Legislature to recommend a bill which will prohibit the forwarding of credit cards unless they are requested in writing by the consumer."

Mr. NIX. We will also have scheduled the distinguished Chairman of the Federal Trade Commission, accompanied by Mr. William Dixon, Chief, Division of Trade Regulation Rules, and Mr. Roger Fitzpatrick, attorney, Trade Regulation Rules.

It would be most helpful to the subcommittee if these gentlemen could accommodate their time to our meeting, which is the 19th of November. We would be deeply grateful to them.

Mr. DIXON. I will do my best to accommodate you.

Mr. NIX. Thank you very much.

Mr. DIXON. Mr. Chairman, I might suggest to you that the statement I was going to give has already been distributed to the reporters so I suggest you incorporate it in the record right now.

Mr. NIX. There is no objection.

Mr. DIXON. If you want me to, I will come back and answer your questions.

Mr. NIX. Thank you. It would be most helpful to us, and we certainly would be grateful to you.

Mr. DIXON. Thank you.

Mr. NIX. That statement will be incorporated in the record at this point.

(The statement of Chairman Paul Rand Dixon follows:)

STATEMENT OF PAUL RAND DIXON, CHAIRMAN, FEDERAL TRADE COMMISSION

I am happy to appear before this Subcommittee and state my views on H.R. 13244, a bill "To amend title 39, United States Code, to restrict the mailing of unsolicited credit cards."

While I enthusiastically support the goals of H.R. 13244 which would place reasonable restrictions on the mailings of unsolicited credit cards, I must admit to some reservations as to the effectiveness of its remedy in correcting all of the problems which have come to our attention. Senders of such cards would be required to use registered mail restricted to delivery to addressee only. Additionally, they would be required to post notice on the envelope that the envelope contains an unsolicited credit card and that the addressee may refuse the mailing and require the sender to pay the cost of return mailing should such letter be refused. Failure to comply with these requirements would make such a letter "nonmailable" and the use of the mails by senders of such nonmailable matter would subject the senders to a fine of \$1,000 or imprisonment or both.

The bill would therefore not prohibit the unsolicited mailings of credit cards but would impose reasonable restrictions on the mailings which would assure that the intended recipients received and had an opportunity to refuse it immediately upon receipt, thus removing from the recipient the burden of having to take separate action to either return the card and notify the sender that the recipient did not want an account set up in his name. The virtue of such a bill is that all the burden is placed upon the sender who chooses not to obtain the prior request or consent of the recipient of the credit card and sends such a card through the mails without the knowledge of the recipient. Again, I applaud the goals of such legislation.

As you know, Mr. Chairman, the Federal Trade Commission is also interested in unsolicited mailings of credit cards. The large scale mailings of credit cards on an unsolicited basis is not a new development. The oil companies marketing gasoline and other oil products have been engaged in the mailings of credit cards on an unsolicited basis for several years. Within the last several years the banking industry has seen fit to enter the arena of competition by utilizing large scale mailings of credit cards also on an unsolicited basis. Large scale mailings of unsolicited credit cards have been utilized by department stores also. The purpose of such large scale, unsolicited mailings is to assure that a large number of cards will be in the hands of prospective customers in a relatively short period of time. This, from a marketing standpoint, is more efficient than the time-consuming method of waiting for specific applications from consumers.

The widespread distribution of unsolicited credit cards is predicated on the assumption that a consumer in possession of a credit card is more likely to make his purchases at a company station, or from a merchant enrolled in a particular credit card plan. In the case of gasoline outlets, the possession of a credit card by a customer enhances increased sales of accessories such as tires and batteries since it is more often convenient to charge such items rather than pay cash. Additional income is generated by use of credit cards for merchandise solicitations through the mails.

The mailing of credit cards is a major source of new accounts. The list of prospective recipients is usually drawn from such sources as city directories, credit bureaus, and surveys of residents in a particular area. Often mailing lists are prepared which focus on specific consumer groups such as college graduates or physicians.

For a new entrant into the credit card method of marketing, such as a bank credit card plan, a large scale mailing of credit cards on an unsolicited basis has a particular appeal. The use of mass mailings does provide a ready means for a marketer or other credit card organization to have available in a relatively short period of time a large body of credit card holders.

As stated by Mr. Thomas Bailey on behalf of the American Bankers Association during hearings held before the Subcommittee on Financial Institutions of the Committee on Banking and Currency of the United States Senate on October 9, 1968:

A large number of credit card holders is a vital prerequisite for making the plan attractive to participating retailers and other suppliers of goods and services. To deny banks without credit card plans the privilege of issuing cards unless requested would completely limit this business—which is a most natural one for banks—to those with plans now in operation, and would keep them free from new competition * * * (p. 24).

Public concern with the use of the mails to distribute unsolicited credit cards has surfaced with increasing frequency within the last couple of years. The fact that the practice is widespread and the subject of the consuming public's concern is borne out by the frequency of protest letters. The public record of the recent Trade Regulation Rule hearings held by the Federal Trade Commission contains at this point approximately one thousand letters complaining of the practice of large scale mailings of credit cards. These letters were mailed directly to the Commission, or forwarded through the good offices of Members of Congress, the Attorney General, the office of Special Assistant to the President for Consumer Affairs, and many were supplied by Mrs. Margaret Dana, who authors a nationally syndicated consumer's information column.

The sentiments expressed in these letters is overwhelmingly opposed to the practice of the mailing of unsolicited credit cards. The complaints registered by consumers show a concern that:

(1) The credit card may be lost or stolen in transit and fraudulently used, thereby making the intended recipient subject to billing and collection efforts, and a fear that out of such collection efforts, if resisted or ignored, the recipient's credit reputation will be jeopardized;

(2) The general inconvenience of receiving unsolicited mail containing credit cards, which requires some action to be taken, such as the destruction of the card, returning it to the sender and instructing that the card is not wanted and to remove the account;

(3) The gratuitous establishment of an account in the name of the recipient of the unsolicited credit card and through errors in the often automated billing system the recipients are billed by mistake and placed under the burden of demonstrating to the billing establishment that they neither incurred nor au-

thorized any charges. As in the case of billings resulting from the fraudulent use of the credit cards, consumers fear for their credit reputations. The public record of the Commission's hearings contain letters by consumers indicating they have been billed without having knowledge that a credit card was ever sent to them, or that they have been billed even though the unsolicited credit card was never used. The letters run the gamut from expressions of irritation and anger to fear of what might have happened had the card been stolen in the mails, to actual complaints of misbillings and the necessity of writing one or more letters before the matter is adjusted.

Perhaps the most poignant letter is one that was mailed to me recently by a woman in California. The writer informs that her father had been sent an unsolicited credit card by one of the bank credit card programs. The father, a man in his seventies, has been a known alcoholic for thirty years, and has had a sub-zero credit rating which even the most casual credit check would have uncovered. The alcoholic father, upon receipt of the credit card promptly took it to the local liquor store where it was kept in the cash register for him. He ran up in a short period of time a five-hundred dollar liquor bill, and in the short period of time has drunk himself into insanity.

The first indication of the tragedy came to light when the old man's son, of the same name, but different part of the country, received a phone call from the credit card establishment implying that he must have had some good parties—witness the \$500 liquor bill. The author of the letter states that the son is still receiving billing letters which, among other things, ask "Do you want your credit rating ruined?"

Incidents such as these are, fortunately, not commonplace but it does illustrate what can happen as a result of the unsolicited mailings of credit cards on a large scale. The use of mailing lists which may not be thoroughly verified and the potential confusion and error that is a part of automated billing procedures contribute to the public's irritation and anger with such credit card distribution practices.

Another problem area that has surfaced as a result of the FTC hearings is that of law enforcement as it relates to credit cards. Testimony by the District Attorney of Brooklyn (Kings County) and written statements by the District Attorney for the Bronx have indicated that unsolicited mailings of credit cards do contribute to law enforcement problems involved with the theft and subsequent sale of credit cards on the black market. This is particularly so when the envelopes have statements which advertise that credit cards are contained in the envelopes.

We were indeed fortunate to have appear and testify at the Commission's hearings Representative Karth, Bingham and Corman. Representative Karth dwelt at some length upon his concern that unsolicited mailing of credit cards does increase the law enforcement burden, and Congressmen Bingham and Corman each had constructive statements to make.

Problems arising from the mailing and losses of credit cards has been the subject of numerous articles in magazines and newspapers over the last two or three years.

Mr. Chairman, the essential lack of fairness to consumers becomes apparent. Because of the sending of such valuable plastic cards through the mails consumers are subjected to several hazards. The card may be stolen or lost while in transit and the intended recipient would be unaware of such fact. Misappropriation of the card by unknown parties results in billings to individuals who were up to that point unaware of the existence of a credit card in their name. As a result, the intended recipient is put to the often vexatious task of demonstrating to the billing company that the credit card was never requested or received and that the purchases were made by others.

Credit cards which do arrive at their intended destination create a general inconvenience of receiving unsolicited mail which requires some action to be taken such as destruction of the card or return to the sender.

Even though the card is not used, an account is established by virtue of the unsolicited mailing. Through errors in the automated billing procedures involving thousands of accounts, the recipient of the credit card may be billed by mistake, again placing upon him the burden of demonstrating that he incurred no charges on the unsolicited account.

While our files, at this point, do not indicate that individuals have had derogatory credit information relayed to credit bureaus as a result of disputes over unauthorized charges, common to many, if not most, of the letters of complaint

by consumers is the real fear that their credit standings will be jeopardized as a result of collection efforts. Indeed, some of the language of billing letters suggesting that "your credit reputation is in danger" does much to justify this fear on the part of consumers.

In my judgment, the above litany of events and public concern cries out for remedy.

Public hearings were held by the Commission on September 10 and 11, 1969. The public record was held open until October 11, 1969. The staff is presently digesting and analyzing the entire record of the proceedings and I expect that a recommendation from them will be forthcoming soon. Once the staff report is forwarded, the Commission will then consider the matter and I hope to be able to report our findings and conclusions in the near future.

As you may have noticed, the Trade Regulation Rule which was proposed by the Commission in its Notice of Public Hearings goes a step further than H.R. 13244. The proposed regulatory action by the Commission would require that "The mailing by marketers of products or services or by others of credit cards to any party without first receiving an expressed written request from such party for the cards or the expressed written consent to the mailing of the cards constitutes an unfair act or practice and an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act."

I would like to emphasize at this point that the rule as proposed by the Commission in its Notice of Public Hearing is just that, a proposed rule. Our purpose in setting out a suggested rule at the outset is to give all parties an idea of what, as a preliminary matter, the Commission has in mind as a possible remedy to the situation giving rise to the Commission proceedings. This, in my judgment, then gives all interested parties to such proceedings a reference point from which to present their views of support or opposition, or their alternative suggestions.

As the staff has not yet reported to the Commission its recommendations arising from our proceedings, I would like to discuss with you what I believe are the differences between H.R. 13244 and the proposed approach to the problem set out by the FTC in its original Notice to the public.

The proposed Trade Regulation Rule requiring mailers to have prior written consent of recipients, or written request for such credit cards, in effect prohibits the mailing of unsolicited credit cards. Once an intended recipient indicates that he has no objection to the mailing of the card, the card then in effect becomes a solicited one.

In other words, under the Commission approach, mailers would continue to prepare their mailing lists and run the credit checks necessary to cull out undesirable names from such lists. But prior to mailing the credit card the mailer would, through a premailer device or other methods, notify the intended recipient of their selection and obtain their written assent to the mailing of the credit card. Once such assent to the mailing is obtained the recipient knows to look for the card in the mail and of course then would have no objection to its appearance in his mailbox. Parenthetically, in cases where the recipient is aware that such a card is on its way, the sender should be less inclined to state on the outside of the envelope that a valuable credit card is contained within.

H.R. 13244 would not preclude the sending of credit cards without expressed consent, but would place certain safeguards upon the mailing of such unsolicited cards. If I may be allowed to analogize, you might describe the proposed FTC approach as surgery, and the tack followed in H.R. 13244 as medicinal treatment of the problem.

Until I have had an opportunity to study our staff report, I would like to reserve judgment and comment as to whether or not surgery is more effective than the medicinal treatment recommended in H.R. 13244.

Thank you again for the opportunity to appear here today and present my views. I want to assure you that the Commission and the staff stand ready to assist you in whatever manner within our power.

Mr. NIX. The subcommittee will be adjourned until the 19th of November at 10 o'clock.

(Whereupon, at 12 noon the subcommittee was recessed, to reconvene at 10 a.m., November 19, 1969.)

THE PLASTIC JUNGLE

WEDNESDAY, NOVEMBER 19, 1969

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON POSTAL OPERATIONS OF THE
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C.

The subcommittee convened at 10 a.m., in room 210, Cannon House Office Building, Hon. Robert N.C. Nix presiding.

Mr. NIX. The subcommittee will be in order.

Today we continue our hearings on the subject of the unsolicited mailing of credit cards. We will hear from witnesses who are part of the present administration, as well as from private citizens.

Mr. Robert Meade, who is the Legislative Assistant to the Office of Special Assistant to the President on Consumer Affairs, will testify today. He has testified previously on the subject of unsolicited credit cards before the Federal Trade Commission. During his testimony he asked that the Federal Trade Commission recommend legislation to the Congress. We are here today to discuss legislation. A copy of his statement before the Federal Trade Commission has already been added to the hearing appendix.

Mr. David Nelson, General Counsel to the Post Office Department, will also testify on the problems resulting from the mass mailing of credit cards, especially the mass mailing of unsolicited and unwanted credit cards as an advertising gimmick. This has caused some problems in the postal service in that some cards have been stolen from mailboxes in an organized fashion and there has been some stealing of credit cards from within the postal service itself.

There is a serious organized crime problem connected with the replacement of money with plastic credit cards. Gangsters have always flocked to rackets where there is a quick turnover in cash.

Narcotics, prostitution, gambling, and loan-sharking rackets have been the backbone of gangsterdom. But they have found a new racket today which involves the theft, transfer across the country, and criminal use of credit cards.

The collectors for loan-shark rackets now tell their victims that if they don't have any money, "Order a credit card—get two, or three, and then give them to us." They then use the cards to run up bills and provide identification for mobsters.

In Brooklyn, N.Y., \$175,000 worth of bills was run up on 20 credit cards. In Chicago, two brothers obtained \$500,000 in cash by the resale of airline tickets obtained by credit cards.

Last Friday, the son of the gangster, Joe Bonanno, was convicted of the extortion of a credit card to finance cross-country travel. The

man who extorted the credit card for the gangster's son was murdered prior to the trial.

What has this to do with the mass mailing of unsolicited credit cards as an advertising device? Quite a bit, since great opportunity is available for the theft of credit cards from within the postal service, or from mail boxes, without the victim ever knowing that a credit card bearing his name is being used. He won't know, until he is flooded with bills.

The essence of credit card rackets is the use of a credit card in a different part of the country before the victim knows that the card is missing. In the case of unsolicited credit cards, there is no notice of the missing card for a month. In the case of a requested credit card that has been stolen, there is notice within a comparatively short time.

I mention the theft of credit cards from within the postal service because it is possible to add low paid postal workers to the long list of loan shark victims. Once such a loan is made, a thousand per cent interest charges come due, and a man and his family are threatened with beatings or maiming; it is no wonder that occasionally some credit cards are stolen.

For the most part, since unsolicited credit cards are mailed by the million with Prussian regularity, it is comparatively easy to obtain the services of street thugs to break into mail boxes and steal these credit cards for resale for anywhere from \$50 to \$500 apiece.

A recent junk mail flier was sent to the occupant of 158 G Street SW., Washington, D.C. The advertising on the envelope was entitled, "How to lose your credit cards without losing your shirt." The pamphlet advertised credit card insurance at the rate of \$9 a year. In short, a new insurance gimmick has been devised to spread the cost of the fraudulent use of credit cards, among the public at large. This use has risen to a \$150 million figure each year.

I think that it is time the Congress protects the public from the sloppy, negligent, unsolicited, and unwanted mailings of credit cards.

The people have a right to look for protection to their Government. It is no defense, as far as I am concerned, for the Federal Reserve Board Chairman, William McChesney Martin, the banking industry's representative, to maintain that this inflationary practice is good, because it is profitable to the bank.

Our first witness today is Mr. Jerome R. Gulan, legislative director, National Federation of Independent Business.

Mr. Gulan, it is a pleasure to have you, and you may proceed.

TESTIMONY OF JEROME R. GULAN, LEGISLATIVE DIRECTOR, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. GULAN. Thank you, Mr. Chairman.

Mr. Chairman, I am Jerome R. Gulan, legislative director of the National Federation of Independent Business.

Before going into my statement here, I have with me eight or nine press releases going back over the past year and a half, and I would ask that these be inserted in the record following my statement.

Mr. NIX. Without objection, they may be inserted in the record immediately following your statement.

Mr. GULAN. Mr. Chairman, we appear today in support of H.R. 13244 and similar legislation aimed at preventing the wholesale mailing of unsolicited credit cards.

Recently the federation polled its membership on this question and found that 80 percent of our respondents were in favor of curtailing the practice of this unsolicited mailing of credit cards. The particular bill in question was H.R. 858 introduced by Mr. Ottinger. I believe that called for the outright prohibition of mailing of unsolicited cards. This strong stand against the practice comes despite the fact that many independent retailers are participating in bank credit card plans.

Our continuous field surveys shows that about 35 percent of our retailers make credit card sales, and in so doing, account for about 18 percent of their volume.

Some small retailers find this preferable to carrying accounts themselves, and feel that it gives them the opportunity to rival the big stores' revolving credit plans.

Nevertheless, it seems that four out of five of our members are strongly opposed to the unsolicited mailing of these cards. Fundamentally, most businesses, believe that credit should be granted only to those who have asked for it, and have demonstrated that they will make good on their obligations. Many independent businessmen are alarmed at the magnitude of consumer credit, and fear possible economic collapse should uncollectible accounts increase.

Mr. Chairman, although we are currently studying the effect of credit cards, we do not feel that we are in possession of sufficient data at this time to enable us to reach a determination regarding their ultimate effect upon the economy.

When the federation study started in January 1968, it was presumed that the bank credit cards would furnish the independent retailer with a major competitive tool against the big corporate merchandisers who have long offered customers a revolving-type credit plan.

Yet the current data coming off the federation computers raises a serious doubt that this switch from revolving plans to bank card credit plans is taking place.

For the third consecutive month independent retailers honoring credit cards report only 18 percent of their volume done on them.

For the first time in 21 months, too, the percentage of independent retailers who report honoring the cards failed to show a gain, remaining nationally at 34 percent.

While it could be assumed sufficient time has not elapsed for consumers to "get out of hock" to the big corporate merchandisers and change to using their bank credit cards, the data from the Pacific Coast where bigtime promotion of bank credit cards had its genesis does not seem to afford any substantiation of this surmise. In this area, card-honoring merchants report only 21 percent of their volume done on them, despite the fact that 52 percent honor the cards.

Federation researchers are now inclined to believe it possible that consumers carrying bank credit cards are not using them for routine ordinary purchases, but rather hold them for a "rainy day," for an emergency, or for rare occasions when the temptation to buy a luxury or semiluxury item becomes overpowering. Because the Federation survey is confined to independent retailer attitudes toward bank

credit cards and does not sound out consumers, it is not known how much validity this assumption may have.

Federation researchers do feel that credit cards have contributed to inflation, although to what degree is not ascertainable at present.

This opinion is based on what seems to be a relationship between the use of credit cards, and the interest rates paid by independent businessmen.

One example cited is the data from the South Atlantic States. For many months independent firms had been reporting bank interest rates substantially below the national average in that area.

But in the midyear apparently a drive was launched to sell the bank credit card idea in that area, with the result that in the space of 1 month, acceptance of credit cards jumped to over 40 percent, second only to the Pacific Coast.

Coincidentally, the average bank interest rate reported by South Atlantic independent business firms jumped a full one-half percent from July to September, while the national average bank rate to small business showed but one-tenth of 1 percent increase.

While the example of the South Atlantic States shows up the most dramatically, there appears to be a relationship between bank interest rates to independent business, and the degree of acceptance of bank credit cards. Federation researchers are making further studies on this interrelated data before arriving at any definite conclusions.

It is possible that the development boom in the South Atlantic States has now overreached the available lending capital. On the other hand, banking institutions must make money available to the holders of bank credit cards to honor their agreements with card-honoring retailers, which could curtail the funds available for other types of loans, and thus create a scarcity of lending funds to result in higher interest rates.

Differentials in bank profitability may also be a factor. While an interest rate of 10 percent to a small business borrower is a severe problem to the smaller businessess, it is far from the 20 percent or more that bank funds can earn from financing credit card accounts whereby the consumer pays 18 percent per year, and the retailer is also discounted 2 percent or more.

In conclusion, Mr. Chairman, we would ask that your committee take a long hard look at this problem, examining possible bad side effects, such as the lending credit in areas where banks are heavily involved.

Finally, it is the recommendation of the National Federation of Independent Business that the unsolicited mailing of credit cards be discontinued, and to that end we offer our support to the legislation before you today.

That concludes my formal statement, Mr. Chairman.

Mr. NIX. Thank you, Mr. Gulan.

I understand that you have a continuing investigation of this subject matter, but you have not reached the point where you have definitive answers or conclusions supported by the type of facts that you would like to have at your command?

Mr. GULAN. That is correct, sir.

Mr. NIX. But the study will continue?

Mr. GULAN. Yes, it will.

Mr. NIX. I think it would be most helpful for this committee to receive the report at the conclusion of your studies.

Mr. GULAN. We will be more than happy to furnish that for you.

Mr. NIX. Mr. McClure?

Mr. McCLURE. Thank you, Mr. Chairman.

I think the main thrust of your statement, as I read through it hastily—and I am sorry I was late coming in—was toward the difficulty that you had in competing for the funds which are available in the lending market; is that not correct?

Mr. GULAN. Yes, Mr. McClure. As Mr. Nix said and I pointed out in my statement, we do not have enough definitive data as yet, but it seems that in any given area where these cards are in use, we find a corresponding decrease in available lending funds for short-term business loan purposes or equity capital.

Mr. McCLURE. Have you also had any experience in regard to the difficulties imposed upon businesses as a result of uncollectibility of accounts or frauds in the use of cards because of the unsolicited mailing?

Mr. GULAN. Well, again, we are anticipating a fair amount of this, but as yet we have only begun the study, and we do not have enough to support a charge.

Mr. McCLURE. The reason I ask that question is that it would appear to me that perhaps this committee and its interest is more directed to the difficulties caused by unsolicited mailing than they are on the financial impact of the use of credit cards; and while your statement is very good and I find nothing in this with which I disagree, the problems which we are looking at are probably in a slightly different field.

Mr. GULAN. I realize that, Mr. McClure, but going along with your idea here, we do anticipate that where extensive fraud is involved in the misuse of the credit cards, that the card-issuing companies will not be honoring the charges, and this would leave the middleman or the retailer holding the bag, in other words.

Mr. McCLURE. I assume a good many of your members do honor the credit cards?

Mr. GULAN. Nationally 34 percent of them do; yes.

Mr. McCLURE. This could then become a severe problem to the small retailer?

Mr. GULAN. Yes sir, I think so.

Mr. McCLURE. Thank you, Mr. Chairman.

Mr. NIX. Thank you, Mr. Gulan.

(The following compilation of news releases, which were issued by the National Federation of Independent Business, Inc., were ordered made a part of the record at this point:)

NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC.

THE BRIEF FACTS

Congress is expected to go into considerable debate on lending practices to consumers. While the Federation has never conducted a poll on proposed legislation somewhat loosely classified as "Truth in Lending" it has just completed a nationwide vote among independent business proprietors on a bill by Representative Wright Patman, Texas, that would prohibit Federally insured banks from issuing unsolicited credit cards. The vote shows 70 percent in favor, 23 percent opposed, with 7 percent undecided. In addition, the 1968 Federation

continuous field survey is seeking to find out how widespread is the use of these credit cards. The first small return sample would indicate that they are being used quite extensively.

In an era when apparently only the tax collector follows the old poetic admonition, "Oh, take the cash and let the credit go", there appears to be widespread interest in the independent business community on any action Congress may take on what is known as "Truth in Lending" legislation.

Due to the fact that this legislation has constantly changed in character during its Congressional consideration it has never been submitted to a nationwide vote by the National Federation of Independent Business.

There has been just completed a nationwide vote on a bill by Representative Wright Patman, Texas, which would forbid Federally insured banks from issuing unsolicited credit cards. This vote found 70 percent of the independent proprietors in favor, 23 percent opposed, with 7 percent undecided. Under the rules of the organization, the majority vote requires the Federation to support this measure.

But on the other hand, the 1968 continuous field survey by the organization shows that there is apparently a widespread acceptance of credit cards by retailers and service establishments especially in areas where bank credit cards have been promoted.

A preliminary check on the first scattered returns to this survey indicates that around 13 percent of all firms are using credit cards for the credit accommodation of customers.

Inasmuch as roughly 40 percent of all respondents are in occupations where consumer credit is usually required, as distinguished from independent manufacturers, builders and others where open consumer credit is not used, this preliminary data would indicate that close to 30 percent are honoring such cards.

Wide regional variances are also showing up, principally between areas where bank credit cards have been promoted, and those where they have not entered the business structure to any significant degree. This same preliminary data also apparently indicates that over 30 percent of these consumer-oriented businesses in California are using them, and upwards of 50 percent in Florida. These figures will be re-evaluated as the sample becomes large enough to attain statistical validity.

The big interest in the Congressional action on the so-called "Truth in Lending" bill is what is finally decided upon in the revolving credit plans offered by the big corporate merchandisers. These are the plans whereby the consumer pays each month only a certain percentage of the total amount due at any one time, paying an interest of 1½ percent on the unpaid balance.

While some Congressmen have been insisting that these corporate merchandisers should be required to state the interest rate is 18 percent per year, there has been strong opposition to such a requirement largely based on a somewhat philosophic-mathematical argument that in this type of operation 1½ percent per month is really not 18 percent per year.

But regardless of this disputation over mathematical theories which largely escape the layman, these revolving credit plans have been felt to give the big corporate merchandisers a competitive edge over the independent merchant.

Thus, bank credit cards, which insofar as the consumer is concerned, operate in the same manner, and on the same interest rates as revolving credit plans, but allows freedom of choice in where to buy have been hailed by many as the most valuable competitive tool ever developed for the independent merchant who does not have corporate assets to pledge.

Whether or not banks have entered into the credit card business from philanthropic motives is a moot question. While one bank official will candidly state that the bank grew weary of loaning money to big corporate merchandisers at the prime rate and then seeing them benefit by, in effect, loaning out these funds at a rate more than three times the prime rate, others will say that they saw an opportunity to supply a service badly needed to keep their independent business customers competitive. The truth lies probably somewhere in between these positions.

In the meantime, evidence appears to grow that many businesses in this era of tight money, and increasing interest rates, are quite happy to let the banks take over their credit and collection problems and pay the nominal fee required.

The Federation incorporated this element into the continuous field survey for for this year on the basis of results from over 200,000 respondents about evenly divided between the 1966 and 1967 surveys. The earlier year showed that independent businesses' accounts receivable had built up to a high level, with serious

collection problems indicated. By the end of 1967, however, the amounts on the books have been materially reduced which led to the assumption that perhaps a substantial number were turning their credit and collection problems over to banks via the credit card system.

Federation researchers are now inclined to believe that the data developed this year on the usage of credit cards will reflect what action, if any, that the Congress takes before adjourning. If the use of revolving credit plans by the large corporate merchandisers is stopped by law, it is presumed that the independent merchants will not feel that bank credit cards are needed to be competitive.

Again, in the unlikely eventuality that interest rates go down, there may be a slackening in their use, but at present rates it is far less costly to pay banks their service charge than borrow money to maintain their charge accounts, not to mention the avoidance of any collection problems.

If the Congress finally enacts the long sought "plowback allowance" sponsored by Representative James Corman, California, there is a possibility that more independents might be inclined to carry their own charge accounts. This bill would permit a business before taxes to put back into inventory, or in accounts receivable, 20 percent of a year's profits up to a maximum of \$30,000.

Thus, perhaps the attitude is best summed up by one proprietor who commented, "Maybe these credit cards are not so sound in principle, but at least the banks are doing something to help solve our problems which is more than you can say for Congress."

BANK CREDIT CARD ACCEPTANCE

Consumer serfhood that resulted in households being captive customers of the big corporate merchandisers offering revolving credit plans appears to be on the wane as bank credit cards increase in acceptance and usage.

This trend is apparently emerging from a further analysis of the nationwide returns to the 1968 continuous field survey of the National Federation of Independent Business. The data now shows that approximately one-fifth of the total sales volume of independent retailers is handled by credit cards, and in states where bank credit cards were pioneered, such as Texas, 44 percent of the independent retail business volume is on such cards.

Although attention has been drawn to the promotion of bank credit cards by the big banks, it is largely overlooked that small banks pioneered this concept some fifteen years ago, preceeding the banking giant's entry by a decade or more. A state bank in Dallas was one of the very first in this field.

Of especial interest is the data now developing from over 10,000 respondents to date in the strong use of credit card plans by the smaller retailing units. In these smaller units, those with up to three employees, 15.4 percent nationally are tied in on credit card arrangements, but the cards account for 19 percent of their sales volume.

The data further shows that 16.2 percent of the firms operating as sole proprietorships, have credit card arrangements, but they account for 22 percent of their volume.

More firms, 18.4 percent, in the \$100,000 to \$200,000 yearly sales volume, honor credit cards and this group also shows the largest volume being done on them, hitting 20 percent.

So far it is appearing that those independent firms who do honor credit cards are having greater success in their sales efforts. It also appears that there is a time lag involved in the building of sales volume on credit cards.

This is evidenced by the figures showing in the west south central states which include Texas, 9.3 percent of the independent firms accept credit cards, but do 44 percent of their volume on them. If Arkansas were excluded the percentage would be higher.

In the middle Atlantic states 11.7 percent accept credit cards and do 19 percent of their volume on them. It is perhaps significant that a small bank on Long Island, as well as one in New Jersey were, along with the Dallas bank, the pioneers of bank credit cards.

On the other side of the ledger, in the Pacific Coast states 21.9 percent of the independent firms honor credit cards, which is about 50 percent higher than the national average, yet only 15 percent of the volume is done on cards, which is below the national average.

This disparity is taken to indicate the time lag required for consumers to change over from being captive buyers of the big corporate retailers where they have been paying on revolving charge accounts and diversify their buying habits.

The big Western banks, especially in California, who entered the credit card field comparatively recently, have engaged in heavy promotion campaigns to result in a greater than national acceptance of credit cards by independent merchants.

But on the other hand, before the volume purchased on these cards can attain an equal basis, it is probably necessary for many consumers to pay down their existing revolving credit accounts with the big corporate merchandisers before being able to divert from monthly budget payments on bank credit cards.

If the trend now being noted continues to grow, Federation researchers are inclined to believe that merchandising revolution is in the making which will alter public buying habits. With the consumer able to obtain the same monthly budget terms on purchases made in a wide variety of stores, they will probably be less inclined to buy everything under the one roof of a big department type store.

This could result in the greater development of specialty shops and stores confined to one field, such as appliance, hardware, apparel, and other fields. In fact, bank credit cards may already be having an affect on department store sales who previously held as a major competitive edge over independents the ability to borrow money on corporate assets to carry customers in extended terms.

PACIFIC COAST AREA SHOWS INCREASES IN USE OF CREDIT CARDS

Undoubtedly sparked both by aggressive advertising and by high interest rates that make borrowing to carry accounts receivable unattractive, acceptance by independent retailers of bank credit cards jumped 33 percent in twelve months.

This is reported by the research staff of the National Federation of Independent Business based on computer analysis of the data from over 115,000 respondents obtained through continuous field surveys.

In the 1968 Federation survey, questions were included to measure the impact of bank credit cards and this same procedure is being followed in the current 1969 survey.

The first computer analysis early in 1968 showed on a national basis 24 percent of the independent retailers were then honoring bank credit cards. The figures for the same period this year now show 32 percent honoring the cards.

The most dramatic increase is shown on the Pacific Coast. A year ago only 21.9 percent honored the cards, and currently 55 percent are doing so. Acceptance of bank credit cards by independent retailers shows 41 percent in the Mountain States, then jumps across the continent to New England where 36 percent currently accept the cards. The lowest acceptance is in the wheat states of the West north central where it drops to 20 percent.

The volume of business done on credit cards also shows a gain, but not compatible with the acceptance of the cards. At the beginning of last year 15 percent of independent business volume was shown as being done on these cards as compared to 19 percent currently.

It appears that while aggressive advertising by banks offering credit cards account for a major share of the increased acceptance of bank credit cards, inflation is also a motivating force.

This appears indicated, according to Federation researchers, from the survey showing independent retailers have reduced their accounts receivable on a dollar basis by 15 percent over a year ago, despite a dollar increase in sales.

With the average interest rate around 7 percent, and many finding it necessary to borrow money to maintain a satisfactory unit level of inventory in view of the higher costs of replacement, there has developed a reluctance to go further "in hock" to finance carrying accounts.

Thus, with the service charge on bank credit cards substantially lower than prevailing interest rates, it appears that independent merchants are seeking to transfer their charge accounts over to the bank credit card method of financing.

As previously reported, and also borne out by the geographical differences showing up in the survey on this question, there is a difference in the attitude of the businessmen toward the credit cards.

By and large, merchants who are competing with the big corporate merchandisers who offer revolving credit plans are apparently finding bank credit cards the most effective competitive tool that has been developed.

On the other hand, those who are located in areas remote from the big corporate merchandisers and thus not in competition with them, are inclined to look upon bank credit cards with less favor, despite the fact there is some fragmentary evidence that larger sales, either in quantity or quality, result from the use of credit cards than when cash is paid.

Federation researchers also feel that the surveys will show some interesting trends when, and if, the regulations are formulated for the disclosure of interest rates under the so-called "truth-in-lending law."

While consumers using either bank credit cards, or revolving plan credit from big corporate merchandisers pay $1\frac{1}{2}$ percent per month on the unpaid balance, no particular change is expected unless as a competitive weapon the big corporate merchandisers drop their rate to (one) 1 percent. If this happens, it is also anticipated the banks issuing credit cards will meet the competition.

The big change in credit selling may arise in the field of autos, appliances and other big ticket items that are usually financed through sales contracts. In this field the interest rate is usually expressed as somewhere between 6 and 8 percent.

However, this is interest paid on the entire amount over the life of the contract. In other words, a three year contract at 6 percent adds 18 percent to the original balance.

Thus, forced disclosure of the true interest rate on installment contracts could result in a competitive situation whereby a change may be made in the selling of such items.

It is impossible, it is foreseen, that the eventual result will be an enlargement of the bank credit card system so that purchasers of big ticket items will be charged interest on a declining basis.

Whether or not consumers will find it more attractive to finance such items at an interest rate of $1\frac{1}{2}$ percent on the monthly balance instead of the present system remains to be seen.

Also there remains to be seen if banks will enter into financing in this manner. At present most holders of bank credit cards are limited to around \$350 outstanding credit at any one time. Obviously, this limit would have to be increased to accommodate the financing of an auto, as well as more expensive items such as color TV sets and major appliances.

INDEPENDENT RETAILERS INCREASE ACCEPTANCE OF CREDIT CARDS

Acceptance of credit cards by independent retailers jumped nationally 2 percent in June, but the average percentage of business transacted on them dropped 1 percent.

This is the finding of the continuous field survey of the National Federation of Independent Business which asks not only if retail respondents honor bank credit cards, but also how much of their volume is done on them.

The latest data from the computers finds on a national basis 34 percent accept the cards, up from 32 percent, but the average percentage of business done on them has dropped down to 18 percent from a previous 19 percent.

In addition, volunteer additional comments indicate that there is a growing resistance among independent retailers to the spread of bank credit cards on a regional basis.

This is emanating largely from the New England and Middle West states where the retailers are not in so much direct competition with the big corporate chains who offer their own revolving credit plans.

Typical of the comments received by Federation researchers is one from a medium-sized retailer in a small upper Ohio city who says:

"At present we have no credit card arrangement locally but some will soon be forced down our throat. In talking with local bankers they express a very definite 'anti-bank credit card sentiment' but feel compelled to join in such arrangements to blunt the invasion from the large metropolitan banking interests.

"They feel that it will be merely a brokerage operation and that the $3\frac{1}{2}$ to 5 percent discount on consumer purchases will go directly to the large banking interests controlling this type of credit card. The small businessman is totally powerless to withstand the pressure of joining such a plan, and there must be some type of legislation curbing their action. In essence, they are extorting $3\frac{1}{2}$ to 5 percent out of the sales by small businessmen to their preferred credit customers. The garbage they leave for the businessmen to worry about."

On the other hand in such areas as the Pacific Coast where 50 percent of the independent retailers are shown as accepting credit cards, there is a different sentiment. The essence of these opinions is that as long as the big corporate merchandisers offer revolving credit plans to consumers, bank credit cards are essential to the survival of the smaller retailer.

It appears significant that the greatest acceptance of bank credit cards, and the highest volume done on these cards is among the smaller retailers, or those with 7 or less employees.

Federation researchers are now seeking data to determine if there is any significant relation between the high usage of bank credit cards in the Pacific states and the fact that interest rates in this area are also substantially above the national average.

It is felt there is some possibility that there could be a manifestation of Gresham's Law at work, with the attractiveness of an interest rate of 1½ percent per month from consumers, plus a discount from retailers, diverting lending funds away from standard business loans.

RETAILERS IN SOUTH ATLANTIC STATES INCREASE ACCEPTANCE OF CREDIT CARDS

Acceptance of bank credit cards by independent retailers in the South Atlantic states has dramatically zoomed upward, according to the latest data compiled from the continuous research of the National Federation of Independent Business.

In this bloc of states the acceptance has jumped almost 20 percent to show that 43 percent of the retailers now honor such cards. These states are topped only by the Pacific Coast where 52 percent of the independent retailers are now honoring bank credit cards.

Nationally, 33 percent are now honoring the cards, with 18 percent of the total sales volume of these retailers transacted on the cards. This latter figure reflects no change from a previous month when the volume dropped from 19 to 18 percent.

The Federation survey furnishes no definitive clues to account for the fact that although acceptance by retailers of bank credit cards is on the upswing, the percentage of business reported done by these firms on the cards remains constant.

Federation researchers are inclined to believe the cause is due to a slowing down of retail sales that is being noted in other data compiled from the survey. Or, it is also felt possible that disclosures of the interest rates that became mandatory on July 1 may have cooled consumer enthusiasm for "charging it". It is also viewed as a possibility that as more retailers offer this type of credit accommodation, the available credit card business is spread among more establishments.

Generally, the data continues to show that the larger independent retailers lag behind the smaller establishments in their acceptance of credit cards, and also the percentage of volume done on them.

But apparently in the South Atlantic states this situation is reversed. In that area Federation data shows 67 percent of the independent retailers with 50 or more employees are honoring the credit cards, more than twice the national average in this size category. They report 18 percent of their volume done on them, or 50 percent more than the national average of 12 percent reported by this category.

A sharp contrast is found in the middle Atlantic states, which include the big metropolitan centers of New York and Philadelphia.

In this area, although the number of smaller retailers accepting credit cards is approximately half the national average, the volume of business they do on them is almost 50 percent higher.

But in the larger independent retailers, those with over 50 employees, only 10 percent report honoring the cards, and these establishments report only 10 percent of their volume is done on them.

Based on data collected to date, Federation researchers arrive at two tentative conclusions:

1. There are wide differentials in the expertise, or the aggressiveness, or perhaps a combination of both, by which banks promote retailer acceptance of credit cards.
2. Consumer usage of credit cards, even in areas of heavy promotion, does not seem to reflect commensurate gains.

On the last point, it cannot be determined if this is due to consumers still being captive of the big corporate merchandisers' revolving credit plans, or if consumers use bank credit cards largely for the purchase of luxury, or semi-luxury items, and depend on other credit sources in purchasing the everyday items.

There is also a possibility, Federation researchers claim, that the independent retailing community has not yet become aware of the fact that the credit cards afford them a competitive tool which could be used as the backbone for their own advertising and promotional programs. It is also possible, it is felt, that advertising media has not yet become aware of the potentials, either.

PERCENTAGE RISE IN USE OF CREDIT CARDS

Are bank credit cards going the way of trading stamps?

This question is posed by researchers of the National Federation of Independent Business who find although more independent retailers are honoring bank credit cards, there is no increase in the volume they are transacting on the cards. In some areas a volume decrease is shown.

The data, compiled from close to 150,000 responses to the organization's continuous field survey in all fifty states analyzed by computers compares the first quarter of 1968 with the first quarter of the current year.

The results show that in the first quarter of 1968, 23 percent of the independent retailers nationally honored bank credit cards. This has now jumped to 32 percent.

But in addition to ascertaining the degree of acceptance of credit cards, the survey also asks each respondent honoring the cards for the percentage of his total volume done on them.

The study shows no change among card-honoring respondents on the volume transacted on these cards. In the first quarter last year, 19 percent was done on the cards. This percent remains the same this year, despite much wider acceptance of the cards.

In some areas, such as the west south central states, the acceptance of cards has doubled, jumping from 12 percent last year to 24 percent, but the sales volume reported on cards has dropped from 37 percent to 29 percent.

This data leads Federation researchers to the tentative conclusion that among independent retailers bank credit cards are following a pattern quite comparable to that noted of the independent retailers' experience with trading stamps.

In the early stages of the big postwar trading stamp boom it is a matter of record that the first independent retailers to take on stamps built impressive sales volume records, a situation that lasted until more and more retailers took on stamps, followed by the entry into the field of the big corporate chain merchandisers. Today, it appears offering trading stamps has become more of a competitive defensive measure than a sales promotion tool.

Likewise, it appears that the first independent retailers who honored bank credit cards built more sales volume but this advantage is diminishing as more and more retailers take this step, and it is possible that, as with trading stamps, honoring credit cards will become a defensive matter.

The possible parallel between bank credit cards and trading stamps ends here. Bank credit cards furnish the independent retailers, especially those located close to the big corporate merchandisers, a competitive tool to combat the revolving credit plans offered by the big corporate merchandisers.

On the other hand, trading stamps in the early stages offered the single-store independent a competitive tool to offset the advantage that big corporate chains had through their ability to cover an area with outlets supported by area-wide advertising which was not possible for a single outlet. Thus, the corporate chains took on stamps as a competitive tool against the independents. This has led to substantial chain store support for elimination of stamps.

While the membership of the National Federation of Independent Business has never taken a position on either bank credit cards or trading stamps, the Federation research staff conducts continuous surveys in this area, as well as many other areas relative to the operations of the market place insofar as independent firms are concerned.

The current study also indicates that a new trend may be gaining ground by which the larger independent retailers are setting up their own revolving plans.

Evidence along this line appears to be developing from the data which shows that the biggest decline in volume reported on bank credit cards is from the

larger independent retailers. Although the acceptance of credit cards by these bigger operations is about the same as the overall percentage, the percentage of their volume done on these cards is dropping dramatically.

The data is showing that in this group in some areas, 45 percent of their 1968 volume was reported done on credit cards, currently this has dropped to 11 percent.

It is known that many of the big financial institutions such as the C. I. T. Corporation are offering financing support to the larger independent retailers who want to set up their own revolving credit plans, and there are indications this trend is gaining.

There are arguments for both methods. Proponents of the bank credit cards point out that their use relieves the retailer of any credit reporting or collection expenses. The other side argues that with a retailer offering his own credit plan, he is not paying what amounts to a discount fee to the banks, and maintains a close customer contact. There is also the argument that the independent retailer can profit from the interest rate charged consumers although there is some doubt that after deducting the expense of setting up and maintaining a credit department, there is much margin left.

Insofar as the consumer is concerned, no matter what plan is used, he pays 1½ percent per month on the unpaid balance. Some economists claim this creates a built-in inflation. Others take the position that if such consumer credit plans were not available, the economy would come to a screeching halt as reduced sales would reflect on employment in the productive industries.

THE BRIEF FACTS

Mailing credit cards to virtually every household—without application or request—has made “easy credit” more of a reality than ever. Loss, theft and illegal use of credit cards has been a problem, and many think the unsolicited card has encouraged more people to live beyond their means. A bill to prohibit the mailing of any unsolicited credit cards, H.R. 858, was put before the Congress by Representative Richard Ottinger of New York. Voting through the National Federation of Independent Business, the independent business owners react in this way: 80 percent favor the measure, 16 percent oppose it, and 4 percent have no opinion.

Mass mailing of credit cards has no mass appeal for the nation’s independent business owners.

The practice of mailing credit cards to “everybody in the phone book,” instead of only to those who request them or those with good credit histories, is frowned upon by the independents, says the National Federation of Independent Business.

This technique has been used by banks in promoting their credit card plans and by some major oil companies.

Credit never came so easy. Too easy, say critics of mass credit merchandising, including Representative Richard Ottinger of New York, who has introduced a bill to prohibit entirely the mailing of unsolicited credit cards. Independent businessmen polled by the National Federation of Independent Business concur; 80 percent endorse this action, which supports the position taken by the Nixon administration, only 16 percent object, and 4 percent have no opinion.

The bill to amend the U.S. mail regulations carries a \$10,000 fine for a violation.

The businessmen’s strong stand against unsolicited credit card mailings comes despite the fact that many independent retailers are participating in bank credit card plans. The Federation’s continuous field survey shows that 35 percent of the retailers make credit card sales and do 18 percent of their volume on them.

Many small retailers find this preferable to carrying accounts themselves, and it gives them “easy credit” to rival the big stores’ revolving credit plans.

Nevertheless, four out of five independents want to see Representative Ottinger’s bill become law. Many unsolicited cards are lost or stolen which can result in a person being billed for charges he did not incur on a credit card he did not ask for and never received. A legal cloud hangs over such situations.

Banks claim more screening of mail lists has reduced such problems.

Fundamentally, too, many businessmen believe that credit should be granted only to those who ask for it and have demonstrated they will make good on

their obligations. Many complain of the many "deadbeats," the problems of collecting past-due accounts, and the ease of bankruptcy.

Some independents are alarmed at the magnitude of consumer credit, nearly \$100 billion in short-term debt, and fear possible economic collapse if uncollectibles mounted. Mass mailing of credit cards—which has increased consumer debt sharply—is reprehensible, in this view.

The Federation research staff concludes that, whatever the individual businessmen may think about the "credit card explosion" and the trend to a "cashless society," a huge majority firmly supports regulation of credit card distribution.

STATE BREAKDOWN FIGURES—A BILL TO PROHIBIT THE MAILING OF UNSOLICITED CREDIT CARDS

[In percent]

State	In favor	Against	Undecided	State	In favor	Against	Undecided
Alabama.....	78	14	8	Nebraska.....	82	14	4
Alaska.....	65	33	2	Nevada.....	79	20	1
Arizona.....	79	18	3	New Hampshire.....	82	14	4
Arkansas.....	79	15	6	New Jersey.....	87	9	4
California.....	82	14	4	New Mexico.....	64	29	7
Colorado.....	79	17	4	New York.....	85	12	3
Connecticut.....	86	9	5	North Carolina.....	83	13	4
Delaware.....	83	15	2	North Dakota.....	80	17	3
Florida.....	76	19	5	Ohio.....	80	16	4
Georgia.....	80	15	5	Oklahoma.....	79	15	6
Hawaii.....	80	17	3	Oregon.....	79	15	6
Idaho.....	78	19	3	Pennsylvania.....	83	13	4
Illinois.....	82	13	4	Rhode Island.....	74	21	5
Indiana.....	83	12	5	South Carolina.....	81	15	4
Iowa.....	82	13	5	South Dakota.....	82	14	4
Kansas.....	79	17	4	Tennessee.....	78	17	5
Kentucky.....	78	17	5	Texas.....	75	21	4
Louisiana.....	74	20	6	Utah.....	72	23	5
Maine.....	80	14	6	Vermont.....	75	19	6
Maryland.....	85	12	3	Virginia.....	82	16	2
Massachusetts.....	78	18	4	Washington.....	82	13	5
Michigan.....	84	13	3	Washington, D.C.....	100	-----	-----
Minnesota.....	81	15	4	West Virginia.....	79	17	4
Mississippi.....	77	19	4	Wisconsin.....	85	11	4
Missouri.....	80	16	4	Wyoming.....	73	25	2
Montana.....	73	23	4				

EASIER CREDIT—LESS MONEY?

Is the increasing acceptance of bank credit cards by smaller retailers adversely affecting the availability of short term lending capital and the interest small business must pay for its short term money? This question was asked of the Subcommittee on Postal Operations of the House Post Office and Civil Service Committee today by Jerome R. Gulan, Legislative Director of the National Federation of Independent Business.

Gulan, testifying in favor of legislation aimed at restricting the mailing of unsolicited credit cards, argued that in areas of the country showing marked increases in acceptance by retailers of the bank cards, there are indications that normal short term lending capital is either in short supply or more expensive than in other areas of the country. The Federation spokesman asked whether it might be possible that as more banks engage in the issuance and financing of bank credit cards, they tend to opt in favor of this practice over standard business loan practices. He stated that in financing their credit cards, they are receiving upwards of 20 per cent interest on their money whereas in making standard business loans, they are only receiving the going rate which, although now at an unreasonably high rate of 10 or 11 per cent, fails to yield the rate banks are realizing from financing their consumer credit card operations.

Adding that the Federation is not yet in possession of sufficient hard data to bear out this point on a nationwide basis, Gulan asked the Committee to look into this matter to see just how great an affect the credit card situation could have on standard business lending procedures.

Mr. Nix. Our next witness is Robert Meade, Legislative Director, Office of Special Assistant to the President on Consumer Affairs.

Mr. Meade?

And will you introduce your associate, for the record?

TESTIMONY OF ROBERT MEADE, LEGISLATIVE DIRECTOR, OFFICE OF SPECIAL ASSISTANT TO THE PRESIDENT ON CONSUMER AFFAIRS; ACCOMPANIED BY MRS. BETTY BAY, ASSOCIATE DIRECTOR FOR LEGISLATION

Mr. MEADE. Yes, I will, Mr. Chairman.

This is Mrs. Betty Bay, who is the Associate Director for Legislation on the President's Committee.

Mr. NIX. On behalf of the subcommittee, we welcome both of you. You may proceed.

Mr. MEADE. Thank you, Mr. Chairman.

Mr. Chairman, Mr. McClure, thank you for the opportunity to be here today in relation to H.R. 13244 and H.R. 14346, both of which deal with restrictions on the mailings of unsolicited credit cards.

It goes without saying that consumer credit today is of paramount importance to our economy. For consumers, the informed use of credit has made possible the acquiring of goods and services once restricted to an elite few. For vendors of those goods and services, it has provided a ready means of distribution and increased demand for their products.

Consumer credit today stands at an all-time high of \$110 billion and very likely will increase materially in coming years. The "all-credit society," sometimes glibly referred to, is increasingly a real possibility. Credit takes many forms. Loans of varying nature are regularly made. Goods and services are sold through retail installment sales agreements. Revolving credit at department stores has become a potent sales factor. Bank devices such as check-credit plans have proved popular.

Probably the most significant advance in the credit-granting field has been the widescale issuance and acceptance of credit cards. It is estimated that there are in excess of 200 million credit cards in use throughout the country, and that a total of \$13 billion in credit through the use of credit cards was outstanding at the end of last year.

Banks have entered the credit card field in great volume. Outstanding credit under bank credit cards rose from \$636 million in 1967 to \$1.3 billion at the end of last year.

Credit card losses are high. Estimates run from \$50 to \$100 million a year. Unsolicited mailings of credit cards are contributing to law enforcement problems. This means an added cost for the taxpayer, who must pick up the tab for the increased cost of that law enforcement.

The ready availability and acceptability of credit cards actually has spawned an appalling new scope of fraudulent activities—credit card copiers, fences, and thieves. The black-market price of a freshly stolen credit card in New York presently is reported as \$50.

U.S. postal authorities have reported to us that as of July 1, 1969, mail fraud credit card cases had soared over 700 percent in the past 4 years. This is certainly among the fastest growing categories of mail fraud complaints.

An ever-increasing number of consumers and public officials have apprehensions about the practice of unsolicited mailing of credit cards.

Evidence that the practice of unsolicited credit card mailings is a consumer problem meriting legislative attention also comes from the States. In recent years, a growing number of States have enacted laws to restrict or prohibit the practice.

In a number of other States, proposals are being considered or are likely to be introduced shortly. But the fact remains that, due to the interstate nature of the practice, State laws cannot be totally effective. The problem is one which is most appropriate for Federal regulation.

We believe the consumer is justifiably concerned on two counts. The first is the principle involved: Many consumers consider the unsolicited credit card a form of invasion of privacy. There have been many instances in which unsolicited credit cards were sent to children or to spouses whose mates would prefer they did not possess such a means of credit.

The second problem is that of jeopardy or potential jeopardy to a consumer's credit rating, since the intended recipient of an unsolicited credit card may not even be aware that an account has been opened in his name, if he never gets the card. However, a consumer who might receive a subsequent bill will sometimes pay it in the erroneous belief that he has some obligation therefor. Or at least the burden is placed upon him to explain why he is not liable for the bill. Often this could lead to problems with credit-reporting agencies around the country. The onus of either destroying the unwanted card or returning it to the credit grantor falls upon the cardholder, and many existing laws and credit card plans in no way limit the liability of the person designated as the cardholder.

We would concur with the principles of H.R. 13244 and H.R. 14346 that some regulation and restriction of the practice of mailing unsolicited credit cards is necessary and desirable. We do not believe it would cause an undue burden on a new credit card issuer's entry into the market to require him to seek prior consent of the consumer to the mailing. Such prior consent would do away with any problem of invasion of privacy and would, at the same time, alert the consumer to be expecting the card through the mail.

We believe it is fallacious reasoning to argue, as some have, that an objectionable practice should be allowed to continue simply on the grounds that it had been allowed in the past, or on the grounds that others have taken advantage of it.

We concur that Federal legislation is necessary to restrict the practice of unsolicited credit card mailing. We believe that the most effective solution to the problem would be legislation which restricted the mailing of unsolicited credit cards without exception. In addition, we believe that the question of liability of the consumer, both for unsolicited and solicited and accepted cards, should be also of concern.

If unsolicited cards are outlawed, that problem will be solved. But surely there should be some limitation of liability for the consumer who loses his card or has it stolen.

My home State of Massachusetts has enacted legislation dealing with this problem, and I recommend it to other States. Due to the interstate aspect of use, however, the problem is one which is most appropriate for Federal regulation.

We do not believe that the consumer problems will be solved, as H.R. 13244 intends, if the card is sent by registered mail, restricted to delivery to the addressee only.

While H.R. 13244 does afford the consumer a measure of protection, the fundamental question of invasion of individual privacy is still open.

Further, such a procedure does not preclude the very real danger of premail theft or postal theft. It does not relieve the recipient of the burden of either destroying the unwanted card or returning it to the credit grantor with an indication that he does not want it. Any increased cost to the sender through paying for mail returned to him would ultimately be passed on to the consumer.

In September we testified before the Federal Trade Commission on its proposed rule to restrict unsolicited credit card mailings by industries under its jurisdiction. At that time, we recommended to the FTC that its proposed rule be amended to place some reasonable limit on cardholder liability so as to place the risk of misuse of lost or stolen cards on the issuer, but which limit, at the same time, would encourage the recipients to use the cards in a responsible manner and promptly report any loss or theft. Issuing companies are far better able to bear the risk of loss, and only some small liability should remain with the holder to stimulate prompt notice of the loss of a card.

Thank you.

Mr. NIX. Thank you, Mr. Meade.

Just last Saturday, I was in my district, and on those days I am accustomed to interviewing or taking confessions from at least 150 of my constituents. One couple came in. They were in the process of being divorced, and the man's complaint was that a short time before the final decree from the court, his wife went out and spent \$5,000 to buy clothing on these credit cards and he was terribly distressed.

So I thought I would make that a part of the record, because I think making it a part of the record is the only satisfaction he is going to get. [Laughter.]

Mr. McClure?

Mr. McCURE. Thank you, Mr. Chairman.

First, let me say that I am very happy to see you here before the committee expressing the interest of the President and of the President's Consumer Committee's interest in this legislation, because I think he has made some very strong statements concerning consumer protection.

I think your appearance here and your statement is very consistent with that position. I think your statement is very good.

However, I would note what I think is perhaps some inconsistency in two paragraphs of the statement in which you suggest that the cost to the sender through paying for mail returned to him was ultimately passed on to the consumer in the first paragraph on page 5, and then in the second paragraph on page 5, you say the risk of loss ought to be borne by the issuer.

I would suggest, if there is a risk of loss there that is absorbed by the issuer, it will be passed on to the consumer, just as the cost of mailing would be.

Mr. MEADE. That is very true, Mr. McClure. The only difference there is though the risk of loss would be passed on, it would be passed on in a higher cost of goods and services to consumers generally; whereas the risk of loss now hits one individual consumer specifically.

Mr. McCURE. I agree totally with that, but I think the same kind of cost is passed on to the consumers. Any cost of doing business is borne by the consumer ultimately, unless the merchant goes out of business.

Mr. MEADE. I was not meaning to suggest otherwise.

Mr. McCLURE. Thank you very much. I think it is a good, strong, and forthright statement, and I commend you for it.

Mr. NIX. Thank you, Mr. Meade. Thank you, Madam.

Our next witness is Mr. David A. Nelson, General Counsel of the Post Office Department, accompanied by Mr. William J. Cotter, Chief Postal Inspector.

Good morning, gentlemen. It is a pleasure to see you here.

TESTIMONY OF DAVID A. NELSON, GENERAL COUNSEL, POST OFFICE DEPARTMENT; ACCOMPANIED BY WILLIAM J. COTTER, CHIEF POSTAL INSPECTOR

Mr. NELSON. Good morning, Mr. Chairman. It is a pleasure to be here.

I am indeed delighted to have this opportunity to testify on the unsolicited distribution of credit cards through the mail.

The subject is one that has evoked increasing concern, both within and without the Government, and this subcommittee is to be commended, if I may say so, for taking a hard look at the question whether unsolicited credit card mailings ought not to be brought under some form of governmental control.

At the present time there is no special rule of substantive Federal law governing the potential liability of a person to whom an unsolicited credit card is mailed and who, for one reason or another, either does not receive the card at all, or does not wish to accept responsibility for its use after he has received it. Neither does existing Federal law impose any restrictions upon the mailing of credit cards to people who have not asked for them.

As the subcommittee knows, however, the Federal Trade Commission did initiate a rulemaking proceeding last May on a trade regulation rule which, if adopted, would declare it an unfair act or practice, and an unfair method of competition in violation of section 5 of the Federal Trade Commission Act, to mail a credit card to anyone who had not expressed, in writing, a request for the card or consent to its mailing.

Adoption of such a rule would not necessarily render this subcommittee's inquiry moot, since the jurisdiction of the Federal Trade Commission does not extend to banks and common carriers—and banks, at least, have been among the major mailers of unsolicited credit cards.

Indeed, a Federal Reserve System report issued in July of 1968 suggested that mass mailings of credit cards to persons meeting certain credit standards seemed to be the most effective way for a bank that wanted to start a credit card operation to generate the volume of business necessary for success, and the report declared that "legislation forbidding the unsolicited mailing of credit cards would seem unnecessary and undesirable."

From the standpoint of the postal patron who is concerned that unsolicited issuance of a credit card in his name might result in damage to his credit rating, either because of some clerical error or because of fraudulent use of the card by an unauthorized person, legislation prohibiting unsolicited mailings of credit cards might seem highly desirable.

Without attempting to balance the interests of such citizens against those of the credit card entrepreneurs, or the interests of companies that have already established successful credit card operations against those of potential competitors who have not yet broken into the field, it seems appropriate to point out that, as far as the Post Office Department is concerned, while the mass distribution of credit cards does result in an increase in revenue-producing business for the Department as a whole, it also imposes a significant burden on the Postal Inspection Service.

With increasing frequency, the inspection service is called upon to investigate thefts of credit cards from household letterboxes, depredations by those employed by or contracting with the Post Office Department, and use of the mails in connection with credit card fraud.

The fact that conviction for any of these offenses may entail a stiff criminal penalty (see 18 U.S.C. 1341 for postal fraud and 18 U.S.C. 1708 and 1709 for theft from the mails) has not been sufficient to prevent the incidence of such crimes from rising as credit cards have been more widely distributed.

A number of techniques have been developed to tighten the security of credit cards in the mail. The Post Office Department has embarked on a vigorous campaign to apprise distributors of these methods and stimulate their use. Although adherence to our recommendations can, we believe, materially improve the situation, a certain number of credit card thefts will be inevitable as long as huge quantities of cards are sent through the mail.

Misappropriation and misuse of credit cards can be anticipated, of course, whether or not the cards are issued in response to the addressees' requests. However, concern over the possibility that members of the public may be charged for goods and services purchased on credit cards that they have not asked for and have not even known about makes the possibility of such misuse loom particularly large in so far as unsolicited cards are concerned.

By their very nature, credit cards are vulnerable to misdirection, misappropriation, and misuse from the time they are first related to specific accounts.

The period during which they pass through the mails is but one period when they are so vulnerable. One obviously effective way to strike at all the abuses to which unsolicited credit cards may be subject would be to impose a flat prohibition against their issuance and distribution. This approach would meet the objections raised by those who believe that unsolicited credit cards tend to encourage the recipients to plunge too heavily into debt, or who believe that merchants who benefit from the distribution of such cards receive an unfair competitive advantage.

If the principal objection to unsolicited cards is felt to be the risk that an addressee may be subjected to inconvenience before he has decided whether or not he wants to make use of the card, however, an alternative approach would be to enact legislation insulating the addressee from any kind of liability in connection with the card, unless he personally takes affirmative action evidencing his willingness to be bound by its terms.

The two bills which this subcommittee is currently considering—H.R. 13244 and H.R. 14346—come closer to the first approach than to the second.

As an aside, before considering the substance of these bills, we should briefly note that in proposing an amendment of 39 U.S.C. 4001, they do not take account of the existence of subsection (c) thereof, dealing with solicitations in the guise of invoices, which was enacted in 1967 as part of Public Law 90-206. This is a matter which, obviously, could readily be corrected in the drafting stage.

Both bills would make nonmailable, subject to certain exceptions, "every credit card and every other document and device intended or adapted for the purpose of establishing the identity and credit of any person in connection with the purchase or rental on credit of goods or services, or the obtaining of loans." Both bills appear to be designed to permit the mailing of such cards by anyone other than the issuer or someone acting on the issuer's behalf; to permit the mailing of such cards in response to a request or application therefor; and to permit the mailing of replacement cards.

It should be noted, however—again as an aside—that the word "or" appears to have been inadvertently omitted at the end of subsection 4001(c) (2) in H.R. 14346; this omission could conceivably lead to the conclusion that all three conditions would have to be met before a credit card would be mailable under that bill—and I suspect that this was not the intention of the draftsman.

H.R. 13244 provides an additional exclusion from the nonmailability provisions. It would permit unsolicited credit card mailings if the cards are sent by registered mail, restricted to delivery to addressee only, endorsed on the outside with notice of their contents in large letters, and subject to an additional charge for return.

As a practical matter, the cost of compliance with these conditions would probably be prohibitive, from the mailer's standpoint, but any cards that were mailed in this fashion would be prime targets for theft from the mails, because of their conspicuous markings. I might also add that a requirement that such cards be sent by registered mail with delivery restricted to the addressee could conceivably result in inconvenience to the addressees if the cards should arrive during the addressee's absence from home.

Both bills provide criminal penalties for violation. In addition, they both provide that credit cards that are nonmailable "shall not be conveyed in the mails or delivered from any post office or station thereof, or by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postmaster General shall prescribe."

Such a provision would, in our judgment, be extremely difficult to administer and would be unlikely to produce any significant beneficial results. In order for the Post Office Department to ascertain, prior to delivery, that matter is nonmailable, the contents of the mail pieces must somehow be inspected.

Under existing law, the Post Office Department is prohibited, as the subcommittee knows, from opening first-class mail (except for dead letters) without a search warrant based upon probable cause to believe the contents are unlawful. Sufficient evidence to show probable cause would not necessarily be easy to come by. Even in cases where we might have such evidence and might gain access to the contents, we would then be required administratively to determine all the issues—except for criminal intent—that would have to be proven in a prosecution for criminal violation.

If an administrative adjudication were reached that nonmailable matter had been deposited in the mails, the sanction of withdrawal from the mail would hardly be as effective a deterrent as fine or imprisonment. Moreover, such an administrative procedure might not be dispositive of the matter, as the mailer would be entitled to seek judicial review.

We would be disposed, therefore, to eliminate the "noncarriage" obligations of the Post Office Department, and to rely on criminal penalties to induce compliance.

In this respect I note that H.R. 13244 provides for a maximum imprisonment of 2 years, as compared with 1 year in H.R. 14346. Consideration might well be given to providing enhanced penalties for second and subsequent offenses.

In conclusion, Mr. Chairman, let me say that as this subcommittee fully appreciates, the primary mission of the Post Office Department is to deliver the mail, and not to make value judgments on its contents.

We are keenly aware, however, of the serious questions of public policy raised by mass mailings of credit cards to people who have not asked for them, and, without endorsing the precise language of any particular bill, we have no objection in principle to legislation designed to control such mailings.

That completes my prepared statement, Mr. Chairman, and I would be happy to try to answer any questions that the members of the subcommittee may have.

Mr. NIX. As always, Mr. Nelson, your statement is an excellent one. It touches on the points that we consider vital in the two bills under consideration. It adds suggestions for further action beyond and above the two bills, which we consider most helpful.

Thank you very much.

Mr. McClure?

Mr. McCURE. Thank you, Mr. Chairman.

Mr. Nelson, you make reference on pages 1 and 2 of your statement to the FTC rulemaking and suggest that this is a partial answer. But is it not also a fact that there might be a question raised by some of the people affected by that as to whether or not they have the authority to so act, and that a clear expression of the legislative intent by the enactment of a new law might remove such a question?

Mr. NELSON. As you know, Mr. McClure, there is nothing lawyers like to do better than to ask questions. Yes, sir, such a question might very well be raised.

Mr. McCURE. They get paid for it.

Mr. NELSON. They do indeed.

Mr. McCURE. There is quite a bit of money involved on the part of the issuers of credit cards, and so there is quite a financial stake in the continuation of it, particularly based upon the argument that those who are already in the business have a competitive advantage over those who might have a wish to enter this field. If they could delay the rulemaking long enough to get in business, they might be tempted to do so.

You raised the question in regard to the provisions of the one bill which calls for delivery by registration alone, and I had noted several areas which may or may not be covered later on by Mr. Cotter's statement. One was with respect to the security within the mails, or the dif-

ference in security of ordinary first class mail and registered mail. You suggest in your statement marking them as being credit cards would subject them to a greater hazard of theft.

Is there a substantial volume of theft of credit cards by postal employees themselves at the present time?

Mr. NELSON. Unfortunately, Mr. McClure, there is an increasing volume of depredations on the mail, not only by postal employees, but by others who come in contact with the mail, such as star route contractors, mail messengers, and the like. There has also been an increase in thefts from household mailboxes.

Mr. McCURE. Well, if they are registered mail, the latter category would be completely removed and you would only be subjected to the hazard of the in-mail-transit theft, would you not? And if they are registered, would not that danger be greatly reduced?

Mr. NELSON. It would be significantly reduced. I do not think it would necessarily be eliminated, but it would be reduced.

I suspect that, as a practical matter, you would not see mass mailings of unsolicited credit cards if the mailers had to pay \$1.36 for each mailing piece.

Mr. McCURE. If that were true, it would be eliminated then—the risk, that is?

Mr. NELSON. It would.

Mr. McCURE. If we were to make the opposite assumption, that the companies mailing credit cards would find it sufficiently worthwhile to themselves to continue it even under the registration practice, would this impose an impossible burden upon the Post Office Department to handle all these pieces as registered mail transactions?

Mr. NELSON. It might conceivably induce us to raise our registry fees, which of course we have the authority to do. But we would try to recover the cost through these fees.

Mr. McCURE. And as far as the simple mechanical procedural requirements on registered mail today, do you think the Post Office Department could handle that all right?

Mr. NELSON. As a cautious lawyer, I would not want to commit my client without discussing that question with the client first. But I think that, assuming that the volume will not be as great as the volume presently is, it ought to be possible to comply with such a law.

Mr. McCURE. Thank you.

On page 5, you raise the question parenthetically in regard to the failure of the bills to state the context of subsection (c) of the code, I would understand your suggestion there that this is simply a drafting oversight that could be corrected by an amendment of the bills by the committee; is that correct?

Mr. NELSON. Yes, sir.

Mr. McCURE. I think that is a very helpful thing you have pointed out; as you have also pointed out the possible omission of the word "or" on that same page of your testimony.

On pages 6 and 7 of your statement you mentioned the administrative difficulty imposed upon the Post Office Department in trying to ascertain the contents of the mail to determine whether it was non-mailable matter. Are there not now several such categories in which the Post Office Department has precisely that responsibility?

Mr. NELSON. Yes, there are; and I wish there were not.

Mr. McCCLURE. But nevertheless the Congress has seen fit to impose those responsibilities, and you are discharging them?

Mr. NELSON. We are attempting to discharge them. In all candor, we are not discharging them as fully as we would like to do, because it is a physical impossibility to do so.

Mr. McCCLURE. And if the Congress in this instance should see fit to do this, you would attempt to discharge that responsibility?

Mr. NELSON. We would again attempt the impossible.

Mr. NIX. But you prefer that the Congress use its ingenuity to get around that?

Mr. NELSON. We would, Mr. Chairman.

Mr. NIX. Mr. Daniels?

Mr. DANIELS. I am sorry I was not here when you gave your oral testimony. I was committed somewhere else and that is the reason for my delay.

I have not had an opportunity to read your statement, which I shall do, and inform myself of its contents.

However, I would like to direct a question to Mr. Cotter.

Has the theft of credit cards increased substantially during the past several years?

Mr. COTTER. If I may say, Mr. Daniels, I have not made my statement yet. But indeed they have.

For example, in fiscal year 1969, cases involving the theft of credit cards from house letterboxes increased to 382 arrest cases from 347 in the prior year; and cases involving thefts by postal employees increased from 68 to 80.

Mr. DANIELS. I do not want to jump the gun on you if you have yet to testify. Thank you.

Mr. NIX. Mr. Cotter, will you proceed?

Mr. COTTER. Thank you, Mr. Chairman. I too consider it a privilege to testify before this subcommittee with respect to H.R. 13244 and H.R. 14346. Both bills deal with the mailing of unsolicited credit cards, a business practice which has had a significant impact on the law enforcement work of the Postal Inspection Service.

My testimony will be confined for the most part to a description of the practical effect which the credit card system in all of its ramifications has had on our investigative responsibilities to the public.

Essentially, H.R. 13244 declares unsolicited credit cards nonmailable unless (a) they are sent by registered mail with restricted delivery to addressee only; (b) the envelope bears an endorsement on its face stating "unsolicited credit card—addressee may refuse"; and (c) the sender agrees to pay the handling cost for any mailing returned to him.

On the other hand, H.R. 14346 would ban the mailing of unsolicited credit cards by the issuer or by anyone in his behalf. Unlike H.R. 13244, no exceptions are provided. While both bills impose fines of up to \$1,000 and/or imprisonment, the penal sanctions of H.R. 13244 provide for a maximum prison sentence of 2 years, whereas H.R. 14346 limits the prison term to 1 year.

Mr. Chairman, for the record, the Postal Inspection Service would express no objection to the passage of either bill, should the Congress conclude that it is in the public interest to do so.

The Postmaster General, as you know, discharges his responsibility for the investigative enforcement of the postal laws through the Postal Inspection Service.

For the purpose of this hearing, these laws may be grouped into two categories: (1) Those which prohibit criminal misuse of the postal system and (2) those which prohibit criminal attacks on mail entrusted to the system.

In a rather unprecedented way, the credit card business has generated a law enforcement problem for us in both categories.

Since time immemorial, the confidence man, the thief, and other dishonest people have succumbed to the temptation to acquire products or services through trickery and deceit with the intention of avoiding payment. It is not strange, therefore, that the phenomenal growth of the credit card system might find itself matched in criminal exploitation by a dishonest segment in our society.

The criminal misuse of this newest of commercial systems has brought the misuser, in many cases, within the pale of the oldest of all Federal statutes designed to protect the public from fraud—the Mail Fraud Statute, section 1341, title 18, United States Code.

The postal fraud statute is extremely broad in its application. The offender need not personally place anything in the mail nor take anything from it. The crime is complete if, in furthering his criminal scheme, the offender sets in motion a chain of circumstances which in the normal course of business events causes the mails to be used.

During the 1950's and early 1960's the Federal Government's prosecutive involvement in credit card frauds was premised on the understanding that Postal Inspectors investigated cases involving misuse of cards obtained by mail through fraudulent applications, since the Mail Fraud Statute was clearly applicable, and the Federal Bureau of Investigation investigated those involving the unauthorized use of lost or stolen cards under circumstances where the charge slips or vouchers traveled interstate. This latter prosecutive action was predicated on the legal theory that vouchers were "securities" within the meaning of the National Stolen Property Act (18 U.S.C. 2314).

However, in 1963, the Ninth Circuit Court of Appeals in *Barack* (317 F. 2d 619) held that a credit card charge voucher was not a "security" within the meaning of 18 U.S.C. 2314. This reversal was followed in 1964 with a similar decision in *Merrill* (338 F. 2d 763).

Since a finding that charge vouchers were "securities" was also a prerequisite to a prosecution for interstate transportation of the card itself, prosecution of credit card frauds under the National Stolen Property Act had to be abandoned by the Department of Justice and, in fact, a number of convicted offenders had to be released from confinement.

However, in 1963, the Fifth Circuit in *Adams* (312 F. 2d 137) handed down a decision which again illustrated the great breadth of the Mail Fraud Statute. A few of the details might be of interest.

For several months Adams had used a Gulf credit card previously issued to but subsequently lost by William Magie and had obtained gasoline and other products in several States to the extent of some 200 purchases totaling \$2,953.55. Although the card had not been obtained on the basis of false application, Adams was charged with mail fraud and convicted on the trial court level.

On appeal, the Fifth Circuit held in part that:

(a) the appellant's scheme reasonably contemplated the utilization of a commercial practice which, taken in its entirety, embraced the use of the mails.

(b) the use of the mails to forward the sales slips occasioned delay in the detection of the appellant's scheme which delay permitted him to expand his scope of operations.

Thus, a major involvement of the Postal Inspection Service with the credit card system from a purely law enforcement standpoint centered on our responsibility to protect the business community and the public alike from fraudulent schemes which embrace a use of the mails.

The availability of credit cards has spiraled significantly upward since 1966, largely because of the full-scale entry of banks into the universal credit card field and the growing corporate relationships between the petroleum and Hotel-motel-entertainment industries.

The competition has been intense and all parts of the country have experienced promotional unsolicited mailings of credit cards.

The universal credit card has taken on high value and has become a commodity readily sold and fenced by the thief or counterfeiter at prices ranging up to \$100 each. The professional criminal element in this country soon realized that competing issuing companies were not mouthing empty advertising phrases when they suggested that this or that card was "the one that does it all" and that it could be used like money to obtain every conceivable product or service available in this advanced civilization of ours.

As a result the involvement of the postal inspection service in credit card traffic has grown rapidly. In fiscal year 1964, we completed 15 mail fraud investigations in this area; in 1968 we completed 360 cases and in 1969 we completed 762. Most of the cards involved in fraudulent usage were stolen from or lost by authorized owners, stolen from industry embossing or distributing plants, or were obtained on the basis of false applications.

The attractiveness of credit cards to the criminal and the tremendous increase in their circulation also has had its impact on the second category of postal crime to which I referred earlier—namely, attacks on mail entrusted to the postal service.

In fiscal year 1969, cases involving the theft of credit card letters from house letter boxes increased to 382 from 347 the prior fiscal year.

Cases involving thefts by postal employees increased from 68 to 80 over the same period. Arrests in these two categories totaled 336 in fiscal year 1969.

I might say, we do not regard this number of investigations as inordinately high in view of the millions of credit cards in the mails.

A survey recently conducted disclosed that in fiscal year 1969 major credit card mailers in 83 cities alone mailed almost 100 million credit cards. We do, however, regard credit card thefts as serious postal crimes, and we are gravely concerned at their increase.

From the enforcement standpoint, unsolicited credit cards present several problems to the postal inspection service. As unsolicited mailings are promotional mailings, regardless of the extent of screening the mailing lists, address reliability is apt to be lower in comparison with credit cards mailed in response to an application. Wrong deliveries, forwarding and multiple handling increase the exposure of an unsolicited mailing to theft and loss.

As unsolicited mailings are unwanted by some percentage of the addressees, perhaps as high as 75 percent, that percentage of a given mailing is needlessly exposed to loss or theft in postal transit and otherwise until the cards are either destroyed or returned to their issuer.

Fraudulent usage of unsolicited cards which are stolen before reaching their intended addressee ordinarily is not detected as soon as such usage of cards based on an application is detected. An authorized user of a card usually becomes aware of its loss in a timely fashion and makes a prompt report which sets in motion the investigation process.

The addressee of an unsolicited card, not anticipating it, usually finds out about its misuse when he receives an invoice, perhaps 6 weeks after the date of mailing. The delay in initiating the investigative process is an impediment to its success.

Postal employees and others can usually spot unsolicited mailings and one inclined to theft will reckon an unsolicited mailing as a safer and more desirable target than regular customer mailings.

Most Federal prosecutors and many State prosecutors show a disinclination to prosecute offenders involved in unsolicited credit card transactions unless highly aggravated circumstances are present.

From the standpoints of vulnerability to theft and fraud, and the obstacles to prompt investigation and successful prosecutions, promotional mailings of unsolicited credit cards are handicaps to the inspection service in postal enforcement.

I can report, however, that an extremely effective liaison has developed between inspectors and responsible officials of all banks, specialized credit card companies, oil companies, major airlines, department stores, and others who offer credit card plans.

Particularly effective is the rapport between our inspectors and the increasing number of security and investigative agents attached to the banks and companies. Such cooperation resulted in some 53 apprehensions in one case involving counterfeit credit cards emanating from the greater New York area and reaching literally all parts of the country.

In a somewhat similar case involving the use of stolen, as well as the manufacturing of spurious duplicate cards, some 60 arrests were made.

We are increasingly finding that individuals with backgrounds in the highest level of organized crime are at times involved and that such cards are used to finance extensive sprees into other areas of crime.

Bank cards, as you know, have been the subject of highly successful criminal attacks with perhaps the unhappy experience in Chicago several years ago providing the extreme example. I refer to the credit card operation formed by five banks in Illinois, Michigan, and Indiana in 1966 in which any member bank's credit card would be honored by merchants who had contracted with any of the participating banks.

Some 60,000 merchants were enlisted in the plan and in the wake of an extensive advertising program, mass mailings of credit cards were made in the late fall of 1966. You are no doubt familiar with the Federal Reserve System report filed in July 1968 on the subject of bank credit card and check-credit plans. The Chicago experience

was dealt with in some detail in the report. Cards were placed in a postal system already heavily burdened with Christmas mail and staffed by large numbers of temporary workers. Criminal groups systematically stole cards in multifamily housing units and apartment houses.

Certain participating merchants conspired with unauthorized cardholders to bill large quantities of merchandise until the card appeared on the "hot card list."

To compound the injury, some merchants then turned in the card and split the "hot card" reward with the original thief.

During the ensuing months it is estimated that roughly 7,000 cards were fraudulently used.

Corrective measures were varied and effective. The closest sort of hour-to-hour liaison was established between banks and post office. Some 84 arrests were made and from 200 to 300 merchants were eliminated from the plan. Cards were called in by the three major banks and reissued this time by registered mail.

The clearing of sales slips was speeded up. One bank official estimated by the summer of 1967, losses were reduced 90 percent. The Federal Reserve report, I am certain, has made worthwhile reading to all connected with the credit card system.

During the National Postal Forum III held in September of this year, a highly successful two-session credit card security workshop was conducted. This was the first such meeting of national scope and was attended by 589 representatives of all four categories of credit card issuers—banking, petroleum, retail merchandising, and travel entertainment.

Numerous postal problems were explored. Cooperation between the industry and the Post Office Department was stressed to the end that maximum security could be attached to credit card mailings.

Every practicable effort is being made to reduce the incidence of postal crime in connection with credit cards. Our liaison with banks, oil companies, major airlines, department stores, and specialized credit card companies is becoming increasingly effective.

Many suggestions have been made to provide better evidence and early detection in mail fraud cases. Changes in mailing practices have been recommended to reduce the theft of credit card letters. One such change involves the use of less conspicuous mailing envelopes so potential thieves cannot recognize a credit card letter.

With respect to H.R. 13244, it is believed the disclosure language proposed on the outside of the envelope containing the credit card tends to increase the possibility of mail theft.

Additionally, the registered mail, addressee only, requirement could produce patron complaints. A high percentage of such mailings would require the addressee to call at the post office because he was not at home when the carrier attempted delivery. Those addressees who made special trips to receive a credit card they did not desire could be expected to react critically toward the mailer and the postal service.

Again, Mr. Chairman, I appreciate this opportunity to report our observations. I assure you and your subcommittee that whether unsolicited credit card mailings continue or are restricted, the postal inspection service will continue to apply its resources diligently to all postal-related crimes.

I will be pleased to endeavor to answer any questions you may have.

Mr. NIX. Thank you very much, Mr. Cotter, for a most excellent statement.

Mr. McClure?

Mr. McCLURE. Thank you, Mr. Chairman.

You referred to the *Barack* and *Merrill* cases and identified the Circuit Court of the Ninth Circuit in one instance. Was the *Merrill* case in the same court?

Mr. COTTER. The *Merrill* case was 338 F. 2d 763 and the *Barack* case was 317 F. 2d 619.

Mr. McCLURE. Were they both in the same circuit?

Mr. COTTER. I do not know offhand. I have the Ninth Circuit in the *Barack* case, and I do not have the circuit in the *Merrill* case.

Mr. McCLURE. At any rate, following those two cases, the Government abandoned attempts to use this method to enforce compliance?

Mr. COTTER. That is correct, sir.

Mr. McCLURE. Thank you, Mr. Chairman.

Mr. NIX. Mr. Daniels?

Mr. DANIELS. Thank you, Mr. Chairman.

I want to compliment you, Mr. Cotter, for a very, very fine statement.

Mr. COTTER. Thank you, sir.

Mr. DANIELS. I was interested in your comment on the bottom of page 9 and going on over to page 10. Do I understand you would recommend that we should omit from any legislation that we might consider a provision that it contain any reference on the envelope statement as to what is contained?

Mr. COTTER. Indeed, that is our conclusion as a result of lengthy discussions and observations. We would suggest, from pure security, that it would be safer if the letter looked like any other letter than if it was apparent that it did contain a credit card.

Mr. DANIELS. And you approve of the provision that it should be sent by registered mail rather than ordinary mail?

Mr. COTTER. Well, sir, I suggest, there again reacting to security, that if these cards were sent by registered mail, they would be afforded greater security, as was shown in Chicago, for example.

In following up after their disastrous experience, they sent their cards by registered mail. Certain companies in New York City, for example, will send cards by registered mail to neighborhoods where they have had problems with thefts.

Mr. DANIELS. You mentioned the fact that in Chicago, after this great theft, they employed registered mail and that the thefts were reduced by 90 percent?

Mr. COTTER. Yes, sir; and of course they did a lot of other things. For example, they culled out their mailing lists, something they had not done at the time they commenced their massive advertising program to get the credit card system kicked off.

Indeed here, if it gets to a definition of what is an unsolicited credit card, these banks sent credit cards to anyone who had accounts in their banks. One individual with four different accounts, maybe a safe deposit box, a checking account, and a savings account, he in fact received three, four, five cards; and his son, his 4-year-old son who had a bank account there would perhaps receive a card also.

In addition to merely sending the cards out the second time by registered mail, they went through their lists and took a greater amount of care in selecting the individuals to whom they were sending the cards.

Mr. DANIELS. Mr. Nelson, have you given any thought to the idea of prohibiting the mailing of cards unless they are solicited by the remittee?

Mr. NELSON. Well, I have certainly given thought to the question of whether legislation to that end is not desirable. I do not believe that the Post Office Department would have authority to adopt such a prohibition administratively, without special statutory authority.

Mr. DANIELS. What is your thought on the legality of such legislation? In other words, should the Congress adopt a bill prohibiting the mailing of credit cards unless they are expressly solicited in writing by the person who desires a credit card?

Mr. NELSON. I am a great believer in the principle that any act of Congress is presumptively constitutional, and it would take a strong argument indeed to convince me that such legislation would not be constitutional. I think it would be constitutional.

Mr. DANIELS. I have had the experience since I have been a Member of Congress of having various department stores in Washington, upon the commencement of a new term of Congress, mailing me a credit card which I had never sought. So I usually take the clippers out and cut it up and throw it in the wastebasket. I do not know if that affords me any protection against some unscrupulous person coming across the card and trying to paste it together and sending it in and asking for a new credit card.

Mr. NELSON. The problem, it seems to me, is not with the addressee being subjected to liability, because I think in most jurisdictions the addressee would probably prevail, ultimately, in the event of his being sued.

The more serious problem, to my mind, is the inconvenience to which the addressee might be put in trying to establish that in fact he was not the one who had used the credit card. He might even have to hire one of those expensive lawyers that Mr. McClure was talking about.

Mr. DANIELS. It poses not only a great deal of inconvenience but it might subject the addressee to legal expenses, unwarranted legal expenses.

In addition thereto, in the interim his name is disseminated to different credit houses, by virtue of which his credit is destroyed to some extent, if not totally. So the thought occurs to me that perhaps we ought to make it unlawful to permit the mailing of unsolicited credit cards.

Mr. NELSON. Yes.

Mr. DANIELS. That would also relieve the Postal Department of a great many headaches and problems so that they can devote their time to other more useful duties.

Would you care to comment on that?

Mr. NELSON. I think, Mr. Daniels, there is very little that I can add to your statement.

Fundamentally, the question of whether or not you want to permit merchants to send credit cards to people who have not asked for them is a question of public policy that ought to be decided not on the basis

of postal policy—not on the ground of whether the practice is one that inconveniences the Post Office Department—but on the basis of what is right.

I think the President's Council on Consumer Affairs has a valuable perspective on this subject; and the Congress as a whole, as the body charged with the responsibility of translating the wishes of the people into legislation, will have to make the final decision.

Speaking as an individual, I think that there is a great deal to be said for the conclusion that this practice should be prohibited or otherwise controlled.

MR. DANIELS. Now, Mr. Cotter mentioned in his testimony that during the National Postal Forum—which was held I think in September of this past year?

MR. COTTER. Yes, sir.

MR. DANIELS (continuing). That it was very well attended and many good suggestions were made by the persons who attended that forum. I was wondering if any suggestions were made which would improve or strengthen the legislation we have under consideration?

MR. COTTER. Yes, sir. In fact, I have brought with me 10-or-so copies of a summary of some of these observations that came up during the discussion. I intend to make them available to Mr. Kennedy.

For example, we touched upon some do's and don'ts for the purpose of giving guidance—and these are things that came out from the individuals themselves, representatives of the various companies, with our participation—do's and don'ts on preparing mailings.

For example, in our guidelines on prior-to-mailing measures, we tell them to check on their addresses, prepare a list of prospective customers and check for duplications, and go through this type of thing.

One thing that is suggested, and some of the companies do this: send to each prospective customer a premailer, a letter in advance, at least a month before the actual issue of the credit card. This premailer may be of the positive or negative type. Most of the companies prefer the negative type. "Unless we hear from you, we are going to send you this credit card." This was discussed at the forum.

Another technique that may be also utilized is to request an address correction. The POD charges 5 cents for making sure the address is proper.

There are other guidelines and I touch on several others in this paper, which I think might be helpful in your considerations. I will make these available.

MR. DANIELS. Mr. Chairman, I would ask that the statement that was produced as a result of the National Postal Forum, containing suggestions to improve the relations between the credit card mailer and the addressee, be filed with the record of this hearing.

MR. NIX. The material mentioned will be made a part of the record.

(The following letter, with enclosure, was received by the subcommittee for inclusion in the record at this point.)

POST OFFICE DEPARTMENT,
CHIEF POSTAL INSPECTOR,
Washington, D.C., November 19, 1969.

HON. ROBERT N. C. NIX,

Chairman, Subcommittee on Postal Operations, House Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN NIX: In accordance with your request and for inclusion in the record of the Hearings conducted today by your Subcommittee, there is at-

tached several copies of suggested measures for the better preparation and mailing of credit cards. As indicated in my testimony, these suggested procedures emerge from a two day discussion during National Postal Forum III between representatives of the Postal Inspection Service and other postal people, and members of the Credit Card Industry.

We are happy to provide all possible assistance to the Subcommittee.

Sincerely,

W. J. COTTER, *Chief Inspector.*

(Enclosure.)

CREDIT CARD SECURITY WORKSHOP—NATIONAL POSTAL FORUM III

GENERAL SECURITY PROVISIONS TO BE OBSERVED IN CREDIT CARD MAILINGS

Prior to mailing

1. Compile list of prospective customers and check for duplications.
2. Submit to the prospective postmaster a list of the names and addresses in his area and request that the list be corrected as to name and zip code. This request may be made under postal regulation #123.514 which provides for such service at a cost of 5¢ a name.
3. Send to each prospective customer a pre-mailer at least a month before the actual issue of the credit card. This pre-mailer may be of a positive or negative type. (Pre-mailer may also be utilized to request an address correction from the post office as an alternate method to the procedure outlined above. In such cases, by placing on the top left hand side of the envelope, just under the return card, "address correction requested", the postmaster concerned will supply a corrected address and zip code on form card # 3547 at a cost of 10¢ each.)
4. Avoid sending to high risk areas. High risk area may be defined as those where previous experience has shown abnormally high mail loss either from mail boxes or sub-stations. Care should be taken not to mail to rooming houses, in care of, post office boxes, mail receiving agencies or hotels. If mailings must be made to these areas, the use of certified or registered mail should be considered.
5. Rent a post office box to be used exclusively for the return of undelivered mail containing credit cards. To provide security, request postmaster or other postal official to arrange for all return mail to be placed in a locked sack of mail to be picked up daily. The locks, as well as a key, to be supplied by mailer. This will prevent theft between post office and office of mailer.

Envelope

1. The size of the envelope used should be varied from time to time. Care should be taken, however, that the envelope size should not exceed the standard measurements set up by the post office for machine processing. (Envelopes under 3x4 1/4" are unmailable). The color of the envelope should be alternated regularly between white, brown, buff or gray. Unusual color schemes should be avoided.
2. It is strongly recommended that only those envelopes be used that have double glue flaps which would prevent the envelope opening while being handled.
3. The upper left hand corner should contain only the return box number and the name and zip of the post office, and elsewhere on the envelope the inscription: "Postmaster: If Undeliverable as Addressed, Do Not Forward." Current mailing regulations prescribe that when registered mail is utilized, the name of the mailer be included in the return address. In such cases it is permissible to use initials instead of the full name of the company, i.e., it would be permissible to use "F.N.C.B." in the return address on registered mail instead of First National City Bank.
4. The envelope should not be of the transparent type but of good quality. Credit cards should be enclosed in cardboard inserts so that cards do not shift around within the envelope and cannot be readily felt.

Preparatory to mailing

A. In-house security mismatching

1. Maintain an accurate and up-to-date audit trail on card production. This audit trail must be under dual control at all times.
2. Those employees inserting cards in envelopes should make sure that the card and number matches the address of the insert to avoid mismatching.
3. Stuffing operations should be performed on premises where practicable. The use of temporary help in this critical stage should be avoided at all cost.

Where the stuffing operation is performed by an outside contractor, they should be supervised on the premises by representatives of the credit card company.

4. Stuffing rooms should be closed to all but authorized personnel during non-operational hours. Credit cards and mailing lists should be secured in a safe or vault.

B. Before mailing

1. Mail should be sorted in zip code order and broken down to the 5 digit zip if possible. Prior to introducing the credit cards into the mail stream the mailing agency should contact the local postmaster and postal inspector to advise them of the critical nature of the mailing and solicit their advice as to the best dates to deliver the mail. Avoid mailing if possible, the first through the fourth, sixteenth through the eighteenth of the month when the mail is at a peak capacity. Do not mail on Fridays to avoid credit card lying in postal facilities over the weekends, also the day before a holiday.

2. Mail should be sent first class meter and said meter date must conform with actual delivery of mail to the post office facility.

3. Complete records of each mailing should be kept by batches in order that the actual date of mailing can be pinpointed in case of loss through the mails. This information is vital in the proper preparation of post office form number 1510 (request for tracer-lost mail.)

4. Secure sufficient number 3 sacks, locks, seals, labels, first class and mixed tags from post office department. When the volume of mail to a particular post office branch or station is sufficient to fill or half fill a sack, seal and label direct to that office, branch or station. This mail can be loose-packed. If the volume is not sufficient to permit such a procedure, bundle and tie out the mail by 5 digit zip and forward to the appropriate sectional center.

5. If a 5 digit breakdown is not possible, put in bundles marked mixed and forward to the appropriate sectional center for distribution.

6. Lock and label all bags properly with destinations and zip numbers clearly marked and first class tag attached to bag. Deliver mail to the post office at specified time under dual control. (Never permit credit cards to be delivered to a postal or other facility while under the control of any one individual.)

General comments

1. After initial mailing has been accomplished it is the responsibility of the mailing agency to up date the mailing addresses when return mail is received marked "Undeliverable as addressed", request the post office for address correction and mark your records accordingly, from the information supplied on Form 3547 as explained in paragraph number 3.

2. Maintain group contact with postal authorities and make sure that they are advised of all future mailings and anticipated volume.

3. At periodic intervals, change the postal box number of the box designated for the return of undelivered credit cards.

4. Cooperate closely with postal inspectors and supply them forthwith with duplicates of bank records (where feasible) in connection with any investigation which they may be conducting.

Unique situation

1. When fraud records of the mailing agency reveal an abnormally high number of reports of Never Received Issues from a particular post office branch or station, immediately notify the postal inspector concerned giving him full particulars as to date and place of mailing, number of cards reported missing, name and address of persons to whom cards were addressed and fraudulent use on said cards if known. Upon request, supply postal inspectors with "live" test material for use in his investigation.

2. Registered mail: In those instances where registered mail is utilized, the mailing agency may supply to the postmaster a computer print out, listing such registered mail in lieu of a firm mailing book.

3. As a general rule, the mailing agency must deliver its mail to the post office indicated on its meter mark. In those cases where they wish to deliver direct to the post offices, branches or stations, other than those indicated in the meter mark, arrangements must be made to have the mailer designated as an official mail messenger of the United States Post Office. Such designation may be obtained upon written request to the Regional Director of the post office in the area where this facility is located.

The Postal Inspection Service is vitally concerned with the safe handling of the mails, and that the mails are not used in connection with illegal operations. To this end a number of laws have been enacted and our investigations are conducted under these statutes. Those relating to credit card security are Sections 1341, 1342, 1702, 1708, and 1709, of Title 18, United States Code. These laws are reproduced on the following pages.

Mail fraud investigations are handled under Section 1341 and 1342. The investigations center upon two areas of interest; misuse of lost or stolen credit cards, and those obtained through false representations. Occasionally, a legitimately obtained card will be used to "purchase" such an enormous volume of goods and services as to create the initial inference that the user does not intend to pay. We will honor requests for such investigations. We will NOT consider any request for investigation of any complaint of unsatisfactory business relationship or one involving unpaid goods. These are civil matters which have their own avenues of process.

Investigations relating to outright theft from the mails are handled under Sections 1702, 1708, and 1709. Postal Inspectors will actively pursue any complaint, information, or evidence that credit cards are being stolen while in the custody of the Postal Service. Custody is here defined to be the time from when a card is first deposited with a postal employee or in a collection box, until it is delivered to the addressee or his authorized agent.

We should like to point out, however, that successful conclusion to any investigation is entirely dependent on the establishment of the suspect's full scope of activity. Evidence of deception pointing to an *intent not to pay* is central to any mail fraud prosecution. Evidence that the stolen item (credit card) actually was in the mail stream is paramount to any mail theft prosecution. Credit card firms can, therefore, materially aid any investigation by maintaining complete mailing records, by producing such records upon request, and by evidencing a willingness to testify to the record in any court of law.

We wish to stress that Postal Inspectors stand ready to cooperate in all areas of postal complaint, be they fraud or theft. We are NOT prepared, nor do we intend to police the credit card industry, for credit card firms are in a better position to know the character of their security needs and the requirements for internal regulation.

TITLE 18, UNITED STATES CODE

Sec. 1341. Frauds and swindles.

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Post Office Department, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

Sec. 1342. Fictitious name and address.

Whoever, for the purpose of conducting, promoting, or carrying on by means of the Post Office Department of the United States, any scheme or device mentioned in section 1341 of this title or any other unlawful business, uses or assumes, or requests to be addressed by any fictitious, false, or assumed title, name, or address or name other than his own proper name, or takes or receives from any post office or authorized depository of mail matter, any letter, postal card, package, or other mail matter addressed to any such fictitious, false, or assumed title, name, or address, or name other than his own proper name, shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

Sec. 1708. Theft or receipt of stolen mail matter generally.

Whoever steals, takes, or abstracts, or by fraud or deception obtains, or attempts so to obtain, from or out of any mail, post office, or station thereof, letter

box, mail receptacle, or any mail route or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail, any articles or thing contained therein, secretes, embezzles, or destroys any such letter, postal card, package, bag, or mail, or any article or thing contained therein; or

Whoever steals, takes, or abstracts, or by fraud or deception obtains any letter, postal card, package, bag, or mail, or any article or thing contained therein which has been left for collection upon or adjacent to a collection box or other authorized depository of mail matter; or

Whoever buys, receives, or conceals, or unlawfully has in his possession, any letter, postal card, package, bag, or mail, or any article or thing contained therein, which has been so stolen, taken, embezzled, or abstracted, as herein described, knowing the same to have been stolen, taken, embezzled, or abstracted—

Shall be fined not more than \$2,000 or imprisoned not more than five years, or both.

Sec. 1709. Theft of mail matter by postmaster or employee.

Whoever, being a postmaster or Postal Service employee, embezzles any letter, postal card, package, bag, or mail or any article or thing contained therein intrusted to him or which comes into his possession intended to be conveyed by mail, or carried or delivered by any carrier, messenger, agent, or other person employed in any department of the Postal Service, or forwarded through or delivered from any post office or station thereof established by authority of the Postmaster General; or steals, abstracts, or removes from any such letter, package, bag, or mail, any article or thing contained therein, shall be fined not more than \$2,000 or imprisoned not more than five years, or both.

Sec. 1702. Obstruction of correspondence.

Whoever takes any letter, postal card, or package out of any post office or any authorized depository for mail matter, or from any letter or mail carrier, or which has been delivered to the person to whom it was directed, with design to obstruct the correspondence, or to pry into the business or secrets of another, or opens, secretes, embezzles, or destroys the same, shall be fined not more than \$2,000 or imprisoned not more than five years, or both.

Mr. DANIELS. Thank you, Mr. Chairman. I have no further questions.

Mr. NIX. One moment, Mr. White. I want to thank Mr. Nelson for the remark he made, that any act passed by Congress is presumptively constitutional, because there are so many others who are not as charitable to us as you, Mr. Nelson.

Mr. White?

Mr. WHITE. Thank you, Mr. Chairman.

I am approaching this as a person saying "Show me," because this is the only way I think we can plumb into the basis of the legislation.

I think we need to analyze this particular bill and the problems.

Would you please tell me—either one of you gentlemen—why mailing of unsolicited credit cards should be made unlawful or restricted in some measure?

Just a short answer.

Mr. COTTER. The problems which we are confronted with in unsolicited credit cards are touched upon in my statement. The address on an unsolicited credit card letter is more apt to be erroneous. Therefore, when it gets to the destination point, it has to return through the mail flow again and is subjected to the further possibility of theft, just by the fact that the address could well be erroneous.

Second, many people do not desire to receive these cards and could just throw them away. If later found and misused, the individual is inconvenienced as a result of inquiries from the credit card company and all sorts of activity is required on the part of law enforcement officers to investigate fraudulent utilization of these cards.

These are two major problems with respect to unsolicited credit cards.

Mr. WHITE. Now touching on an adjunct matter, would this then be different, except in the sense of staff perhaps, although this does figure, than to ban the mailing of unsolicited books? Because book clubs will send you books if you do not send a rejection slip.

Mr. COTTER. I would say "Yes." The difference would be in the long-range ramifications of the possible utilization of the credit card to inconvenience and defraud others.

One card, for example, could be used to run up thousands of dollars of indebtedness just by the value aspects.

Mr. WHITE. We are talking about inconvenience. Do you feel the mailing of books does not cause such inconvenience to the recipient, that it should not be regulated also?

Mr. NELSON. May I interject at that point?

I think perhaps, Mr. White, there may be an important distinction—

Mr. WHITE. I would like to get an answer on the books.

Mr. NELSON. That is what I wanted to address myself to. Normally the books are sent only to individuals who have subscribed to the book club plan, who have agreed to be members of the book club and to be bound by its rules and regulations, and who have said in advance they are willing to receive these books unless they send in a card each month saying "I do not want to receive this month's selection."

I think the credit card situation is a little different, because there the individual has not agreed to accept the card unless he sends back a notice saying "I do not want to receive the credit card."

In some cases, he does not even know it is being mailed.

Mr. WHITE. I figured you would say that, so let me test the points you have made.

You explained it is susceptible to theft. That is the first point. You said it causes an inconvenience and leads to fraudulence.

You said that it differentiates from the book clubs in that people agree to be recipients of some publications of this particular club.

Could this not all be solved by going back to basic contract law, so that a person, as you said, must have an application, or at the time the card is sent, it has a card for acceptance, pure acceptance under contract law. That recipients have to sign with their signature that could be determined by a handwriting expert; if they do not send in an acceptance, then they would not be liable.

The company itself would take the chance, of course. The only proof the company would have if they did not get that acceptance would be the handwriting, the acceptance by a signature on the purchase of the goods. So the burden would then be on the company, instead of on the individual, and you are not trying to restrict the sending of cards.

I cannot necessarily see a criminal aspect as a reprehensible feature of sending cards per se.

Your questions and your complaints seem to address themselves to the point of theft, of unlawful use, which would be taken care of by acceptance. The inconvenience would be taken care of by ratification when the individual signs and sends back the card saying, "I accept this."

And the willingness would be taken care of by the acceptance, by the card sent back.

Mr. COTTER. I think a better way would be the premailer approach, whereby, before you send the credit card itself through the mail you send a notification and acceptance card a month beforehand. The credit cards themselves are not then floating through the mail until the addressee has indicated an acceptance.

Mr. WHITE. But if you have the acceptance card, would you not be solving every one of the complaints you are talking about? Except human nature?

Mr. COTTER. I am suggesting, Mr. White, that unsolicited credit cards will still be floating through the mail. Let us say they experience a 75-percent turndown. These credit cards will still travel from company to addressee and back again.

Mr. WHITE. But the company knows that they cannot hold the addressee liable—and we can so state in the bill—unless they have the acceptance card.

Mr. COTTER. Correct. As far as the individual is concerned.

Mr. McCLURE. Would the gentleman yield?

Mr. WHITE. Yes.

Mr. McCLURE. I think Mr. Nelson touched on that a moment ago, as far as ultimate liability is concerned. The addressee probably is going to prevail anyhow. There is nothing under your suggestion that would prevent somebody from taking from the mails the credit card and the acceptance, signing a name on both the card and the acceptance, and mailing it back, and still imposing the same kind of inconvenience and difficulty on that person.

Mr. WHITE. But we provide a penalty for harassment in the bill. That is the point. We put the burden on the sender.

Mr. McCLURE. I did not understand you saying that there would be a penalty for harassment.

Mr. WHITE. You are putting a penalty in here anyway.

Mr. McCLURE. You mean you are going to penalize people for trying to collect a bill?

Mr. WHITE. For harassing, unless they have an acceptance card and they can prove it.

Mr. McCLURE. They have one.

Mr. WHITE. If the man sends back and says, "This is not my signature," and they persist, then you put the penalty on.

Mr. McCLURE. But still the person who has received the billing who was the original addressee is going to have to go to court and defend himself.

Mr. WHITE. So you put your attorney's fees on there and put a penalty for destruction or hampering of the credit rating.

Mr. McCLURE. I think there is no question you could do any of a number of things to get to it, but you still put some burden on the addressee.

Mr. WHITE. I think you would eventually reduce this practice so they would have to be very certain—

Mr. McCLURE. Would the gentleman yield further?

Mr. WHITE. Yes.

Mr. McCLURE. What you are really saying is, we should make it so difficult that they will not mail it.

Mr. WHITE. Put the burden of caution on them. Then they are going to have to be very careful.

I do not see anything wrong with unsolicited credit cards. My bank sent me one. I use the card they sent and I am glad they sent it. I figure it was a great convenience to me.

Mr. McCCLURE. Would the gentleman yield further?

Mr. WHITE. Yes.

Mr. McCCLURE. If they had offered to send it, would you have returned it and asked for the card?

Mr. WHITE. Maybe I might have. On the other hand, I have it, and if I do not want it, I could destroy it. Probably once having it, I would probably send the acceptance and then I would feel I would not fear misdirection by mailing and somebody picking it up and using it, because if they did not have a tangible acceptance card on my part, they could not hold me liable and they would not take a chance of trying to hold me liable.

Mr. DANIELS. Would the gentleman yield?

In the last statement you made, you say the sender would not be able to hold you liable. I do not think you are liable. The addressee would not be liable under any circumstances if he did not find the card or if he did not order the material. He would not be liable under any circumstances.

However, I think you do make a good point. You would permit the addressee, in the event a suit was instituted against him by the mailer, to file a counterclaim to recoup damages for the expenses he incurred in engaging counsel; and, in addition thereto, a penalty would be imposed for possible loss of credit rating?

Mr. WHITE. Yes.

May I suggest this? Every time Congress passes a law we are restricting the liberty a little bit. Why do we not go back to basic contract law and impose the penalties under existing types of law, within the channels of existing law? I think you would solve it.

Mr. DANIELS. I think you made a very good point.

If I may, on your time, address a question to Mr. Cotter?

Mr. WHITE. Yes.

Mr. DANIELS. You stated that some banks and credit card companies have engaged in the practice of first sending out a letter asking the addressee to indicate their acceptance of a credit card. Now, I am wondering if this would not also pose innumerable headaches for the addressee as well as the Post Office Department, because the person, recognizing that such a letter contains an invitation to order a credit card, might steal that letter from the mail, forge the addressee's name to it and ask for a change of address and that it be sent to a different address.

Mr. COTTER. It is possible, Mr. Daniels.

Mr. DANIELS. So it does not help the problem at all by sending out an invitation to order a credit card.

Mr. COTTER. I would personally think that few individuals who might be inclined to steal a credit card, generally speaking, would be so sophisticated as to go through such a procedure as that. That would be my reaction.

Mr. NIX. Would the gentleman yield?

Mr. WHITE. Yes.

Mr. NIX. You are not seeking a cure to anything. I do not think there is a cure to anything in the world. You are seeking to lessen the hazard; that is your objective, is it not?

Mr. COTTER. Yes, sir.

Mr. NIX. Thank you, Mr. Daniels.

Mr. DANIELS. Thank you, Mr. Chairman.

Mr. NIX. Mr. Nelson, and Mr. Cotter, thank you very much for your contribution here today.

Our next witness is Mr. Seymour Rotker, executive assistant to the district attorney of Bronx County, Bronx, N.Y.

We welcome you, Mr. Rotker. You may proceed, sir.

**TESTIMONY OF SEYMOUR ROTKER, EXECUTIVE ASSISTANT TO THE
DISTRICT ATTORNEY, BRONX COUNTY, BRONX, N.Y.**

Mr. ROTKER. Mr. Chairman, Members of Congress, on behalf of Burton B. Roberts, the district attorney of Bronx County, and myself as his executive assistant, I welcome the opportunity to speak before this subcommittee on some problems of local law enforcement pertaining to the unsolicited mailing of credit cards.

At the very outset of my remarks to this committee, I want one thing made clear: that none of my comments is intended to be construed as a position on the desirability or of the economics relating to the use of credit cards.

Since July of 1966, the Bronx district attorney's office has been engaged in various credit card fraud investigations. Undercover detectives from our district attorney's squad were able to make purchases of stolen credit cards for various sums of money—at this time they were oil company credit cards—ranging from \$10 to \$50.

These cards were also from some of the leading department stores in the metropolitan New York area, as well as the oil companies.

Obtained through confidential sources, we ascertained that numerous gas station owners and attendants would submit receipts to the various oil companies for a much larger sum of money than actually collected for the services that they rendered to the individuals who were utilizing these cards. As a result of the investigation, we were able to apprehend and arrest six gas station owners, eight attendants, and five sellers of stolen credit cards.

Sixteen of the defendants were either convicted or pled guilty to the crimes.

In June of 1967, a second major credit card investigation was commenced. The modus operandi utilized by our office in the first investigation, through the use of undercover personnel and detectives of our squad, resulted in the indictments against 22 sellers of stolen credit cards and gas station owners for the illegal acceptance of credit cards, most of whom have either been convicted or pled guilty to the crimes as charged.

I would like to note at this time that the credit cards utilized in this investigation, the stolen cards, a portion of them, were originally received by or supposed to have been received by the persons in whose names the credit cards were issued, and they were unsolicited. They were sent out in bulk mailings.

Several of the credit card investigations conducted by this office were on a smaller scale. In these investigations only one or two persons

were involved in the misuse of oil company or the UniCard credit cards, resulting in various arrests and convictions.

Our major problem arose in February 1968. We received a complaint from the First National City Bank as a result of which the Bronx district attorney's office commenced a major investigation into the illegal use of the so-called everything card which now has been superseded, I believe, by the Mastercharge card.

At the outset the bank had reported that at least 18 credit cards had been used and over \$80,000 was charged in Bronx County alone. After 2 months, the figure rose to \$125,000, and 60 credit cards were used. These credit cards had been stolen and used illegally.

It is to be noted that the First National City Bank made its original offering for the use of credit cards several months before the thefts were brought to our attention, and they utilized a bulk mailing type of unsolicited credit card to various customers at the bank, as I think has been outlined by Mr. Cotter previously.

Persons with various accounts at the bank were sent these cards. During the course of the investigation, I might state that it was learned that credit cards had been stolen from the mail by post office employees, who, in turn, sold them to a middleman at the time for a \$25 fee or profit. The middleman then sold them to a distributor, and we estimate \$50 was received; who then in turn would sell them to users, the front people who went out and actually utilized these credit cards in various stores; and the price range for the sale of the cards to this stage was from \$100 to \$400.

In order to effectively utilize these cards, we found that forged driver's licenses, forged social security cards, and other similar and like documents were supplied to the ultimate illegal user of the credit card in order to establish his ownership of the card. These forged driver's licenses and social security cards had a name imprinted of the party who was supposed to have received that card.

So, of course, you can see the effect of going into a store with your driver's license or social security card, which is the usual form of identification asked for by the owner, and everything seemed to be all right.

This, gentlemen, was the first inkling that we had that the utilization of the credit cards on this wide and large scale was to a great extent fomented and aided and abetted by members of organized crime. And this utilization of these credit cards by members of organized crime is the basic problem that we have today with regard to the Bronx district attorney's office investigation of these matters.

The sophisticated way of their dealing with these credit cards make it very difficult on the individual store owner to be discerning enough to determine that the credit card is not rightfully in the hands of the proper person.

As a result of this investigation, we were able to obtain 18 indictments. Of the 18 persons who were arrested, five of them were store owners themselves who acted in collusion with the credit card users. They acted in collusion to the extent of having knowledge of the fact that the credit cards were stolen and they were able to give the merchandise out and then, of course, bill the bank or other credit card institution with regard to the charges.

In addition, our view that the persons utilizing or behind this endeavor were persons engaged in organized crime was buttressed by the fact that persons arrested in this investigation had violations as known to the New York City Police Department for gambling laws of the State of New York as well as other basic criminal records, and I do not think that I have to go into the fact that the persons involved in gambling activities, and especially the persons who were involved in this case, were definitely affiliated with members of organized crime.

I might say that subsequent to this investigation, two further arrests have recently been effected by our office, where over 19 Mastercharge cards were used, some of which had been mailed unsolicited, and over \$20,000 in charges were made against these cards.

I might say that one of these persons pleaded guilty this past Monday, which brings it current, to the crime as charged, which was grand larceny in the third degree.

Our New York State Legislature has recently enacted amendments to the penal law which now makes the possession of a stolen credit card a class E felony, and possession of a forged credit card as a class D felony, punishable by imprisonment of 4 to 7 years respectively.

The enormity of the problem with regard to the illegal use and possession of stolen credit cards has been recognized by the Federal Strike Force for the Southern District of New York, which for the first time is including operations by Federal, State, and local personnel in order to combat, as one of its committee endeavors, the illegal use of credit cards by members of organized crime.

The problems of local law enforcement regarding the illegal use and theft of credit cards are numerous, but it is my understanding that this committee is principally concerned with the ending of unsolicited credit cards through the U.S. mail, and, accordingly, I will endeavor to confine my additional remarks to that issue and only parenthetically allude to the problems that may arise when credit cards are taken in the more conventional burglaries or larcenies or robberies.

As some background for the problem, a consumer in the New York area today, if he qualifies, can obtain any one or all of a number of retail credit cards. By retail credit cards, I refer to those cards usually issued by banks which are principally designed for use in a retail store for the purchase of goods.

In addition, he may obtain travel and entertainment cards such as those cards issued by American Express, the Diners' Club, or Carte Blanche.

Of course, in certain circumstances, these cards can be interchangeably used and, under certain circumstances, can be used as retail credit cards also.

The major credit cards available for use in the New York area today are the BankAmericard, the Unicard, and the Mastercharge card, which, of course, is sponsored by the Interbank, which absorbed several cards formerly issued by independent banks, including some of the largest banks in the United States.

As you can well imagine, simply from the number of organizations that have become interested in sponsoring a credit card, competition has become quite keen and each sponsor seeks to have the most possible cardholders and the most possible establishments equipped to use the

card. Because of this competition, the banks have taken to mailing their credit cards to those, as I indicated previously, who maintain accounts with the bank, or to those who have taken loans from them in the past, with whom they have had a quantity or a quality of good experience, and it is this practice developed by the banks in an effort to get their respective credit card programs off the ground that we now call the unsolicited credit card.

To be sure, this is not the only instance a credit card is sent through the mails. All, including travel and entertainment cards, are mailed to those who apply and renew. But, as I shall explain, the unsolicited credit card, once stolen, renders the issuing bank particularly vulnerable and generates sizable losses.

The method of mailing the unsolicited credit card varies between the different sponsors and often from time to time by one sponsor alone. Most often the card is simply sent by the bank to the intended cardholder without any prior notice. In some cases the bank sends a notice to the intended cardholder, but this only tells him to return the notice if he does not want the card. If he does not do anything, the card or cards are sent as a matter of course.

It is our view that this perhaps places a burden which should not be borne by the consumer, of having to send back a piece of mail saying he does not want the card, or he will automatically receive it.

In many instances, the consumer destroys the letter initially and has no idea the card will be sent out.

Either way, the intended cardholder never knows when the card is mailed and does not know when to expect it.

It follows then that if the card should be stolen, the intended cardholder has no idea that it is missing; and we have found that the sender does not learn of the fact until 4 to 8 weeks have elapsed. This is the critical time.

Now, at this point you may well be asking, "What about the security employed by the senders?" There are two principal methods now in use.

The first is a weekly bulletin of cards not to be honored, which includes those cards which are known to be stolen. This is commonly known to the trade as "the hot sheet," and it must be checked by the merchant whenever a card is proffered for use.

The second security measure is the "floor limit" which varies from store to store, and simply is an amount, usually \$30 or \$50—if a purchase is made which comes to more than the store's floor limit, the merchant must first call for authorization before accepting the card.

As to the floor limit, we have found that those who would use a stolen card are usually aware of this practice and usually keep the purchases just below the floor limit of the store in which they make their purchase. But you can see the problem that may arise where the individual who is supposed to have received the card is not aware of the fact that the card is stolen, nor is the bank or credit card company aware of that fact, and there would be no indication that the card was stolen or otherwise hypothecated, and the limit, even upon calling in by a merchant, may be exorbitant.

With regard to the "hot sheet," we have found in our investigations that it is of little value in stopping the use of the unsolicited card. As I mentioned before, when an unsolicited card is sent to the intended

cardholder, he has no idea when to expect it. Therefore, if the card is stolen in transit, the cardholder does not know it is missing; meanwhile, the card, after being sold two or three times, finds its way to the eventual user within a matter of days, who proceeds to run up many purchases.

Since the card is mailed without any signature, the eventual user only has to sign the intended cardholder's name in his own hand to make it appear to be a perfectly valid card. And as I also said before, other indicia of legitimacy, such as driver's licenses and social security cards, and so forth, are forged and utilized to legitimize the transaction.

The banks who bill the cardholders on a monthly basis usually do not know of their loss until 4 to 6 weeks later when they mail the monthly statement to the intended cardholder, and before he disclaims his responsibility for the purchases, another 2 weeks could easily go by.

Accordingly, it is this initial 4- to 8-week period when the card can be used with impunity, since it will not appear on any "hot sheets." And that should be the target of any attempt to eliminate the problem.

Complaints usually come to our attention only after the bank becomes aware that the intended cardholder has not received his card and charges have been made in his name. Attempts by law enforcement people to identify the perpetrators are then made. This usually involves a cold canvass of the merchants who have been victimized until one can recognize a series of photos or one of a series of photos that may be shown to him.

Very often the merchant has only seen the perpetrator once and is unable to make such identification. At other times the merchant will simply not cooperate to avoid the inconvenience.

At this point, I might digress to mention another problem we have come across with increasing frequency. I mentioned earlier that a merchant must check a "hot sheet" whenever a card is offered for use. I also stated that if the sale exceeds the floor limit of the store, the merchant must call for authorization before completing the sale on the card.

If the merchant meets these two requirements, he will be reimbursed by the credit card firm, even if the card proves to be used unlawfully. As stated before, however, the card usually does not appear on the "hot sheet" until the first 4 to 8 weeks after it is stolen, so this practice becomes academic.

More disturbing, however, is the fact that merchants will often make up separate charge slips in order to keep the actual amount of the total sale within the floor limit. This practice, known as "splitting sales," enables the merchant to make the sale for an amount in excess of his floor limit without calling for authorization, which might result in earlier detection.

Most important, the splitting of sales enables the store owner to be reimbursed when, in fact, he may be well aware that something is being improperly and unlawfully used with regard to the credit card, either because of the amount of the goods purchased, or because he is actually told by the perpetrator and is his accomplice, as has happened in the Bronx before.

But even assuming that the merchant is taken in by the thief, and cooperates initially, he soon becomes discouraged. He is called upon to come to court several times and lose his time from his store, which often depends upon his personal attention for its success. He is called upon to make an in-court identification of the perpetrator, which at best can be an unnerving circumstance, and at worst, he may be subjected to possible intimidation and harassment.

So, too, are the intended cardholders greatly inconvenienced. These people, who may never have wanted the card and derive no benefit at all, must first explain their predicament to the sender of the credit card. Then, if a perpetrator is apprehended—and most perpetrators are not—they must testify both at the grand jury and at subsequent court proceedings as to each of the slips that was allegedly forged. And they must also testify to the fact that they never received the cards.

There are some possible solutions to the problem that I can respectfully offer. The credit card firms, of course, we believe should bear the primary responsibility for eliminating the evils that have sprung up from what is and should be a great convenience to the consumer.

In our experience, however, it appears that internal conflicts within these various credit card firms have stifled such innovations. Security personnel of financial institutions, many of whom are retired police officers, are naturally concerned with instituting procedures which would cut down the losses. Marketing personnel, however, with their understandable desire to have the widest possible use of the card with the greatest ease for the cardholder, are evidently reluctant to initiate reforms.

Admittedly, some of these solutions would involve substantial expense, and it appears that from a business standpoint the firms may be willing to sustain losses to some extent through illegal use which may be less than the necessary expense to cut these losses.

For example, as it has been discussed by several of the previous witnesses, if the cards were sent registered or certified mail, it would be easier to control the mailing.

However, the expense for the sender would be much more than having to send it through the regular mail.

It would also create difficulty for the intended cardholder who would be required or called upon to sign for it by the postal authorities.

So, too, the idea that the cardholder sign for the card at the local branch of the issuing bank or credit card firm would be an inconvenience for the intended recipient.

It would also be possible for the banks to send a separate notice, as has been discussed by Mr. Cotter previously, and some of the other witnesses, for the intended cardholder to expect his card by a certain date, or else to call the bank or sender. This notice would be sent under separate cover and is a technique which would be aimed directly at the 4-to 8-week gap in detecting which I mentioned earlier.

And if this were to be combined with a slight alteration of the card, it might truly prove to be an effective technique.

All cards have an expiration date printed on them. They do not, however, have any effective date, a starting date, before which the card

could not be used. If such an effective date could be put on the card, before which time the card could not be used, and if notice of mailing were sent under separate cover approximately 1 month before the effective date on the card, then the bank would have ample time to learn of the loss and list the card on a "hot sheet."

Admittedly, this would not stop the thefts, but it should reduce the value of the stolen card, thus making them less desirable.

As I have mentioned throughout my remarks, the inherent problem in the mailing of unsolicited credit cards is their appreciable value in the first few weeks after the actual theft occurs. This value depends directly on the ability to detect the loss and prevent further use of the stolen card. If such detection can be made by the various issuers of credit cards by combining perhaps some of the ideas I mentioned earlier, or by others which they may have already under consideration, this should aid in ameliorating the problem.

However, I believe the most effective single program would be the enactment of legislation under consideration here, and it is heartily endorsed by Burton B. Roberts, the district attorney of Bronx County.

I am now available for any questions, Mr. Chairman.

Mr. NIX. Thank you, Mr. Rotker.

Mr. McClure?

Mr. McCLURE. Thank you, Mr. Chairman.

Just very briefly, I think what you outlined is a very exhaustive and complete delineation of the entire problems in the entire field of credit cards. It goes far beyond the ability of this committee to deal with, except in some details.

Would it not be possible for the professional criminal to forge the credit card as well as the identification that supports it, and to the same extent as is done under unsolicited credit cards, obtain credit from merchants, unless the merchant was in collusion with him, as is sometimes the case?

Mr. ROTKER. There is no question about that, Mr. McClure.

Mr. McCLURE. So we cannot eliminate the entire problem by simply eliminating the flow of unsolicited cards?

Mr. ROTKER. Not the entire problem, but I believe, from our investigations, it would have a great impact on the flow of these cards into illegal, unauthorized areas, because we believe that a large portion of these may come from post office personnel who have been alerted to the fact by these large bulk mailings of these unsolicited cards and are able to easily hypothecate these cards for their use.

Mr. McCLURE. If the card itself is a fictitious card, not put out by the issuer at all, but forged by someone else, or produced by someone else, this would eliminate the collusive practice, at least, between the user and the merchant; would it not?

Mr. ROTKER. Yes, sir.

Mr. McCLURE. Because he could not receive reimbursement.

Mr. ROTKER. We have not run into the case of forgery, but I have testimony that the post office has apparently had that problem. Our problem has come through the use of the legitimate card by the illegitimate user.

Mr. NIX. Mr. Daniels?

Mr. DANIELS. No questions.

Mr. NIX. Mr. White?

Mr. WHITE. I have one statement, Mr. Chairman.

I listened to your discussion of the various problems concerning the credit cards, and I wonder if this has ever been considered: You can forge signatures, but you cannot forge a print. If you required that anyone that had an unsolicited card to put their thumbprint as well as their signature, would you not pretty well stop those who would be illegally using the cards?

Mr. ROTKER. I would assume so, if there was some way that the merchant, upon receipt of the card, could identify through some device the fact that the thumbprint of the individual is the thumbprint on the card, the one who hands it in.

But if the card is stolen prior to the time that it goes to the recipient, then the perpetrator claiming to be "John Doe," whose name appears on the credit card, may put his own thumbprint on there.

Mr. WHITE. Do you think he would do this, knowing he might be apprehended on the basis of his thumbprint?

Mr. ROTKER. I have heard of the criminal mind doing a lot of things. It is possible, maybe; not probable.

Mr. WHITE. Has it ever been considered by any group in trying to stop the illegal use of solicited and unsolicited cards?

Mr. ROTKER. To my knowledge, no, sir. But in discussing these problems with security personnel at the credit card institution, I would say that I do not think that they would buy that, for the simple reason that I think it would create an aura of criminality about it.

I think they would probably feel it would be more likely to alienate a potential legitimate user of these cards by having him be fingerprinted. I think the connotation of fingerprints has a criminal aspect to it. Probably from a marketing point of view, I do not think they would go for it.

Mr. WHITE. This would only be on unsolicited credit cards.

Mr. ROTKER. I think on unsolicited credit cards, on an initial mailing, for very many of the institutions, this is the first impetus for this thing, and it is possible they may do it.

If they asked for the card, then there are no problems. Then they do not have the problem of unsolicited cards. It is where the cards are mailed out in bulk. First National City Bank has 200,000 or 300,000 customers in the New York City area, and these go out periodically in the mails in large portions.

This was the problem that was created in February 1968 for our office.

Mr. WHITE. I know if you asked for a print you would have it down to a trickle.

Mr. ROTKER. It is very possible, sir.

Mr. NIX. I want to thank you very much, Mr. Rotker, for a most informative and helpful statement. Thank you.

Mr. ROTKER. Thank you, sir.

Mr. NIX. Our last witness is Mr. Earl E. Pollock, attorney for Midwest Bank Card System.

I want to apologize for the fact that you have 12 minutes. I think you should have as much time as anyone else. In the event that you are not able in the time limit to present your entire statement, we would be happy to invite you to return. We want to hear from you.

We want you to have an opportunity to set your views on this subject. You may proceed, sir.

TESTIMONY OF EARL E. POLLOCK, ATTORNEY FOR MIDWEST BANK CARD SYSTEM, INC.

Mr. POLLOCK. Thank you very much, Mr. Chairman.

I appreciate this opportunity very much, particularly since I appear to be the only witness who has yet been heard who stands in opposition to the bills which have been proposed and which are the subject of today's hearings.

In addition, because of the 3 full years of experience with the operation of the credit card program, I think we are in a position to lay to rest some of the more extreme fears which have been expressed today.

Let me first of all say that the Midwest Bank Card System is not itself an issuer of bank cards. Instead, it is a cooperative association of banks which do issue cards.

The system was founded in November of 1966 by five Chicago banks and one Indiana bank. Today the system has 17 members located in four States. Some of these banks are among the largest in the country; some are of extremely modest size.

In addition, correspondents of the member banks participate in the system primarily as banks of deposit for their merchant customers.

There are some 835 correspondent banks participating in this way. Typically, these are very small local banks.

The Midwest system has 1.5 million cardholders and some 90,000 merchant outlets. To a very large extent, these merchants are small, independent retailers who are probably the most significant beneficiaries of a bank credit plan such as Midwest. As a result of the system's credit mechanism, which gives these retailers "instant cash" for their sales slip, less a nominal discount, retailers of this type find that their participation in the system not only greatly enlarges their customer potential, but also goes far to help them compete with the big merchandisers in the marketplace.

At a cost considerably below what it would cost them to operate their own credit programs, these small merchants do not have to wait for 30, 60, or 90 days to get their money. They get it right away and are able to use their often-limited resources to build up their inventory to better serve the sharply expanded market.

In this way the bank card is a very important aid in maintaining the competitive vigor of tens of thousands of small businesses around the country. The bank card, I should also add, provides another democratic function in our society by affording credit card privileges to millions of families with moderate income and good payment records. These consumers can now have the convenience and other benefits that previously were limited to high-income families and to businessmen with expense accounts.

Although there is cooperation among the members in the exchange of transaction slips, competition in the Midwest System has been extremely intense, and particularly was this so during the start-up period in the fall of 1966.

At that time the banks utilized a device which had been employed, and I think has since been employed, in the launching of almost every

bank card program, namely the mass distribution of unsolicited cards to persons or prescreened lists.

As the Federal Reserve Board has found, this was the only way for those banks to enter the charge card business, and the mass distribution of unsolicited credit cards is a technique which is generally indispensable to the start-up of a bank card program. As a result, if that technique, gentlemen, were ever outlawed or curtailed, that restriction might even redound to the benefit of our present members because it would make it considerably more difficult for would-be competitors to get into the business. Once you are in the business, the mass mailing of unsolicited credit cards is not particularly important.

Nevertheless, despite that possible advantage, the Midwest System strongly opposes any such prohibition. We have no desire to obtain an unfair competitive advantage over anyone merely because our members were earlier than others in launching their charge card programs.

It should also be noted that most of the large banks in the country have already entered the charge card business and, therefore, if Congress were to adopt a prohibition against the mass mailing of unsolicited cards, this prohibition would be aimed primarily at medium-sized and smaller banks, which would thereby be precluded from competing with the large banks which any such legislation would protect.

Now, it is against this background that we approach the subject of today's hearing. One of the bills would ban the mailing of unsolicited cards directly; the other would almost certainly do it indirectly.

Measures of this sort are presumably designed to reduce the theft of cards and inconvenience to citizens. The fact is, as we shall see, that they would probably have exactly the opposite effect.

Furthermore, such measures are based on a whole series of resolutely held misconceptions about credit cards generally and unsolicited ones in particular.

Because my time is so limited this morning, let me say that one of the most popular of these misconceptions is that the intended recipient of an unsolicited credit card is responsible for charges made with the card, even though he never receives it.

Gentlemen, so far as I am aware, I do not know of a single case where any such person has ever been held responsible; nor do I know of a single instance, despite the fact there have been tens of millions of these cards issued, where any bank has even attempted to hold the intended recipient of an unsolicited credit card responsible for charges on that card where that card was lost or stolen before it was ever received.

We are dealing with a bogeyman which simply has no existence in the real world. This is shown not only by the Federal Reserve System report, but also by the statement of Governor Andrew Brimmer just 2 months ago in his address before a Seattle group—cited in my prepared statement.

There is no such danger that any such intended recipient would be held responsible.

Furthermore, there has been legislation enacted in Illinois and other States to confirm the absence of any such liability.

Nor is it true, as a general matter, that the intended recipient is unaware that a card is on the way. As has been testified to by other witnesses this morning, it has become standard practice to use the so-

called premailer, so that if any person does not want a card sent to him, all he has to do is use a prepaid envelope or a postcard that is included for his convenience and to indicate to the bank that no such card should be sent.

Mr. DANIELS. Would the gentleman yield at that point?

Mr. NIX. Go ahead.

Mr. DANIELS. Instead of making that in the negative, why do you not make it in the positive? Have them indicate their acceptance?

Mr. POLLOCK. That is done in some instances, but it is found to be necessary to use a more effective device, because by and large the experience has shown—

Mr. DANIELS. Why do you say "more effective"?

Mr. POLLOCK. It has been shown when the negative mailer technique is used, there is no substantial inconvenience. As a matter of fact, Mr. Daniels, I have set forth here—and I would like to have the whole prepared statement made a part of the record—the experience of a bank which recently used precisely this technique, and no inconvenience of any substantial nature was encountered, even though there were calls made to the intended recipient in each instance.

We certainly do not mean to suggest that the theft of credit cards from the mails does not present a problem. Of course, it does. But the risk is that of the card issuers, and not the intended recipient. And the remedy is not to ban cards from the mails, but instead to improve security arrangements on the part of the Post Office Department as well as card issuers.

Banks have effectively demonstrated that credit cards can be made drastically less "theft prone," particularly within the last 3 years in large part because of experiences gained during that period.

The accomplishment of that objective, however, would not be helped, and it might well be hindered, gentlemen, by enactment of the bills under consideration here.

May I just briefly summarize what our objections are to this legislation? I think I could do it in a matter of 1 or 2 moments.

Mr. NIX. Proceed.

Mr. POLLOCK. First of all, the proposed legislation—which, either directly or indirectly, would ban the use of an essential technique for entering the credit card field—is patently anticompetitive, since it would shield the banks already in the field from the competition of newcomers.

Second, mandatory use of registered mail irrespective of varying circumstances is unnecessary and unwise. It would cause needless expense, place a needless burden on the postal system, and cause needless annoyance to consumers, particularly if it were required that the mail could be delivered only to the named addressee.

Third, the proposed legend on the face of the envelopes would make credit cards substantially more "theft prone," as the gentlemen from the Post Office Department have testified.

And, fourth, the bills completely fail to meet the problem of theft of credit cards from the mails. That problem is fundamentally one of protecting the integrity of the postal operations, a function for which this subcommittee, of course, has a very special responsibility. But the integrity of postal operations would not be protected by banning the

mailing of credit cards. Instead, the imposition of any such ban would represent simply a tacit admission that the Post Office Department is incapable of safely transporting such mail.

We do not believe that any such wholesale indictment of the Post Office Department is justified. Substantial improvements in security have already been worked out through the cooperation of credit card issuers and postal authorities; and if any change is necessary, it is in the direction of further improvements of this nature.

For these reasons, the Midwest Bank Card System opposes both bills. We urge their disapproval by the subcommittee, and we ask that my entire prepared remarks be included in the record, Mr. Chairman, as if I had delivered them this day.

Thank you very much.

Mr. NIX. Without objection, the entire statement will be incorporated in this morning's record.

If the unsolicited credit card is used and the bill is rung up, certainly there is no legal liability on the part of the person whose name is on the card; but he is called upon to come into court and defend himself in the event suit is brought against him. He cannot sit idly by and allow them to enter a judgment against him. He is harassed to that extent.

How would you prevent that? How would you protect him?

Mr. POLLOCK. Mr. Chairman, we have had considerable experience with this, and although there have been tens of millions of such cards sent out, I have never heard of a single suit of that sort ever having been brought.

The matter is handled in this way: As soon as a card is used, a phone call is invariably made by the issuer to the intended recipient. If that person says that he used the card, the question is asked as to whether he found this to be a convenience. If he says that the card was not used by him and was not received, in almost every instance that will end the matter, because that will alert the issuer that this card has gotten into the wrong hands.

No such suit, Mr. Chairman, has ever been brought, to my knowledge.

Mr. NIX. We have abundant evidence to the contrary.

Mr. DANIELS. Mr. Chairman, would you yield at that point?

Mr. NIX. Yes.

Mr. DANIELS. Did you hear the previous witness from the Bronx County district attorney's office?

Mr. POLLOCK. Yes, sir.

Mr. DANIELS. In addition to the civil suit, he brought to the attention of this committee the fact that the addressee of that stolen card may be called upon to appear before a grand jury to testify that that card was stolen.

In addition thereto, if the defendant is being prosecuted for the theft of that card, he would have to appear in court to testify, for which he receives no compensation, and it would put him to great trouble.

Mr. POLLOCK. Mr. Daniels, our experience has been that this has happened perhaps in a dozen instances over 3 years, in comparison with some, as I say, million and a half card holders in the Midwest System.

And may I say this in response to the chairman's observations? I think that inquiry will demonstrate that the suits which have been

referred to are suits which have been brought against cardholders who had already accepted their cards, have used the cards, and then had lost the cards or had suffered the experience of having those cards stolen. There have indeed been suits brought in that instance where the cardholder does not notify the card issuers.

But those are not, Mr. Chairman, instances of suits having been brought against persons who never received a card in the first place. And that, of course, is the only kind of situation that we are talking about today in connection with unsolicited credit cards.

As a matter of fact, one point which I seek to make in my prepared remarks is that the real problem of credit card theft has very little to do with unsolicited mailing. The typical fraud case involves a card which was received by the cardholder and thereafter was lost by the cardholder or was stolen from him by pickpockets or others.

But the legislation which we are dealing with today concerns the unsolicited mailing of credit cards, and that, I submit, is only a very small aspect of the total problem of credit card fraud.

Mr. NIX. Thank you very much, Mr. Pollock.

Mr. McCURE. Mr. Chairman?

Mr. NIX. Go ahead.

Mr. McCURE. I do not want to prolong this, but I do thank the chairman for permitting me to ask this question.

I would assume from your prepared statement and the response to the chairman's question and the question by Mr. Daniels that the people that you represent would not object to the suggestion that was made earlier by Congressman White, that the issuer bear all the costs, including reasonable attorney's fees, and the defense of any action that might be brought or any harassments that might be occasioned?

Mr. POLLOCK. Well, since there has never been in our experience a single suit which has ever been brought against the intended recipient of an unsolicited credit card, which has never been received by him, we cannot in principle oppose that. Certainly the intended recipient should not be obliged to pay one cent for a card which he never received.

Mr. McCURE. You keep referring to suits, but I am sure you as a practicing attorney recognize there can be a great deal of legal harassment and quite a lot of actual loss to a person short of actual liability determined by a court; is that not correct?

Mr. POLLOCK. It is possible that many things could happen. For example, the chandelier could fall. But the fact of the matter is that our experience has been that there is no harassment, and that where the intended recipient of a card states that he did not receive the card and that it must have been used by someone else, the total inconvenience would normally consist of nothing more than a polite phone call between the intended recipient and the bank.

After all, we have to remember that this man is typically already a customer of that bank. Any harassment of the sort suggested would be exactly contrary to the best interests of the issuer.

Mr. McCURE. Mr. Pollock, I would judge from your answer, then, the people you represent would have no objection to that kind of an absolute liability being imposed by legislation upon them if there were such harassment—what you say is as remote as the falling of the chandelier?

Mr. POLLOCK. We would have no objection in principle, but we see no reason which would exist for the enactment of such legislation, because in our view the problem is a nonexistent one.

Mr. McCLURE. I am sure the bank does not feel a very great hazard from the falling chandelier, but I am not sure they would not feel a great hazard from your statement.

Mr. POLLOCK. I think, Mr. McClure, there have been more chandeliers that have fallen than there have been intended recipients that have been abused in the way suggested here.

Mr. McCLURE. I would suggest the Congress does not drop chandeliers, but they might impose liabilities.

I would also invite you to read the reports of these hearings and I do not think you would ever again make the statement that there is absolutely no evidence of any harassment.

Thank you very much, Mr. Chairman.

Mr. POLLOCK. Again, Mr. McClure, I think inquiry will demonstrate that any problems which have arisen have invariably involved people who have accepted credit cards and have thereafter lost the cards.

Mr. McCLURE. I would just rejoin that if you will read the record, I do not think you will make that statement any further.

Mr. NIX. Let me just say this, Mr. Pollock: It is a very dangerous thing to mention chandeliers. The ceiling here fell a short time ago without notice. I see you are not sitting under it.

Mr. POLLOCK. I assume, Mr. Chairman, that no such legislation has been enacted.

Mr. NIX. Mr. Daniels?

Mr. DANIELS. Thank you, Mr. Chairman.

Mr. Pollock, you stated that the Midwest System has one and a half million cardholders and 90,000 merchant outlets, and that the Midwest System was created in 1966 by five banks in Chicago and one in Indiana?

Mr. POLLOCK. Yes.

Mr. DANIELS. How many of the cards that have been mailed out by this Midwest System were stolen from the intended addressees?

Mr. POLLOCK. I assume you are speaking now of the startup period in 1966?

Mr. DANIELS. I am talking about the entire period from 1966 up to the present time.

Mr. POLLOCK. As I indicated before, since the startup period, the use of the unsolicited mailing technique has been used almost entirely by new members who have just gone into the business.

Mr. DANIELS. Mr. Pollock, you are a pretty good lawyer. I can detect that from the way you are articulating here. You are not responsive to my question.

A million and a half credit cards have been issued?

Mr. POLLOCK. It may well be more than that. A million and a half cards are outstanding at this time. I do not have the figures as to the number of cards which were used fraudulently.

Mr. DANIELS. Let me put the question differently. I want the opportunity to ask you a question before the House bells ring.

Mr. POLLOCK. Surely.

Mr. DANIELS. Answer this question: Since the Midwest System was created in 1966, how many thefts of credit cards were reported to the Midwest System?

Mr. POLLOCK. I do not have that figure. I would be happy to try to obtain that for you, Mr. Daniels.

Mr. DANIELS. Well, I got caught by the bell.

Mr. POLLOCK. I would be happy to obtain the figure. I would like to tell you this, though, that currently the fraud encountered by the Midwest Bank Card System is something under one-eighth of 1 percent.

Mr. DANIELS. How much does that mean in dollars?

Mr. POLLOCK. Well—

Mr. DANIELS. You quoted a percentage. Now tell me the corresponding dollar value.

Mr. POLLOCK. Probably the total dollar volume for the system in a year would be between \$150 million and \$200 million. If I were more of an accountant than a lawyer, I could quickly make some calculations.

Mr. DANIELS. So over a 3-year period, it would be anywhere from \$450 million to \$600 million?

Mr. POLLOCK. I want to make clear that the fraud loss during the startup period was higher than one-eighth of 1 percent, Mr. Daniels. I do not want you to assume that that represents the figure for the entire period. I am talking now about the current rate of fraud.

In the installment loan business or in the consumer credit business generally, regardless of the particular kind of credit involved, it is regarded as an extremely enviable record.

Mr. DANIELS. Have the post office inspectors had occasion to step into any of these cases where credit cards were stolen?

Mr. POLLOCK. Oh, yes. As a matter of fact, there was a series of indictments of postal employees, and, more recently, a series of indictments of merchants in the Chicago area who had conspired to utilize these cards in an improper way.

The Midwest Bank Card System has cooperated on an intimate basis with the Post Office Department and its inspectors to try to reduce fraud, and that cooperation and liaison have been, we think, extremely successful.

One of the things covered in my prepared statement is a detailed explanation of how one bank recently went into the business and how it followed carefully the suggestions and guidelines of the Post Office Department, with great success, not only from a commercial standpoint, but also in terms of avoiding fraud and in terms of avoiding inconvenience for cardholders.

Mr. DANIELS. As a result of the criminal indictments you just spoke about, was not some inconvenience caused to the addressees of those credit cards who had to appear before the grand jury and in court to testify?

Mr. POLLOCK. I would say that there was no substantial inconvenience. If there were more than a handful of cardholders who testified before the grand juries in those cases, I would be very much surprised.

By and large, these indictments were obtained on the basis of testimony from witnesses other than cardholders, and on the basis of merchant records.

Mr. DANIELS. You intimated that there is no need for this legislation; that it is intended to give some adequate protection to the Post Office Department, and also there is an inference in the course of your testimony that the Post Office Department does not employ proper security measures.

What security measures would you recommend to the Post Office Department in order to offset these thefts from the mail?

Mr. POLLOCK. I do not mean to suggest that the Post Office Department today is not seeking through its best efforts to protect these cards, but I think the Post Office Department will be the first one to tell you, for example, that there are certain post offices in the country where an issuer should not deposit a credit card, whether it be an unsolicited credit card or a solicited credit card, simply because of the hazards involved.

The guidelines which the Post Office Department has given to the banks at the present time are, to a great extent, set out in my prepared statement, and these are followed today.

Mr. DANIELS. But, Mr. Pollock, you made the statement that the Post Office Department had not taken proper security measures. Now I would like to know just exactly what you meant by that remark.

Mr. POLLOCK. I do not think I said that the Post Office Department had not taken proper security measures; but I will say that in the 1966 startup period, the members of the Midwest Bank Card System perhaps overestimated the security conditions operative in certain post offices in the Chicago area. It was a bitter experience to learn that this confidence was misplaced.

Since that time, with the cooperation of the post office inspectors, mailings are planned very carefully and usually handled, as my prepared statement indicates, at preselected post offices which have been chosen because, in comparison with certain other post offices, they are regarded as relatively safe from a security standpoint.

Mr. DANIELS. Would you say the Postal Inspector Security Service is doing a relatively good job today?

Mr. POLLOCK. Yes, we have enjoyed very much working with the post office inspectors in trying to eliminate credit card fraud, and I think that they are as understanding of the problem as we are.

Mr. DANIELS. Mr. Chairman, may I request, through you, of this witness that he furnish this committee with a statement as to the number of credit cards that have been stolen since the Midwest System went into business in 1966, and the dollar value of the merchandise involved?

Mr. NIX. Have you any objections to complying with that request, Mr. Pollock?

Mr. POLLOCK. I do not have that information myself, but I certainly will endeavor to obtain it for this committee.

Mr. NIX. Please send it to the committee.

Mr. POLLOCK. All right, sir.

Mr. NIX. Thank you very much.

The subcommittee will stand adjourned, subject to the call of the Chair.

(Whereupon, at 12:20 p.m., the subcommittee was adjourned, subject to the call of the Chair.)

(The prepared statement of Mr. Pollock follows:)

STATEMENT OF EARL E. POLLOCK ON BEHALF OF MIDWEST BANK CARD SYSTEM, INC.

My name is Earl E. Pollock. I am a member of the Chicago law firm of Sonnenschein Levinson Carlin Nath & Rosenthal, counsel to Midwest Bank Card System, Inc.

I appreciate the opportunity to appear at this hearing to present the views of the Midwest Bank Card System. It has a deep and vital interest in the subject of credit cards. In addition, as it commences its fourth year of operations, the System has had considerable experience with some of the problems of establishing and operating a credit card program.

Midwest Bank Card System, Inc. is not itself an issuer of credit cards. Instead, it is, in substance, a cooperative association of banks which issue credit cards. Organized in the form of a not-for-profit membership corporation, one of its primary functions is to provide a framework for the interchange of credit card transaction slips among System members. In this respect, it is quite analogous to a clearing house through which checks deposited at one bank are paid by another bank.

The Midwest System was founded in November 1966 by five Chicago banks and one Indiana bank. Today the System has 17 members located in four states—Illinois, Indiana, Michigan and Kentucky. Some of these banks are among the largest in the country; some are of extremely modest size.

In addition, correspondence of the member banks participate in the System, primarily as banks of deposit for charge slips deposited by merchant customers of the correspondents. There are some 835 correspondent banks participating in the Midwest System in this manner, although they are free, of course, to join as full-fledged members if they wish.

The Midwest System has 1.5 million cardholders and 90,000 merchant outlets.¹ To a very large extent, these merchants are small independent retailers, who are probably the most significant beneficiaries of a bank credit plan such as Midwest. As a result of the members' promotional efforts and the System's credit mechanism—which gives them "instant cash" for their sales slips (less a nominal discount)—retailers of this type find that their participation in the System not only enlarges greatly their customer potential but also goes far to help them compete on an equal basis with large merchandisers. At a cost considerably below what it would cost them to operate their own credit programs, these small merchants do not have to wait, 30, 60 or 90 days to get their money; they get it immediately and are able to use their often-limited resources to build up their inventory to better serve the sharply expanded market open to them because of bank card plans such as Midwest.

In this way, the bank card is an important aid in maintaining the competitive vigor of tens of thousands of small businesses throughout the country. The bank card also provides another democratic function in our society by affording credit card privileges to millions of families with moderate income and good payment records. The typical holder of a bank card has an annual income of 5,000 to \$15,000. These consumers now can have the convenience and other benefits that previously were limited to high-income families and to businessmen with expense accounts.

Midwest was the first *compatible* credit card system to commence large-scale operations. What do we mean by a *compatible* system? It works like this: Each bank *independently* issues cards to cardholders and enrolls merchants to accept cards, but with the understanding that cardholders and merchants will be *interchangeable*. In other words, every cardholder has the right to use his card at every merchant enrolled in the Midwest System; the cardholder therefore does not care (and usually does not even know) which member bank enrolled the merchant. Conversely, every merchant enrolled in the System agrees to honor the cards of all Midwest members because his bank has agreed to purchase the sales slips from him; as a result, the merchant generally could not care less which bank issued the card that his customer uses.

Despite this measure of cooperation among members, competition in the Midwest System has been intense, particularly during the start-up period in the fall

¹ In addition, by virtue of Midwest's membership in Interbank Card Association, Midwest cardholders who are granted national interchange privileges may use their Midwest cards at over 500,000 other merchant outlets throughout the country and abroad.

of 1966. During that period, each member was naturally anxious to enroll as many worthwhile merchants, cardholders, and participating banks as possible, since the bank's success or failure in these efforts would directly determine the bank's income from its card operation. With respect to cardholders, each of the banks utilized a great deal of advertising to promote the use of its own card. The banks also utilized a device which had been employed in the launching of almost every bank credit card program—namely, the mass distribution of unsolicited cards to persons on pre-screened lists. As noted by a report of the Federal Reserve System, “. . . unsolicited mailing was the logical course to pursue if a large merchant-mailing cardholder-base were to be developed in Chicago.”²

As the Midwest experience illustrates, the mass distribution of unsolicited credit cards is a technique used primarily during the start-up of a credit card program. As a result, if that technique were ever outlawed or curtailed, the restriction might even redound to the benefit of our present members by making it considerably more difficult for would-be competitors to get into the business.³ Nevertheless, despite that possible advantage, the Midwest System—as a matter of principle—strongly opposes any such prohibition, whether in the form of legislation or administrative regulation. We have no desire to obtain an unfair competitive advantage over anyone merely because our members were earlier than others in launching their charge card programs.

It is against this background that we approach the subject of today's hearing. H.R. 14346 would ban the mailing of unsolicited credit cards directly; while H.R. 13244 would almost certainly accomplish the same end indirectly. Measures of this sort are presumably designed to reduce the theft of cards and inconvenience to citizens. The fact is, as we shall see, that they would probably have the opposite effect. Furthermore, such measures are based on a whole series of resolutely held misconceptions about credit cards generally and unsolicited ones in particular.

For example, it is sometimes asserted that the increased use of credit cards is inflationary and may have adverse effects on monetary policy. Those charges were recently examined in depth by the Federal Reserve System and found to be without any substance.⁴ In its report the System also found that, “in the period when the bank credit card and check credit plans have shown their most rapid expansion, there has been no marked change in the relative indebtedness of consumers.”⁵ The Federal Reserve System's latest findings in this area were summarized by Governor Andrew F. Brimmer, less than two months ago, when he said:

“It is becoming increasingly evident that credit extended through bank credit cards is being used as a substitute for some other forms of credit. However, there is no evidence suggesting that the total amount of bank credit extended to consumers has accelerated because of the spreading use of cards.”⁶

Another strangely prevalent misconception is the notion that the intended recipient of an unsolicited credit card is responsible for charges made with the card even though he never receives it. Nothing could be further from the truth. For example, after making an intensive study of the 1966 mass mailings of unsolicited credit cards by the five Chicago charter members of the Midwest System, the Federal Reserve System concluded:

“As far as is known, no individual was held responsible for charges made by persons not authorized to use his card. Until the individual accepted the card by signing or using it, the bank was held liable. While he may have been con-

² Federal Reserve System, *Bank Credit-Card and Check-Credit Plans*, p. 73 (1968). The report also states (p. 74): “The unit-banking structure in Illinois and the highly competitive nature of banking in Chicago were important reasons for using unsolicited mailings in that area and at the same time were the cause of some of the difficulties associated with the mass mailings of credit cards. The large unit banks in Chicago—operating, as they do, in a non-branch-banking State—did not have the merchant or individual customer contacts necessary to build a large merchant- and cardholder-base. One of the reasons for entry into the credit-card field had been to expand their retail market. Since credit cards, unlike overdraft banking, do not require a prior customer relation, the bank credit-card field provided entry into a market that in the opinion of some had been closed by the restrictions on branching. In order to tap this market, unsolicited card mailings were considered essential.”

³ See also Pollock, *Credit Cards—A Legal Viewpoint*, *The Magazine of Bank Administration*, December 1968, pp. 6, 8.

⁴ Federal Reserve System Report, *supra*, pp. 61–62.

⁵ *Id.* at 60.

⁶ Andrew F. Brimmer, *New Horizons in Credit Card Banking*, Remarks Before the Seattle Clearing House Association, Sept. 23, 1969, pp. 18–19.

cerned initially about his liability, this concern now appears to be a thing of the past."⁷

This finding was updated, and enlarged, in Governor Brimmer's recent statement on bank credit cards. As he pointed out, "If there are banks which do [i.e., attempt to hold the intended recipient responsible for an unsolicited card which is lost or stolen in the mail], at least the Board is not aware of them."⁸ We are likewise unaware of any bank—or, for that matter, any other issuer of credit cards—which follows such a practice. Moreover, as Governor Brimmer also pointed out, there would not appear to be any legal basis for imposing liability on the intended recipient in those circumstances, even without the statutory protection which has recently been enacted in Illinois, Massachusetts, New York, Wisconsin and possibly other states.

Nor is it true, as a general matter, that "the intended recipient is unaware there is a card or that an account is established in his name."⁹ Instead, it has become a common practice for the card issuer to send a "pre-mailer" notifying the customer that a card is going to be sent and, then after sending the card, to notify the customer that the card has been sent, or to call the customer after the first use of the card, or to do both.¹⁰

We certainly do not mean to suggest that the theft of credit cards from the mails does not present a problem. Of course, it does. But the risk is basically that of the card issuer, not the intended recipient. And the remedy is, not to ban cards from the mails, but instead to improve security arrangements on the part of the Post Office Department as well as card issuers.

Banks have effectively demonstrated (and the Federal Reserve System has found) that credit cards can be made drastically less "thrift-prone". The accomplishment of that objective, however, would certainly not be helped—and might well be hindered—by enactment of the bills under consideration here.

To begin with, neither of the bills even affects the mailing of requested cards or replacement cards or the theft of cards already received by the cardholder. Instead, the bills are aimed almost exclusively at the mailing of unsolicited cards, apparently on the premise that this is the main source of credit card fraud. But any such premise is incorrect. By and large, misappropriation and fraudulent use of credit cards have very little to do with whether the credit card was mailed unsolicited or not. Indeed, today many of the main hazards of card theft do not involve the mails at all. Take, for example, a pickpocket's theft of a cardholder's wallet that contains credit cards, or the theft of cards from an accidentally misplaced wallet; such thefts are totally unrelated to the manner in which the cardholder had received the card.

Moreover, even with respect to the mailing of unsolicited cards, adoption of H.R. 13244 would, in all likelihood, increase the risk of theft as well as the inconvenience to the intended recipient. This bill would require (1) that an unsolicited card be mailed only by registered mail, restricted to delivery to the address only, and (2) that the face of the envelope bear a conspicuous legend disclosing that the envelope contains an unsolicited credit card.

Use of registered mail is, in the experience of the Midwest System, a wise and worthwhile procedure, at some post offices and in some delivery areas. Mandatory use of registered mail is quite another thing. To require this procedure on an "across-the-board" basis, regardless of the circumstances, would lead to unnecessary costs for the card issuer, unnecessary administrative burdens on the Post Office, and unnecessary inconvenience to the cardholder and his family.

This inconvenience (which Governor Brimmer has described as "the really important objection to the use of registered mail in the distribution of unsolicited credit cards. . .")¹¹ would be substantially increased if delivery were restricted solely to the addressee, as H.R. 13244 would require. In the usual situation, the card is addressed to the husband and father, who is at work when the card arrives—and who will be at work, typically, during all of the hours of postal delivery with the exception of Saturday mornings. If he wished to have the credit card, as so many working people do, he would then be obliged to either arrange to have the card redelivered on a Saturday morning or make a special trip to the Post Office.

⁷ Federal Reserve System Report, *supra*, p. 75.

⁸ Governor Brimmer's Remarks, *supra*, Sept. 23, 1969, p. 14.

⁹ See Federal Trade Commission Notice of Rulemaking Proceeding, May 13, 1969.

¹⁰ Federal Reserve System Report, *supra*, p. 75.

¹¹ Governor Brimmer's Remarks, *supra*, Sept. 23, 1969, p. 11.

The other main requirement of H.R. 13244—that the face of the envelope disclose the presence of the credit card inside—can only be regarded as extremely hazardous. A legend of the sort proposed would virtually constitute an open invitation to steal. The experience of the Midwest System would indicate the desirability of precisely the opposite policy—even going so far as to avoid identification of the sender on the face of the envelope and to use a “carrier” inside which makes it impossible to detect the card by feeling the envelope.

These are just some of the many methods which banks, without the necessity of legislation, have employed to make their credit card mailings less “theft prone.”

Let me describe to you how a fairly typical mass mailing was recently planned and conducted. In this instance, the bank was a new member of the Midwest Bank Card System. The bank is located in Chicago and had not issued credit cards before.

The first step was preparation of the mailing list. This particular bank started with two of its customer lists: its checking account depositors, and its installment credit customers. Lists of savings account depositors, trust accounts, and other lists of bank customers were not used in preparing the initial mailing list, but later those customers were mailed credit card applications. The checking account list and the installment credit list were screened four times—once by computer and three times by hand. In the checking account list, the computer screened out depositors whose minimum balance had at any time within a number of years fallen below a prescribed amount and screened out those who had had a check returned for insufficient funds. Likewise, any person who had been delinquent in making installment payments was screened out.

While the mailing lists were being prepared, and starting two to three months before the first mailing took place, the bank began its consultation and cooperation with Post Office Inspectors. They gave the bank specific, and apparently very sound, advice on the “Do’s and Don’ts.” That advice included the following:

1. Notify the Department, before mailing begins, of the actual dates of planned mailings. That was done, and the postal authorities placed extra security personnel in the post office which was selected for the mailings.
2. Mail from a post office of proven reliability from a security standpoint. For this purpose, the Inspectors recommended some seven post offices, and the bank selected from the list a suburban post office which was most convenient to the place where the credit cards were embossed.
3. Avoid mailing between the 25th of the month and the 5th of the following month for first class mail, and mail registered mail before the 27th and 28th of the month. This recommendation reflects the wisdom of not having credit cards in the mail at the same time as social security and welfare checks, because of the high incidence of those checks being stolen from mail boxes.
4. Stagger the mailings over a period of time, mailing 4-6,000 per day.
5. Don’t use a “Do Not Forward” legend on the envelope, but instead use an “Address Correction Requested” legend. The bank did so, and paid the standard Post Office fee for address correction slips, in order to reduce its exposure on cards sitting at a Post Office.
6. Avoid any external identification or clue to the contents of the envelope. The Post Office Inspectors also cautioned against use of any advertising or other wording in the postage meter stamp which would identify the sender or contents, and further cautioned that the credit card account number should not be visible through the address window.

In addition to those measures, the bank designed and used a credit card carrier which is entirely flat. As already indicated, the purpose is to make it impossible to detect the card embossing by feeling the envelope. The carrier is corrugated cardboard with one layer having a cut-out into which the credit cards fit, with a paper sealer on the top of the carrier and cards.

The bank sent “pre-mailers” 45 days before mailing of credit cards was scheduled to begin. The pre-mailer informed the addressee—who, as I explained, was a bank customer who had passed a rigid screening—that a credit card was being prepared and would be sent to him unless he returned an enclosed form to notify the bank that he did not want the credit card. The negative response was only about 10 per cent.

The cards were then mailed in accordance with the security procedures previously worked out. The Post Office supplied the bank with mail trays and the bank itself arranged the mail by zip code in the trays. About one-third of the cards went by registered mail; the balance, by first class mail.

The bank delivered the registered mail to the Post Office in bundles of 20 pieces each. A receipt in duplicate was prepared by the bank, as required by postal Regulation, and wrapped around each bundle. This procedure enabled the Post Office to receipt for the entire registered mailing in about four hours. Despite that, and despite the fact that only about one-third of the mailing was by registered mail, it took the Post Office two days to process the registered mail.

After the mailing was completed, the bank sent to each person on the mailing list a letter saying that a card had recently been sent to the person. The letter requested that the addressee call a given number if the card was not received within the next five days.

The bank received only a few complaints from recipients of cards. Some of these persons returned their cards, but the rate of return was negligible. Other customers called the bank. The bank executive who handled the complaints pointed out in each case that the complainant had received a letter saying that a credit card would be sent unless the enclosed form was returned, and that the complainant had not returned it. In each case that was about the end of the complaint. Many of the persons who called to complain kept their cards.

The bank feels that the amount of annoyance or ill will generated by its mailing has been insignificant. Its experience to date confirms that the bank's careful planning, and its consultation and cooperation with postal authorities, have worked effectively. Nevertheless, to be doubly sure, the bank is at present calling each cardholder after the first use of the card to verify that it was used by an authorized person.

These procedures, and the procedures followed by other banks and probably by other issuers of credit cards, do not impose any substantial burden or inconvenience upon the addressee. The use of the pre-mailer is now quite common. In fact, it is recommended by the Federal Reserve Board in its guidelines and those of the Office of the Controller of the Currency, which are used in examination of all national banks and state member banks.¹²

Even if a customer neglects to return the negative response to the pre-mailer and receives a card he does not want, all that needs to be done is to cut the card in two or three pieces with an ordinary scissors; or, if the recipient prefers, he can simply mail the card back to the issuer. Surely any such trivial inconvenience to a scattered few is vastly outweighed by the proven convenience of credit cards to the millions of cardholders who receive and use cards as well as the thousands of small businessmen who rely heavily on this credit service.

In summary, our objections are—

First, the proposed legislation—which, either directly or indirectly, would ban the use of an essential technique for entering the credit card field—is patently anti-competitive since it would shield those already in the field from the competition of newcomers.

Second, mandatory use of registered mail irrespective of varying circumstances is unnecessary and unwise. It would place a needless burden on the postal system, and cause needless annoyance to consumers, particularly if the registered mail is required to be restricted to delivery to the addressee only.

Third, the proposed legend on the face of the envelopes would make credit cards substantially more "theft-prone."

Fourth, the bills completely fail to meet the problem of theft of credit cards from the mails.

That problem is fundamentally one of protecting the integrity of postal operations—a function for which this Subcommittee, of course, has special responsibility. But the integrity of postal operations would not be protected by banning the mailing of credit cards, whether unsolicited or otherwise. Instead, the imposition of any such ban would represent simply a tacit admission that the Post Office Department is incapable of safely transporting such mail. We do not believe that any such wholesale indictment of the Post Office Department is justified. Substantial improvements in security have already been worked out through the cooperation of credit card issuers and postal authorities. And if any change is necessary, it is in the direction of further improvements of this nature.

For these reasons, the Midwest Bank Card System opposes both bills and urges their disapproval by the Subcommittee.

¹² Governor Brimmer's Remarks, *supra*, Sept. 23, 1969, pp. 8, 10.

(The letter which follows was received for inclusion in the record.)

THE UNIVERSITY OF WESTERN ONTARIO,
London, Canada, November 6, 1969.

Hon. ROBERT N. C. NIX,

Chairman, Subcommittee on Postal Operations of the Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN NIX: In reply to your letter of October 14 requesting some information on the credit card situation in Canada I thought that you might like to know that there is no legislation whatsoever with respect to the Civil Liability that may attach to a holder of a credit card, solicited or unsolicited. The fraudulent use of a credit card to obtain goods or money is an offence under our Criminal Code but law enforcement officers have indicated to me that very few prosecutions have taken place which relate solely to the use of a lost or stolen credit card.

Most provinces of Canada have now enacted legislation similar to the Truth in Lending Law of the United States requiring the disclosure of the financial and other terms associated with a credit card agreement and these parallel very closely those contained in the Truth in Lending Law recently enacted by your Government.

There has been some talk of legislation dealing specifically with unsolicited credit cards in Canada, but there has been little or no serious movement in this direction.

It is my opinion that many of the problems caused by credit cards do not result from the manner in which they are distributed except insofar as the wide spread dissemination of credit cards through unsolicited mailings will obviously yield more lost or stolen cards to the criminal element who wish to take advantage of such situations. From what I understand, more credit cards are taken from automobile glove compartments and stolen wallets than are taken from unsolicited mailings. Furthermore, whether solicited or unsolicited, the cards may be stolen.

From what I have been able to determine of the law in the United States, and the Canadian law would be similar, no liability would attach to a card holder until he has received the card and he actually uses it. Until such time there can be no possible contract enforceable by the card issuer against the card holder.

A more serious question, in my opinion, is the distribution of losses stemming from the unauthorized use of credit cards, and the sharing of those losses between the card issuer, the merchant or card honourer, and the card holder. Probably the best legislation is that which would limit the liability of the card holder to some stipulated amount, say \$50.00.

More important, however, is the availability of agencies to which a card holder may turn so that his case may be taken against the card company and its computer. From what I have been able to glean, mistakes most often occur in the industry because of a computer breakdown. As we enter the computerized society it appears that some checks will be necessary and the average person must be provided with the facilities whereby he can communicate effectively with the computer. It is this part of the rapid growth of the credit card industry that is, perhaps, more frightening.

I hope my comments have proved useful to you. I look forward to receiving copies of your hearings when printed.

Sincerely,

MITCHELL H. GROPPER.

THE PLASTIC JUNGLE

WEDNESDAY, JANUARY 28, 1970

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON POSTAL OPERATIONS OF THE
COMMITTEE ON POST OFFICE AND CIVIL SERVICE
Washington, D.C.

The subcommittee met at 10 a.m., in room 210, Cannon House Office Building, Hon. Robert N. C. Nix (chairman of the subcommittee) presiding.

Mr. Nix. The subcommittee will be in order. We are here today to resume our hearings on the mailing of unsolicited and unwanted credit cards.

Banks and other institutions defend this hard sell device because they say that people do not voluntarily join credit card plans in any great numbers. For instance, the Marine Midland Trust Co. of New York in testimony before the Federal Trade Commission, stated that the results of two experiments showed that out of 33,000 requests for credit card applications they received less than 1 percent in replies. Whereas, 90 days after a mass mailing of unsolicited credit cards, 19 percent were in use.

An apt comparison would be to the Government's efforts to enlist people in the Army as opposed to drafting them by mass mailings from selective service. When you get an unsolicited credit card, you have been drafted into the credit card army.

We will hear testimony today on the mailing of credit cards to bankrupts, and we have already noted the mailing of credit cards to children.

Credit cards can now be used for the payment of State and Federal taxes, weddings, groceries, and charitable donations, all at approximately 18 percent interest.

The 18 percent interest banks and others receive from credit card operations results in some peculiar attitudes. For instance, the New York Chemical Bank recently spent a quarter of a million dollars on an advertising campaign in the New York City area pleading with people not to borrow in order to fight inflation.

At the same time, the same bank was flooding the New York City area with a mass mailing of unsolicited credit cards.

What explains the different view of that bank toward consumer loans and credit cards? The difference is that consumer loans pay 12 percent interest and credit cards draw 18 percent interest, and apparently banks believe in high interest as a cure for inflation and as a simultaneous stimulant to business.

This belief in high interest as a cure for other people's financial stress seems to be shared by the Federal Reserve Board.

Money which used to be available for loans to consumers and for home loans has left for the mass credit card market. We are a million homes a year behind our national goals, yet there is no mortgage money because it only pays 8 percent a year.

If this keeps up, all loans for homes and other necessities could be driven up to the 18 percent a year bracket.

There have been many television advertisements this past Christmas portraying cab drivers who sent their wives to Hawaii for a Christmas vacation. How did he do it? He used his credit card. He didn't need money. He has a year to pay—at 18 percent.

I suppose trips to Hawaii will be the usual thing for the foreseeable future. Only the financial world will be happy over that kind of exchange. The rest of us will have to live in the plastic jungle, with trips to Hawaii to make us forget that we live in an ill-housed country.

Our first witness today is one of the most outstanding Members of the Congress of the United States, who is deeply interested in the question before this subcommittee.

I personally welcome, and we are honored to have as our first witness, the Honorable Arnold Olsen, Member of Congress from Montana. Mr. Olsen.

TESTIMONY OF HON. ARNOLD OLSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA

MR. OLSEN. Thank you, Mr. Chairman, and thank you for your flattering remarks. I am very much interested in this legislation. I want to say that I congratulate you and the members of the subcommittee for your courage in taking up the subject of unsolicited credit cards.

Unsolicited, and unwanted credit by mail may benefit some banking interests but in the long run this advertising device will not only injure the individuals who are subject to the losses from the theft of 300,000 credit cards a year, but the economy as a whole.

Credit cards add to inflation because they carry an 18-percent interest charge on credit card debt over 30 days old. A further 3 to 7 percent added to the merchants' costs of doing business in discounted debt can only have an inflationary effect.

It is curious that the Federal Reserve Board defends the credit cards use as both a stimulant to business and noninflationary. This same Board keeps fighting for high interest rates generally, and they have been so successful that they have successfully injured the housing industry at a time when we need 1 million more homes a year than we are building.

Credit card purchases now amount to \$13 billion a year. I submit that in robbing the housing industry of money by high interest rates, we are robbing the American people of the housing we need. It isn't a question of catching up. It is a question of not getting further behind with housing in America, which is what is happening.

The financial interests that benefit from the credit card explosion are indifferent to public opinion, the press, and up to now they have been indifferent to the Congress. They are even indifferent to the edi-

torial pages of the Wall Street Journal. On September 15, 1969, in an editorial, "Credit by Mail," the Journal said in part:

Still, a simple sense of responsibility would seem to counsel against the mailings. Freshly stolen credit cards are worth \$50 each on the black market in New York: their theft is a growing problem, according to Post Office officials. Thus an unknowing target of a credit card mailing might wind up going to court to prove himself not responsible for payments charged to a stolen credit card.

While it is unlikely that credit card mailing will bring on another recession or depression, the practice does raise enough questions to buttress our view that beyond the danger to individuals, future economic stability might better be served by extending credit according to the expressed demand of consumers, rather than the aggressive encouragement of the credit industry.

Such misgivings are even shared by some of those who indulge in the credit card mailings. One banker reportedly told the FTC hearings that "competitive situations mean that sometimes you temper what you think is the right thing to do." Unfortunately, if businesses don't do the right thing on their own, they risk having Government step in to do it for them.

I believe that it is time for Government to step in, and may I point out that the States of New York, California, Alaska, Connecticut, Illinois, Maryland, Massachusetts, Minnesota, New Mexico, North Dakota, Ohio, South Dakota, and Wisconsin have already done so.

I disagree with the editorial of the Wall Street Journal in only one particular. I think that the forced stimulation of an inflationary economy for short-term profits for the few, through unwanted credit by mail, can result in a depression or recession. A depression is a condition where people can't keep the promises they have made to pay debts, which they expected to pay out of future income.

The mass mailing of credit cards is the evil we have to confront. It is financial pornography and it operates the same way. In October of last year, the New England Bank Card Association made a mass mailing of 2 million unsolicited Master Charge Cards. This was done at a time when the Federal Reserve Board and representatives of the credit card industry were assuring the world and this subcommittee that they were using restricted mailing lists. So you see, they aren't very accurate when they discuss their own business and its impact on an inflationary economy.

What are some of the results of this type of mass mailing? Roger Gelpy of Marblehead, Mass., is 9 years old and he received his unsolicited credit card this fall, with which he bought himself a dollar tie. The credit card he received was supposed to entitle him to a \$300 loan.

About the same time, Tony Benitez of Tampa, Fla., received two unsolicited credit cards which were supposed to entitle him to world-wide travel, among other things. He is 5 years old.

A 96-year-old widow from Lima, N.Y., who is living on a \$114 a month social security check, didn't receive her unsolicited credit card. She did, however, receive a bill for \$1,661 for charges against it. She leaves her home once a month to cash her social security check.

Her case isn't unusual since 300,000 credit cards are stolen each year, and postal theft cases involving credit cards have risen 700 percent in the last 4 years. Part of the reason for this may be that loan sharks representing organized crime often demand that their victims obtain credit cards in partial payment of loans.

According to administration sources, \$100 million a year is obtained in goods, services and cash from the fraudulent use of credit cards. In Brooklyn, N.Y., 26 credit cards stolen from the postal service were used to run up \$175,000 in bills. Testimony before this subcommittee showed that in Bronx County, N.Y., stolen credit cards were used to run up \$125,000 in fraudulent bills, with the use of 60 stolen credit cards.

The Wall Street Journal pointed out that stolen credit cards sell for \$50 on the black market and testimony before this subcommittee shows that stolen credit cards can be sold for as high as \$500, on the black market.

There is great advantage to criminals in the mass mailing of unsolicited credit cards, since the theft of an unsolicited credit card from the mails can be used almost immediately, and it will be 5 to 6 weeks before the victim will receive a bill from the credit card company. That is time enough to run up a large bill and resell the card as identification to any criminal who would want it, to establish a new identity.

I note that in testimony before this subcommittee, an industry represented that because of the goodness of these companies, they do not sue the victims of unsolicited credit card mailings.

I point out that in two law review articles, the means of collection short of lawsuit is discussed. In one by a Mr. Murray, entitled "A Legal Empirical Study of Unauthorized Use of Credit Cards," 21 University of Miami Law Review, 1967, interviews by the author showed half the issuers of credit cards try to recover and are successful in 30 percent to 50 percent of their attempts.

Another article to be published in the next issue of the Montana Law Review by the counsel of this subcommittee, Mr. Thomas R. Kennedy, demonstrates that although the legal position of those who are billed for fraudulent credit card spending is strong, the destructiveness of bad credit reports, threatened garnishment and harassing telephone calls to employers make the position of the debtor very weak, in reality, and this may explain the figures used by Mr. Murray in his article. The Kennedy article is entitled, "The Plastic Jungle."

My bill, H.R. 15103, will, if it becomes law, protect mail patrons from unwanted credit by requiring that credit card issuers mail credit cards by registered mail, return receipt requested, with restricted delivery to the person in whose name the card is drawn, in response to a written application.

The Olsen bill would eliminate liability for the fraudulent use of credit cards, unless the credit card bears a photograph and signature of the person in whose name the credit card is issued.

If such a photograph and signature is in place on the face of the credit card, liability for fraudulent use to the cardholder will be limited to \$50.

When credit cards are mailed in violation of the law, the sender will be subject to criminal fines up to \$1,000, per mailing of individual card. No prison penalties are provided for, since in corporate life, persons do things they would not do as individuals and there is very little feeling of personal responsibility on the part of corporate executives. Therefore, it is, I believe, better to penalize the institutions

that benefit from the wrongful act, and the way to do that is through fines.

I want to say here that there is a great difference between liability in the use of credit cards and the liability in the use of checks on a bank account. No forgery of a check on a bank account could run against the person who owns the account. If the bank accepts a forged check on someone's account, the bank can't draw that against that person's account.

But in the case of credit cards, because of the contractual language on the credit card, all of the liability goes against the person who has the credit card, whether it be forged against that credit card or however.

And I say it is no wonder the banks would like to have a system where they are no longer responsible for accepting a forgery. But I think it is wrong. I don't think that any of my property, any of my money, should be liable for a forgery.

The provisions of my bill are based in large part on State statutes. Many more legislatures will act during this coming year in this field, but this is basically a Federal problem since the means of distribution of unsolicited credit cards is through the U.S. mail.

I realize that there will be opposition to this bill, of course. There always is. But particular objection will be taken to the encouragement of pictures and signature blocks on credit cards in return for permitting limited cardholder liability for fraud.

It is true that an individual who goes to the trouble of having his picture taken and made part of a credit card really does want to have the credit card. Someone in his household cannot accept for him.

As evidence of the practicality of this provision, I would like to submit for the record two advertisements, one issued by the Marine Midland Bank, entitled "If You Grow a Mustache, We'll Give You a New Card," which explains the bank's program of placing identifying photographs on their credit cards, and the rear cover page of the "Banking Journal," official organ of the American Banking Association for October, entitled "New Photo Protection From Thieves Gets 4,000 'Inactive' Bank Americards Into Use in Ohio."

Mr. Chairman, I would like to have these advertisements and the Kennedy article entitled, "The Plastic Jungle," which is to be published in the near future, entered into the record.

Mr. NIX. Without objection, the articles will be entered in the record at the end of your testimony.

Mr. OLSEN. I believe that H.R. 15103 will do much to cure the problems of individual citizens who have no protection today from the forced giving of credit by mail. They may not want to pay the cost of this kind of borrowing. What is more, the mass mailing of unwanted credit cards by the million has a disastrous effect on an economy which is suffering from inflation.

Once credit card mailings are limited to those who already want them, this impact will be lessened. I don't think it can be reasonably argued that adding 25 percent to the cost of goods is noninflationary and there has been evidence submitted to this subcommittee showing that small businessmen who are forced to join these plans because of the fear of competition find it very difficult to obtain loans themselves

because of the scarcity of money, which has been channeled out of small business loan funds into bank credit card plans.

In conclusion, let me give one example of this type of thing. The Chemical Bank of New York, in November of 1969, spent a quarter of a million dollars on advertisements urging the public in Metropolitan New York not to borrow—in a combined effort on the part of the bank and the public in fighting inflation.

The same bank has been very strict in its requirements in making business loans, as well as consumer loans. These types of loans earn about 12-percent interest.

At the same time, the same bank was engaged in the mass mailing of unsolicited credit cards. Credit cards draw 18-percent interest on the unpaid debt.

I don't think this bank, or the Federal Reserve Board, which represents the banks of this country, can go on encouraging a recession through high interest rates and encourage inflation at the same time through mass mailings of credit cards.

My bill would stop the mass mailing problem, and we will be able to get out of the plastic jungle without a serious recession. Thank you, Mr. Chairman.

Mr. NIX. I want to thank you, Congressman Olsen, for a real contribution to what we are seeking to do. Mr. Cunningham?

Mr. CUNNINGHAM. I want to compliment my colleague. He is always introducing constructive legislation, and I am awfully pleased that he supports this move on our part.

Mr. OLSEN. I certainly do, and I want to tell you, Mr. Cunningham, that I very much respect the courage of you fellows in taking on this particular program.

Mr. CUNNINGHAM. This committee first took up this matter and Mr. Hanley had the original bill. We had hearings last year. However, one of the Members of the other body, after several months, saw a good thing on the horizon involving credit cards. He got nationwide publicity as if he were the one that was going to do something about credit cards, when—the chairman will agree—we started this series of hearings long before he ever uttered a word on this subject.

So, we have done the spadework on this, and I hope some form of control will be enacted.

Mr. OLSEN. You certainly have done the spadework. I want to say parenthetically that even when you have a credit card legitimately, applied for, there are lots of problems, and troubles with it.

I have an old friend who has been the largest taxpayer in our State of Montana, and he was in Arizona one time and had used a credit card and his family had used the credit card. And later he was there on another trip, and he did not use the credit card. He paid cash, and by check.

But the hotel went ahead and billed the credit card company anyway for the bill—it was a mistake of the hotel. Well, of course, when

he was billed by the credit card company, he would not pay. He simply wrote them a letter—and I am talking about the American Express Co.—he wrote them a letter that he had paid the bill to the hotel, and that the hotel had made the mistake. That this was not his debt.

And he asked them to rebuke the hotel, and he sent a copy of his letter to the hotel.

Well, he kept getting the warnings out of that computer of American Express. There was no way to write a letter to that computer. No way to do it.

It went on for a year, until he got a warning from a vice president that it was going to be turned over to a collection agency. Well, he called the vice president and he had a pleasant conversation with him, and thought it was all settled.

The next thing you know, he did have a warning from the collection agency that his credit was going to be destroyed. This is a man that operates on large credit. Then he had to get hold of somebody with higher authority and with very strong, four letter words, on the telephone, he let them know that American Express was going to have to answer in a lawsuit if they went any further against him for a debt which he did not owe.

Now that is how bad it can be, even if you have a credit card legitimately, because of the computer that you have to argue with. Just think of the problem if you never did get the credit card, and somebody else was using it in your own community. How would you deny that you used it? You would have one hell of a time. You would be in a lawsuit if it was a very big sum. And the coldblooded computer will put you there.

I thank you, gentlemen.

Mr. NIX. I might make the observation that these hearings have established, without contradiction, that the incident that you mentioned before is widespread.

The hearings have further established that many credit cards have been stolen with resultant unpleasantness to people who did not solicit them.

We have elicited from the testimony offered in many of the hearings that the practice has become widespread, and when we hold hearings and the basic information appears that cries out for some action to be taken, then it is inescapable that we are on solid ground in seeking legislation, and I again thank you for your contribution.

Mr. OLSEN. Thank you very much. Mr. Chairman, I ask unanimous consent to supply some material from the Honorable Wright Patman of Texas on the problems of rising interest as we know them.

Mr. NIX. The material to be submitted later by Congressman Olsen will be placed in the record at the conclusion of his remarks today.

Mr. OLSEN. Thank you.

(The material submitted is as follows:)



If you grow a mustache we'll give you a new card.

We have to.

We're the only bank in town that puts your picture on the back of a charge card. At no cost to you.

You get the protection of positive photo identification with all the convenience of a worldwide credit card.

You can take advantage of this exclusive privilege by opening a Marine Midland Master Charge account.

We'll establish a line of credit for you up to \$5,000. Then you can write your own personal loan by simply writing a check. Overdrafts are automatically covered, and we guarantee your personal checks up to \$100.

You can use the Marine Midland Master Charge Card at about half a million counters around the world.

You can use it to travel and entertain.

You can even charge cash with it. At any Master Charge bank.

Pick up an application at your nearest Marine Midland Grace office.

You can do just about anything with the Marine Midland Master Charge Card.

And nobody else can do a thing with it.

Except admire your mustache.



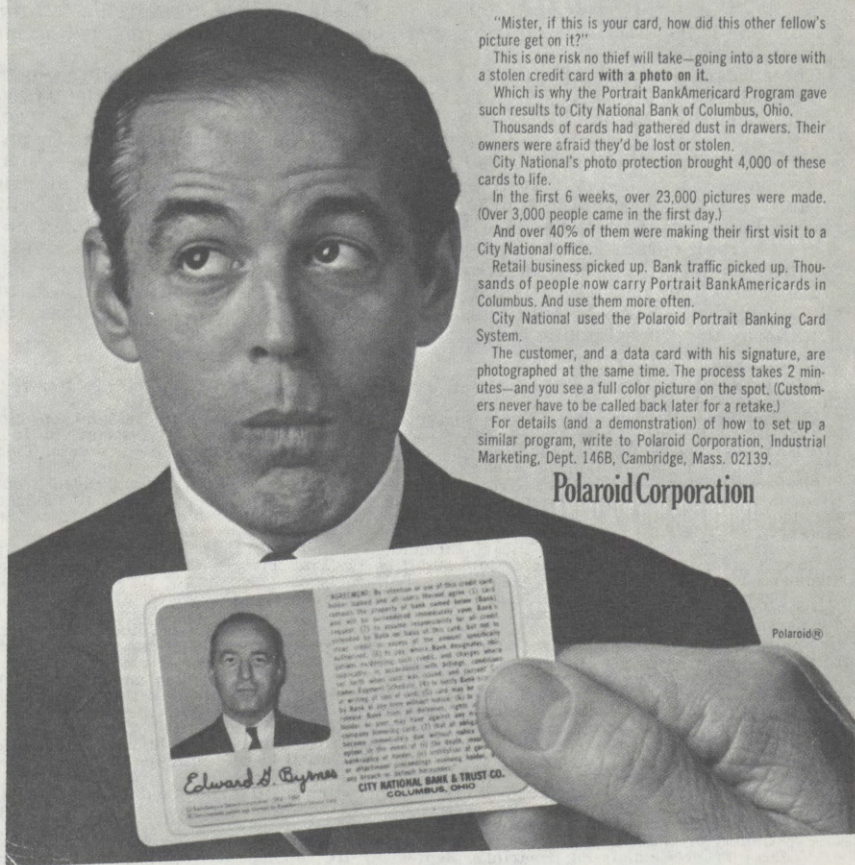
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 Nassau: 366 North Broadway, Jericho • London: 5 Lothbury, E.C.2

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New photo protection from thieves
gets 4,000 "inactive" BankAmericards
into use in Ohio.



"Mister, if this is your card, how did this other fellow's picture get on it?"

This is one risk no thief will take—going into a store with a stolen credit card with a photo on it.

Which is why the Portrait BankAmericard Program gave such results to City National Bank of Columbus, Ohio.

Thousands of cards had gathered dust in drawers. Their owners were afraid they'd be lost or stolen.

City National's photo protection brought 4,000 of these cards to life.

In the first 6 weeks, over 23,000 pictures were made. (Over 3,000 people came in the first day.)

And over 40% of them were making their first visit to a City National office.

Retail business picked up. Bank traffic picked up. Thousands of people now carry Portrait BankAmericards in Columbus. And use them more often.

City National used the Polaroid Portrait Banking Card System.

The customer, and a data card with his signature, are photographed at the same time. The process takes 2 minutes—and you see a full color picture on the spot. (Customers never have to be called back later for a retake.)

For details (and a demonstration) of how to set up a similar program, write to Polaroid Corporation, Industrial Marketing, Dept. 146B, Cambridge, Mass. 02139.

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THE PLASTIC JUNGLE

(By Thomas Kennedy, Staff Assistant, Subcommittee on Postal Operations)

INTRODUCTION

Tony Benitez of Tampa, Florida was never able to use either of his unsolicited credit cards. One of his credit cards was a Master Charge card which he could have used to finance a trip to Europe or buy a new wardrobe. Tony is five years old and he can't sign his own name, although his credit rating is excellent according to the bank that mailed the credit cards to him.¹

Roger Gelpey of Marblehead, Massachusetts was able to use his unsolicited credit card. He bought a dollar tie after he had been turned down for a three hundred dollar loan. He is nine years old.²

A Lima, New York widow didn't buy anything with her unsolicited credit card. She had never received it. Someone else used it and she received a bill for \$1,661. She is 96 years old and leaves her house once a month to cash her social security check of \$114.³

The stealing as well as the mailing of unwanted and unsolicited credit cards is a big business. In Brooklyn, New York, according to testimony by District Attorney Eugene Gold before the Federal Trade Commission on September 9, 1969, twenty stolen credit cards were used to run up bills totaling \$175,000. An unsolicited credit card is easily used by organized crime because the person in whose name it is issued is unaware of its existence. Credit cards obtained through assaults are sent across the country for immediate use because the victim will realize immediately that his card has been stolen. In the case of a stolen unsolicited credit card, thieves may use it at leisure as it will take up to six weeks for the bills to arrive in the victim's mailbox.⁴

The losses that occur as a result of the mailing of unsolicited credit cards to adolescents,⁵ alcoholics,⁶ bankrupts,⁷ and financially overburdened families are paid for by the general public in the form of higher prices.⁸

¹ England, "Mass Mailing Keys Credit Card Operation," *Christian Science Monitor*, November 4, 1969.

² United Press Release, *Los Angeles Times*, October 22, 1969. See also England, *op. cit.*

³ In the past month, member banks of the New England Bankcard Association, Inc. (NEBA) have mailed over two million unsolicited master charge cards to customers. This practice has been common in other areas.

⁴ Robert C. Rier, President of NEBA, defends the practice. 'Each bank decided from their own accounts who would get cards,' he said of the operation here. 'We spent months and months to do the proper thing. In Chicago, they literally handed them out on the street.'

⁵ Subcommittee staff study on Chicago incident. Testimony of Eric E. Bersten, professor of law, University of Iowa, before Subcommittee on Financial Institutions of the Committee on Banking and Currency, U.S. Senate, 90th Congress, October 10, 1968, pp. 90-128. Mrs. Betty Furness, Special Assistant to the President for Consumer Affairs, p. 63, October 10, p. 64, same committee.

⁶ The reference to Chicago by Mr. Rier, referred to the first mass mailing engaged in by American Banks of unsolicited credit cards. They picked the Christmas rush of 1966 to begin this practice. In addition, the Chicago banks are quite competitive and they all sought to build up the most massive lists possible in order to convince merchants that the credit plan individuals were trying to sell individual merchants was the best. Large numbers of cards were stolen. Credit cards were sent to children and the deceased and entire neighborhoods were flooded with the new bankcards from rival Chicago banks. One man received 18 credit cards from the same bank addressed to himself and three each of his sons, aged 9, 11 and 13. The Chicago banks had issued millions of credit cards during the height of the 1966 Christmas rush.

⁷ *New York Times*, November 26, 1969, "State Attorney General Louis J. Lefkowitz, reported another incident yesterday, which he said should dispel any doubt that the legislature should pass a law to prohibit the forwarding of unsolicited credit cards."

⁸ Testimony of Gold, Eugene F., District Attorney, Kings County, New York, Transcript of Federal Trade Commission Hearings, September 10, 1969, p. 76. Testimony of Rotker, Seymour, Executive Assistant to District Attorney, Bronx County, New York, at hearings before Subcommittee on Postal Operations, U.S. House of Representatives, October 13, 1969, p. 114, unpublished transcript.

⁹ Miragila, "My \$10,000 Credit Card Binge," *Life*, October 26, 1959, p. 53. A 19 year old took a one month trip across the United States by means of an all purpose credit card. He purchased \$10,000 worth of goods and services, including U-Drive It cars, a silver mink coat for a girl friend, and a puppy for himself.

¹⁰ McDonald, "Credit Cards—Our Funny Money," *Detroit News*, November 4, 1969, p. 1.

¹¹ Jackson, Royal E., Chief of the Bankruptcy Division, Administrative Office, U.S. Courts, at Hearings before Subcommittee on Financial Institutions, Committee on Banking and Currency, U.S. Senate, October 9, 1968, p. 31 *et seq.*

¹² *Ibid.*, p. 33.

Individuals cannot pass on the expense of resisting erroneous claims against them as a result of the fraudulent use of unsolicited credit cards.⁹

What can a lawyer in Billings, or Butte, Missoula or Great Falls tell his client when he has been billed because of the fraudulent use of an unwanted and unsolicited credit card which he never received?

LEGAL LIABILITY AND THE LOST CREDIT CARD

A lawyer can advise his client that his legal position is strong. He can say that even if he requested the credit card and had been using it before it was lost he would be liable for fraudulent use between the time of loss and the time of notification to the credit card company. Since he never received the unsolicited credit card and did not use it, he is not bound by the terms of any agreement which imposes any liability on him for fraudulent use. The credit card company will have to prove, if it brings suit, that the card had been used by the defendant in order to show that he is bound by any of the contract terms associated with the use of the card. These terms are for the most part printed on the card. A comparison of the signatures on the charge slips with the actual signature of the client should clear the matter up.¹⁰

In addition they may allege negligence on the part of the merchant for not obtaining proper identification.¹¹

The client could be advised that regardless of the abusive credit collection letters he has been receiving, credit card companies almost never bring such suits on the basis of unsolicited mailings as a matter of public relations¹² and their poor legal position.¹³

⁹ McDonald, *op. cit.*, In San Francisco, California, Mrs. Lucille Vitorelo received a bill for \$368.78 from a department store. A credit card in her name, sent without her knowledge or request, was apparently stolen from the mails. The store threatened to sue her for the unpaid bill, her credit rating was damaged and she had to pay a lawyer \$175 to prove she was not liable.

¹⁰ IF THERE IS NO CONTRACT placing liability for unauthorized purchases on one of the parties and if neither of the parties has been negligent or acted in bad faith, the credit card holder will not be liable even though he does not report the loss promptly. The only implied duty in the absence of a contract is to exercise due care in handling the card. *Thomas v. Central Charge Service, Inc.* (1965 District of Columbia, Court of Appeals), 212 A2d 533, 15 ALR 3rd 1083, in which a judgment for the plaintiff was reversed.

THE HOLDER MAY BE LIABLE for fraudulent use if he authorizes a third party to make purchases and such a state of facts raises a jury question as to liability. *Jones Store Co. v. Kelly*, 225 Mo. App. 833, 36 S.W. 2d 681 (1931).

UNDER A CONTRACT FOR COMPLETE LIABILITY on the part of a cardholder prior to giving the issuing company notice of loss such terms may be enforced, according to a decision in New York in the case of *Texaco, Inc. v. Goldstein*, 34 Misc. 2d 751, 229 N.Y.S. 2d 51, aff'd 39 Misc. 2d 552, 241 N.Y.S. 2d 495. The facts of this case involved not only the contract term which placed complete liability for fraudulent use on the cardholder but the credit card was an oil company credit card which had no identification but a card number and the court took the position that only the cardholder could save the company from loss by prompt notice.

In *Union Oil Company v. Lull*, 220 Or 412, 349 P2d 243, 1960, the court relied on an analogy between a bank passbook where there is a duty by the issuer to ascertain the identity of the person presenting the passbook, even though a contract term existed which placed all liability for fraudulent use of the passbook on the holder, since the bank as an indemnitee has the duty of exercising reasonable care to protect the indemnitor.

On the other hand, a case involving a contract term placing all liability on the cardholder until surrender of the card was upheld in *Socony Mobil Oil Company v. Grief*, 10 App. Div. 2d 119, 197 N.Y.S. 2d 522 (1960).

The standard clause now used limits cardholder liability for fraudulent use until the card is surrendered or written notice is given the issuer that the card has been lost or stolen. Where a "hot list" of missing cards is issued by the credit card company and the merchant still accepts the card for credit, the contract between the merchant and the credit card company may require the merchant to assume liability. *Bergsten v. "Credit Cards: Distributing Fraud Loss"*, 77 Yale Law Journal, 1418, 1420 (1968).

¹¹ In *Humble Oil and Refining Company v. Waters* (1963) La. App. 7, 159 S. 2d 408, the one whose negligence occasioned the loss must bear the loss. In this case a card was mailed as the result of a telephone request from a person claiming to be a cardholder who had lost her credit card and asking for a replacement. The replacement card was stolen from the cardholder's mailbox. The court held that it was negligent for the credit card company not to ascertain the identity of the caller and that the credit card had been obtained by fraudulent means, and the record of the case was devoid of any fault on the part of the holder.

¹² Pollock, Earl R., Attorney, Midwest Bank Card System, Inc., Postal Operations Subcommittee Hearings, U.S. House of Representatives, November 19, 1969, p. 153 *et seq.* Transcript.

¹³ The credit card transaction which we are discussing is new to the law and unique. It involves a credit card issuer, an honoring merchant who sells diverse products to cardholders. There is virtually no authority, judicial or statutory, that is controlling. The problems arising from the use of this device are discussed in Mafly & McDonald, 49 Calif. Law Review 459, 465 (1960). In addition, legislation has been enacted in each state but relating only to criminal penalties for fraudulent use. Montana's statute is 94 R.C.M. 1823 through 94 R.C.M. 1830.

With this advice in mind, can the case file be closed with an exchange of correspondence between the lawyer and the credit card company? The answer is no.

"AGREE FOR THE LAW IS COSTLY"¹⁴

Estimates of collections on unpaid credit card debts without suit vary from 30% to 50%.¹⁵

Financially responsible families would rather pay an unjust debt than have a lawsuit filed against them with the possibility of garnishment and/or a ruined credit rating, as well as possible difficulties resulting from telephone calls to the breadwinner's employer.

An average American family cannot afford the payment of legal fees in defending a lawsuit over an amount of money which may very well be less than the cost of a defense. A good credit rating is a matter of necessity in obtaining decent housing and, in the land of the automobile, transportation. Certainly no wage earner can afford the damage resulting from a garnishment which brings about the failure to meet monthly payments. Garnishments are the number one cause of bankruptcies.¹⁶

We live in a cashless society in the midst of a credit explosion and we may even see the end of personal checks as a regular means of payment. The debtor, because he lives from check to check and from monthly payment to monthly payment, is not in fact able to refuse to pay even unjust bills. Thus the law has not been kept in balance between debtor and creditor rights.

WHAT'S THE PROBLEM?

American consumer debt stood at \$5 billion dollars in 1945. Today consumer debt stands at \$118 billion and it is growing. The expansion of consumer debt has now reached some final stage with mass mailings of millions of credit cards with no credit check of the addressees.¹⁷

Credit card companies charge merchants from 4% to 7% in discounting credit card bills. The credit card customer pays a monthly interest rate of 1½% or 18% a year as a charge on the portion of his bill that is unpaid as at the end of 30 days. Some credit card companies in addition charge their customers fees for membership and additional services. The merchant may raise his prices to compensate him for the 7% discount on his sales.¹⁸

Many people derive an emotional satisfaction from credit card ownership.¹⁹ According to motivational research expert Dr. Ernest Dichter, the credit card is a "symbol of inexhaustible potency. . . . It gives its owner the wonderful feeling that he has Aladdin's omnipotence in thousands of famous restaurants, hotels and shops throughout the world, even though the chances are that he will never see the inside of a hundred of them."

According to the National Petroleum News of March 1967 (Page 92), "American business is creating credit faster than certain Roman emperors minted money."²⁰ It seems that the flood of credit has created a cashless society, and

¹⁴ Agree, for the law is costly (William Camden: *Remains*), Evans, *Dictionary of Quotations*, p. 378.

¹⁵ Half the issuers try to recover and are successful in 30% to 50% of their attempts. Interview with managers of local bank credit card plan. Murray, "A Legal Empirical Study of Unauthorized Use of Credit Cards," 21 U. Miami L. Rev. 811, 833, 834, 1967.

¹⁶ Jackson, Royal E., Hearings on Bank Credit Card and Check Credit Plans, Subcommittee on Financial Institutions, Committee on Banking and Currency, U.S. Senate, p. 33, October 9, 1968. Subcommittee Staff Study, Postal Operations Subcommittee, U.S. House of Representatives. Filed, September 1969.

¹⁷ Meade, Robert L., Legislative Director, Office of Special Assistant to the President on Consumer Affairs, at Hearings before Subcommittee on Postal Operations, U.S. House of Representatives, November 19, 1969, p. 88 *et seq.* Mr. Meade also stated that credit card losses are over \$100 million a year, stolen credit cards sell in New York City for at least \$50 and that mail fraud cases involving stolen credit cards has risen over 700% in the last four years. According to a United Press International release the consumer debt of the United States has jumped from a figure of \$110 billion that Meade used on November 19, 1969 to a figure of \$118 billion as of December 4, 1969 according to end of October figures issued by the Federal Reserve System.

¹⁸ Patman, Wright, M.C., Chairman of the Banking and Currency Committee of the U.S. House of Representatives, before the Subcommittee on Postal Operations of the U.S. House of Representatives on October 29, 1969.

¹⁹ Brean, "Charge Plans Make Cash Unstylish," *Life*, June 1, 1959, p. 120 *et seq.*
²⁰ "Credit Card Frauds: What You Need to Know About This Growing Danger," *National Petroleum News*, March 1967, p. 92.

at the same time easy credit for some items has led to limited credit for major items such as housing, and harsh collection procedures have resulted in order for some creditors to be the first in line to be paid by the overcommitted debtor.²¹

THE CREDITOR'S WEAPONS

In the new cashless society creditors have protected themselves by the expansion of a computerized, highly organized and until now unregulated credit bureau system.²² With credit a necessity to consumers, and taking into account that one out of every five Americans moves each year, it is natural that this has come about.²³ There is a vast need for credit information and it is sold like any other commodity.²⁴

Credit collection agencies have found a position of great power in the fact that almost every American is an employee in a highly industrialized society.²⁵ The loss of a job is far more devastating to Americans than the payment of a bill, just or unjust. The use of "garnishments" has become a perfected weapon, since almost no consumer can safely fail to meet his monthly payments without facing financial disaster.

In order to redress the balance to some extent it is vital that new regulatory legislation be passed by the Congress and State legislatures. This has begun to happen.

THE GARNISHMENT SANCTION

Since garnishment is one of the chief sanctions against debtors, and the threat of garnishment is a means of collection of disputed bills, it is important to note, in reference to claims resulting from the fraudulent use of unsolicited credit cards, Public Law 90-321, better known as the "Truth in Lending" law.²⁶

Title III of the Act entitled "Restriction of Garnishment" applies federal regulations to all garnishment proceedings and sets up federal standards for future proceedings. This title will take effect on July 1, 1970 (Sec. 504).²⁷

The findings in section 301 of the Act stated that the unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit and that such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce; that the application of garnishment as a creditor's remedy frequently results in loss of employment by the debtor; and the resulting disruption of employment, production and consumption constitutes a substantial burden on interstate commerce.

Further, "the great disparities among the laws of the several states relating to garnishment have in effect destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country."²⁸

The Secretary of Labor, through the Wage and Hour Division of the United States Department of Labor, shall enforce the provisions of the Act (Sec. 306).

Section 303 limits the amount of wages that can be garnished through a percentage figure and/or a mathematical formula based on the Federal Minimum Hourly Wage prescribed by the Fair Labor Standards Act of 1938.²⁹

Only 25% of the weekly wages of an employee would be subject to garnishment or the amount of disposable earnings for that week which exceeded thirty times the federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 in effect at the time the earnings are payable, whichever is less. If wages are other than weekly wages, the Secretary of Labor by regulation shall set up a formula that achieves the same result.³⁰

These restrictions do not apply to court orders for support, an order of any court in bankruptcy under Chapter xiii or any debt due for any state or federal

²¹ Jackson, Royal E. Hearings on Bank Credit Card and Check Credit Plans before the Subcommittee on Financial Institutions, U.S. Senate, October 9, 1968, p. 33.

²² Proxmire, William, U.S. Senator, Statement on Senate Floor, *Congressional Record*, November 6, 1969, p. S-13906.

²³ Wattenberg and Scammon, "This U.S.A.", p. 112 (1960 Census Figures).

²⁴ Lederberg, "Business Marketing Data Once Sold by Private Eye," *Washington Post*, August 2, 1969.

²⁵ Wattenberg and Scammon, "This U.S.A.", p. 179 (1960 Census Figures).

²⁶ 15 U.S.C. 1601, *et seq.*

²⁷ 15 U.S.C. 1673.

²⁸ 15 U.S.C. 1676.

²⁹ 29 U.S.C. 201, *et seq.*

³⁰ 15 U.S.C. 1673.

tax. No court of the United States or of any state may make or enforce any order or process in violation of this section.³¹

Section 304 provides that no employer shall discharge an employee as the result of garnishment for one indebtedness, and willful violation of the section shall subject the employer to a fine of not more than \$1,000 or imprisonment for not more than one year, or both.³² State laws which are more restrictive shall not be annulled.³³

THE CREDIT BUREAU SANCTION

A reporter for the Columbia Broadcasting System, claiming to represent a non-existent firm, obtained credit reports on 10 individuals out of a random list of twenty names. His investigation was the basis of a televised report on credit bureaus, which generally claim that their information is kept confidential.³⁴

Credit bureaus have dossiers on 110 million Americans or almost the entire adult population of the United States. Most credit bureaus belong to the Associated Credit Bureaus of America, which has over 2,200 individual members serving 400,000 creditors in 36,000 communities. These credit bureaus issued 97 million credit reports in 1967. This information is freely transferable between the association's membership and the information is used for extensions of credit and employment purposes.³⁵ Massachusetts and New Mexico passed statutes regulating credit bureaus in 1969. Until this year, the only state statute regulating credit bureau activities was one passed in Oklahoma in 1916 and that was inadequate.³⁶

Credit reports include such items as age, race, marital status, opinions of neighbors of personal habits as well as financial information. In addition information goes into credit reports and remains on file without being corrected or updated. Information is not evaluated and wholly false information has the same status as correct and relevant information.³⁷

Senator Proxmire in his explanation of S. 823, an amendment to the Consumer Protection Act, outlined seven problems and then gave seven solutions his amendment would provide. These are shown below by enumerated paragraphs with the proposed S. 823 resolution in a lettered paragraph.

1. Consumers do not know that they are being damaged by adverse credit reports.

(a) The bill provides that where a person is refused a loan, employment or insurance because of and adverse credit report, those who make the decision upon the written request of the disappointed applicant must disclose the name and address of the credit bureau from which they obtained the information. Present contracts between creditors and the bureaus forbid revealing the identity of the credit bureau. A person would then have the opportunity to correct misleading information in such credit files (Sec. 615).

2. A consumer is rarely given access to his own file, even if he knows the name of the credit bureau which has it on record.

(a) Under the Proxmire bill, S. 823, credit bureau reporting agencies must interview complaining consumers during normal business hours and on reasonable notice disclose all information in the consumer's file. A complaining consumer may bring one other person with him when he asks to examine his file. This could be helpful generally but especially so in poorer areas (Secs. 609-610).

3. Consumers have great difficulty in correcting inaccurate information.

(a) Debtors would, under S. 823, have the right to file explanatory information or to have incorrect or unverifiable information deleted as the result of the right to demand reinvestigation of allegations. Frivolous consumer statements need not be included (Sec. 611).

4. Information in credit files is not kept confidential.

(a) Those who request credit reports must certify as to the purpose for which they are requested and agree not to use the information for any other purpose.

³¹ 15 U.S.C. 1675.

³² 18 U.S.C. 891.

³³ 15 U.S.C. 1677.

³⁴ Williams, Harrison, U.S. Senator. Remarks, *Congressional Record*, November 6, 1969, p. S-13909.

³⁵ Proxmire, William, U.S. Senator. Remarks, *Congressional Record*, November 6, 1969, p. S-13905.

³⁶ Massachusetts General Laws, Ch. 93, amended by addition of Sections 44-47, 1969. New Mexico, 50-18-2 through 6h 50-19-1, General Laws 1969, Ch. 259, Sec. 1. Oklahoma, 24 Oklahoma 31 through 85, 1910.

³⁷ Brenton, "The Privacy Invaders," p. 38, 43, 1964.

A person who obtained a credit report under false pretenses would be subject to a fine of up to \$5,000 or imprisonment up to one year, or both (Sec. 619).

5. Credit bureaus gather highly personal information based on the subjective opinions of others, whether or not such information is relevant to credit standing.

(a) Investigations of a personal nature must be revealed to the consumer as well as the nature and scope of such investigation, if he makes a written request. His right to make such a written request must also be disclosed to him (Sec. 615b).

6. Public record information such as arrests are not updated and do not show eventual disposal of cases.

(a) This problem will be solved upon passage of the Proxmire bill (S. 823) by the requirement that public record information be kept up to date. If this cannot be done, the consumer must be notified that an inquiry has been made and of the identity of the person to whom a report was sent. The consumer would then have the opportunity to have updated information forwarded to the inquirer and the file corrected (Sec. 613).

7. Old information on past credit deficiencies is not updated to show improved performance on any regular basis.

(a) Section 605 provides that obsolete information from official records such as suits and judgments, unpaid tax liens, records of arrest, indictment, conviction and matters such as accounts placed for collection or charged to profit and loss, shall not be made part of consumer reports beyond 7 years. In the case of bankruptcies the limit is 14 years (Section 605a). Section 605b provides that transactions involving more than a principal amount of \$50,000 or more, the underwriting of life insurance policies involving a principal amount of \$25,000 or more, or the employment of any individual whose yearly compensation amounts to more than \$20,000, is exempt from these restrictions.³⁸

MASS MAILING KEYS CREDIT CARD OPERATIONS

There are 300 million credit cards in use in the United States. About 1.5 million of these credit cards are stolen each year and the annual loss from fraudulent use has reached a figure of \$100 million.³⁹

In an article in the *Christian Science Monitor*, entitled "Mass Mailing Keys Credit Card Operations," dated November 4, 1969, it was noted that "In the past month, member banks of the New England Bankcard Association, Inc. (NEBA), have mailed over two million unsolicited Master Charge Cards to customers. This practice has also been common in other areas."⁴⁰ With large mailings of this kind, it is inevitable that unsolicited credit cards are stolen.

The lead time given to thieves through the stealing of unsolicited credit cards makes them valuable, not only in providing funds, but in providing identification.

As a direct result of hearings held in the Postal Operations Subcommittee of the U.S. House of Representatives, Congressman Arnold Olsen introduced H.R. 15103, which provides for restricted conditions for the mailing of credit cards.

H.R. 15103

Section 4001 would be amended upon passage of the Olsen bill by adding credit cards to the category of nonmailable matter under subsection (b). Subsection (c) contains the exceptions to the mandate of Subsection (b).

Subsection (c) provides that credit cards may be mailed—

(1) by registered mail, return receipt requested, with restricted delivery to the person in whose name the card is drawn;

(2) in response to a written application; and

(3) the credit card bears a term on its surface, in eight point type, that liability for fraudulent use is assumed by the sender, unless the credit card bears a photograph and signature of the person in whose name the credit card is issued. In that case liability to the cardholder will be limited to \$50; and that

(4) the sender agrees to pay an additional charge for any mailing returned to him covering the cost to the Department of such return as established by the Postmaster General.

³⁸ Proxmire, William, U.S. Senator, explanation of amendment to the Consumer Protection Credit Act, *Congressional Record*, 6 November 1969, p. S-13905-07.

³⁹ Dallos, "Fighting Credit Card Fraud," *Washington Post*, December 7, 1969, p. 1.

⁴⁰ England, "Mass Mailing Keys Credit Card Operation," *Christian Science Monitor*, November 4, 1969.

A criminal fine of \$1,000 per mailing of each nonmailable card is added as a sanction in Subsection (d). Subsection (e) provides that nonmailable matter under the bill may be seized and disposed of as the Postmaster General shall direct in postal regulations.

The Olsen bill is a combination of approaches, that are now before the Congress.

For example, Senator Proxmire's bill, S. 721, introduced for himself and Senators Dodd, Eagleton, Inouye, McGee, McIntyre, Mondale, Moss, Nelson, Yarborough and Young of Ohio, would amend section 103 of the Truth in Lending Act (82 Stat. 146).

It would limit the liability of the cardholder for unauthorized use of an unaccepted credit card (Sec. 132). An accepted credit card is defined, in what will be a new subsection (1) of section 103 of the truth in Lending Act (82 Stat. 146), as "any credit card which the cardholder has requested in writing or has signed or used, or authorized another to use." Also a "Renewal card shall be deemed to be accepted if it is issued within one year after a prior card has been paid for or used"; and "A new credit card issued in substitution for an accepted credit card as a result of a change in the corporate structure or ownership of a card issuer shall be deemed to be an accepted credit card."

Section 2(b) of S. 721 would be added to Section 105 of the Truth in Lending Act, and it would require that the Board of Governors of the Federal Reserve System shall prescribe regulations under which card issuers may issue credit cards not requested in writing by a prospective cardholder, in the matter of minimum credit standards for such prospective cardholders in order to limit overextension of credit by consumers and protect the financial stability of banks insured by the Federal Deposit Insurance Corporation.

H.R. 13244

This bill introduced by Congressman James Hanley, Democrat of New York, provides that unsolicited credit cards must be sent by registered mail restricted to addressee only and that otherwise the mailings of unsolicited credit cards would be a criminal offense, subject to penalties of not more than two years imprisonment and/or a fine of not less than \$1,000, or both.

H.R. 14346

This bill, introduced by Congressman William Scott of Virginia, would bar unsolicited credit cards from the mail as being nonmailable. The criminal sanction in the Scott bill is a misdemeanor, with a maximum imprisonment of one year and a fine of not less than \$1,000, or both.

H.R. 14897

Congressman Glenn Cunningham, Republican of Nebraska, introduced H.R. 14897 which would require that all credit cards be forwarded by registered mail and bear the words on the envelope "credit card" or "unsolicited credit card—addressee may refuse" in the appropriate case.

OBJECTIONS

The Federal Reserve Board and the Credit Card industry object to all of these bills on the basis that there is no serious problem involved in the mailing of unsolicited credit cards that cannot be corrected by better screening of mailing lists.⁴¹ They also maintain that the barring of unsolicited credit card mailings would prevent other credit card companies from entering the field because they cannot procure sufficient credit card holders to support a plan and solicit participation in a credit card plan by merchants unless large numbers of consumers have credit cards in their possession.⁴² A bank that attempted to obtain cardholders by forwarding credit card applications received less than a 1% response.

⁴¹ Brimmer, Andrew F., Member of the Board of Governors of the Federal Reserve System, "New Horizons in Credit Card Banking," before Seattle Clearing House Association, September 23, 1969, p. 10.

⁴² Martin, William Mc., Jr., Chairman of the Board of Governors of the Federal Reserve System, Letter to Chairman Robert N. C. Nix, M.C., dated October 28, 1969.

The same bank found that by mailing unsolicited credit cards a 19% use rate was established within a few months.⁴³

The Olsen bill, H.R. 15103, and the Cunningham bill, H.R. 14897, are objected to because of the cost of sending all credit cards by registered mail. Registered mail in the case of credit cards would cost .80 per piece, and a restricted delivery requirement would cost an additional .50, a total of \$1.30 per credit card mailing.⁴⁴

THE OLSEN POSITION

Congressman Olsen and the authors of other bills are in agreement that unsolicited credit card mailing should in effect be barred from the mails because of the danger of theft. Credit cards are instant cash to persons who take them. They are sold, for instance, by criminals at rates from \$25 to \$500.⁴⁵ In our larger cities apartment mail boxes are regularly rifled and some postal employees who have fallen into the hands of loan sharks are induced to pilfer mailed credit cards as repayment.⁴⁶ The passage of credit cards through the postal system in locked mail bags with a limited number of individuals responsible for the entire process would cut down on the opportunity for such theft.⁴⁷ A restricted delivery insures proof of receipt in the form of the cardholder's signature.

Cardholder liability for fraudulent use of credit cards should be restricted and in the case of unsolicited credit cards eliminated altogether. The main concern of credit card companies is that without some liability cardholders will be negligent about prompt notice to the issuer of the loss.⁴⁸ While this is a consideration, a credit card carrying the photograph and signature of the cardholder would prevent much of the fraudulent use of such cards. Merchants would have to be grossly negligent to accept credit cards when they are being used by a third person. If a credit card company did perfect its credit cards so that the card itself identified the person seeking to make a purchase, it would seem reasonable that limited liability on the part of the cardholder be provided for in order to assure prompt notification of loss.⁴⁹

⁴³ McNeal, Edward J., Chairman of the Consumer Credit Issues Committee of the American Retail Federation, Proceedings Federal Trade Commission, Docket No. 215-20, p. 185, 186. "The Marine Midland Trust Company of New York made a promotional mailing soliciting applications for credit cards, and received a return of .007, of a total mailing of 33,000. An unsolicited mailing to a control group of 731 indicated that 139, or about 19%, had been used within a 90-day period.

⁴⁴ P.O.D. Notice 59, Domestic Postage Rates, Fees and Information, July 14, 1969.
⁴⁵ United Press International, "Mafia Strikes Gold in Credit Cards," *St. Paul Sunday Pioneer Press*, November 26, 1967, p. 4.

Rotker, Seymour, Executive Assistant to the District Attorney, Bronx County, Bronx, N.Y., Credit Card Hearings, Postal Operations Subcommittee, U.S. House of Representatives, November 19, 1969, p. 138. Transcript.

⁴⁶ United Press International, "Mafia Strikes Gold in Credit Cards," *St. Paul Sunday Pioneer Press*, November 26, 1967, p. 4. "Traditional 'shylocking' techniques are also being streamlined by the shift from cash demands to credit. When syndicate collectors need to pressure these days," said Hentel (former District Attorney, Queens County, New York City), "they'll collect their pound of flesh not by beating on his noggin but by getting his credit cards . . . and if he doesn't have one, they tell him 'Get one, get two, get three . . .'"

Cotter, William J., Chief Postal Inspector, Credit Card Hearings, Postal Operations Subcommittee, U.S. House of Representatives, November 19, 1969, p. 112. Transcript.

⁴⁷ Cotter, William J., Chief Postal Inspector, Credit Card Hearings, Postal Operations Subcommittee, U.S. House of Representatives, November 19, 1969, p. 113, 114. Transcript. "From the enforcement standpoint, unsolicited credit cards present several problems to the Postal Inspection Service. As unsolicited mailings are promotional mailings, regardless of the extent of screening the mailing lists, address reliability is apt to be lower in comparison with credit cards mailed in response to an application. Wrong deliveries, forwarding and multiple handling increase the exposure of an unsolicited mailing to theft and loss."

"As unsolicited mailings are unwanted by some percentage of the addressees, perhaps as high as 75%, that percentage of a given mailing is needlessly exposed to loss or theft in postal transit and otherwise until the cards are either destroyed or returned to their issuer."

"The addressee of an unsolicited card, not anticipating it, usually finds out about its misuse when he receives an invoice, perhaps six weeks after the date of mailing. The delay in initiating the investigative process is an impediment to its success."

"Postal employees and other can usually spot unsolicited mailings and one inclined to theft will reckon an unsolicited mailing as a safer and more desirable target than regular customer mailings."

⁴⁸ Pollock, Earl E., Attorney, Midwest Bank Card System, Inc. Credit Card Hearings, Postal Operations Subcommittee, U.S. House of Representatives, November 19, 1969, p. 153 et seq. Transcript.

⁴⁹ H.R. 15103, Subsection (c), is not impractical or futuristic. The Marine Midland Grace Trust Company of New York advertises a Master Charge Card with photograph and signature and has done so for several years. Advertisement, *New York Times*, December 9, 1969, p. 36. The advertisement read in part: "If you grow a mustache we'll give you a new card." "We have to." "We're the only bank in town that puts your picture on the back of a charge card." "At no cost to you."

SUMMING UP

The ending of unsolicited mailings is the issue on which the Members of Congress who have introduced bills and the Federal Reserve Board, the banks and the credit card companies cannot agree.

Unsolicited credit card mailings are under attack in the state legislatures, before the Federal Trade Commission, and before committees of the Congress. Thirteen states have already passed laws restricting unsolicited mailings and limiting liability for the fraudulent use of credit cards.⁶⁰ Most states have enacted criminal statutes for fraudulent use of credit cards.⁶¹

⁶⁰ State Statutes Limiting Liability in matters involving the fraudulent use of unsolicited credit cards. (Citations from Commerce Clearing House Service.)

ALASKA

Sec. 06.05.209. Issue of credit cards. A bank is not prohibited from issuing unsolicited credit cards or other similar credit granting devices but the bank may not hold the customer liable for charges made on a credit card or other device before its acceptance by the customer. Before an unsolicited card is considered accepted by the customer, the customer shall execute and furnish to the bank a written statement of acceptance. (Sec. 06.05.209, as added by Laws 1969, S.B. No. 173, approved May 5, 1969, effective August 3, 1969).

CALIFORNIA

Sec. 1718. (Definitions—Cardholder's liability limited.) (a) as used in this section: (1) "Credit Card" means any instrument or device, whether known as a credit card, credit plate, or by any other name, issued with or without fee by a card issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value, either on credit or in consideration of an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder.

(2) "Accepted credit card" means any credit card which the cardholder requested in writing or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor or services on credit. A renewal credit card shall be deemed to be accepted if it is issued within one year after a prior card has been paid for used. A credit card issued in connection with a merger, acquisition, or the like of card issuers or credit card services in substitution for an accepted credit card shall be deemed to be an accepted credit card.

(3) "Card issuer" means the business organization or financial institution which issues a credit card, or its duly authorized agent.

(4) "Cardholder" means the person or organization identified on the face of a credit card to whom or for whose benefit the credit card is issued by a card issuer.

(5) "Unauthorized use" means a use of a credit card by a person, other than the cardholder, who does not have actual, implied, or apparent authority for such use and from which use the cardholder receives no benefit.

(b) The cardholder is not liable for any unauthorized use of a credit card which has not become an accepted credit card.

(c) If an accepted credit card is lost or stolen after the credit card has reached the cardholder, and the cardholder notifies the card issuer within a reasonable time by telephone, telegraph, letter, or any other reasonable means after discovery of the loss or theft or after the time in which a reasonable man in the exercise of ordinary care would have discovered the loss or theft, the cardholder is not liable for any unauthorized use of the credit card.

(d) This section applies only to credit cards originally issued or renewed on or after the effective date of this section. (Sec. 1718, as added by Laws 1969, A.B. No. 1763, Ch. 904, approved August 23, 1969, effective November 10, 1969.)

Sec. 1719 (Disclosure of Charges) Whenever fees, charges, or penalties are assessed against a cardholder for the use of a credit card, the card issuer shall separately state and label all such fees, charges and penalties.

The terms "credit card," "card issuer," and "cardholder" in this section shall have the same meaning as prescribed in Section 1718. (Sec. 1719, as added by Laws 1969, A.B. No. 1764, Ch. 905, approved August 23, 1969, effective November 10, 1969.)

CONNECTICUT

Sec. 1 (Acts 1969, P.A. No. 136) (Distribution of unsolicited credit cards.)

(a) No person, company, partnership or corporation shall engage in the practice of mailing or the distribution in any form of any credit card, charge plate or any like instrument or device in any other person, firm or corporation unless such other person, firm or corporation has previously made a request therefor in writing or verbally.

(b) Any person, company, partnership or corporation which violates the provisions of subsection (a) of this act shall be fined not more than one hundred dollars for each card, plate, instrument or device so mailed or distributed.

(c) The provisions of this act shall not apply to the renewal of any credit card, charge plate or like instrument or device unless the recipient has previously indicated in writing his intention that such renewal not be effected nor shall it apply to the replacement of any such instrument or device by the issuer thereof during the period such instrument or device is in effect. (Approved May 15, 1969, effective January 1, 1970.)

ILLINOIS

Credit Cards—Act of July 27, 1967.

Sec. 1 (Rev. Stat. 12½ Sec. 381) Unsolicited credit cards—Liability to issuer—Burden of proof—Fees and costs.

(a) No person in whose name a credit card is issued without his having requested or applied for the card or for the extension of the credit or establishment of a charge account which that card evidences is liable to the issuer of the card for any purchases made or other amounts owing by a use of that card from which he or a member of his family or household derive no benefit unless he has indicated his acceptance of the card by signing or using the card or by permitting or authorizing use of the card by another. A mere failure to destroy or return an unsolicited card is not such an indication. As used in this Act, "credit card" has the meaning ascribed to it in Section 17-1 of the Criminal Code of 1961 (6381), except that it does not include a card issued by any telephone company that is subject to supervision or regulation by the Illinois Commerce Commission or other public authority.

(b) When an action is brought by an issuer against the person named on the card, the burden of proving the request, application, authorization, permission to use or benefit as set forth in Section 1 hereof shall be upon plaintiff if put in issue by defendant. In the event of judgment for defendant, the court shall allow defendant a reasonable attorney's fee, to be taxed as costs.

Sec. 2. (Rev. Stat. 121½ Sec. 382) Requested or accepted credit cards—Liability to issuer—Burden of Proof—Fees and Costs.

(a) Notwithstanding that a person in whose name a credit card has been issued has requested or applied for such a card or has indicated his acceptance of an unsolicited credit card, as provided in Section 1(6335) hereof, such person shall not be liable to the issuer of the card for any amount hereinafter set forth, resulting from a use of that card from which he or a member of his family or household derives no benefit or which he has not authorized or permitted:

Card without signature panel, \$25.00.

Card with a signature panel, \$75.00.

(b) When an action is brought by an issuer against the person named on a card, issuance of which has been requested, applied for, solicited or accepted and defendant puts in issue any transaction arising from the use of such card, the burden of proving benefit, authorization, use or permission by defendant as to such transaction shall be upon plaintiff. In the event the defendant prevails with respect to any transaction so put in issue, the court may enter as a credit against any judgment for plaintiff, or as a judgment for defendant, a reasonable attorney's fee for services in connection with the transaction in respect of which the defendant prevails.

MARYLAND

Art. 83, Sec. 21B. (Unsolicited Credit Cards—Liability of Issuer—Renewals.)

When a credit card or card of identification for credit is issued to a person in the absence of a prior request or application for such card by that person or an authorized agent of that person, such card shall not be deemed to have been accepted until such person signifies acceptance in writing or uses such card to obtain credit. Until such acceptance takes place, the person issuing the card shall be presumed to have assumed the risk of the loss, theft, or unauthorized use in any action against the person to whom the card is issued. The provisions of this section shall not be applicable to cards issued to renew or replace existing cards originally applied for or accepted by the cardholder. (Sec. 21B, as added by Laws 1969, Ch. 252, approved April 23, 1969, effective July 1, 1969.)

MASSACHUSETTS

Chap. 255, Sec. 12E (Credit Cards—Cardholder Liability). (Series of definitions. Relevant definitions.)

"Accepted Credit Card", any credit card which the cardholder has requested in writing or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor or services on credit. A renewal credit card shall be deemed to be accepted if it is issued within one year after a prior card has been paid for or used. A credit card issued in connection with a merger, acquisition or the like of card issuers or credit card services in substitution for an accepted credit card shall be deemed to be an accepted credit card.

"A provision imposing liability on a cardholder for the unauthorized use of a credit card shall be effective only if the card is an accepted credit card, the liability imposed is not in excess of one hundred dollars, the card issuer gives adequate notice to the cardholder of the potential liability, the unauthorized use occurs before the cardholder has notified the card issuer of the loss or theft of the card or of any unauthorized use, and the card issuer has provided a method whereby the user of the credit card can be identified as the person authorized to use it, including without limitation a place on the card for the photo or signature of the holder.

"Except as hereinbefore provided, a cardholder incurs no liability from the unauthorized use of either an accepted or an unaccepted credit card."

(Sec. 12E, as added by Laws 1968, Ch. 394, approved June 11, 1968, effective January 1, 1969, and applicable only to credit cards issued after the effective date.)

MINNESOTA

(Credit Card Liability)—Laws 1969, Ch. 1004. Approved June 6, 1969, effective June 7, 1969.

Sec. 2. (Unsolicited credit cards.) No person in whose name a credit card is issued shall be liable for any amount resulting from use of that credit card from which he or a member of his family or household derives no benefit unless he accepted the card by (1) signing or using the card, or (2) authorizing the use of the card by another. A mere failure to destroy or return an unsolicited credit card is not such an acceptance.

NEW MEXICO

(Credit Card Liability)—Laws 1969, Ch. 172.

Sec. 1. Unsolicited credit cards—Liability of issuer—Burden of proof—Attorney fee.
A. No person in whose name a credit card is issued is liable to the issuer of the credit card for any amount owing because of a use of the credit card if: (1) he did not apply for the credit card; or (2) he has not indicated his acceptance of the credit card; or

(3) he or a member of his family or household derives no benefit from the use of the credit card. If the person named in the credit card has indicated his acceptance of the credit card by signing or using it or by permitting or authorizing another person to use it, he is liable to the issuer. The failure to destroy or return an unsolicited credit card is not an indication of acceptance.

B. In any action brought by the issuer against the person named in an unsolicited credit card, the burden of proving the application, authorization, permission to use or benefit is on the plaintiff if put in issue by the defendant. If the defendant prevails, the court shall award the defendant a reasonable attorney fee. (Approved April 1, 1969, effective 12 o'clock noon, June 20, 1969.)

NEW YORK

General Business Law—Ch. 20. Credit Cards.

Sec. 512. Limitations on liability for use of lost or stolen credit cards. A provision to impose liability on an obligor for the purchase or lease of property or service by use of a credit card after its loss or theft is only if it is conspicuously written or printed in a size at least equal to eight point bold type either on the card, or on a writing accompanying such a card when issued, or on a writing accompanying the card when issued or on the obligor's application for the card, and then only until written notice of the loss or theft is given to the issuer. Such a provision either in a credit card issued prior to the effective date of this article, or in a writing accompanying such a card when issued, or in the obligor's application for such a card is effective, on or after the effective date of this article, only if the issuer mails to the obligor, properly addressed, written notice of the provision conspicuously written or printed in a size at least equal to eight point bold type. Such a provision is effective only if the obligor has requested in writing the issuance of a credit card; the signature of the obligor or of a person authorized by him upon a sales slip or memorandum evidencing a purchase or lease of property or services by use of a credit card is the equivalent of the obligor's request in writing for the issuance of a new credit card and for the issuance of a new credit card to replace or renew a credit card previously issued to him.

NORTH DAKOTA

Credit Cards. Enacted by Laws 1969, S.B. No. 345, approved March 17, 1969, effective July 1, 1969.

Sec. 1. Definition of credit cards and other terms and imposition of liability on cardholder.

4. "Accepted credit card" means any credit card which the cardholder has requested in writing or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor or services on credit. A renewal credit card shall be deemed to be accepted if it is issued within one year after a prior card has been paid for or used. A credit card issued in connection with a merger, acquisition, or the like of card issuers or credit card services, in substitution for an accepted credit card shall be deemed to be an accepted credit card.

7. "Unauthorized use" means a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit.

A provision imposing liability on a cardholder for the unauthorized use of a credit card shall be effective only if the card is an accepted credit card, the liability imposed is not in excess of one hundred dollars, the card issuer gives adequate notice to the cardholder of the potential liability, and the unauthorized use occurs before the cardholder has notified the card issuer of the loss or theft of the card or of any unauthorized use.

OHIO

Sec. 1319.01. (Unsolicited credit cards—Liability)

A cardholder who receives a credit card from an issuer, which such cardholder has not requested nor used, shall not be liable for any use made of such credit card which has not been authorized by such cardholder, unless such credit card is in replacement or renewal of a credit card previously requested or used by the cardholder. (Sec. 1319.01, as added by Laws 1969, S.B. 326, approved August 19, 1969, effective November 18, 1969.)

SOUTH DAKOTA

Laws 1968, H.B. No. 721, effective July 1, 1968.

Sec. 4. (Issuance—Unsolicited—Nonliability). No credit card shall be issued unless its issuance was requested nor shall any person who has not so solicited or has not accepted or utilized any unsolicited credit card be liable to the person who issued it or honored it for its misuse by others.

WISCONSIN

Sec. 895.45. Exemption from civil liability for lost or stolen credit cards. Notwithstanding any provision contained on a credit card, no person shall incur civil liability for the fraudulent use of a credit card by another, as defined in Sec. 943.41 which was issued without the former's written application or acceptance therefor and which was used without the former's knowledge or consent. (Sec. 895.45, as enacted by Laws 1967, Ch. 155.)

ATTORNEY GENERAL'S OPINION

Washington. 02. Credit Cards. The regulatory provisions of the Credit Card Disclosure Act pertaining to maximum service charges, collection of delinquency charges, disclosure, etc., that apply to retail charge agreements as defined by the Act apply to situations where the holder of a bank credit card used the card to purchase goods or services from a participating vendor. Opinion of Attorney General of Washington. (February 8, 1968.)

⁶¹ 94 R.C.M. 1823 through 94 R.C.M. 1830. These provisions applying criminal sanctions to the fraudulent use of credit cards is typical of statutes now part of the law in almost every state.

It is true that legislation banning unsolicited credit cards from the mail will stabilize the credit card industry insofar as new companies will find it difficult to enter the field. But the entry, beginning in 1966, of giant new bankcard operations has not resulted in competitive pricing or cost cutting on the part of credit card companies. Their charges for bills over 30 days are on the average 18% and that is attractive to those who enter the credit card business. The consumer has seen no benefit in lowered costs of this form of credit. In fact, there is every indication it has raised the cost of maintaining his family's budget. He continues to pay $1\frac{1}{2}\%$ a month on his credit card purchases and most people seem to stretch out such purchases beyond the "thirty days to reality" period. In fact, this is the source of the great profitability of credit card operations. In addition, the discounts charged merchants for the sale of bills run up under the credit card plans are significant and are as high as 7%.⁵² Moreover, the switching of funds from consumer loan investment and small business loans has the tendency to raise interest rates on funds remaining and available for those purposes.⁵³

The mailing of millions of unsolicited credit cards is a hard sell device that has been used to excess. The excesses of past operations do not justify continuing the same practices. What is more, building credit card operations on the basis of applications and the well thought out decisions of consumers to participate in one or two plans will cut down on ill considered impulse spending, which is inflationary.

The main opposition to curbs on the mailing of unsolicited credit cards comes from the banking industry and the Board of Governors of the Federal Reserve System.⁵⁴ Bankcards are the latest arrivals in the credit card field. They are the "everything" cards and they have great competitive advantages over the more specialized credit card operations such as the airline companies and the oil companies who use credit cards as a selling device for their product; or the entertainment cards issued by the Diners Club and American Express Company. Out of 300 million credit cards there are now 60 million bank credit cards in use. The future belongs to the bank credit cards because they seem to be more convenient. Half of all the banks in the United States now offer a charge plan, either as part of a larger operation or individually.

A Mr. Edward E. Bontema, president, Eastern States Bankcard Association, said in an Atlantic City Conference on Consumer Credit:

"By 1975 almost every bank depositor in the U.S. also will be a bankcharge card holder.

"This will result in a decline in the volume of checks handled by banks and at the same time reduce the number of operations needed to process checks.

"According to a Federal Reserve System survey nearly 20 billion checks were processed in 1967. It cost almost \$4 billion to process those checks through some 20 operations."⁵⁵

It may be easy to understand why the banks of this country are in a hurry to establish credit card plans. But although a soft sell through applications may take longer, it will probably take place nonetheless. Legislation which protects the consumer from liability for fraudulent loss and which provides for credit cards which in fact do accurately identify people are worth the trouble and time to the public. If the Olsen bill and bills like it delay the switch from checks to credit cards by protecting the consumer, it may be worth doing.

CONCLUSION

Technology has changed forever the American's way of borrowing and spending by the mass issuance of the credit card.

⁵² Patman, Wright, M.C., Chairman of the House Banking and Currency Committee, in testimony before the Postal Operations Subcommittee of the U.S. House of Representatives, October 29, 1969, p. 9, referring to bank credit cards. "The bank is collecting 18% from the consumer and 7% from the merchant, or a total of 25% in the form of interest on discounts."

⁵³ Gulian, Jerome R., Legislative Director, National Federation of Independent Business, in testimony before the Postal Operations Subcommittee, U.S. House of Representatives, November 19, 1969, p. 83. "While the example of the South Atlantic States shows up the most dramatically, there appears to be a relationship between bank interest rates to independent business, and the degree of acceptance of bank credit cards."

⁵⁴ Martin, William Mc., Chairman of the Board of Governors, Federal Reserve System, in a letter to Chairman Robert N. C. Nix, M.C., Postal Operations Subcommittee, U.S. House of Representatives, dated October 28, 1969.

⁵⁵ Bontema, Edward E., President of Eastern States Bankcard Association, in *Philadelphia Evening Bulletin*, October 30, 1969, p. 10.

The law in the nature of things develops much more slowly than technology. Legislation balancing once more the rights and duties of individuals and organizations, debtors and creditors, has developed very slowly. But the time has come for the passage of such legislation.

The Truth in Lending Law, the Proxmire bill on arbitrary credit reporting, and the Olsen bill limiting liability resulting from lost credit cards and the mass mailing of unwanted credit, are all steps on a road toward protecting individual rights in a computer civilization.

This legislation and more like it must be enacted. The market place cannot become a lawless place where only the buyer has to beware. A computer civilization and the applied technology resulting therefrom will not reach its full promise if individuals do not share in that promise. A sense of fairness resulting from new rules in a new society is essential.

NEWS RELEASE FROM THE OFFICE OF CONGRESSMAN WRIGHT PATMAN

Denouncing the latest increase in FHA and VA interest rates as a death warrant for many housing programs, Chairman Wright Patman today called for a wide-ranging Congressional re-examination of home mortgage financing.

Mr. Patman said the re-examination is necessary to offset what appears "a calculated effort of the Nixon Administration to close out low-income and moderate-income housing programs through round after round of interest rate increases."

"The latest interest rate increase is the height of irresponsibility when viewed against the Administration's failure to offer even the most meager alternative to the great mass of the American population that cannot afford homes bearing 9% mortgages," Mr. Patman said. (This figure includes one-half percent for FHA insurance.) "The Administration raised these interest rates fully aware that most families with incomes less than \$13,000 a year would be priced out of the housing market."

"This Administration, through its encouragement and acceptance of high interest rates, is developing Federal housing programs only for the affluent with the low and moderate income citizen left out in the cold," the Banking and Currency Committee Chairman charged.

"Faced with this attitude by the Administration, it is the responsibility of Congress to act swiftly to provide alternative means of financing homes for these families. The Congress cannot become a willing partner in the Nixon Administration wrecking crew."

Mr. Patman said he would call for an early re-examination of proposals to have the Federal Reserve System purchase large blocks of housing mortgages at interest rates not in excess of 6 percent. He said the Federal Reserve should make available between \$10 and \$20 billion to assure recovery of the housing market.

He noted that similar proposals calling for the Federal Reserve to purchase \$6 billion worth of housing paper failed on a close vote in the final days of the First Session. He said a switch of 30 votes would have put the proposal into law and brought immediate relief for housing.

"I am convinced that the House would have approved this measure had the Members realized that their constituents would be forced to pay a nine per cent interest rate in a few short days," Mr. Patman said.

Mr. Patman said he would also urge early consideration of other measures which provide additional alternatives for home financing. He referred specifically to legislation which would set up a \$2 billion fund for direct Federal lending at 6 percent interest; a National Development Bank modeled after the old Reconstruction Finance Corporation; and legislation designed to encourage increased investments in home mortgages by the various pension funds.

He said he planned to give these measures priority treatment in the Banking and Currency Committee in the Second Session.

Mr. Patman said Secretary Romney's announcement of a new interest rate increase was poorly timed and will result in new pressures to force all interest rates up.

"The Administration should be devoting its energy to rolling back interest rates and not shopping around for places to announce new increases," Mr. Patman said. "The Administration is apparently intent on sending the homebuyer out in the market to compete with the big corporations, the gambling casinos and fast-buck operators for available loan funds. The Homebuyer cannot compete in this market and the Federal Government should not force him to do so."

The Administration, Mr. Patman said, now has the unenviable record of creating the fastest and the most frequent housing interest rate increases in the history of the nation.

"Secretary Romney has been in office only eleven months and he has managed to raise the FHA interest rate 25 percent," Mr. Patman said. "It is significant that housing starts have dropped from an annual rate of 1.9 million units to about 1.2 million units since Romney announced his first increase in the FHA rate last January."

Mr. Patman said the latest increase was apparently being justified by claims that the action would provide more housing and that the so-called discount points would be eliminated.

"These are the oldest and the most fallacious arguments that could be used in support of this unnecessary interest rate increase," he charged. "There is absolutely no evidence that high interest rates bring more housing. It is a fact, undisputed by any housing economist, that interest rate increases price the lower income groups out of the housing market."

Mr. Patman said that a reduction in the "points" would be only temporary and "very slight at the best." "In past interest rate increases, the points have declined for a few months and then skyrocketed back to their high levels again. And this will happen again with this latest increase."

"The homebuyer will continue to pay points as well as a record high interest rate," Mr. Patman said. "In fact, the purchaser of a \$20,000 home will pay more than twice the value of the house in interest charges, points, and other finance charges over the life of a thirty-year mortgage."

STATEMENT OF HON. WRIGHT PATMAN BEFORE THE DEMOCRATIC CAUCUS,
JANUARY 21, 1970

Mr. Chairman, last August 13th, you appointed nine members of this Caucus to study the growing problem of high interest rates and report back to this body.

In the intervening months, we have had a number of meetings, and we have heard from a number of distinguished economic experts, including John Kenneth Galbraith and Leon Keyserling. They have re-inforced what the great majority of this Caucus already favored—immediate and strong action to bring down interest rates.

The Democratic Party, throughout its long and proud history, has always been the protector of the American public against high interest rates and tight money. The Nixon Administration, like the Eisenhower and Hoover Administrations before it, is pursuing the false doctrine of high interest rates as a cure-all for the economy. The result is a growing danger of unemployment, a badly-depressed housing industry and the potential bankruptcy of thousands of farmers and small businessmen.

The Interest Rate Committee which you appointed feels that it is time for the Democratic Party to restate its position against high interest rates and to urge action by the appropriate Committees of the Congress.

Before I present the formal resolution on behalf of this Committee, I want to commend the great leadership of Speaker McCormack, Majority Leader Carl Albert, Majority Whip Hale Boggs, Chairman Ray Madden of the Steering Committee, and the Chairman of this Caucus, Mr. Dan Rostenkowski, for their support and counsel of this issue.

All the Members of this interest rate committee have participated in bringing this issue before the Caucus. They are Edward Boland of Massachusetts; Thomas L. Ashley of Ohio; Mrs. Edith Green of Oregon; Jim Wright of Texas; Robert G. Stephens, Jr. of Georgia; James M. Hanley of New York; Sidney R. Yates of Illinois; and William "Bill" Clay of Missouri.

Mr. Chairman, on behalf of these Members, I present the following resolution: Whereas, a decade ago, the Democratic Party stated:

"As the first step in speeding economic growth, a Democratic President will put an end to the present high-interest, tight money policy.

"This policy has failed in its stated purpose—to keep prices down. It has given us two recessions within 5 years, bankrupted many of our farmers, produced a record number of business failures, and added billions of dollars in unnecessary higher interest charges to Government budgets and the cost of living"

Whereas, this policy of low interest and plentiful credit has been a mainstay of the Democratic Party throughout its modern history, and

Whereas, interest rates have skyrocketed to their highest levels in history, crushing the housing market, blocking school construction, water and sewage facilities and the revitalization of our urban and rural communities, and creating unemployment and inflation, and

Whereas, these high interest rates have placed a heavy burden on the low and middle income family, and

Whereas, these high interest rates have gone hand in hand with high prices: be it therefore

Resolved, That the Democratic Caucus of the House of Representatives reaffirms the Democratic Party's support of policies and programs to bring about reasonable interest rates and adequate credit and, be it further

Resolved, That the Democratic Caucus urges the appropriate Committees of the House, in lieu of leadership from the Executive Branch, to draft a specific program to combat high interest rates and to bring about a more equitable and effective monetary policy for the nation, and be it further

Resolved, That the Members of the Democratic Caucus use every means at their command to explain to the American people the causes and the results of the high interest, tight money policies of the Nixon Administration.

[From the Congressional Record of Jan, 21, 1970]

DEMOCRATIC CAUCUS ADOPTS RESOLUTION OPPOSING HIGH INTEREST RATES

(Mr. PATMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. PATMAN. Mr. Speaker, today the Democratic Caucus of the House adopted unanimously a resolution firmly establishing the Democratic Party's position against high interest rates and urging action to correct the monetary mismanagement of the Nixon administration.

Mr. Speaker, I hope that the appropriate committees and the Members of this House will follow up this resolution with concrete action during this second session to bring economic relief for the American people who are sorely pressed by the highest interest rates in the history of this Nation. It will take action by this Congress because it is apparent that the Nixon administration will do nothing.

The Nixon administration has embarked on the same old discredited course of high interest rates and tight money followed by the two preceding Republican administrations headed by President Hoover and President Eisenhower. The Republicans never learn, they just keep plodding along allowing the banking and big business community to make the real decisions in the economy. The people who profit most from high interest rates are calling the shots on monetary policy in this administration.

Mr. Speaker, I place in the RECORD a copy of the resolution adopted by the Democratic Caucus this morning:

"Whereas, a decade ago, the Democratic Party stated:

"As the first step in speeding economic growth, a Democratic President will put an end to the present high-interest, tight money policy.

"This policy has failed in its stated purpose—to keep prices down. It has given us two recessions within 5 years, bankrupted many of our farmers, produced a record number of business failures, and added billions of dollars in unnecessary higher interest charges to Government budgets and the cost of living;

"Whereas, this policy of low interest and plentiful credit has been a mainstay of the Democratic Party throughout its modern history; and

"Whereas, interest rates have skyrocketed to their highest levels in history, crushing the housing market, blocking school construction, water and sewage facilities and the revitalization of our urban and rural communities, and creating unemployment and inflation; and

"Whereas, these high interest rates have placed a heavy burden on the low and middle income family; and

"Whereas, these high interest rates have gone hand in hand with high prices; be it therefore

Resolved, That the Democratic Caucus of the House of Representatives reaffirms the Democratic Party's support of policies and programs to bring about reasonable interest rates and adequate credit; and be it further

"Resolved, That the Democratic Caucus urges the appropriate Committees of the House, in lieu of leadership from the Executive Branch, to draft a specific program to combat high interest rates and to bring about a more equitable and effective monetary policy for the Nation; and be it further

"Resolved, That the Members of the Democratic Caucus use every means at their command to explain to the American people the causes and the results of the high interest, tight money policies of the Nixon Administration."

As the Members will note this resolution calls for the appropriate committees of Congress to take action to bring down interest rates. Mr. Speaker, the Banking and Currency Committee will move immediately to follow up the letter and the spirit of this resolution. We will schedule early hearings to seek alternative means of financing housing for the millions of Americans who have been priced out of decent homes by the Nixon administration and the Federal Reserve System. We will seek alternatives to the 9-percent interest rates imposed by the Republican Secretary of Housing and Urban Development, George Romney. We are preparing these hearings right now.

We also will move early in this session on H.R. 11, a bill designed to reform the Federal Reserve System and to coordinate its policies with the broad economic goals of the Nation. This legislation would make the Federal Reserve System responsive to the elected representatives of the people rather than to the banking community which stands to profit from most of the decisions of the Federal Reserve System.

Also, Mr. Speaker, I want to call attention to the fact that this Congress in the closing days of the first session passed legislation which gave the President of the United States adequate and broad powers to control excessive use of credit in inflationary areas of the economy and to control interest rates on that credit. The President has not used that power and we have seen new actions by administration officials to force up interest rates.

The President should use his powers and should come to Congress if he needs additional tools with which to fight inflation and high interest rates. It is apparent that he is reluctant to take on his friends in the banking and business communities. Until this administration is willing to disturb its banker friends, we will continue to suffer from inflation and high interest rates.

Mr. Speaker, the resolution adopted by the Democrats today can be fairly regarded as the first shot in the 1970 campaign. The country has waited 12 long months for the Nixon administration to do something about high interest rates. Instead, the Nixon administration has allowed interest rates to rise farther and faster in a single year than in any previous year in the history of the United States.

The Republicans are refusing to protect the people; the Democrats must now go out and make a crusade on this issue and protect the American public from usurious interest rates.

Mr. Speaker, a great number of people deserve credit for bringing this issue so forcibly before the Democratic caucus. Last August 13, nine members of the Democratic caucus, including myself, were named to study the growing problem of high interest rates.

The interest rate committee appointed by the caucus includes Edward Boland, of Massachusetts; Thomas L. Ashley, of Ohio; Mrs. Edith Green, of Oregon; Jim Wright, of Texas; Robert G. Stephens, Jr. of Georgia; James M. Hanley, of New York; Sidney R. Yates, of Illinois; and William "Bill" Clay of Missouri. All of these Members participated in bringing this issue before the caucus.

Also, I want to commend the great leadership of Speaker McCormack, Majority Leader Carl Albert, Majority Whip Hale Boggs, Chairman Ray Madden, of the steering committee, and the chairman of the caucus, Mr. Dan Rostenkowski, for their support and counsel on this issue.

Mr. Nix. Our next witness is a distinguished Member of Congress who has been deeply engrossed in this problem, has contributed greatly to a solution of it, and continues to do so, and I particularly welcome his participation here today. The Honorable Glenn Cunningham, Member of Congress from Nebraska.

**TESTIMONY OF HON. GLENN CUNNINGHAM, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NEBRASKA**

Mr. CUNNINGHAM. Thank you very much, Mr. Chairman, for those kind remarks.

I might say that I am the author of H.R. 14897, which I introduced on November 20, 1969. I think it is a very good bill and it follows along the lines of your interest, Mr. Hanley's, Mr. Olsen's, and others.

With those remarks, I would like to read my statement into the record at this point.

Mr. Nix. Thank you very much, and you may proceed.

Mr. CUNNINGHAM. I am the author of H.R. 14897 which I introduced on November 20, 1969.

My bill provides that credit cards shall only be forwarded in the U.S. mail by registered mail, and insured mail, restricted in delivery to the addressee only. Violations of the sections of this legislation could result in a \$1,000 fine and/or imprisonment for not more than 1 year.

I believe that this legislation is necessary because the credit card explosion is a permanent feature in our economy and the burdens from the fraudulent use of credit cards fall on the individual cardholder whose credit standing is endangered. The individual must turn to Congress and ask for its help against what is now a \$13 billion industry. In addition, it seems to me that credit cards will be used by the banking industry to replace checks, as checks have replaced cash in the market place. If this is the case, it certainly seems reasonable to me that a balance be struck between the interests of these giant credit card companies and individual consumers.

Today in our cashless society, groceries, weddings, church dues, trips around the world, and in Phoenix, Ariz., a master charge card can be used to arrange bail. I would also like to point out that you can pay your Federal income taxes by credit card in the States of California, North Carolina, Washington, Oregon, and Arkansas. All this can be done for the payment to credit card companies of 18 percent a year on the debt drawn up with the credit card company. Gangsters will also accept credit cards in payment of loan shark debts.

There is great urgency upon the part of those banks who have not yet cut into this 18 percent loan business to engage in mass mailings of unsolicited credit cards. Mail patrons get credit whether they want it or not. Why? The credit card issuers cannot convince merchants that they have to join credit card plans in order to protect themselves against competitors who do, unless the bank or other issuers can show that an overwhelming number of customers in the merchant's area have the cards. The bank knows that it cannot convince people to join the plan voluntarily. A survey by the Marine Midland Bank of New York showed that less than 1 percent of consumers responded to requests to join credit card plans but where unsolicited credit cards are forced into the mail box, 19 percent of the mail patrons contacted used the card within 6 months. It takes 6 months and only 19 percent respond through inflationary impulse buying but at least the card plan becomes active. The merchant doesn't know how many cards are in use. He is told only about the thousands and in some cases millions of cards have been sent through the mail and are in the possession of mail patrons. When the merchant joins the plan, he must pay the credit

card people from 3 percent to 7 percent for discounting the debt run up in his store. He can only get this amount back by raising his prices. The merchant is not guaranteed any exclusive territory, so he finds himself raising prices without any competitive advantage. His only satisfaction is knowing that he has protected himself against a competitor, who is protecting himself against the first merchant. This fear psychology wouldn't be possible without the mass mailing technique which the banks and other credit card issuers want to make use of in selling their plan.

Individual consumers have to pay 18 percent on the unpaid portion of the debt they owe over 30 days. If the unsolicited credit card doesn't reach a mail patron he may be surprised to find himself being billed from a credit card company. These companies have a very weak position legally since their negligence in engaging in the mass mailing of credit cards which bring from \$50 to \$500 in the blackmarket, brought about the loss. There has been testimony here that credit card companies are good guys and they are so nice, they don't sue the unfortunate consumer who doesn't owe them anything in the first place. They may not bring suit or if they do they may drop it once they do because of public relations considerations. But these considerations don't stop them from threatening collection action which would ruin the credit standing of an individual. Nor does it stop them from trying to collect from an individual's employer. What is more, the fiction of writing off \$100 million worth of fraudulent debt a year, means that they only pass that loss on to their other customers or to the merchant members of the plan.

Two years ago banks had about \$815 million out in credit card plans. Today through the use of the mass mailings of unsolicited credit cards, that business has reached a \$2 billion mark and is climbing. There are estimates that the entire credit card industry has a \$13 billion business going for it.

The answer of the industry and the Federal Reserve Board to pleas for support of regulatory legislation is that \$100 million a year loss in fraud doesn't hurt the industry. Credit cards are good for the money changing and bill collecting business. It may be good for their business but it is not good for the families of America and their budgets. It is not good for the merchants who have to turn over a large share of their profit on sales. Most important of all, it is not good for the country. An Evans and Novak column which appeared early this fall, had this to say on the subject of inflation—

There is a considerable body of opinion which feels that while the present tight money policy is crippling the housing industry, it has done nothing to curb consumer credit aggravated by the proliferating credit cards.

In reference to the Federal Reserve Board's tight-money policy clamped on the country by Mr. William McChesney Martin, who is now leaving the Board, I think it is very odd that this same man can urge credit card spending which adds up to 25 percent in charges on to consumer spending at the same time he pushes interest rates even higher in a so-called clampdown on other kinds of borrowing. This means to me that the credit card companies are busy tearing down the President's program against inflation.

This is the people's business and the business of the Congress. I believe that my bill will protect credit card mailings in that they will go

through the mail in locked mailbags. I believe that a \$100 million loss a year is important to the consumer public and the individual consumer who will pay rather than lose his credit rating or job. It is important to them, it is important to the Congress. The mass mailing of unsolicited credit cards has to be controlled now.

Mr. Nix. Our next witness is Mr. Royal E. Jackson, Chief, Division of Bankruptcy, Administrative Office of the U.S. Courts. Mr. Jackson, are you alone?

Mr. JACKSON. Yes.

Mr. Nix. You may proceed, sir.

TESTIMONY OF ROYAL E. JACKSON, CHIEF, DIVISION OF BANKRUPTCY, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. JACKSON. Mr. Chairman, members of the committee, my name is Royal E. Jackson. I am the Chief of the Bankruptcy Division of the Administrative Office of the U.S. Courts. I have served in that capacity for more than 5 years.

I have been a member of the legal staff and the Assistant Chief of the Division since 1946, and in various capacities in the Federal judiciary. I have been acquainted and associated with the work of the bankruptcy courts for more than 30 years.

Mr. Chairman, yesterday I delivered to the counsel of the committee a number of copies of my prepared statement with exhibits attached to them, and with your permission I would like, in the interest of saving time of the committee, to summarize that statement rather than to read it verbatim to the committee.

Mr. Nix. You may proceed, sir.

Mr. JACKSON. As I understand it, there are four bills before this committee, and they are H.R. 13244 by Congressman Hanley, H.R. 14293 by Congressman Bingham, H.R. 14346 by Congressman Scott, and H.R. 15103 by the distinguished witness who preceded me, Congressman Olsen. If I am correct in this assumption, I will speak to all four of them.

Mr. Nix. There is one more. Mr. Cunningham's bill.

Mr. JACKSON. I am very sorry, sir. I did not have that one. In the short time I had to prepare for this hearing. I did not learn of it. But perhaps my remarks in respect to the others will give the committee the benefit of our views.

Mr. CUNNINGHAM. For the record, it is H.R. 14897.

Mr. JACKSON. I very much regret that we did not have that bill and I was not aware that it was before the committee. But I believe that the remarks that I will make in respect to the four bills which I have attempted to analyze will give the committee the benefit of the views of the Administrative Office of the U.S. Courts for whom I speak this morning.

H.R. 13244 and H.R. 14293 appear to us to be pretty much identical bills. These bills make credit cards unmaillable matter except under certain circumstances, and provide specifically that unsolicited credit cards may be mailed if transmitted by registered mail, delivery being restricted to the addressee only.

The bills also provide that the envelope bearing the credit card must identify the enclosure as an unsolicited credit card, and bear the

legend that the addressee may refuse it with the return to the sender being made at the sender's expense.

These bills are most certainly a step in the right direction and would probably, in our opinion, largely solve the problem of the unsolicited credit card because of the expense of registered mail and I suppose it would very likely remedy the problem as we see it from the point of view of the bankruptcy courts.

H.R. 14346, by Congressman Scott, appears to be similar to the previously mentioned bills with one important exception. Subsection (c) (4) of section 4001 of title 39 of the U.S. Code is omitted. This subsection makes the exception for mailing unsolicited credit cards by registered mail. This bill, it seems to me, is the bill to be preferred, since it would prohibit the mailing of unsolicited credit cards entirely, and this has been the point of view of our office from the very beginning.

As I have previously mentioned, the credit card is indispensable in our modern society, but it should not be issued without request, and even then, not until the issuer has taken reasonable steps to determine the credit standing of the person to whom it is issued.

This is just plain good business sense, in our opinion.

H.R. 15103 by Congressman Olsen, would permit the mailing of unsolicited credit cards when sent by registered mail and in response to a written request. This bill also provides that the credit card must bear the statement that the issuer assumes complete responsibility for fraudulent use unless the card bears a photograph and signature of the intended cardholder, in which event the liability of the cardholder for fraudulent use is limited to \$50.

As I understand this bill, it does not contain a provision expressly permitting the mailing of credit cards by other than the issuer. For example, between members of a family. If I am correct in this assumption, this bill would place an inordinate burden upon the public, because it really should be possible for parents to mail a card to a member of the family who is away at college or something of this sort, without having to go through registered mail.

The bill would, however, in its other provisions, go a long way toward solving the problem of the unsolicited credit card in the hands of insolvent persons or persons who do not know how to make wise use of credit cards.

Mr. Chairman, and members of the committee, in the fiscal year 1967, there were a total of more than 208,000 bankruptcy cases filed in our Federal courts. In 1968 the number declined to about 198,000. In 1969, there was a further decline to about 185,000 cases.

In the first half of fiscal 1970, however, we apparently have bottomed out, and there is an increase again. The number of cases filed in this first half of the fiscal year 1970 is increased over the corresponding 6 months a year ago. Whether this means we are going back to setting new records, I don't know. But I can say to you that the pattern is entirely unusual.

Normally, the heavier filings occur in the last half of each fiscal year, and it could very well be that in the fiscal year 1970, we will equal or exceed the number of cases filed in 1969.

The important thing about these cases is that approximately 92 percent of them are filed by the so-called consumer bankrupt. They

are not business cases. Only about 8 percent are filed by business establishments. This has been true for a good many years.

The consumer bankrupt—the so-called blue-collar worker or low-salaried wage earner—has been in a very serious credit squeeze for a good long time. He is caught in an era of inflationary trends, and he has a very difficult time in these days making ends meet.

Homeownership for these people is virtually out of the question. This man's situation is complicated by the fact that he is not equipped by training or experience to make wise use of our modern, sophisticated credit system. The overextension of credit can occur before he realizes it.

And equally as unfortunate, the Bankruptcy Act has no provision for rehabilitation in the real sense of the word. We don't teach them anything. They come into the court with a petition in bankruptcy. They are automatically adjudicated bankrupt. What assets they have, over and above exceptions allowed by the State law, are taken for the benefit of creditors and usually the tax people get most of it.

And he goes out disillusioned and hurt perhaps, but there isn't any machinery in our court system for sitting down with him and trying to teach him how credit operates, how in the future he could avoid these pitfalls. It is not provided in the act, and we are not equipped to do it.

Mr. NIX. Do you believe that that should be included in bankruptcy proceedings?

Mr. JACKSON. Yes, sir; the Bankruptcy Act, as Chief Justice Warren has called it, is intended by the Congress to be a compassionate law, one which is oriented to the relief and rehabilitation of poor people. I think this will come in the complete rewriting of the Bankruptcy Act which is called for by Senate Joint Resolution 88, which was sponsored by Senator Burdick.

It was enacted by the Senate on June 20. It was the subject of hearings before the House Judiciary Committee, Subcommittee 4, on October 1, 1969.

When the Bankruptcy Act is rewritten, the substantive provisions of it—and Heaven knows it is long overdue—I believe that this will be a part of the new bankruptcy law.

I would prefer to see it come this way, after a 2-year study by a commission than to see some attempt by piecemeal legislation, sir.

Mr. NIX. Might I make the observation that while what you say might very well happen, I don't think it is going to happen in the 91st Congress, if it is going to cost any more money.

Mr. JACKSON. Well, this commission, according to the best estimates I could give the Members of the Congress who sat in that hearing, would cost around \$600,000 for 2 years of operation.

Now I am apprehensive about the same thing you are, sir, but the job is so badly needed, the timing is absolutely correct, because the Advisory Committee on Bankruptcy Rules, of the Judicial Conference, will very shortly complete a set of rules of practice and procedure in the bankruptcy courts which will lift out of the present act all of the strictly procedural sections, and leave only a skeleton of substantive law.

Such a commission would have the benefit of the work of the Rules Committee. Moreover, the Brookings Institution for a long time has

been studying bankruptcy, and I understand that a report is to be issued in the next year or so. They would have the benefit of that report.

So the time is right, and I do hope the legislation will be passed.

Turning now again, if I may, sir, to the consumer bankrupt. Unfortunately our public school system, which takes a very large part of our tax dollar, has no effective courses to teach children how to manage their personal finances. It should start in grade school and continue through high school and perhaps even into junior college.

Some steps have been taken in this direction. Some school systems have become interested, but they do not have teachers at this time, I believe, who are prepared to teach what these children ought to know to manage their affairs when they become adults and get on their own, so they can avoid all of the grief and anxiety and trouble that comes with bankruptcy and insolvency.

This consumer bankrupt—I have talked about him enough now, and you probably wonder who he is and what he looks like. Several of our courts have accumulated statistical data, and have prepared “profiles” of the consumer bankrupt. In the district court in eastern Tennessee, at Knoxville, the Hon. Clive Bare has prepared such a profile. Also Hon. Gene Brooks, referee in bankruptcy at Evansville, Ind., has prepared a “profile,” and in California, some referees in bankruptcy there have studied these cases and have “profiles.” According to the profile, the median age of the consumer bankrupt is 30 years, his median education is 10th grade, his median wage is \$75 to \$85 a week. Average number of dependents is four; average indebtedness is \$4,200.

This is the person we are concerned about in our courts, and I think this Congress would be doing him a great favor if it placed the unsolicited credit card entirely out of his reach.

The reason I say that is because many of these people, when they are at the borderline point of having to go to bankruptcy court for relief, perhaps with their credit cut off by other sources, and, as the bankruptcy courts have told us, along comes an unsolicited card in the mail. It's like something from Santa Claus. They cannot resist the temptation to use it, and they are going to use it instead of sending it back as they should do.

In the material attached to my statement are letters from a number of referees in bankruptcy which pretty much represent a cross section of the situation throughout the United States. These gentlemen who wrote these letters are the judges of the bankruptcy courts. They sit in judgment on these cases every day, and I believe the material that they have given you is important.

They share my view, the view of my office, that the unsolicited credit card should be barred entirely from the mail.

I believe that many years ago Justice Holmes, in an opinion, characterized the automobile as an “inherently dangerous instrumentality.” If he were alive today, he would agree it still is. I think the credit card—certainly the unsolicited credit card in the hands of insolvent persons, in the hands of someone who doesn't know how to use it wisely—is a dangerous instrumentality.

I think this is true. The insurance companies recognize it, because many of them have given policyholders credit card insurance whether they have asked for it or not. They have added it to their policies. I

added it to my own policy, and got a refund when the company advised me it was now standard.

That concludes the summary of my statement, and I would be glad to answer any questions you may have.

Mr. NIX. You said a moment ago that unsolicited credit cards should not be available to people in a certain segment—blue collar, I think you referred to. Am I correct?

Mr. JACKSON. It should not be imposed on anyone.

I would like to correct that, and say that the unsolicited credit card shouldn't be sent to anyone, but it is particularly troublesome to the lower income group—not just blue-collar workers, but the people who are having an awfully tough time in the present economy and are harmed by this card, rather than helped by it.

People with better incomes who get the unsolicited credit card are more often than not irritated by it. I know I am. I don't want them unless I ask for them. I have the problem then of either destroying them, or more properly returning them, and I don't know why taking the initiative of returning the card should be imposed on me when I didn't ask for it.

Mr. NIX. The point I have in mind is this. If a certain segment of the population know nothing about their financial condition, have never been trained in it, it seems to me it wouldn't make any difference how he got a credit card. He would still be in trouble. He still would not have the training, the ability to use the credit card to his advantage.

Mr. JACKSON. I believe that limited use of credit cards is essential. I think credit cards are essential and they are here to stay. Limited use of the credit card is all right for the lower income class of our people if the card were issued after a reasonably thorough credit investigation.

But I know that some of our courts have found out in testimony developed at the first meetings of creditors in bankruptcy proceedings that more often than not the uneducated consumer bankrupt, when he goes to buy a new automobile or a television set or some other appliance, will permit the seller to make the determination as to whether or not he can pay for the item rather than to make that decision himself.

This was stressed at great length in an article by Judge Dan Cowans of San Jose, Calif., in the Personal Law Finance Quarterly a year or so ago. I think it is true that many consumer bankrupts are uneducated in the sense that they do not understand our credit system and how it operates. They are not really aware of the impact of the 18 percent interest—the minimum of 18 percent that is added 25 days after the billing date on these credit card charges.

They do know, however, that the bank credit card is preferable to borrowing money from a small loan company, because the small loan company is going to take a mortgage on something. Maybe it's the kitchen range, but they are going to have a mortgage. The bank will not. They will issue a promissory note when the account becomes delinquent, and that won't occur until after 25 days.

Mr. NIX. Another interesting point you make is that the issuer of credit cards should be charged with the responsibility of investigating the credit standing.

Now, I don't at the moment see how that could be made legally mandatory. I don't see how you could do that. I don't see how legislation could be formulated making that incumbent upon the issuer to perform that service.

Mr. JACKSON. I believe that S. 721, by Senator Proxmire, authorizes and directs the Federal Reserve Board to issue regulations under which credit cards would be issued and it seems to me, if I remember correctly—it's been some time since I testified on that bill—it seems to me in that bill the Federal Reserve Board would have the power to say what sort of investigation would be made, and how extensive it needed to be.

But I agree with you, sir, it wouldn't be easy to require it. I say that as a matter of good business sense, the credit card shouldn't be issued to anyone until the issuer has taken reasonable steps to find out what kind of credit rating that person has.

I am sure they are not doing it now. They may be doing a spot check, but not making a thorough investigation before these cards go out.

Mr. NIX. Mr. Cunningham?

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

I appreciate the testimony of the witness. I have no questions.

Mr. JACKSON. Thank you, sir.

(The prepared statement submitted by Mr. Royal E. Jackson, and the attachments thereto, are as follows:)

PREPARED STATEMENT OF ROYAL E. JACKSON, CHIEF, DIVISION OF BANKRUPTCY,
ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. Chairman, I am Royal E. Jackson, Chief of the Bankruptcy Division of the Administrative Office of the United States Courts. I have served as Chief of the Division for over five years, and I have been a member of the legal staff of the Division since 1946.

For more than thirty years in my service in various capacities in the government, I have been associated with the administration of the bankruptcy courts. In the course of my present official duties, I have had constant contact with the bankruptcy courts throughout the country. I have visited the bankruptcy courts in every state of the Union except in Hawaii in connection with my duties, and I have conducted interviews and surveys relating to bankruptcy proceedings in all of the federal courts, including those in Puerto Rico and the Virgin Islands.

THE BANKRUPTCY DIVISION

The Bankruptcy Division is the Seat of Government service organization for the bankruptcy courts charged, under the supervision of the Director of the Administrative Office, with the duty of conducting more or less constant survey and analysis of the work of the bankruptcy courts, including the number, size, and type of bankruptcy cases filed in the courts. These surveys are necessary in connection with the recommendations we must make from time to time to the Judicial Conference of the United States as to the number of referees in bankruptcy to hold office, the regular places of office, territories they are to serve, designated places of holding court, salaries of the referees, and the staffing of their offices.

The Bankruptcy Division conducts studies to establish more efficient methods of dispatching the work of the bankruptcy courts, and the Division is also charged with the investigation of complaints received from time to time from bankrupts, creditors, the bar and the public.

All recommendations formulated by the Bankruptcy Division respecting bankruptcy administration, after approval by the Director, are considered by the district courts and Judicial Council of the Circuits concerned, and by the Bankruptcy Committee of the Judicial Conference of the United States before they are acted upon by the Conference. Under the Bankruptcy Act, the authority to create referee positions, fix their salaries, establish the limits of their territories, and designate the places of holding court is lodged in the Judicial Conference of the United States.

STATEMENT LIMITATIONS

I would like to state that nothing contained in my statement or in reply to questions I may be asked is to be considered as an effort to interfere with matters involving Congressional policy or as an expression of policy contrary to that established by the Judicial Conference of the United States. The four bills, H.R. 13244, H.R. 14293, H.R. 14346 and H.R. 15103, have not been considered by the Judicial Conference to my knowledge, and the views I will express will be those of the Bankruptcy Division and the Administrative Office of the United States Courts.

CONSUMER BANKRUPTCY CASES

In the fiscal year 1967, a total of 208,329 bankruptcy cases was filed in the United States district courts, an all-time high. Of this total, 92 percent of the cases were personal bankruptcy cases as distinguished from business cases. These are the so-called "consumer" bankruptcy cases. In fiscal year 1968, the total filings was 197,811 cases, but the percentage of consumer cases remained virtually the same. In the 1969 fiscal year, a total of 184,930 bankruptcy cases was filed and, again, the proportion of personal bankruptcies remained as in previous years.

As I stated at the hearings before the Subcommittee on Financial Institutions of the Committee on Banking and Currency of the United States Senate in October 1968 and again on December 4, 1969, I believe the large number of personal bankruptcies illustrates that, for a long time, the wage earner has been in a credit squeeze. There are many reasons for bankruptcy: personal misfortune, providence, and the like, but most are due to over-extended credit, frequently the result of unwise use of credit cards. Many people do not understand our credit card system and do not know how to use it wisely; before they realize it, they have over-extended their credit, and the garnishment of wages takes place. This is the triggering factor in most personal bankruptcy cases.

The rapid growth of the credit card business, particularly bank credit cards distributed without solicitation in many instances and almost always without thorough credit investigation, has been an important contributing factor. I am not opposed to credit cards generally. They perform an essential function. But they should not be issued indiscriminately to the public. They should be issued only upon request and then only after a careful and searching credit investigation. We think this is in the public interest and that the more conservative policy on the part of issuing agencies will in no way hurt the economy. Rather, it should be good for the economy of the country.

It has long been recognized that many members of the so-called "consumer" class in this country are totally unprepared to make judicious use of our modern and sophisticated credit system. They depend upon the seller to determine whether they, the purchasers, can pay for the things they want instead of making this determination themselves, and unsolicited distribution of credit cards only adds to the problem.

We have long needed courses in our public schools that would teach children the rudiments of the proper management of their personal finances and the wise use of credit. I personally feel that such courses should start in the grade schools and continue through the high schools and perhaps into junior colleges. Some significant progress has been made in this direction in recent years, and I think it is a good and wholesome thing.

I have attached to this statement a number of statistical tables relating to the filing of bankruptcy cases since 1900 which may be useful for reference purposes.

SENATE BILL 721

The bill under consideration in the Senate, S. 721, would require the Federal Reserve Board to prescribe regulations governing the issuance of credit cards not requested in writing. These regulations would also prescribe minimum standards relating to credit worthiness of prospective card holders to protect consumers from over-extending their credit, and to protect and safeguard the safety and soundness of banks insured by the Federal Deposit Insurance Corporation who are credit card issuers.

This bill would also limit liability of the card holder to \$50.00 for unauthorized use of the card under the several conditions set out in Section 3. This is certainly a much-needed step in the right direction, and we support the bill as far as it goes. I, personally, would go beyond this and prohibit entirely the issuance

of unsolicited credit cards. I believe that the practice is not in the best interests of the country and is a nuisance to most people who receive such credit cards. In the bankruptcy courts we have learned that the rapidly increased use of credit cards has brought into focus some very disturbing abuses.

We have attempted to up-date the material which was submitted to the Senate Subcommittee on Financial Institutions at the hearings held on October 9 and 10, 1968. Mr. Berkeley Wright, the Assistant Chief of the Division, and I have recently received a number of letters from referees in bankruptcy around the country which are pertinent. As you know, the referees in bankruptcy are the judges of the bankruptcy courts. They are in daily contact with the problems of the consumer, and it is common practice for the bankruptcy court to ask the bankrupt to surrender all credit cards to the trustee in bankruptcy at the first meeting of creditors. These cards are either returned to the issuers or held until the conclusion of the bankruptcy proceeding and returned to the bankrupt.

The practice of issuing unsolicited credit cards appears to be widespread, particularly among banks. I have the impression that banks entered this field with competitive haste and with little practical guidance. I understand that very few, if any, banks make what is generally regarded as a thorough credit check and that such credit investigations as are made may be only superficial, or spot checks. The need for uniform regulation of this aspect of credit card issuance is obvious.

I also understand that the Federal Trade Commission early this year initiated proceedings to prohibit the issuance of unsolicited credit cards. Hearings have been held but no final regulations have been issued. These prospective regulations would not, of course, apply to banks, common carriers, and air carriers because they are beyond the jurisdiction of the Federal Trade Commission. Therefore the Congress must act if complete regulation is to be attained.

BILLS INTRODUCED IN THE HOUSE OF REPRESENTATIVES

It is my understanding that there are four bills before this Subcommittee, each of which attempts to deal with the problem of the unsolicited credit card passing through the mails. These bills, unlike S. 721, would apply to all credit card issuers.

H.R. 13244 and H.R. 14293 appear to be identical. These bills make credit cards unmailable matter except under certain circumstances and provide specifically that unsolicited credit cards may be mailed if transmitted by registered mail, delivery being restricted to the addressee only. The bills also provide that the envelope must identify the enclosure as an unsolicited credit card and bear the legend that the addressee may refuse it, with return to sender made at the sender's expense. These bills are a step in the right direction and probably would largely solve the problem as it appears to us from evidence developed in bankruptcy proceedings.

H.R. 14346 appears to be similar to the previously mentioned bills (H.R. 13244 and H.R. 14293) with one important exception. Subsection (c) (4) of Section 4001 of Title 39 of the United States Code is omitted. This subsection makes the exception for mailing unsolicited credit cards by registered mail. This, it seems to us, is the bill to be preferred, since it would prohibit the mailing of unsolicited credit cards entirely. As I have previously stated, the credit card is indispensable in our modern society, but it should not be issued without request and, even then, not until the issuer has taken reasonable steps to determine the credit standing of the person to whom it is issued.

H.R. 15103 would permit the mailing of unsolicited credit cards when sent by registered mail and in response to a written request. It also provides that the credit card must bear a statement that the issuer assumes complete responsibility for fraudulent use unless the card bears a photograph and signature of the intended card holder, in which event the liability of the card holder for fraudulent use is limited to \$50.00.

This bill does not contain a provision expressly permitting the mailing of credit cards by other than the issuer—for example, between members of a family—without using registered mail. If I am correct in this assumption, this bill would place an inordinate burden upon the public. It would, however, in its other provisions, go a long way toward solving the problem of unsolicited credit cards in the hands of insolvent persons and persons who do not know how to use them wisely.

In summary, based on our experience in the bankruptcy courts, we recommend H.R. 14346 for enactment. The losses to issuers of unsolicited credit cards apparently are not significant. The income through carrying charges on past-due obligations in the aggregate must be enormous in relation to losses.

The impact upon the bankrupt should not be overlooked, however. Most persons seeking relief in the bankruptcy courts are in desperate circumstances, with regular sources of credit cut off; they may be improvident or they may be victims of circumstances such as accident or prolonged illness. Overwhelming medical bills and garnishment of wages are the two principal triggering factors in bankruptcy proceedings of the so-called consumer bankrupt. When a person is trying desperately to satisfy his creditors, he can hardly be expected to return an unsolicited credit card. He will use it! As a result, his ultimate bankruptcy is hastened and, when his case is administered in court, his debts are greater than they need to be.

We should also keep in mind that, as is pointed out in the statement of Referee Clive W. Bare attached hereto, the median age of the consumer bankrupt is 30 years; median education, the 10th grade. He is a low-income wage earner whose salary is from \$70 to \$85 a week. He has an average of four dependents. I think we would be doing him a great favor if we kept unsolicited credit cards out of his mail. We may still have to help him rehabilitate himself occasionally in our bankruptcy courts, but perhaps the debts he lists on his petition for bankruptcy will be fewer and less and the losses to creditors lower than they are at present.

In the remainder of my statement, I have included typical reports received from a number of referees in bankruptcy, with my own brief comments respecting each one.

A report received from Referee David C. Doten of the U.S. District Court at Memphis, Tennessee, reveals that the average indebtedness of consumer bankrupts on credit cards ranged from \$319 to \$559 in fiscal years 1968 and 1969. In Referee Doten's district, many banks have issued credit cards without solicitation, and credit cards are generally too easy to obtain. Such credit investigations as are made appear to be very superficial.

It is interesting to note that most consumers are gravitating to bank credit cards and away from small loan companies because the latter usually require mortgages on personal property while banks require only a note, and then only on past-due obligations on which 18 percent is charged beginning twenty-five or thirty days after billing date.

Referee Clive W. Bare of Knoxville, Tennessee, reports that a six-month survey recently conducted in his court discloses debts owing to banks on credit cards were listed in 114 cases for a total of \$61,889.00. Almost without exception, he states, these bank credit cards were mailed without solicitation. He also gives a brief "profile" of these consumer bankrupts whose average earnings were \$70.00 a week.

Similar surveys conducted by the Honorable Gene E. Brooks, Referee in Bankruptcy at Evansville, Indiana, and surveys made by several other referees indicate that this "profile" of the consumer bankrupt does not vary much in other sections of the country. The income may vary slightly, depending upon locality, but the median age and the lack of education are largely present in nearly every case.

In a recent letter to the Administrative Office, Referee Jack C. Jones of the U.S. District Court at Kansas City, Missouri, states that for every debtor who requested a bank credit card there were three who received the card unsolicited. The cases coming before Referee Jones reveal that both BankAmericard and Bankmark are involved, and he cites one example of the results of such unsolicited distribution of these cards.

The Honorable Raymond J. Pellman of Cincinnati, Ohio, in a letter to Mr. Wright, gives a clear and concise statement of the extent to which unsolicited credit cards are involved in bankruptcy proceedings in his court, and

Referee W. Homer Drake of Atlanta, Georgia, points to the effect of indiscriminate mailing of credit cards by financial institutions, particularly to consumers in the lower-income bracket. The debts incurred in these cases sometimes total in the thousands of dollars. He expresses the view that with a high volume of credit card business, banks are apparently prepared to accept the losses.

Referee James E. Moriarty at Los Angeles in the Central District of California, who supplied an extensive report at the Senate hearings on October 9 and 10, 1968, reports that the adverse effect of the proliferation of credit cards in the Los Angeles area continues undiminished. The State of California had over

35,000 new bankruptcy cases in fiscal year 1969, about 90 percent of which were consumer bankruptcies.

The referee states that credit cards are used for everything from payment of taxes to wedding costs and that the average consumer obviously does not know how to use a credit card wisely. He discusses the recent amendments to the California Civil Code aimed at correcting the problem but states that because of the incidence of national and international aspects of credit, federal legislation is needed to provide effective protection to consumers.

Referee Ronald Walker, also of the Los Angeles bankruptcy court, reports on the cases appearing on his calendar the morning of December 8, 1969. The facts are significant. Of 16 bankrupts, 10 had a total of 42 credit card transactions totaling in excess of \$10,000. Of these 42 cards, 20 were mailed to the bankrupts without solicitation.

In his letter, Referee Walker expresses the view that this is "about average" for his court.

In the Eastern part of the country, Referee Sylvester W. Kellerman, Jr., at Louisville, Kentucky, substantiates the evidence submitted by other bankruptcy courts with respect to the high incidence of unsolicited credit cards appearing in bankruptcy cases and also the fact that the average consumer bankrupt is a blue-collar worker. Referee Kellerman also expresses the hope that the issuance of credit cards may, by law, be restricted to persons who have made formal application for such cards.

But probably the most extreme example of credit card abuse is cited by the Honorable Joe Lee, Referee in Bankruptcy at Lexington in the Eastern District of Kentucky, in his letter of November 24, 1969. Also, in a letter to the Administrative Office dated December 12, the referee calls attention to the reported use of bank credit cards by attorneys in Cincinnati and the concern of the Cincinnati Bar Association regarding the practice.

I trust that these observations will be useful to the subcommittee and that appropriate legislation will be approved and enacted by the Congress at an early date.

I thank you, Mr. Chairman, for the opportunity of appearing here today.

(The attachments to Mr. Jackson's statement are as follows:)

U.S. DISTRICT COURT,
OFFICE OF REFEREES IN BANKRUPTCY,
WESTERN DISTRICT OF TENNESSEE,
Memphis, November 25, 1969.

HON. ROYAL E. JACKSON,
Chief, Division of Bankruptcy, Administrative Office of the U.S. Courts,
Supreme Court Building, Washington, D.C.

DEAR MR. JACKSON: In line with a request from Mr. Wright, I am submitting a few statistics that may be of some help to you in your appearance before the Subcommittee on Financial Institutions of the Senate Committee on Banking and Currency.

In September, 1968, I submitted a survey to you covering a period of approximately eighteen months. At that time there were three types of credit cards being used by our three national banks and their many branches. These consisted of BankAmericard, Bancardchek and Chargeall. At the present time, one of the banks is using the BankAmericard and the other two are now using the Master Charge credit card system.

My present survey covers petitions filed by the so-called "consumers" under Chapter III and XIII of the Bankruptcy Act.

In 1968, at least 143 consumer bankrupts listed obligations owed to the banks for a total of \$79,958.05, for an average of approximately \$559.00 per bankrupt.

In 1969 (for approximately ten months), there were 92 consumer bankrupts that listed obligations owing to banks in the amount of \$48,379.90, for an average of approximately \$525.00.

In 1968, there were 107 petition filed under Chapter XIII of the Bankruptcy Act in which the debtors showed obligations owed to one or more banks. These obligations amounted to \$34,170.04 or an average of \$319.00 per debtor.

During approximately ten months of 1969, 121 Chapter XIII petitions showed debts owing to the banks of \$52,364.39 or an average of \$432.00 per debtor.

It has been my observation that one of the reasons for an increase in the percentage of straight bankruptcies over the wage earner plan being filed in our district is due to the larger number of consumers who are using the bank

credit card system for purchasing most of their needs, except for the larger appliances. They do not have the pressure put on them to renew these obligations after bankruptcy, as is exerted on them by the loan companies.

Most of the loan companies will require the borrowers to give a lien on household goods, which they know are already subjected to a prior lien. This is almost routine with loan companies whereas they get the needed credit under a bank credit card system, without pledging any of their furniture as security.

Another incentive to use the bank credit card system, is because they know the interest will be eighteen (18) per cent. The interest at the loan company is presumably less but the consumers have come to realize that the other charges that are added to the loan (investigation fee, life, accident & health and property insurance premiums) makes it about twice as expensive to borrow the money from a loan company.

In Tennessee there is a constitutional limitation of 10% interest on loans but the banks are charging eighteen per cent (18%) on the credit card system if the account is not paid in full within 25 or 30 days of the billing date. The bank charges its clients approximately five per cent (5%) for collecting these accounts.

In making this survey, we could not always determine with a certainty that these obligations were based on the credit cards issued by the banks. One reason for this is due to the practice of having the card holder sign a note at the bank after the account is delinquent for a certain period of time.

The banks were limited to charging six per cent (6%) interest on loans until a recent session of the legislature in the spring of this year, when the limitation was increased to ten per cent (10%), as allowed under the Tennessee State Constitution. The banks have been charging in excess of six (6) and ten (10) per cent interest in their time pay departments. The interest was discounted on the front end of the loan, which meant a true interest of approximately twelve per cent (12%).

Our Court has held that any interest in excess of ten per cent (10%) is usurious. A claim that is filed for payment through a wage earner plan must be purged of all interest charged in excess of ten per cent (10%).

It has become evident that because of the "tight money" situation and the federal garnishment law that will become effective July 1, 1970, the loan companies are becoming more selective in the new loans they are making. The consumer, therefore, is looking to the bank credit card as the best means of enabling him to "purchase now and pay later". It is also evident, that many consumers are seeking to obtain both the BankAmericard and Master Charge credit cards. Many of the petitions, filed in both the Chapter III and XIII proceedings, show sizeable obligations owed from charges on both of these credit cards. It would appear that unless an individual has an extra high credit rating, that a bank would not issue a card to one who already has a bank credit card.

It has been my observation, that in a great many instances the credit cards were mailed to individuals without their having requested them. The applications for these credit cards are also too easily available to anyone who walks into a bank or into the store of a merchant who honors these cards. It has been obvious from my examination of the bankrupts and debtors that the bank did not make a very thorough examination of the credit standing of an individual before issuing a card.

I trust that my observation will help you in a small way in presenting the "facts as they are" to the Senate Subcommittee.

With warmest regards, I am

Sincerely,

DAVID C. DOTEN,
Referee in Bankruptcy.

U.S. DISTRICT COURT,
EASTERN DISTRICT OF TENNESSEE,
OFFICE OF REFEREE IN BANKRUPTCY,
Knoxville, Tenn., November 19, 1969.

HON. ROYAL JACKSON,
Chief, Bankruptcy Division, Administrative Office of the U.S. Courts, Supreme Court Building, Washington, D.C.

DEAR MR. JACKSON: You have requested my views as to whether or not the unsolicited issuance of credit cards has had an impact on bankruptcy filings in this district. A review of the cases filed within the last six months indicates that the issuance of such cards by banks (Mastercharge and BankAmericard)

has had an impact. During the last six months (May through October, 1969) this office processed 741 new cases, 92 percent or 682 of which were filed by wage earners. Debts owing to banks on credit cards in these cases were listed in 114 petitions or 17 percent of wage earner cases filed. These debts ranged in amount from \$22.00 to \$1,838.00 and totaled \$61,889.00.

My examination of bankrupts at the first meetings of creditors reflected that almost without exception these cards had been mailed to them without application on their part.

The average wage earner bankrupt in this area earns \$70.00 per week. He is the head of a family with four dependents. He has a tenth grade education. His average indebtedness is approximately \$4,200.00. When a few hundred dollars is added to this indebtedness with resultant collection procedures which follow upon default, the debtor often resorts to bankruptcy to keep his wages from being garnished and thereby possibly losing his job.

Sincerely,

CLIVE W. BARE,
Referee in Bankruptcy.

U.S. DISTRICT COURT,
EASTERN AND WESTERN DISTRICTS OF MISSOURI,
Kansas City, Mo., November 25, 1969.

MR. ROYAL E. JACKSON,
Chief, Bankruptcy Division, Administrative Office of the U.S. Courts, Supreme Court Building, Washington, D.C.

DEAR MR. JACKSON: Since your visit I have been inquiring about credit cards when they show up on the bankrupt's schedules of unsecured debts.

Bankamericard is the most grievous offender and it appears from my examination that they send out their cards willy-nilly. For every person who asks for the Bankamericard in my Court, there are three who don't and they have incurred sizeable debts. In fact, I am presently helping a young man on his wage earner plan who is about half smart and who hands out keys for lockers at the YMCA. He received a Bankamericard unsolicited and has run up a considerable debt considering the salary he has.

The only two where we have found abuses thus far are Bankamericard and Bankmark, with most of them being the Bankamericard. I would say that of the twenty non-asset cases we have in a morning, we will have on the average of three or four who have one of these credit card debts of which one will have been solicited by the bankrupt himself and the others would have been sent by the company to the bankrupts without solicitation. I am sure you realize that this is a very short survey as I have only done it since you were here recently.

If there is anything else you want me to do along this line or any other line, please let me know. As I recall, you were to testify before Senator Proxmire's committee on or around December 1, 1969, and would not need the information after that date.

I hope the seminar in San Francisco was a great success and that the one in Denver this coming May will be even better.

With best regards to you personally, I am,

Yours very truly,

JACK C. JONES,
Referee in Bankruptcy.

U.S. DISTRICT COURT,
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION,
REFEREES IN BANKRUPTCY,
Cincinnati, Ohio, November 20, 1969.

MR. BERKELEY WRIGHT,
Assistant Chief of Bankruptcy, Administrative Office of the U.S. Courts, Supreme Court Building, Washington, D.C.

DEAR BERKELEY: In response to your recent telephone inquiry we conducted a survey of the issuance and use of unsolicited credit cards as they relate to bankrupts. The following results were obtained from the examinations of the bankrupts at first meetings of creditors held during the past two weeks.

Number of bankrupts interviewed.....	72
Number of bankrupts who received unsolicited credit cards.....	21
Number of bankrupts who used the cards.....	16
Number of bankrupts who listed debts incurred through the use of unsolicited credit cards.....	8

The names of the companies which issued unsolicited credit cards and their frequency are:

Texaco	6	Shell	1
Master Charge	5	Phillips 66	1
Bank Americard	2	American Airlines	1
Standard Oil	4	Sheraton Hotels	1

Of some significance might be the fact that one bankrupt incurred \$700.00 indebtedness on purchases by use of Master Charge and another listed a total of \$1,200.00 in gasoline purchases on an unsolicited credit card.

Hope this information will be of some use to you.

Sincerely,

RAYMOND J. PELLMAN,
Referee in Bankruptcy.

U.S. BANKRUPTCY COURT,
NORTHEN DISTRICT OF GEORGIA,
Atlanta, November 19, 1969.

Mr. BERKELEY WRIGHT, JR.,
*Assistant Chief, Division of Bankruptcy, Administrative Office of the U.S. Courts,
Supreme Court Building, Washington, D.C.*

DEAR BERKELEY: In response to your call last week concerning Royal's upcoming testimony before a Congressional Committee relating to the credit card business and its effect on bankruptcies, I have only a very little bit to add to what I have written previously.

It seems to me that indiscriminate mailing of credit cards by financial institutions to consumers in the lower economic range has the effect of creating much unsecured indebtedness. These low-paid consumers want the finer things of life; that is, more and better clothing for themselves and their families, luxury items which they can charge and put off the reckoning day, etc. I have had many of which the amounts charged on these credit cards are in the hundreds and sometimes thousands of dollars. Just how much pressure is put on the debtor by these financial institutions to collect the indebtedness, I do not know. Perhaps because of the volume of business they do, they are willing and prepared to accept losses of the kind above referred to.

There is no question but that this has some effect on the number of bankruptcies; however, perhaps the stimulus it provides to the economy makes it more of an asset than a liability.

I regret that I do not have any more to offer for the upcoming hearings, but our only experience in regard to the use of such credit cards has been the fact that they are listed on the bankrupt's schedules. What precipitates more bankruptcies here than credit cards are large hospital and doctors' bills, which low income families just cannot afford these days.

I enjoyed talking with you on the telephone last week and hope that we will have the opportunity of seeing each other before too long.

With best regards always, I am

Sincerely yours,

W. HOMER DRAKE.

U.S. DISTRICT COURT,
CENTRAL DISTRICT OF CALIFORNIA,
Los Angeles, Calif., November 18, 1969.

ROYAL E. JACKSON,
*Chief of the Division of Bankruptcy, Administrative Office of the U.S. Courts,
Supreme Court Building, Washington, D.C.*

DEAR ROYAL: You have recently requested that I update the material contained in my letter of September 23, 1968, to you on the subject of credit cards and their effect on the caseload of the bankruptcy courts.

During the interim period I have made no effort to maintain a set of statistics on bankruptcy cases in which credit cards are a factor. I believe I can state that most bankrupts include as creditors some obligation that had its origin in the use of a credit card. Just yesterday I had a matter before me where the bankrupt listed seventeen creditors with eight debts arising out of the use of credit cards.

From my experience I see no indication that the use of credit cards has diminished during the past year. With credit cards expanding the area of their

use, we now find that by the use of a credit card we can pay our taxes, medical care, groceries, church dues and even the cost of our daughter's wedding.

One of the problems that we in the legal profession have is accepting the ethical approach of the business community as it appears to credit cards. We think of Rights and Justice while the business community of today apparently think only of profits and ignore what is good for the community. The ease in which credit cards are obtainable create problems that extend far beyond the relationship of Debtor-Creditor. The placing of a credit card in the hands of many debtors is the same as placing a loaded pistol in the hands of a five year old. They simply do not know how to handle them.

The recent session of the California State Legislature approved two amendments to the Civil Code. Section 1718 was amended to provide that credit card holders are not liable for unauthorized use of credit cards which were not issued pursuant to a written request from the user, and said credit cards were not used by the person named thereon. The remainder of this Section relates to a notice that must be given where credit cards are lost or stolen. As I understand this Section of the Code, if an unrequested credit card is sent, the person named thereon cannot be liable until such time as he made use of the card which would be the act of accepting the card as set forth in the Statute.

The second section that was amended was Section 1719 of the Civil Code which requires a creditor to separate and label all fees, charges and penalties whenever they are assessed against the credit card holder for the use of the credit card.

These two recent amendments could not really attack the problem which we face in the use of credit cards. Credit cards today can be obtained which gives national and international credit to the holder. They transcend all State laws and policy and if the trend continues Congress and Congress alone will have the authority to enact legislation that will be meaningful for the protection of the consuming public.

There is attached hereto several recent clippings from newspapers dealing with this subject which may be of some interest to you and the Committee.

If I can be of any further service, please let me know.

Sincerely,

JAMES E. MORIARTY.

[From the Washington Star, November 3, 1969]

18 PERCENT VERSUS 6 PERCENT PENALTY? TAX PAYING BY CREDIT CARD STIRS UP SOME CONTROVERSY

(By Brian Sullivan)

NEW YORK (AP).—There is one more thing some Americans can take care of with a credit card now—some of their taxes.

In Arkansas, starting Dec. 1, residents will be able to pay their state taxes with a BankAmericard.

In seven states, some counties will accept credit cards for property taxes and in at least five other states, motorists in some counties can pay their automobile registration fees and taxes with credit cards.

The District of Columbia government does not accept credit cards and a spokesman in the tax office said he knew of no plans to honor them.

In California, the Bank of America has had a pilot program since 1967 in some counties for property tax payment with BankAmericard and is launching a new program in all 58 counties.

In this program, card holders in California will charge property taxes by mail. The person is to receive a special draft form by mail which he will be able to fill out for up to \$500 and dispatch it to the tax collector.

The tax is to be added to the taxpayer's regular credit card bill. If the individual settles up within 30 days of billing, all it costs is the postage. After that he must pay the normal interest charge on a cash advance, which amounts to a true annual rate of 18 percent, a BankAmericard official said. For example, he said, a man charging a \$100 tax bill to his credit card and repaying at \$10 a month will end up paying a total of \$107.42.

The tax collectors will get their money right away from the banks, which assume responsibility for collection later.

Wells Fargo Bank, with 2¼ million Master Charge card holders in California, Washington, Oregon, Nevada and Utah, said it is thinking about starting a similar operation.

Credit card operators across the country apparently expect to make money through interest charges, not on discounts as they do with commercial purchases where a merchant pays a percentage of the sale price. No charges to government units were found in a survey.

The two California banks indicated credit card tax payments appear inevitable for state—and even federal—income taxes.

But in Vermont, State Tax Commissioner Lawrence Wright frowned: "The citizen would have to be out of his mind to want to risk paying 15–20 percent interest on his taxes with a credit card when the statutory limit on tax interest for delinquencies is only 6 percent in Vermont.

Massachusetts Tax Commissioner Cleo Jaillet also disapproved: "I don't think it's at all feasible for us right now, and I don't think the federal government is about to get involved in anything like that either."

The states where residents of some counties can use credit cards to pay property taxes include California, Georgia, New Mexico, Indiana, Tennessee, North Carolina and Texas.

In Hawaii, the First Hawaiian Bank in Honolulu allows a customer to pay property tax much as he would finance any other credit card purchase. But the state says it is not directly involved and does not accept credit cards itself.

Next spring, most residents of Arizona will be able to pay their property taxes with credit cards.

[From the Los Angeles Herald-Examiner, November 14, 1969]

CREDIT CARDS PAY TAXES, WEDDINGS

(By Robert J. Cole)

Everybody is talking about the emergence of the great cashless society—not because there isn't much cash around but because credit cards seem to be doing away with most needs for it.

As an example of the tremendous versatility of the credit card: If you happen to get tossed into jail in Phoenix, it might be comforting to know that you can arrange bail on a Master Charge card.

Or, if you're in the mood to get married, the cupid's arrow wedding chapel in down town Reno will tie the knot for just \$20 on either American Express, Bank Americard or Master Charge.

To broaden the credit card even further, the industry is beginning to turn its attention to a number of new—and more challenging—fields: Groceries, taxes, medical care and church dues.

The BankAmericard can be used to pay property taxes throughout California as well as in North Carolina, Washington, Oregon and eight counties in Ohio. It can also be used to pay state taxes in Arkansas.

The National Bank of Commerce in Seattle said its Bank Americard could be used to pay all taxes. On the strength of the card, the bank will even help to pay federal income tax.

Meanwhile, in a somewhat significant breakthrough in the use of credit cards to pay medical and dental bills—up to now more an idea than anything else—25 Florida banks will issue medi cards to each of their 400,000 Master Charge card holders in an area around Miami as well as in West Palm Beach, Orlando and St. Petersburg.

But the most overlooked market of all, perhaps is the churchgoer.

Churches and synagogues have loomed larger, ever since Kenneth Smith, president of the National Association of Church Business Administrators, made what he calls a "facetious" remark at a convention in Houston four months ago.

Smith, noting that people don't have much money in their pockets any more—partly because of tight money and partly because of credit cards—observed that the day might come when churches would set up a table with a credit card machine so parishioners could make pledges.

The story got into print in the church press and among the people who read it was the Rev. Richard C. Ogden Jr., mayor of Vergennes, Vt., (population 1,921) and pastor of the Congregational church there. He liked the idea and now his parishioners can use a Master Charge card of the Chriddenden Trust Company.

[From the Los Angeles Times, Nov. 12, 1969]

CREDIT CARD SYNDROME HELD AIDING INFLATION

Exclusive to The Times from a Staff Writer

SAN FRANCISCO.—Stores, banks and oil companies were criticized Tuesday at a convention session of the National Assn. of Real Estate Boards for feeding inflation through the credit card syndrome.

Realtor Owen E. Hall, Birmingham, Mich. charged that unsolicited mailing of credit cards should be investigated.

He said a bank sent his 17-year-old daughter a credit card and he promptly sent it back. His remarks came during a discussion on possible credit controls to stem inflation.

Uncontrolled credit fostered by businesses is heightening the inflation spiral, he and others charged.

Al Jennings, of Atlanta, said the question of control must be considered seriously because merchants' try to get people to spend now and pay later.

U.S. DISTRICT COURT,
CENTRAL DISTRICT OF CALIFORNIA,
Los Angeles, Calif., December 8, 1969.

Mr. ROYAL E. JACKSON,
Chief, Division of Bankruptcy, Administrative Office of the U.S. Courts, Supreme Court Building, Washington, D.C.

DEAR ROYAL: When Kent was here just before Thanksgiving he sat in on one of my first meetings in straight bankruptcy. He seemed impressed that I was picking up outstanding credit cards and commenting on the fact that such large indebtednesses were incurred in that way.

I understand you are to appear before Senator Proxmire's Committee. Kent indicated that you would be interested in his mentioning these matters to you.

This morning I took a test run on my 10:00 o'clock Calendar which disclosed the following:

Of the sixteen bankrupts, ten of them had forty-two credit card transactions totaling slightly in excess of \$10,000.00.

Of the forty-two credit cards, twenty had been mailed to the bankrupts with no requests nor solicitation for the same.

I would assume that this is about the average which we run into.

Very truly yours,

RONALD WALKER,
Referee in Bankruptcy.

U.S. DISTRICT COURT,
WESTERN DISTRICT OF KENTUCKY,
REFEREES IN BANKRUPTCY,
Louisville, Ky., December 2, 1969.

Mr. ROYAL JACKSON,
Director, Bankruptcy Division, Administrative Office of the U.S. Courts, Supreme Court Building, Washington, D.C.

DEAR MR. JACKSON: I had delayed in answering the request of Mr. Wright regarding the solicitation of bankrupts by various lending agencies issuing credit cards, as Mrs. Kellerman's and my plans have been pretty well occupied in that on December 7th our son is going for active duty in Vietnam.

I have examined into the acts of bankrupts and have inquired from them as to the fact of the receipt of unsolicited credit cards sent to them by various lending institutions. At least 20% of them, in my judgment, made no formal application for the card itself. Instead these unfortunates receive by mail these cards with a pathetic solicitation for their use. These people who receive the cards are in my opinion blue-collar workers and their instant reaction was to treat these unsolicited cards as negotiable instruments with which to buy not what they need, but what they wanted. As one bankrupt told me, "When you have them there cards, it's just like Santa Claus coming every day."

Perhaps some remedy can be enacted into the law that will compel the lending institutions to forward credit cards only upon the receipt of formal application by a prospective user.

My kindest personal regard to you and to the members of your staff.

Very truly yours,

S. W. KELLERMAN, JR.,
Referee in Bankruptcy.

U.S. DISTRICT COURT,
FOR THE EASTERN DISTRICT OF KENTUCKY,
OFFICE OF THE REFEREE IN BANKRUPTCY,
Lexington, Ky., November 24, 1969.

Mr. ROYAL E. JACKSON,
Chief, Bankruptcy Division, Administrative Office of the U.S. Courts, Supreme Court Building, Washington, D.C.

DEAR MR. JACKSON: I offer the following example of overuse of an unsolicited credit card.

The bankrupt, a practical nurse, filed bankruptcy in the United States District Court for the Eastern District of Kentucky at Covington, Kentucky. She scheduled an indebtedness in the approximate amount of \$1500.00 to the Bank Americard. The card, which had been sent to her unsolicited through the mail by First National Bank of Covington, Kentucky, specified a maximum debt limit of \$800.00.

Interrogation of the bankrupt revealed that she had purchased six or seven transistor radios using the Bank Americard. I was curious as to why she owned so many transistor radios. Finally she confessed that she had been buying these radios with colored carrying cases to match her outfits in much the same manner women buy purses and shoes. She had a white one to go with her nurse's uniform and a blue one to match her blue suit, etc., in all, at least six different color combinations.

Yours truly,

JOE LEE,
Referee in Bankruptcy.

U.S. DISTRICT COURT,
FOR THE EASTERN DISTRICT OF KENTUCKY,
OFFICE OF THE REFEREE IN BANKRUPTCY,
Lexington, Ky., December 12, 1969.

Mr. ROYAL E. JACKSON,
Chief, Division of Bankruptcy, U.S. Courts, Supreme Court Building, Washington, D.C.

DEAR MR. JACKSON: In connection with the information you are gathering concerning overuse of credit cards I thought you might be interested in the enclosed news item. According to Mrs. Portia F. Schaefer, the trustee in bankruptcy who serves at Covington across the river from Cincinnati, some of the lawyers who practice bankruptcy in Cincinnati have been charging fees for their services against Bank America Credit Cards issued to the bankrupts. I cannot cite any specific instances, but the fact that the Cincinnati Bar Association has investigated the matter tends to support this thesis.

I think we can look forward to the day pretty soon when law offices will have signs on the door—All Major Credit Cards Honored.

Yours truly,

JOE LEE,
Referee in Bankruptcy.

PROFESSIONAL AND PERSONAL—BANK CREDIT CARDS RULED OUT BY COMMITTEE

Participation by lawyers in bank credit card plans for payment of fees violates the Canons of Professional Ethics. This is the opinion of the Cincinnati Bar Association's committee on professional ethics, it was reported by John R. Bullock, CBA president.

The committee report, submitted by Booth Shepard, chairman, was approved by the association's executive committee. A sub-committee, composed of Nelson Schwab, Jr. & Fred L. Kruse, had made a study of the question and its reports was adopted by the ethics committee.

Mr. Shepard said that "it was the desire of the committee that its opinion be considered as extending only to the credit plans submitted and expressing no view with respect to any necessary amendment of such plans in order that they might conform to the Canons."

The subcommittee concurred with Informal Opinion 1120 of the Standard Committee on Professional Ethics of the American Bar Assn.

Table F 1. United States District Courts
 Bankruptcy Cases Commenced and Terminated During the Fiscal Year
 Ended June 30, 1969, by District

Circuit and District	Pending July 1, 1968	Commenced	Terminated	Pending June 30, 1969
TOTAL ALL DISTRICTS.....	184,470	184,930	190,742	178,658
District of Columbia.....	194	122	134	182
First Circuit.....	6,958	4,610	4,808	6,760
Maine.....	3,688	1,742	1,636	3,794
Massachusetts.....	1,927	1,552	1,636	1,843
New Hampshire.....	513	766	913	366
Rhode Island.....	585	481	504	562
Puerto Rico.....	245	69	119	195
Second Circuit.....	8,267	7,888	8,799	7,356
Connecticut.....	1,077	1,374	1,404	1,049
New York:				
Northern.....	1,447	2,114	2,183	1,378
Eastern.....	2,027	1,134	1,441	1,720
Southern.....	1,627	920	1,121	1,426
Western.....	1,940	2,007	2,273	1,674
Vermont.....	147	339	377	109
Third Circuit.....	4,000	3,479	3,517	3,962
Delaware.....	45	93	78	60
New Jersey.....	2,302	1,710	1,810	2,202
Pennsylvania:				
Eastern.....	814	736	735	815
Middle.....	258	310	300	268
Western.....	574	626	591	609
Virgin Islands.....	7	4	3	8
Fourth Circuit.....	6,206	6,770	6,867	6,109
Maryland.....	397	375	334	438
North Carolina:				
Eastern.....	151	123	129	145
Middle.....	366	243	159	450
Western.....	108	95	106	97
South Carolina.....	175	171	216	130
Virginia:				
Eastern.....	1,148	2,634	2,612	1,170
Western.....	3,010	1,732	1,884	2,858
West Virginia:				
Northern.....	356	534	472	418
Southern.....	495	863	955	403
Fifth Circuit.....	27,594	23,967	24,810	26,751
Alabama:				
Northern.....	9,625	6,082	6,292	9,415
Middle.....	2,515	1,560	1,577	2,498
Southern.....	2,691	1,568	1,721	2,538
Florida:				
Northern.....	105	135	118	122
Middle.....	771	859	976	654
Southern.....	976	488	737	727
Georgia:				
Northern.....	2,447	3,367	3,514	2,300
Middle.....	1,891	1,997	1,912	1,976
Southern.....	2,169	925	1,240	1,854
Louisiana:				
Eastern.....	1,081	2,712	2,651	1,142
Western.....	1,309	1,849	1,795	1,363
Mississippi:				
Northern.....	189	268	281	176
Southern.....	350	786	741	395
Texas:				
Northern.....	772	591	647	716
Eastern.....	91	86	76	101
Southern.....	311	210	177	344
Western.....	301	484	355	430

Table F 1. United States District Courts

Bankruptcy Cases Commenced and Terminated During the Fiscal Year
Ended June 30, 1969, by District - Concluded

Circuit and District	Pending July 1, 1968	Commenced	Terminated	Pending June 30, 1969
Sixth Circuit.....	36,230	34,932	36,566	34,596
Kentucky:				
Eastern.....	1,809	1,491	1,329	1,971
Western.....	2,896	3,571	2,972	3,495
Michigan:				
Eastern.....	5,799	4,326	4,969	5,156
Western.....	1,895	1,757	1,799	1,853
Ohio:				
Northern.....	7,394	7,607	8,425	6,576
Southern.....	6,399	7,968	8,212	6,155
Tennessee:				
Eastern.....	2,834	2,749	2,615	2,968
Middle.....	1,634	2,331	2,423	1,542
Western.....	5,570	3,132	3,822	4,880
Seventh Circuit.....	12,331	23,402	23,177	12,556
Illinois:				
Northern.....	3,321	8,807	8,777	3,351
Eastern.....	1,069	1,094	1,057	1,106
Southern.....	1,786	2,572	2,421	1,937
Indiana:				
Northern.....	906	2,234	2,183	957
Southern.....	1,420	4,787	4,585	1,622
Wisconsin:				
Eastern.....	2,822	2,610	2,906	2,526
Western.....	1,007	1,298	1,248	1,057
Eighth Circuit.....	14,151	13,125	13,191	14,085
Arkansas:				
Eastern.....	1,647	762	580	1,829
Western.....	240	180	154	266
Iowa:				
Northern.....	865	1,141	1,107	899
Southern.....	1,185	1,168	1,159	1,194
Minnesota:				
Eastern.....	5,986	3,161	3,641	5,506
Missouri:				
Eastern.....	2,039	2,550	2,360	2,229
Western.....	1,319	2,484	2,465	1,338
Nebraska.....	598	1,272	1,284	586
North Dakota.....	208	232	258	182
South Dakota.....	64	175	183	56
Ninth Circuit.....	54,032	51,650	54,276	51,406
Alaska.....	155	200	218	137
Arizona.....	2,834	3,052	3,114	2,772
California:				
Northern.....	10,262	8,354	7,199	11,417
Eastern.....	8,740	5,730	6,327	8,143
Central.....	19,053	19,002	22,027	16,028
Southern.....	2,432	2,307	2,335	2,404
Hawaii.....	556	319	460	415
Idaho.....	853	1,123	958	1,018
Montana.....	570	952	661	861
Nevada.....	1,119	1,344	1,300	1,163
Oregon.....	2,934	4,539	4,704	2,769
Washington:				
Eastern.....	700	1,067	1,026	741
Western.....	3,820	3,659	3,944	3,535
Guam.....	4	2	3	3
Tenth Circuit.....	14,507	14,985	14,597	14,895
Colorado.....	5,507	4,029	4,310	5,226
Kansas.....	4,917	4,378	3,657	5,638
New Mexico.....	644	1,428	1,419	653
Oklahoma:				
Northern.....	1,087	1,150	1,282	955
Eastern.....	115	195	188	122
Western.....	512	1,821	1,809	524
Utah.....	1,311	1,421	1,477	1,255
Wyoming.....	414	563	455	522

TOTAL FILINGS OF ALL TYPES OF BANKRUPTCY
CASES BY FISCAL YEARS ENDING JUNE 30, OF
EACH YEAR FROM 1900 THRU JUNE 30, 1968

<u>Fiscal Year</u>		<u>Fiscal Year</u>	
1900	21,938	1936	60,624
1901	19,007	1937	57,485
1902	18,482	1938	57,306
1903	16,875	1939	50,997
1904	17,082	1940	52,577
1905	16,946	1941	56,332
1906	12,972	1942	52,109
1907	14,160	1943	34,711
1908	17,818	1944	19,533
1909	18,018	1945	12,862
1910	18,053	1946	10,196
1911	19,338	1947	13,170
1912	19,745	1948	18,510
1913	20,930	1949	26,021
1914	22,959	1950	33,392
1915	27,632	1951	35,193
1916	27,368	1952	34,873
1917	24,838	1953	40,087
1918	20,385	1954	53,136
1919	14,048	1955	59,404
1920	13,558	1956	62,086
1921	22,812	1957	73,761
1922	38,165	1958	91,668
1923	41,304	1959	100,672
1924	43,519	1960	110,034
1925	45,641	1961	146,643
1926	46,374	1962	147,780
1927	48,758	1963	155,493
1928	53,064	1964	171,719
1929	57,280	1965	180,323
1930	62,845	1966	192,354
1931	65,335	1967	208,329
1932	70,049	1968	197,811
1933	62,256	1969	184,930
1934	58,888		
1935	69,153		

BANKRUPTCY FILINGS BY CLASS

<u>F. Y.</u>	<u>Chap. XIII</u>	<u>Employee</u>	<u>Non- Business</u>	<u>Business</u>	<u>Total Bankruptcy Case Filings</u>
1939	1,639*				50,997*
1940	3,260	36,843	39,073	13,248	52,577
1941	4,433	42,348	44,713	11,619	56,335
1942	4,100	40,180	42,251	9,858	52,109
1943	2,007	27,020	28,782	5,929	34,711
1944	1,249	15,460	16,752	2,781	19,533
1945	1,248	10,010	11,051	1,811	12,862
1946	1,371	7,618	8,566	1,630	10,196
1947	2,354	9,396	10,234	2,936	13,170
1948	3,315	12,546	13,537	4,973	18,510
1949	5,111	17,772	19,144	6,877	26,021
1950	6,007	22,933	25,040	8,352	33,392
1951	6,924	25,984	27,806	7,387	35,193
1952	7,397	26,527	28,331	6,542	34,873
1953	8,670	31,253	33,315	6,772	40,087
1954	9,634	40,889	44,248	8,888	53,136
1955	9,864	46,163	50,219	9,185	59,404
1956	9,535	48,784	52,608	9,478	62,086
1957	11,549	59,053	63,617	10,144	73,761
1958	13,391	73,379	80,265	11,403	91,668
1959	12,993	81,516	88,943	11,729	100,672
1960	13,599	89,639	97,750	12,284	110,034
1961	19,723	119,117	131,402	15,241	146,643
1962	22,880	120,742	132,125	15,655	147,780
1963	24,329	127,156	139,190	16,303	155,493
1964	27,292	141,550	155,209	16,510	171,719
1965	28,027	148,965	163,413	16,910	180,323
1966	28,261	160,299	175,924	16,430	192,354
1967	31,963	174,205	191,729	16,600	208,329
1968	31,065	162,879	181,266	16,545	197,811
1969	28,910	150,235	169,500	15,430	184,930

* From Attorney General's Report

FILINGS BY CHAPTER OF THE BANKRUPTCY ACT

Fis- cal Year	Total	Volun- tary straight bank- ruptcy	Invol- untary straight bank- ruptcy	Ch IX	Ch X	Ch XI	Ch XII	Ch XIII	Ch XV
1940	52,577	43,902	1,752	117	320	990	149	3,247	6
1941	56,332	47,578	1,491	19	269	769	71	4,433	0
1942	52,109	44,366	1,295	43	183	520	52	4,100	0
1943	34,711	30,913	649	13	114	205	22	2,007	5
1944	19,533	17,629	277	5	68	58	10	1,249	0
1945	12,862	11,101	264	8	72	41	5	1,248	0
1946	10,196	8,293	268	7	54	79	1	1,371	1
1947	13,170	9,657	697	7	96	291	7	2,354	0
1948	18,510	13,546	1,029	7	137	442	20	3,315	0
1949	26,021	18,882	1,240	2	149	531	17	5,111	4
1950	33,392	25,263	1,369	4	134	583	31	6,007	0
1951	35,193	26,594	1,099	3	88	459	22	6,924	2
1952	34,873	25,890	1,059	15	74	413	21	7,397	1
1953	40,087	29,815	1,064	0	86	437	15	8,670	0
1954	53,136	41,335	1,398	2	104	649	12	9,634	1
1955	59,404	47,650	1,249	1	73	547	19	9,864	1
1956	62,086	50,655	1,240	1	40	597	15	9,535	2
1957	73,761	60,335	1,189	0	65	599	24	11,549	0
1958	91,668	76,048	1,417	2	67	720	23	13,391	0
1959	100,672	85,502	1,288	3	78	787	21	12,993	0
1960	110,034	94,414	1,296	0	90	622	12	13,599	1
1961	146,643	124,386	1,444	0	112	947	31	19,723	0
1962	147,780	122,499	1,382	1	77	903	37	22,880	1
1963	155,493	128,405	1,409	0	128	1,188	33	24,329	0
1964	171,719	141,828	1,339	0	125	1,088	47	27,292	0
1965	180,323	149,820	1,317	0	88	1,022	49	28,027	0
1966	192,354	161,840	1,165	0	93	909	75	28,261	0
1967	208,329	173,884	1,254	1	125	1,033	68	31,963	1
1968	197,811	164,592	1,017	3	112	953	69	31,065	0
1969	184,930	154,054	963	0	70	867	66	28,910	0

NUMBER OF BANKRUPTCY CASES FILED BY OCCUPATIONS IN THE BUSINESS
AND NON-BUSINESS GROUPS FOR THE FISCAL YEARS 1940 THRU 1968

NON-BUSINESS			BUSINESS								
Fiscal Year	Em- plovee	Others not in busi- ness	TOTAL	Mer- chants	Manu- fac- turers	Farm- ers	Pro- fes- sionals	Others in busi- ness	TOTAL	GRAND TOTAL	NATIONAL POPULATION
1940	36,843	2,230	39,073	4,651	921	2,678	801	4,197	13,248	52,321	132,122,000
% of Total	70.4	4.3	74.7	8.9	1.8	5.1	1.5	8.0	25.3	100.0	
1941	42,348	2,365	44,713	4,278	766	2,367	744	3,464	11,619	56,332	133,402,000
% of Total	75.2	4.2	79.4	7.6	1.4	4.2	1.3	6.1	20.6	100.0	
1942	40,180	2,071	42,251	3,386	507	2,048	581	3,336	9,858	52,109	134,860,000
% of Total	77.1	4.0	81.1	6.5	1.0	3.9	1.1	6.4	18.9	100.0	
1943	27,020	1,762	28,782	1,775	286	1,151	395	2,322	5,929	34,711	136,739,000
% of Total	77.8	5.1	82.9	5.1	.8	3.3	1.2	6.7	17.1	100.0	
1944	15,460	1,292	16,752	554	181	512	211	1,323	2,781	19,533	138,397,000
% of Total	79.2	6.6	85.8	2.8	.9	2.6	1.1	6.8	14.2	100.0	
1945	10,010	1,041	11,051	287	153	305	152	914	1,811	12,862	139,928,000
% of Total	77.8	8.1	85.9	2.2	1.2	2.4	1.2	7.1	14.1	100.0	
1946	7,618	948	8,566	236	201	260	112	821	1,630	10,196	141,389,000
% of Total	74.7	9.3	84.0	2.3	2.0	2.5	1.1	8.1	16.0	100.0	
1947	9,396	838	10,234	631	596	183	111	1,415	2,936	13,170	144,126,000
% of Total	71.3	6.4	77.7	4.8	4.5	1.4	.8	10.8	22.3	100.0	
1948	12,546	911	13,537	1,338	808	167	114	2,546	4,973	18,510	146,631,000
% of Total	67.8	5.3	73.1	7.2	4.4	.9	.6	13.8	26.9	100.0	
1949	17,772	1,372	19,144	1,969	853	232	159	3,664	6,877	26,021	149,188,000
% of Total	68.3	5.3	73.6	7.5	3.3	.9	.6	14.1	26.4	100.0	

NUMBER OF BANKRUPTCY CASES FILED BY OCCUPATIONS IN THE BUSINESS
AND NON BUSINESS GROUPS FOR THE FISCAL YEARS 1940 THRU 1968

NON-BUSINESS				BUSINESS						GRAND TOTAL	NATIONAL POPULATION
Fiscal Year	Em- ployee	Others not in busi- ness	TOTAL	Mer- chants	Manu- fac- turers	Farm- ers	Pro- fes- sionals	Others in busi- ness	TOTAL		
1950	22,933	2,107	25,040	2,555	803	290	126	4,568	8,352	33,392	151,677,000
% of Total	68.7	6.3	75.0	7.7	2.4	.8	.4	13.7	25.0	100.0	
1951	25,984	1,822	27,806	2,360	522	205	127	4,173	7,387	35,193	154,360,000
% of Total	73.8	5.2	79.0	6.7	1.5	.6	.4	11.8	21.0	100.0	
1952	26,527	1,804	28,331	2,319	532	196	137	3,358	6,542	34,873	156,981,000
% of Total	76.1	5.2	81.3	6.6	1.5	.6	.4	9.6	18.7	100.0	
1953	31,253	2,062	33,315	2,402	518	214	140	3,498	6,772	40,087	159,696,000
% of Total	78.0	5.1	83.1	6.0	1.3	.5	.4	8.7	16.9	100.0	
1954	40,889	3,359	44,248	3,191	745	322	154	4,476	8,888	53,136	162,409,000
% of Total	77.0	6.3	83.3	6.0	1.4	.6	.3	8.4	16.7	100.0	
1955	46,163	4,056	50,219	3,317	750	386	217	4,515	9,185	59,404	165,248,000
% of Total	77.7	6.8	84.5	5.6	1.3	.6	.4	7.6	15.5	100.0	
1956	48,784	3,824	52,608	3,155	730	400	212	4,981	9,478	62,086	168,091,000
% of Total	78.6	6.2	84.8	5.1	1.2	.6	.3	8.0	15.2	100.0	
1957	59,053	4,564	63,617	3,160	665	405	204	5,710	10,144	73,761	171,191,000
% of Total	80.1	6.2	86.3	4.3	.9	.5	.3	7.7	13.7	100.0	
1958	73,379	6,886	80,265	3,504	758	332	284	6,525	11,403	91,668	174,000,000
% of Total	80.1	7.5	87.6	3.8	.8	.4	.3	7.1	12.4	100.0	
1959	81,516	7,427	88,943	3,400	634	408	430	6,857	11,729	100,672	177,128,000
% of Total	81.0	7.4	88.4	3.4	.6	.4	.4	6.8	11.6	100.0	

NUMBER OF BANKRUPTCY CASES FILED BY OCCUPATIONS IN THE BUSINESS
AND NON-BUSINESS GROUPS FOR THE FISCAL YEARS 1940 THRU 1968

NON-BUSINESS				BUSINESS					GRAND TOTAL	NATIONAL POPULATION	
Fiscal Year	Em- ployee	Others not in busi- ness	TOTAL	Mer- chants	Manu- fac- turers	Farm- ers	Pro- fes- sionals	Others in busi- ness			TOTAL
1960	89,639	8,111	97,750	3,157	624	453	495	7,555	12,284	110,034	180,670,000
% of Total	81.4	7.4	88.8	2.9	.6	.4	.4	6.9	11.2	100.0	
1961	119,117	12,285	131,402	4,244	790	546	623	9,038	15,241	146,643	182,868,000
% of Total	81.2	8.4	89.6	2.9	.5	.4	.4	6.2	10.4	100.0	
1962	120,742	11,383	132,125	4,295	735	548	771	9,306	15,655	147,780	186,482,000
% of Total	81.8	7.7	89.5	3.0	.4	.4	.5	6.2	10.5	100.0	
1963	127,156	12,034	139,190	4,271	859	554	753	9,866	16,303	155,493	189,278,000
% of Total	81.8	7.7	89.5	2.7	.6	.4	.5	6.3	10.5	100.0	
1964	141,550	13,659	155,209	5,064	819	565	785	9,277	16,510	171,719	191,851,000
% of Total	82.4	8.0	90.4	2.9	.5	.3	.5	5.4	9.6	100.0	
1965	148,965	14,448	163,413	4,856	852	589	780	9,833	16,910	180,323	193,818,000
% of Total	82.6	8.0	90.6	2.7	.5	.3	.4	5.5	9.4	100.0	
1966	160,299	15,625	175,924	4,683	747	551	632	9,817	16,430	192,354	196,843,000
% of Total	83.3	8.2	91.5	2.4	.4	.3	.3	5.1	8.5	100.0	
1967	174,205	17,524	191,729	4,929	729	443	704	9,732	16,600	208,329	199,118,000
% of Total	83.6	8.4	92.0	2.4	.4	.2	.3	4.7	8.0	100.0	
1968	162,879	18,387	181,266	4,567	749	567	1,087	9,575	16,545	197,811	200,996,000
% of Total	82.3	9.3	91.6	2.3	.4	.3	.5	4.9	8.4	100.0	
1969	150,235	19,265	169,500	3,969	680	606	1,301	8,874	15,430	184,930	203,216,000
% of Total	81.3	10.4	91.7	2.1	.4	.3	.7	4.8	8.3	100.0	

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS,
Washington, D.C., February 20, 1970.

MR. THOMAS KENNEDY,
Counsel, Postal Operations Subcommittee, Committee on Post Office and Civil
Service, Rayburn Building, Washington, D.C.

DEAR MR. KENNEDY: Supplementing my testimony on January 28, 1970 on the subject of the unsolicited distribution of credit cards, we have received additional material which may be of interest to the Subcommittee on Postal Operations and which, if possible, should be added to the record of the hearings.

The first enclosure is a letter dated February 12, 1970 from the Honorable Clive W. Bare, President of the National Conference of Referees in Bankruptcy, enclosing a record of the action of the Board of Directors of the Conference in opposition to the unsolicited distribution of credit cards.

The second enclosure is another letter from Referee Bare dated February 17, 1970 enclosing letters from members of the Committee on Chapter XIII and Consumer Bankruptcy, of which he is the Chairman, of the National Bankruptcy Conference. From this correspondence it appears that the majority of this Committee is favorably disposed toward the proposed legislation. Two members would bar unsolicited distribution of credit cards; one would not oppose barring unsolicited credit cards; and the fourth member, Mr. Morris W. Macey, would oppose barring from the mails unsolicited credit cards.

The third enclosure is a letter from the Honorable Robert B. Morton, Referee in Bankruptcy at Wichita, Kansas, dated February 16, 1970, received this afternoon. Referee Morton is a member of the Board of Directors of the National Conference of Referees in Bankruptcy. His letter discloses the results of the examination of the first 155 consumer bankruptcy cases filed in his court in the calendar year 1970. The results of this survey, and Judge Morton's views on the subject, strike us as being most significant.

Sincerely yours,

ROYAL E. JACKSON,
Chief, Division of Bankruptcy.

Enclosures.

THE NATIONAL CONFERENCE OF REFEREES IN BANKRUPTCY,
February 12, 1970.

HON. ROYAL JACKSON,
Chief, Bankruptcy Division, Administrative Office of the U.S. Courts, Supreme
Court Building, Washington, D.C.

DEAR ROYAL: Enclosed please find record of Board action with reference to barring the unsolicited mailing of credit cards. I believe you will be pleased by the affirmative vote taken by the Board. From the attached letter from Referee Hiller you will note that he opposes a ban but favors some regulations to control indiscriminate dissemination of credit cards.

I certainly enjoyed being with you in Washington during the past two days, and I am looking forward to seeing you again in the near future. Thank you for all the assistance you are rendering Referees in attaining their objectives. With kindest regards to Jimmie, I am

Sincerely,

CLIVE W. BARE,
Referee in Bankruptcy.

Enclosure.

RECORD OF BOARD ACTION UNDERTAKEN BY MAIL BALLOT PURSUANT TO ARTICLE V,
SECTION 4

Pursuant to the provision of Article V, Section 4 of the Constitution of the National Conference of Referees in Bankruptcy (as revised and adopted October 26, 1965), a vote by letter ballot was initiated upon the written request of President Clive W. Bare, which request was received in this office on February 2,

1970. On February 3, 1970 the undersigned Secretary submitted the following question to each officer and director for their vote:

Do you favor barring the unsolicited mailing of credit cards?

As of the instant date the following officers and directors have voted affirmatively on the question:

Hon. Clive W. Bare
Hon. Saul Seidman
Hon. Conrad K. Cyr
Hon. Daniel R. Cowans
Hon. John C. Ford
Hon. Asa S. Herzog
Hon. Paul C. Glennon

Hon. Beryl E. McGuire
Hon. John T. Copenhaver, Jr.
Hon. Joe Lee
Hon. James E. McCarty
Hon. Sidney C. Volinn
Hon. Robert B. Morton

and there were no negative votes.

It appearing that more than the minimum of 12 votes was cast on this issue and that the vote was a unanimous one in the affirmative, it is deemed the action of the Board of Directors that the Board has unanimously voted in favor of the barring of the unsolicited mailing of credit cards.

The Secretary tabulated the votes received and mailed a summary thereof to each Director and Officer pursuant to Article V, Section 4 of the Constitution.

At Bangor, Maine this 10th day of February 1970.

CONRAD K. CYR,

Secretary, National Conference of Referees in Bankruptcy.

FEBRUARY 9, 1970.

Hon. CONRAD K. CYR,
*Secretary-Treasurer, U.S. District Court, U.S. Courthouse,
Bangor, Maine.*

DEAR CONNIE: I hasten to reply to your survey request regarding proposed legislation dealing with unsolicited credit cards.

My own observation and experience would seem to indicate that the practice of distributing unsolicited credit cards to individuals is not as indiscriminate as it would appear on the surface.

I would oppose the outright ban by legislation of the mailing of unsolicited credit cards. I would, however, favor some regulation of the practice. Such regulation could conceivably take the form of requiring at least minimal credit data to be assembled about a person before an unsolicited credit card could legally be mailed to him. Such data would include information as to the age, marital status, employment, bank connections if any, and probable resources of the intended recipient.

The latest flood of unsolicited credit cards have come from banks throughout the country. Several of these systems are huge and wide spread. To what extent these systems have been operating without prior data on the card recipients I do not know. However, I would question that the system functions with complete indiscriminate distribution to unknown persons. One would think that a credit card mailing list would be developed first for the bank's customers and depositors about whom they have built-in financial data of a sort. To this extent the recipients' accounts could reflect thrift and resources. To that degree the unsolicited credit card (which customarily carries a basic dollar amount limitation) would be supported by the exercise of some judgment hard facts and discernment on the part of the sender.

In addition to information about its depositors and customers banks have unique access to a great deal of information from which to make knowledgeable assessments of financial ability and reliability. Most any bank knows the economic structure of its community and business area. It knows the identity of the proprietors of all businesses, the officers, managers and directors of local business corporations, the identity of persons holding positions of trust and responsibility in those businesses and in the community, it has access to public records for ascertaining property holdings and secured indebtedness. All these sources provide a base for developing a list of names of financially responsible persons and of those with steady employment.

Credit cards have not been a gateway for unlimited extensions of credit. They commonly involve limited credit on retail purchases of goods and services.

Travelers and diners credit cards were perhaps the earliest credit card systems in this country. To the best of my information these travelers and diners card

systems were not disseminated indiscriminately. To my knowledge there was always an application form which required bank and employment references to be given before approval resulted. Unfortunately it was in this area where the mountebanks and dead beats abounded in great numbers, with resulting high loss ratios.

Following the advent of the diners cards came the nations oil companies. It was this group I believe that started the practice of sending unsolicited credit cards to prospective customers. What credit information, if any, was utilized in making up their selected mailing lists I do not know. Perhaps all they utilized for a mailing list was a list of auto registrations with the State Motor Vehicle Bureau. Their experience with credit cards appears to have been fairly satisfactory, however, for there has been no complaint from them about losses exceeding tolerable limits. In any event with monthly billings the volume of oil and gasoline purchases would create relatively modest obligations for each credit card holder.

Department stores have also entered the unsolicited credit card field, but with what pre-processing of credit risk is not known to me.

Those who want to examine the practices that characterize unsolicited credit card dissemination should be cautious to avoid permitting the experience with the dead beat element of our society to discredit the whole idea. Dead beats, cheats and mountebanks are inevitable in an operation that deals broadly with the general public.

I oppose a ban; I favor some regulation to control indiscriminate dissemination of credit cards without prior relevant data as to the credit worthiness of the recipient.

Yours very truly,

RUSSELL L. HILLER.

NATIONAL BANKRUPTCY CONFERENCE,
February 17, 1970.

HON. ROYAL JACKSON,
Chief, Bankruptcy Division, Administrative Office of the U.S. Courts, Supreme Court Building, Washington, D.C.

DEAR ROYAL: On January 29, 1970, I requested comment from members of the Committee on Chapter XIII and Consumer Bankruptcy of the National Bankruptcy Conference to express their views with reference to barring the unsolicited mailing of credit cards. This committee consists of myself, Conferees Poulos, Loiseaux, and Macey. I have now received replies from them, and I am enclosing copies of same for your information. You will note that Referee Poulos favors barring the unsolicited mailing of credit cards, Mr. Macey opposes such barring, and Professor Loiseaux states that he does not believe the matter to be of major importance but that he would not be inclined to oppose such a bill. As you know, from my previous correspondence to you and the impact which I believe the mailing of unsolicited credit cards has had on bankruptcy filings in this District, I favor barring the mailing of unsolicited cards.

With kindest personal regards, I am

Sincerely,

CLIVE W. BARE,

Chairman, Committee on Chapter XIII and Consumer Bankruptcy.

Enclosures.

NATIONAL BANKRUPTCY CONFERENCE,
February 7, 1970.

HON. CLIVE W. BARE,
Office of Referee in Bankruptcy, U.S. Post Office and Courthouse, Knoxville, Tenn.

DEAR JUDGE BARE: Regarding your question in your letter of January 29 about unsolicited mailing of credit cards, I am afraid that I cannot be very helpful. I do not think I would oppose such a regulation; on the other hand, it would seem to me that this will not be a substantial roadblock to imaginative credit men who will simply send a postcard to be returned requiring two mailings instead of one, mostly at the expense of the taxpayer. I might also observe that the practice can be useful to some consumers and the more intelligent ones realize that they can simply destroy the card if they do not wish to use it.

Of all things that can be done to protect consumer interest this seems to me to be one of less than major importance. However, I repeat I would not be inclined to oppose such a bill.

Kindest personal regards,
Sincerely,

PIERRE R. LOISEAUX.

NATIONAL BANKRUPTCY CONFERENCE,
February 13, 1970.

HON. CLIVE W. BARE,
*Chairman, Committee on Chapter XIII and Consumer Bankruptcy, Office of
Referee in Bankruptcy, U.S. Post Office and Courthouse, Knoxville, Tenn.*

DEAR CLIVE: It is a little difficult for me to answer your letter of January 29, 1970 because unsolicited credit cards were just recently introduced in Maine. My experience is limited and, therefore, I lack the basis for making any worthwhile judgment. But, I have discussed this with Mr. Gerald S. Cope, the standing Chapter XIII trustee in this area, for his view, with which I fully concur. It seems to me that unless there are some reasonable restrictions the unsolicited mailing of credit cards should be barred.

With kind personal regards, I am
Very truly yours,

RICHARD E. POULOS,
Referee in Bankruptcy.

LAW OFFICES OF GERALD S. COPE,
Portland, Maine, February 12, 1970.

HON. RICHARD E. POULOS,
*Federal Building,
Portland, Maine.*

DEAR REFEREE POULOS: Relative to the letter to you from Clive W. Bare, Chairman, Committee on Chapter XIII and Consumer Bankruptcy of the National Bankruptcy Conference regarding the subject of unsolicited mailing of credit cards, it is my view that legislation should be enacted prohibiting such practices.

At the outset my experience in Wage Earner Proceedings filed in Southern Maine indicates that to date there has been no substantial impact in such proceedings from the mailing of unsolicited cards. The reason for this is that this practice has not been substantial until recently when several commercial banks in Southern Maine introduced credit cards and initiated an enormous mailing of unsolicited credit cards. Since the bulk of this mailing occurred within the few months preceding the Christmas buying season, it is likely that we will observe the impact of this in new proceedings filed over the next five or six months. But on the basis of a few isolated instances which have come to my attention, I would anticipate that the impact will be substantial.

In two specific cases that I know of, the particular banks involved mailed these cards directly to individuals who were then on the wage earner plan and had been on the wage earner plan for some period of time, and indeed had listed the particular bank as a creditor. In one of the cases involved, despite a credit limit of \$300.00 on the use of the card, the individual wage earner had in a period of approximately one month incurred over \$900.00 in new debts through the use of the card. As a consequence of this abuse of the credit card, the debtor has concluded that he must convert to bankruptcy. The other instance of which I am aware was not as substantial as this one but the individual nevertheless exceeded the maximum limitation of credit under the card, and in view of the transaction involved, this office was required to dismiss the proceeding for non-compliance.

The inherent danger of these credit cards is that they place in the hands of indiscriminate and unwary consumers an immediate and unregulated source of credit tantamount to cash, and therefore in the hands of such individuals who have poor or limited credit, proceed to exercise this credit as if it were their duty to do so. Since most merchants who have a tie-in relationship with the finance institution issuing the credit cards are able to shift the burden of collection to the bank for a nominal discount, there is little or no inducement upon retail merchants to curb the appetite of such credit card bearing consumers. As a consequence, normal credit restraint by the retailer, who would otherwise check credit through credit bureaus and other usual sources of credit infor-

mation, is eliminated. Really, the credit of the financial institution issuing the credit card is substituted for the consumers' credit standing merely by relying upon possession of the card.

I have discussed the matter with bank officials in this area and have been generally led to believe that such mailing is done in a highly discriminating manner: however, my experience is to the contrary. Further, these institutions anticipate that some cards will fall into the hands of those who are unable to properly use such accounts are expected to be few in number and will shortly eliminate themselves by their immediate abuse. While the loss to the bank may be substantial at first, this situation will level off and will achieve a level consistent with normal banking or credit experience. While this may be so from the bank's point of view, the drastic economic effect to those who receive the unsolicited cards and who are unable to use them properly will be substantial, and we are likely to see the bitter fruit of this harvest in the Bankruptcy Courts of Maine in the immediate future. The impairment of their credit standing and the permanent record of bankruptcy or a Chapter XIII proceeding would remain a permanent economic scar on their credit for years to come. If such result occurs because of unsolicited credit cards, then the cost to consumer far outweigh the long term economic gain to the dispensers of credit cards.

Yours very truly,

GERALD S. COPE, *Trustee.*

NATIONAL BANKRUPTCY CONFERENCE,
February 13, 1970.

Re proposal to bar mailing of unsolicited credit cards.

Hon. CLIVE W. BARE,
*Referee in Bankruptcy, U.S. Post Office and Courthouse,
Knoxville, Tenn.*

DEAR CLIVE: I am opposed to this for the following reasons:

(1) It's unfair to regulate issuance of credit cards without regulating issuance of other types of credit. If the object is to control credit, there are much more effective means of doing it.

(2) It's unfair to new companies who want to get into the credit card business. Obviously they are at a great disadvantage to the companies who are already in operation who in some instances achieved their size because of massive mailing of credit cards.

(3) It might penalize the opening of small businesses. I have observed in my neighborhood that the opening of a new store or service station is usually preceded by the mailing of unsolicited credit cards to people who live in the neighborhood. That certainly has proved true of filling stations. Just recently in Atlanta, a large regional shopping center has opened. In this instance, large New York stores such as Lord & Taylor, coming into the center, sent out massive mailings of unsolicited credit cards. Unless they were permitted to do so, they would be at a substantial disadvantage to the other stores who already have widespread distribution of their credit cards.

(4) The grief to the credit card grantor is likely to be far greater than that to the individual credit card holder in the event of extensive unwise issuance of credit cards.

(5) I don't believe that character can be legislated. I equate this with prohibition which did not prove successful anywhere. Individuals who are going to be tempted by receipt of an unsolicited credit card have already been exposed to the temptations and will continue to be exposed. To try to protect them from themselves through restricting the issue of unsolicited credit cards is like trying to put out the Chicago fire with one bucket of water.

The government can control issuance of credit at any time through regulation of downpayment and terms. Of course, this was done in World War II, and credit on the stock exchanges is still controlled in this manner. I am not in favor of selecting one isolated system subject to abuse in the credit industry, and legislating with regard to it.

Sincerely,

MORRIS W. MACEY.

U.S. DISTRICT COURT,
COURT OF BANKRUPTCY, DISTRICT OF KANSAS,
Wichita, Kans., February 16, 1970.

Re incidence of obligations arising from unsolicited credit cards.

ROYAL E. JACKSON,
Chief, Bankruptcy Division, Administrative Office of the U.S. Courts, Supreme Court Building, Washington, D.C.

DEAR ROYAL: Prompted by the poll of the directors of the National Conference for our respective views on the desirability of barring unsolicited credit cards, I conducted a limited study of our current experience with the problem here.

An examination of the first 155 consumer bankruptcies filed in calendar 1970 disclosed that Bank America and Master Charge card obligations were scheduled in 52.9% of the cases. The amounts were almost never less than a three figure sum and in some instances reached to thousands of dollars. There are, of course, many other unsolicited cards but these two have the broadest circulation and merchant participation in Kansas.

The directors of the Conference have gone on record as unanimously supporting efforts at the national level aimed at curtailing this widespread, indiscriminate encouragement for misuse of credit by the individual consumer. Although I speak only for myself, I am sure that all members of the Conference would be glad to furnish detailed statistics or to assist the Administrative Office in any other manner in presenting the dimensions of the problem as they appear to those of us who preside over the federal bankruptcy courts.

With the best of regards, I remain

Sincerely yours,

ROBERT B. MORTON.

Mr. NIX. Our next witness is Mr. John P. LaWare, senior vice president, Chemical Bank, New York City, member of bank card committee, American Bankers Association. We are glad to welcome you, Mr. LaWare.

TESTIMONY OF JOHN P. LaWARE, SENIOR VICE PRESIDENT, CHEMICAL BANK, NEW YORK CITY, MEMBER OF BANK CARD COMMITTEE, AMERICAN BANKERS ASSOCIATION; ACCOMPANIED BY THOMAS E. McCULLOUGH, VICE PRESIDENT, CHEMICAL BANK, NEW YORK CITY, N.Y.

Mr. LAWARE. With the permission of the committee, I would like to ask my associate, Mr. Thomas E. McCullough, vice president of the Chemical Bank to sit here with me, and I would like to defer to him from time to time during the testimony.

Mr. NIX. We are happy to welcome you, sir.

Mr. LAWARE. Mr. Chairman and members of the subcommittee, my name is John P. LaWare. I am senior vice president of Chemical Bank in New York, N.Y., and a member of the bank card committee of the American Bankers Association. I am appearing before this subcommittee today for the purpose of expressing the association's views on H.R. 13244 and H.R. 14346, two bills designed to restrict the mailing of unsolicited credit cards.

We were not aware, Mr. Chairman, before we arrived here this morning, that the other bills were being considered, and we would like, with the committee's permission, to be given permission to add comments on those two bills for the record subsequent to my appearance.

Mr. NIX. Without objection, the request is granted.

Mr. LAWARE. Thank you.

The association appreciates this opportunity to be heard on the important subject of mailing unsolicited credit cards. We have taken an interest in this matter because bank credit cards have been one of the most rapidly growing and highly publicized aspects of commercial banking in recent years.

The American Bankers Association believes that charge cards are not only a logical and proper extension of consumer financing, but that they are also a permanent and viable function of commercial banks. We feel that bank charge cards are designed to serve the needs of both retail bank customers and merchants alike and that they provide a convenience which enables the customer to use his credit resources more efficiently.

It has been the experience of our members that the only effective means of initiating a bank credit plan is by mailing a large number of credit cards to carefully selected individuals. For this reason the American Bankers Association is opposed to the enactment of either H.R. 13244 or H.R. 14346.

Obviously, the public in general has accepted bank charge cards as a suitable means of obtaining credit, as evidenced by the rapid growth in their use. For example, the dollar volume of transactions through bank credit cards during the first 11 months of 1969 was nearly 80 percent greater than that extended during the same period of 1968, and the number of banks offering credit card plans had increased by more than two-thirds over the year ending June 30, 1969.

This growth confirms the wide acceptance and use of bank credit cards on the part of the consumer. Although it still represents only about 2 percent of total retail sales, we believe that it will become an even more useful and convenient medium of exchange in the years to come.

At present, the dollar volume of debt involved is relatively small and should not be exaggerated. Bank card credit outstanding stood at \$2 billion in November 1969, but represented still only 1.7 percent of total consumer credit.

Unfortunately much of the publicity surrounding the growth of bank credit cards has been more sensational than informative. And the one aspect of the credit card issue which has received the greatest amount of attention has been the unsolicited mailing of cards.

Yet, the Federal Reserve System's 1968 task force on bank credit cards reached the conclusion almost 2 years ago that legislation forbidding the unsolicited mailing of credit cards was unnecessary.

This view was reiterated by Andrew Brimmer, member of the Board of Governors of the Federal Reserve System in the speech "New Horizons in Credit Card Banking" delivered before the Seattle Clearing House Association in Seattle, Wash., on September 23, 1969.

Addressing himself to the practice of unsolicited distribution, Governor Brimmer stated:

Competitive situations appear to rule out the alternative method of depending on applications to be returned before cards are mailed.

He went on:

At the Federal Reserve Board, we have made an assessment of the extent to which state member banks are following the suggested guidelines with respect to credit card plans. On the whole, these banks seem to have exercised prudence in credit card management.

And he further said :

There appears to be no reason to change the Board's position that the System has adequate supervisory powers governing the development of bank credit card programs, and does not see any necessity for special legislation to limit or control bank credit cards.

Despite the growth in bank credit card plans, and their wide acceptance and use, our association finds no justification for Federal legislation. We feel that for most banks the selective mailing of unsolicited credit cards is the only feasible method for operating and promoting a credit card plan.

To digress from the printed statement, I think in addressing ourselves to the question of selective unsolicited credit card mailing, I would like to ask my associate, Mr. McCullough, to describe the method used by Chemical Bank in distributing credit cards.

Under the general definition, this would be unsolicited but we would like to demonstrate what we mean by selective.

Mr. McCULLOUGH. We agree with Mr. Jackson that it is good common business sense to check these things out. This is what we did in our bank: We had a computer printout of all of the regular and special checking accounts that our bank has—several hundred thousand of them—and then, through a computer-selection process, these were identified by account, as to whether they met certain basic criteria, which in our case were: A man should have been a customer of our bank for at least 1 year and have an average balance of at least \$100 in his account.

We also printed whether he had ever overdrawn his account, how much, when he had used the account last, and other items.

Then if the man met these basic criteria—the \$100 and the 1 year with the bank—we assumed that we would be willing to issue him a card.

But before we issued any cards, we sent the list to the bank's branch office and had the manager review the list. We deleted those people he thought should not receive cards, and he signed the list, in effect saying, "This has my approval; I know these people, they are my customers, and I think they should have cards."

Then we sent to this list of people who met these criteria, a letter outlining the card and how it would work, and what we thought would be the advantages, and enclosed with the letter a stamped return envelope to use, saying, if you don't want the card, use the stamped envelope and tell us you don't want the card, or ask us any questions you may have.

Very few, as you know from your other testimony, do that. Some have questions.

Then on the basis of this return mail, we sent out cards to the people who had not indicated they did not wish to receive cards, and whose address by this time we knew was correct.

So we feel that we were very careful in selecting. I might add, we are a fairly large bank. We have consulted with many other banks, large and small, about this practice. I do think it's pretty much the common standard of how banks issue credit cards.

Mr. NIX. May I pose just one question. I think the system is a good one, except I ask whether or not there has been any thought given to checking of the signature from the people whom you sent the cards to against the signatures on the books of your bank?

Mr. McCULLOUGH. What we have done so far is—actually, we have not done that. I will be frank. If I understand your question, where it comes into play is if the card is used and a customer will say, “I didn’t use the card,” and yet the merchant will say, “that is the man, I remember him very well.” We might look at the signature on the card or on the sales slip and compare it with the signature in our records, but as I am sure you know, it is difficult to tie something down by signatures. Anyone can immitate anyone else’s signature and the transaction is done casually in the store. We don’t have too much faith in comparing the signature of the cardholder with the signature on the file. They often differ quite a bit.

I don’t know if that answers your question.

Mr. NIX. Yes, it answers my question.

Mr. LAWARE. Since that initial mailing to the prescreened customers of our bank, we have not sent an unsolicited card, to someone not a customer of our bank, and we have added something over a hundred thousand additional accounts, all by application, since that time.

The legislation proposed in these two bills is too inflexible and if enacted would greatly hinder the ability of banks to widen the scope of services which they can offer to, and are desired by, the general public.

It appears to us that the greatest concern of the Congress in the credit card area is the fraudulent use of stolen or lost cards. We believe, however, that almost all of the difficulties which have been experienced in this connection are due to the loss or theft of the cards en route, rather than the fact that the persons to whom they were sent did not specifically request the card. After all, the same danger of fraudulent use through loss or theft still exists even where a customer has requested a card be sent.

Banks recognize their responsibility to protect unknowing or unwitting receivers of cards against liability in any fraudulent use. Until a person accepts a card by signing or using it, or authorizing its use, the bank itself accepts the liability. If a card is subsequently lost or stolen, the cardowner is protected against fraudulent use after notifying the bank that the card is missing. Some banks will accept a telephone call as notice of a lost or stolen card, before written notice can be received, in order to prevent charges from accumulating. Moreover, in some cases under present business practice and also under a number of State statutes, a maximum liability is stated irrespective of whether the loss or theft of a card is reported.

Governor Brimmer addressed himself to this problem in his Seattle speech when he said :

With regard to the first type of fraud—the unauthorized use of cards stolen before they are received or accepted by the proper person—we know that most banks do not attempt to collect from the intended recipient. If there are banks which do, at least the Board is not aware of them. Moreover, it seems evident that they would have legal difficulties. In addition, the trend is for states to pass laws specifically exempting from liability the customer who has not accepted or begun to use an unsolicited card.

I can confirm from personal experience that this is general practice throughout the industry. While card issuers often include some nominal liability on the part of the customer—\$25 or \$50 or so—it is there as an incentive to the consumer to report the loss of a card promptly, thus enabling the authorities to act quickly to apprehend the thief or recover the lost card.

Our bank was one of the earliest to limit that liability officially as part of the contract with the customer, and we set it at \$25. We have never actually gone after the \$25. We have it there in the hope that someone will report the loss or theft of the card promptly so we can set the wheels in motion.

Card issuers, as well as the post office, have learned much from those who previously sent out unsolicited credit cards and they have instituted new procedures and controls, such as premailer notification by mail or by phone, post mail checkups, followup telephone contacts after expected delivery or first use, and, in some cases, photograph identification to limit the possibility of serious problems arising from stolen credit cards.

This association does not believe that the use of registered mail to send credit cards, as proposed in H.R. 13244, is a workable solution. We are concerned about the great inconvenience it would impose on the customers if home delivery is not possible, thus requiring a special trip to the post office.

The American Bankers Association also opposes the banning of unsolicited credit cards on the ground that such legislation would effectively prevent the overwhelming majority of small or medium size banks not presently operating such plans from getting into the business.

Passage of this legislation would give a virtual monopoly to those with credit card programs in operation to the exclusion of those seeking to enter the field.

Most observers recognize that banks will find it difficult to initiate a credit card plan unless they can send out unsolicited cards to an appropriately preselected list of potential customers in their market area, particularly in the face of competition from banks already having such a plan. Experience has shown most clearly that the "application method" for starting a plan has generally not been successful, and that the unsolicited mailing of a large number of cards is the only way to build volume quickly and put the plan on a viable basis.

The banking industry has been working closely with the postal inspectors to improve the safe handling of credit card mailings. The professional excellence and cooperative spirit of these inspectors have contributed greatly to the solution of this problem.

The National Postal Forum III held in September 1969 had this matter on the agenda. Commenting on this forum, William J. Cotter, Chief Postal Inspector, in testimony before this subcommittee on November 19, said one key recommendation is for the use of less conspicuous mailing envelopes so potential thieves cannot recognize a credit card letter.

This, of course, directly contradicts lines 23 and 24 on page two of H.R. 13244 which requires the phrase "Unsolicited Credit Card—Addressee May Refuse" on the envelope. In my opinion, such a legend might just as well say "steal me."

Along this same line, we noted the testimony of Earl E. Pollock, representing the Midwest Bank Card System, which was also presented to the subcommittee on November 19. Mr. Pollock said the

Chicago post office inspectors gave a member of the Midwest Bank Card System the following advice—

Avoid any external identification or clue to the contents of the envelope. The post office inspectors also cautioned against use of any advertising or other wording in the postage meter stamp which would identify the sender or contents, and further cautioned that the credit card account number should not be visible through the address window.

The banking industry, and I am sure other credit card issuers, in cooperation with the U.S. Postal Department, can solve their credit card mailing problems without Federal legislation.

Finally, the language in both bills is not clear. The wording of H.R. 14346 could eliminate and H.R. 13244 could seriously restrict the bank identification cards which involve years of customer relationships. The legislation would certainly eliminate or restrict the check guarantee card which is a distinct and different customer service.

Moreover, the routine mailing of renewal cards could be a violation if the customer had not previously used his expired card. We do not understand why unsolicited cards must use registered mail while solicited cards have access to regular mail. This appears to be simply an attempt to penalize the issuer of unsolicited cards rather than to protect card issuers and customers.

To sum up, we believe that the thrust of these proposals is undesirable and unworkable. We feel that the unsolicited mailing of credit cards is the only effective means of providing qualified customers with a convenient means of securing cards. At best, the legislation would greatly increase the cost of operating charge card plans, and this would inevitably hurt the consumers.

Our feeling is, therefore, that the prudent issuance of unsolicited charge cards is one means by which the American consumer's needs for a means of payment and credit can be met while assuring that those institutions which presently have such plans will not obtain an unfair advantage over those who do not.

While there have been some problems in the past, banks, other card issuers, and the Post Office Department, have learned a great deal about this infant industry. We are convinced that the major problems have already been solved, and other problems which may arise can be handled by the industry in cooperation with the Post Office Department, and that Federal legislation is unnecessary.

Thank you, Mr. Chairman. I will be glad to try to answer any questions that you may have.

Mr. NIX. Thank you. I take it that in substance your position is that credit cards as such are a necessary and worthwhile addition to the industry?

Mr. LAWARE. Mr. Chairman, a lot has been written, and a lot of it is pretty blue sky, about the so-called checkless, cashless society that we are plunging toward in our electronic technology.

But the fact of the matter is that we probably have to move toward a less-check, less-cash society. Otherwise, we are going to drown in a sea of paper.

My bank alone processes more than 2 million checks a day, and you multiply that by all of the other banks in the country, and it's a colossal flow.

We believe that by the end of this decade, a substantial percentage of money transactions in the country will be handled by electronic transfer. We believe that the input mechanism that you and I as consumers will be using will be something very like the credit card we are using now.

It will have more information, be more sophisticated, but this will be the input mechanism. So we believe it is an evolutionary step toward the electronic system of value exchange.

Mr. NIX. I agree it is. I think there is widespread consensus supporting the position that was just mentioned. However, there is an acknowledgement from almost any source that certain problems result.

Now the issue seems to be how shall we dispose of those problems? Whether or not they are of sufficient magnitude to warrant Federal legislation. That is the issue involved in all of this. Now you say no?

Mr. LAWARE. No, I say yes.

Mr. NIX. You say yes? Then what would you suggest is the type of legislation that is needed?

Mr. LAWARE. Well, Mr. Chairman, I think that it is safe to say that most of the banking industry who are involved in the issue of credit cards feel that, or support the present trend toward legislation to limit the liability—to legally limit the liability, even though general business practice at this point in time—

Mr. NIX. Of the recipient?

Mr. LAWARE. Yes, of the consumer, of the recipient of the card—even though it is not general business practice of the banks at least to pursue the customer, we certainly have no objection and would support legislation to generally limit that liability to some nominal amount.

Beyond that we feel these are basically operating problems, and that we are in effect—these horror stories which we can all dredge up, we have all had trouble with the computer in one way or another in our business, and personal, experience. These stories can be dredged up, but when you consider that there are something like 24 million people in the United States carrying a Master Charge Card, which is the one we issue, and perhaps 22 million carrying BankAmericard. The number of instances of displeasure and unhappiness and frustration with the card are relatively small by comparison with the total volume of the business.

We are working on these things very diligently. If the consumers' benefits are not kept in mind by the banks, then we will go out of business, because they are important to us as sources of deposits and sources of profits, and we are anxious that our consumer customer be very happy with whatever services we provide.

We don't want to get him in trouble either. We just don't think at this point Federal legislation with regard to this aspect of unsolicited credit cards is necessary.

Mr. NIX. In substance, you say that the number of unpleasant incidents is such a small proportion that Federal intervention by Federal legislation is not warranted?

Mr. LAWARE. Yes, sir.

Mr. NIX. Then correspondingly, you would intimate that in the event that the incidents increased in number, one might well consider Federal legislation?

Mr. LAWARE. Yes, sir.

Mr. NIX. To what degree?

Mr. LAWARE. It's hard to put a number to it, Mr. Chairman.

Mr. NIX. Someone mentioned a moment ago, something about the number of States having legislation covering this point. I think 11 States. Are you familiar with the statutory law in those States?

Mr. LAWARE. I am not sure that all of that legislation pertains to the unsolicited mailing as much as, for example, in New York State we have recently upgraded the level of criminal offense for stealing and using credit cards fraudulently—raised them in some cases from misdemeanors to felonies.

I believe that the State of Connecticut has passed a law which prohibits the unsolicited mailing of credit cards. I am not familiar with legislation, in any detail, in other States.

Mr. NIX. That was brought to the attention of the committee, the prohibition against the unsolicited mailing, and I think very little of legislation along that line. I question its constitutionality. I just don't think it could possibly stand up and that in my view is not the approach to the problem.

It seems to me the problem, the difficulty is to be found in that area having to do with the distribution of unsolicited—I think we ought to have more definitive information as to just that—the reception of unsolicited credit cards and what use is made of them. To what extent, what loss, what irritants are caused to people whose names appear and who had nothing to do with the use of them.

Mr. LAWARE. Well, we are trying very hard to prevent unsolicited cards from getting to people who cannot handle the credit, and Mr. McCullough described the methods we went through. We also tried to avoid irritating the customer who doesn't want the card.

We tried to make it as easy as possible to say, "I don't want that thing, don't bother me."

But the tradeoff is that if you use, if you rely on applications only, it is terribly difficult to build a broad enough cardholder base to sustain the system, and we are really caught in the economic pinchers, Mr. Chairman. We are trying to accommodate the need, to get into the business and do it on a viable basis with the best interest of the consumer.

Mr. NIX. I think that Mr. Jackson raised extremely interesting questions when he mentioned the necessity for a course in the schools and he mentioned revision of the bankruptcy law, so that people, after appearing there, can leave with something that can be used to better their conditions after they shall have experienced the ordeal of bankruptcy.

I think it is an excellent suggestion. As I said before, I am not at all optimistic about its passage—certainly not in the 91st Congress.

I want to express my deep appreciation to you, Mr. LaWare and Mr. McCullough, for appearing here. This subcommittee has had under consideration these bills and will consider others, and I think your views certainly have been a great contribution to my thinking.

I want to direct the thinking of the subcommittee to the issues mentioned a moment ago, because I don't think that any subcommittee should just do something that is destructive of the progress that we are making in this field. I don't think so.

Mr. LAWARE. Thank you, Mr. Chairman. It was a privilege to be here. We appreciate your courtesy.

Mr. McCULLOUGH. Mr. Chairman, I would like to say that we would be delighted to assist your staff members in any way. If they would like to visit our operation and go through these letters—it contributes a lot to the understanding if you go through them. I read every complaint letter. It contributes a lot to your understanding when you actually see the case in point.

If we can assist in any way, we would be delighted.

Mr. NIX. Mr. McCullough, I know I reflect the views of the other members of the subcommittee when I invite you to submit to the subcommittee your views as to what the legislation should be.

Mr. McCULLOUGH. Thank you very much.

Mr. NIX. Thank you. Ladies and gentlemen, this concludes the hearing of the subcommittee. The subcommittee will stand adjourned. (Whereupon, at 11:30 a.m., the subcommittee was adjourned.)

(The following letters and statements were received by the subcommittee for inclusion in the hearing record:)

THE AMERICAN BANKERS ASSOCIATION,
Washington, D.C., February 6, 1970.

HON. ROBERT N. C. NIX,
Chairman, Subcommittee on Postal Operations, Committee on Post Office and Civil Service, U.S. House of Representatives, Washington, D.C.

DEAR MR. NIX: In testimony before your subcommittee on the 28th of January, 1970, the witness for the American Bankers Association, John P. LaWare, requested that the Association be given the opportunity to submit the Association's views on two bills which were the subject of the hearings on that date, but which the Association did not consider in its statement. Those two bills were H.R. 15103 introduced by Mr. Olsen and H.R. 14897 introduced by Mr. Cunningham. We would like to take this opportunity to give you our views on the proposals contained in those two bills.

The bills propose to amend section 4001, chapter 51 of Title 39, United States Code. With exceptions discussed below, every credit card or similar device would be deemed non-mailable matter and would be prohibited from being conveyed in the mails or delivered from any post office or station or by any letter carrier, and would be withdrawn from the mails under the Postmaster General's regulations.

These exceptions to the prohibitions contained in H.R. 14897 would allow mailing when:

(1) The credit card or device was sent by registered mail and insured mail restricted to delivery to addressee only.

(2) The envelope bears on its face in at least one-quarter inch letters, "unsolicited credit cards—addressee may refuse" in the case of the unsolicited credit card. In the case of a solicited credit card, the words on the envelope must read "credit card."

(3) Additional charges for return mailing would be borne by the sender.

Violation of the prohibition contained in H.R. 14897 shall result in a fine of not more than \$1,000 or imprisonment for more than one year or both.

The exceptions to the non-mailable provisions as contained in H.R. 15103 will allow the credit card to be mailed when:

(1) It is sent by registered mail, return receipt requested, restricted to delivery to the individual in whose name the card is drawn.

(2) Card is sent in response to a written application.

(3) The credit card bears on its surface, in eight point letters, that liability for fraudulent use is assumed by the issuer of the credit card unless the card bears a photograph and signature of the intended card holder. The card may bear on its surface a term limiting liability of the cardholder for fraudulent use to \$50.

(4) Sender agrees to pay additional postage for return mailing to him.

Violation of the provisions of H.R. 15103 provide for a fine of not more than \$1,000 per mailing of each non-mailable credit card.

The American Bankers Association opposes enactment of either H.R. 14897 or H.R. 15103.

The basic reasons for this Association's opposition to the two bills are stated in the testimony presented to your subcommittee on January 28, 1970, by Mr. John P. LaWare.

Sincerely yours,

CHARLES R. McNEILL.

STATEMENT OF EDWARD J. McNEAL, CHAIRMAN, COMMITTEE ON CONSUMER CREDIT ISSUES OF THE AMERICAN RETAIL FEDERATION

Mr. Chairman, and members of the Subcommittee, my name is Edward J. McNeal. I am Chairman of the Committee on Consumer Credit Issues of the American Retail Federation, a national organization which, through its 50 state and 28 national retail trade association affiliates, represents more than 800,000 retail establishments of all types.

We appreciate the opportunity to appear here today and present our views on the unsolicited distribution of credit cards, a subject which has received increasing attention in recent months from Congressional committees and key government agencies.

A cogent analysis of the situation with regard to unsolicited credit cards has been made by Professor Michael A. Duggan, of the University of New Hampshire, who wrote the Federal Trade Commission that the problem "is not caused by the unsolicited mailings but rather the unauthorized use of the credit card."

Regulating the unsolicited distribution of credit cards as suggested in H.R. 13244 will not stop the unauthorized use of credit cards, will not halt fraud on retailers and others who honor credit cards, will not shelter consumers from liability. Indeed, these problems are common to all types of credit card distribution methods.

Before offering what we believe are sensible, across-the-board solutions to these problems, let me first discuss the specific bills pending before this Subcommittee.

SPECIFIC COMMENTS ON H.R. 13244

H.R. 13244, introduced by Mr. Hanley of New York, would make any unsolicited credit card "nonmailable matter" unless (1) it is sent by the issuer by registered mail restricted to delivery to the addressee only; (2) the envelope is marked "Unsolicited Credit Card—Addressee May Refuse" (or words of similar import); and (3) the issuer guarantees payment of return postage.

The purpose of this bill is obviously to make it so costly for a credit card issuer to distribute unsolicited credit cards that he will not do it. However, the flaws in this approach are obvious. Some of these shortcomings were pointed out by former Federal Reserve Board Chairman William McChesney Martin, Jr., in an October 28, 1969 letter to the distinguished Chairman of this Subcommittee. That letter says in part:

"... the requirement of the bill that unsolicited credit cards be sent by registered mail... would subject many intended cardholders to a substantial burden. Registered mail (even if not restricted to delivery to the addressee only, as would be required by the bill) must be accepted by a responsible person at the address indicated. This would mean in many cases that the intended cardholder, with no idea of its contents, would have to collect the letter from his post office. Not infrequently, this would involve expense and other inconvenience."

SPECIFIC COMMENTS ON H.R. 14346

An alternative proposal before this Subcommittee is H.R. 14346, introduced by Mr. Scott of Virginia, which would meet Mr. Martin's objection by not allowing an exemption from the nonmailable matter section of the U.S. Code for unsolicited credit cards sent by registered mail. The bill would simply declare unsolicited credit cards to be "nonmailable matter."

Thus, unsolicited credit cards would be placed in the same nonmailable category as lottery tickets (Section 1302), obscene or crime-inciting matter (Section 1461), indecent matter on wrappers or envelopes (Section 1463), foreign divorce information (Section 1714), firearms (Section 1715), injurious articles such as poisons (Section 1716) and many others.

We seriously question whether unsolicited credit cards present the same kinds of hazards to the intended recipient as do the other types of nonmailable

matter. Indeed, we propose a solution which will, hopefully, minimize the hazards associated with *any* distribution method for credit cards, for we think problems resulting from credit card proliferation are the same whether the cards were requested or not.

FEDERATION SOLUTION

We agree with Professor Duggan that the problem is one of unauthorized use of credit cards. It is the problem local District Attorneys are wrestling with. It is the problem the Postal Inspection Service has sought to minimize with its list of "Do's and Don'ts" for credit card mailers. (Incidentally, that list is attached to our statement and we would request that it be made a part of the hearing record.)

Unauthorized use of credit cards is the problem that has plagued the more than 1,000 consumers who wrote the Federal Trade Commission last fall when that agency announced its proposed Trade Regulation Rule restricting distribution of unsolicited credit cards.

A careful reading of those consumer letters indicates that the prime concern of the consumer is liability—real or potential—that may result when any credit card—requested or not—is misused.

Therefore, the Federation proposes the following solutions:

1. Total prohibition against consumer liability until a credit card has been accepted, either by signing the card, or using it, or through the reissuance of an already-accepted credit card. Mere retention of the credit card without some affirmative act would not lead to liability.

This non-liability provision should be made thoroughly clear to the consumer. It is now the law in several states and the practice of retailers and others in the remaining jurisdiction.

2. A general strengthening of state credit card crime laws. A model state law, providing for specific types of credit card fraud and stiff penalties for each, has been developed at the Columbia University Law School and has already been adopted in several states. In many states today, credit card misuse is only a misdemeanor. These penalties should be stiffened.

3. More vigorous enforcement of existing credit card abuse legislation. We applaud the action taken recently by grand juries in New York City and Chicago and praise the work of the public officials which led to the smashing of credit card crime rings.

4. Consideration should also be given to federal legislation making the transportation of stolen credit cards in interstate commerce a federal offense. Such legislation has already been introduced in the House of Representatives (H.R. 15004 by Mr. Halpern) and is pending in the House Judiciary Committee.

CONCLUSION

In conclusion, Mr. Chairman, we urge the Subcommittee to defer action on H.R. 13244 and H.R. 14346 and to work with us toward developing what we believe is a more suitable solution.

Credit cards—whether unsolicited or requested—present a degree of hazard. We think the hazard should be minimized or eliminated, not by stopping the distribution of only one type of credit card, but rather by eliminating customer liability for unrequested cards, and by cracking down on those who would steal and misuse all types of credit cards.

MAILING DO'S AND DON'TS TO PROTECT CREDIT CARDS

The U.S. Postal Inspection Service has issued the following suggestions for better protection in the mailing of credit cards:

DO

Visit your Customer Relations specialist in the Region or local post office, and discuss your mailing problems. It pays.

Remember that several million credit cards move through the mails each year. Use up to date mailing lists—good addresses get good delivery.

Use standard size envelopes which are compatible with optical sorting capabilities and which do not invite theft.

Arrange mail in ZIP Code sequence and presort, even if it is first-class mail. Consider computerizing your mailings down to carrier route sequence.

Bring your mailing to a prearranged mailing unit and deposit with a designated employee.

Mail in the middle of the morning for prompt and secure dispatch.

Keep precise mailing records.

Adopt a secure return address and return handling procedure to preclude loss of undelivered credit cards.

Analyze returned items for errors in mailing preparations.

DON'T

Fail to plan ahead. Doing it alone is the hard way—and it can cost more than you think.

Believe that a cheap mailing list saves money—it will cost you more in the long run.

Think that you can save by using any kind of envelope. Check with us.

Forget that fewer handlings equal better service and diminish the possibility of loss.

Place mailings in street letter boxes for the same reasons as above.

Rely on late afternoon mailings for they present logistical problems similar to rush hour traffic.

Forget that Inspectors need evidence to back up theft or fraud charges. Mailing proof is number one in this category.

(Press Release)

HAVE YOU BEEN DRAFTED INTO THE CREDIT CARD ARMY?

Chairman Robert N. C. Nix, Chairman of the Postal Operations Subcommittee, today announced the resumption of Congressional Hearings on legislation restricting the mass mailing of unsolicited credit cards, on the 28th of January, 10 a.m., in room 210 of the Cannon House Office Building, Washington, D.C.

"The mass mailing of unsolicited credit cards and vast credit card spending will within a few years replace other kinds of borrowing. Funds are already being shifted from consumer loan programs to credit card operations by banks because of the high rate of interest charged credit card users. Credit Card interest amounts to 18% a year, whereas Consumer Loan Interest amounts to only 12% a year, Nix said."

"Credit Card Companies can not wait to enlist people in credit card plans. They draft them into credit card plans by sending them unasked for credit cards in the same manner that Selective Service has drafted millions into the Army. The operation is the same", Nix continued.

"There is an additional problem. Very few draft cards are stolen from the mails and debt run up through their use. Some Americans find themselves being threatened with lawsuit by credit card companies for debts run up by thieves."

"It is time to protect the public from being drafted into the Credit Card Army by mail," Nix said, and "we intend to write legislation that prevents junk credit from invading the family mail box".

A. J. WOOD RESEARCH CORP.,
Philadelphia, Pa., January 26, 1970.

To: Mr. Thomas Kennedy, counsel, Postal Operations Subcommittee, U.S. House of Representatives, Washington, D.C.

From: Robert D. Breth, senior vice president, A. J. Wood Research Corp., Philadelphia, Pa.

Subject: H.R. 14346 and H.R. 13244—Unsolicited mailing of credit cards,

Regarding the hearings being held on the above bills, we would like to suggest a modification to lines 13 and 14, Paragraph 4001. Nonmailable matter, Section (c), sub-paragraph (2) which now reads:

"(2) in response to a request or application thereof:"
to read:

"(2) in response to a request or application therefore, *verbally or in writing*;
We hold no position for or against these bills, but we do feel that some clarification of terminology is needed to prevent the passage of any bill which might unintentionally, or inadvertently, do more harm than it will do good.

While HR 14346 and HR 13244 do not use the terms "unsolicited" or "unless requested in writing," Senate Bill 721 does. Presumably, all of these bills will be subjected to a Joint Committee review in order to correct dissimilarities.

We therefore suggest that consideration be given by your committee to clarifying the meaning of these words before approving the bills you are considering. This clarification consists of defining "unsolicited," which even the dictionaries are not very clear about. For example, in examining the College Edition of *Webster's New World Dictionary of the American Language*, 1966 edition and its 1965 predecessor *Webster's Seventh New Collegiate Dictionary*—no definitions at all are given for "unsolicited." By inference, to define this word, one must look up "solicited" and then assume the opposite to find out what the prefix of "un" does to the meaning.

In doing this, I find that "solicit" means:

1. To ask or seek earnestly or pleadingly; beg; entreat: as, we *solicit* your support, he *solicited* them for help

2. To tempt or entice (another) to do wrong.

3. To accost (another) for some immoral purpose, as a prostitute does.

So says Webster 1966.

The 1965 Webster is a little more explicit and, in a business context, slightly more helpful:

1. a. To make petition; to entreat.

b. To approach with a request or plea.

2. To strongly urge (as one's cause).

3. a. To entice or lure especially into evil.

b. To attempt to seduce (obsolete).

c. To accost (a man) for immoral purposes.

4. To try to obtain by asking.

We, therefore, suggest that in the case of this bill, the meaning of "unsolicited" be clarified and stated to mean: *Charge account cards or credit cards mailed without the prior knowledge or consent of the addressee.*

We further suggest that the positive or affirmative meaning of the word "solicited" be stated to mean: *Charge account cards or credit cards mailed after the addressee has been given the opportunity to accept or reject the charge account card or credit card, or apply for a charge account or credit card, either verbally or in writing.*

We believe that this clarification would more clearly define the intent of the bill and do so without injuring innocent bystanders.

A literal interpretation of "unsolicited" to mean any charge account or credit card that he not been "requested in writing" could mean that any request for a credit card or charge account *over the telephone* would also be prohibited and illegal. And, by logical extension of this principle, any other telephoned request for credit toward the purchase of *any* product or service would also be prohibited. Thus, not only would this affect the many hundreds of thousands of consumers who open charge and credit accounts with department and specialty stores, petroleum marketers, and banks via the telephone; it would apply equally to many types of credit transactions among retailers, wholesalers and manufacturers; the sale and purchase of securities through stock and bond houses; the placement of telephoned hotel and motel reservations, and hundreds of other transactions conducted daily and routinely by businesses and individuals.

In today's fast-paced, complex and competitive world, the telephone has come to be recognized as an indispensable medium for transacting legitimate business of the type described herein. By smoothing the way for the conduct of a myriad of credit transactions, telephone communications of this nature have contributed in large measure not only to the convenience of the American consumer but to the growth of the national economy as well.

We earnestly suggest that the Subcommittee, in its wisdom, in discussing the pros and cons of the mailing of unsolicited credit cards, clarify such discussion by defining "unsolicited" as "without expressed consent of the addressee" and "solicited" as "requested in advance, verbally or in writing, by the addressee", or a reasonable variation of them, as suggested in the amendment which opened this paper.

OFFICE OF THE ATTORNEY GENERAL,
Seattle, Wash., December 23, 1969.

HON. ROBERT N. C. NIX,
*House of Representatives, Chairman, Subcommittee on Postal Operations, of the
Committee on Post Office and Civil Service, Washington, D.C.*

DEAR CONGRESSMAN NIX: Let me apologize for not responding sooner to your letter of November 6, 1969 asking about the credit card situation in our state.

I enclose for your reference a copy of a paper produced by a law clerk in this office last summer which discusses the general situation from our point of view. I am also enclosing two versions of a proposed bill which may be introduced in the January, 1970 Special Session of our Legislature and which would regulate liability as between credit card issuers and holders. Finally, I am enclosing a copy of a bill which approaches the subject from a criminal standpoint and is particularly concerned with fraudulent or other misuse of credit cards.

As Mr. Anderson's legal memorandum points out, this state is one of the few which has no credit card legislation whatsoever. Our experience in the Consumer Protection Division has been that many members of the public are disturbed about unsolicited mailings but that other than this we have few consumer complaints resulting from credit card misuse.

It is my personal impression that the question of unsolicited mailing of credit cards should be dealt with at the federal level since so many of them cross state lines. Absent a piece of uniform legislation, each state would then be free to legislate in the area of credit card liability as it sees fit.

I hope this information is useful, and again our apologies for the delay.

Very truly yours,

CHRISTOPHER T. BAYLEY,
*Deputy Attorney General,
Chief, Consumer Protection,
and Antitrust Division.*

Enclosure.

OFFICE OF ATTORNEY GENERAL,
August 21, 1969.

MEMORANDUM

To: Thomas R. Kennedy.
From: Steven S. Anderson.
Re: Credit card law.

INTRODUCTION

The focus of this paper will be on the response of the legal process to the problem of distributing fraud loss for the unauthorized use of the credit card among the participants in the credit card transaction—the user of the card, the card holder, and the merchant. The problem has received increasing attention in recent years with eight states now having statutes dealing with the problem with varying degrees of effectiveness.

The courts have uniformly held that the risk of loss for unauthorized use is on the issuer in the absence of a specific contractual provision to the contrary or any negligence on the part of the cardholder. *Thomas v. Central Charge Service, Inc.*, 212 A. 2d 533, 15 A.L.R. 3, 1083, anno. 15 A.L.R. 3, 1083 sec. 3 (1967). The result has been that issuers have attempted to shift the risk to the cardholders with express clauses in the underlying contracts. There were some early attempts to shift the entire risk to the cardholder, but perhaps fearing judicial and/or legislative hostility to this scheme, most issuers now include a clause that makes the holder liable until the card is returned or written notice is received that the card has been lost or stolen.

A typical liability clause is that of Humble Oil Company:

"Customer named hereon . . . assumes responsibility for purchases made through its use prior to surrender to Humble, or prior to the receipt by Humble of written notice of its loss or theft."

The liability-until-notice clause has provided the card-issuing company with an effective instrument to shift liability to the card holder in a typical two-party credit arrangement. This type of credit card system has been called "bipartite" and is typified by the customer-oil company credit card. The clause does not relieve the issuer of liability *after* notice is received, however, and issuers like Diners Club, whose system is "tripartite" since an issuer, card-holder and merchant are involved, have further shifted the risk by sending out period lists of missing cards to merchants who honor the card and requiring the merchant to assume liability if he honors a card on the current "black list."

The overall result is that the issuer, the party who probably is best equipped to accept liability because of its financial resources, its access to information about lost cards and its control over whether or not individual cards are honored, has effectively shifted most of the burden to the card holder, the party least able to financially bear the risk or protect himself.

REACTION OF THE COURTS TO LIABILITY-UNTIL-NOTICE

Judicial authority on the validity of liability-until-notice clauses is somewhat scarce and not particularly consistent. Three New York courts have considered the question with varying results. In *Texaco v. Goldstein*, 34 Misc. 751, 229 N.Y.S. 2d 51 (1962), the court held that the liability-until-notice clause was reasonable and that the contract was enforceable. The court reasoned that since New York had passed a statute requiring such clauses to be in 8-point bold type, the legislature recognized its reasonableness. The court distinguished the contract from an indemnity agreement which would place a higher degree of care on the issuer to protect the card holder-indemnitor. The card holder was held liable for all purchases made before notice was received.

In *Uni-Serv Corp. v. Vitiello*, 53 Misc. 2d 396, 278 N.Y.S. 2d 969 (1967), the court held that a phone call to the company did not satisfy the provision in the contract for written notice and held the card holder liable. An interesting decision was *Allied Stores of N.Y., Inc. v. Funderburke*, 277 N.Y.S. 2d 8 (1967), where the court held that the liability-until-notice clause was inapplicable where the card holder was unaware that the card was missing. The court stated:

"The credit agreement . . . does not expressly provide that the holder assumes all risk occasioned by loss or theft of the credit card where the credit card-holder is unaware of such facts and thus is unable to give the required notice . . ." (*Allied Stores, supra*, at 11-12).

The leading case is *Union Oil Co. v. Lull*, 220 Ore. 418, 349 P. 2d 243 (1960). The court disagreed with the conclusions of the New York court in two respects: First, contrary to the holding in *Allied Stores, supra*, the court said that the liability of the card holder was not affected by the fact that he gave reasonable notice as soon as he discovered the loss of the card—the issuer's remedy was in contract and not tort and the tort maxim that there can be no liability without fault was inapplicable; second, contrary to the holding in *Texaco v. Goldstein, supra*, the court held that the clause created a guarantee agreement; the card holder was essentially acting in the capacity of a gratuitous indemnitor (gratuitous in the sense that the card holder was not in the indemnity business and the only consideration received was the convenience of the credit card). The court said:

"The fact that the indemnitor's control over the conduct of others is lacking or limited and the essentially gratuitous character of the indemnitor's promise are basis for treating the contract as embodying an implied promise on the part of the indemnitee to exercise reasonable diligence to protect the indemnitor in transactions which may create indemnity liability . . ." (*Union Oil Co., supra*, at 250.)

The court stated that the contract must be interpreted as "subjecting defendant to liability for sales made through the unauthorized use of its credit cards only if due care is exercised by plaintiff to ascertain the authority of the customer who presents the card." Whether or not a reasonable inquiry as to the identity of the user of card was made was held to be a jury question with the burden of proof being on the plaintiff (issuer). The holding of the court was followed in *Diners Club v. Whited*, Civil No. A 10872 (L.A. Super. Ct. App. Dept.) (1964), noted in 43 N.C.L. Rev. 416 (1965).

As a practical matter, the effect of these decisions is to shift the risk back to the issuer, since it would be almost impossible for an oil company, for example, to sustain the burden of proof in an individual transaction. This conclusion must be somewhat qualified, however, in light of the recent decision of the Texas Supreme Court in *Sears, Roebuck and Co. v. Duke*, No. B-1264, May 7, 1969. The court said that:

"The cases differ as to the nature of the issuer-seller's duty of care, and as to the burden of proof. We hold that the seller need not demand more identification than the credit card as a matter of normal procedure. This is the function of the credit card, and it should be considered satisfactory evidence of identity of the holder or authorized user, unless the appearances or circumstances would raise a question in the mind of a reasonable seller. Proof that the seller did fail to

use ordinary care in this respect is a defense to the liability of the holder of the card, and the burden of proof should be placed on him."

To date, then, Oregon is the only state which has seriously limited the liability of the card holder through the judicial channel. It would appear, however, that there are other precedents which could be utilized to limit this liability. In "Credit Cards: Distributing fraud loss," 77 Yale Law Journal 1418 (1968), it is suggested that contract of adhesion doctrine easily fits liability-until-notice: (1) the clause is a standardized contract provision; (2) the credit card is unavailable without the clause; and (3) the extended card holder liability is against public policy. See also *Henningsen v. Bloomfield Motors*, 32 N.J. 358, 161 A. 2d 69 (1960). The judicial solution, however, is of somewhat limited utility in view of the fact that card-issuing companies might still be able to rely on the lack of knowledge of the average consumer to enforce the invalid clause outside of court.

LEGISLATIVE REACTION TO LIABILITY-UNTIL-NOTICE

Every state in the union except Washington and North Dakota has some statutory provision regulating credit card transactions. Most of the statutes, however, are criminal statutes levying penalties for the unauthorized use of a lost or stolen card. Only eight states have statutes which regulate card holder liability for unauthorized purchases. Copies of these eight statutes are attached and arranged in alphabetical order at the end of the paper.

Of these eight statutes, the Illinois, Massachusetts and Minnesota laws are the most comprehensive, fundamentally altering the structure of liability-until-notice.

The Illinois statute, Rev. Stat. 121-1/2, sec. 381 (1967), provides that no person shall be liable for the unauthorized use of a credit card unless he has requested it in writing or has indicated his acceptance by signing the card or using it, the burden of proof being on the plaintiff-issuer. Even if he has requested or used the card, he is not liable for unauthorized purchases in excess of \$75 if the card has a signature panel, and \$25 if it does not. The act also provides that the defendant can collect reasonable attorneys' fees if he prevails.

The Massachusetts law, Laws of 1968, chapter 394, sec. 12(e), is similar, but has no provision for attorneys' fees. A provision imposing liability on a card holder is declared to be invalid unless the holder is given adequate notice of his potential liability, the liability is not in excess of \$100, and the unauthorized use occurs before the holder notifies the issuer of the loss of the card. No liability can be imposed on the card holder unless the card has some method of identifying the person authorized to use it, such as a photograph or a signature panel.

In Minnesota, a statute passed on June 6 of this year, chapter 1004, provides that no person shall be liable for any purchases from which his family receives no benefit unless he has "accepted" the card by signing or using it. No person can be held liable in excess of \$50 if he notifies the issuer of any unauthorized charges on a bill within 60 days after receiving the bill.

Of the other states, Maryland, New Mexico, New York, South Dakota and Wisconsin have "unsolicited credit card" laws which provide that no one shall be held liable for the unauthorized use of a card which he has not requested or used. New Mexico has an additional provision placing the burden of proof on the plaintiff-issuer and providing for an award of reasonable attorneys' fees if the defendant prevails. The New York statute stipulates that a clause imposing liability on the card holder is not valid unless it is conspicuously printed on the card or the accompanying papers in at least 8-point bold type.

In addition, all the states except Washington and North Dakota have some sort of criminal statute levying penalties for fraudulent use of a credit card. The attached New Mexico statute is fairly representative. The typical statute outlaws the unauthorized use of a credit card, use of a card after revocation, fraudulent financial statements to obtain a card, and so forth. Connecticut, Florida and Oklahoma also have provisions in their insurance-regulating statutes restricting the use of credit cards to purchase insurance.

There is no federal law or administrative regulation presently in effect regulating card holder liability. (Conversation with Mr. Fred Lukens, Federal Trade Commission, Seattle.) The Federal Trade Commission has proposed the following unsolicited credit card rule, however, the hearing to be held on September 10, 1969:

"The mailing by marketers of products or services or by others of credit cards to any party without first receiving an express written request from such party for the cards or express written consent to the mailing of the cards constitutes an unfair act or practice, and an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act."

It is Mr. Lukens' opinion that the rule will be adopted.

CONCLUSION

The excellent note in 77 Yale Law Journal, *supra*, points out that the existing liability-until-notice structure is inadequate for several reasons. It places the initial burden of risk on the card holder, who is unable to adequately bear the burden, both because of his lack of financial resources and his lack of information and control over the credit card once it leaves his hands. The issuer, on the other hand, has more extensive financial resources and is able to protect himself by requiring the card holder to establish his authority to use the card. The existing system also lumps all the loss on a few individuals rather than spreading the risk throughout the system. The Yale Law Journal estimated the total credit card population to be 200 million and the yearly loss through fraudulent use of credit cards to be \$50 million. This means, of course, that the issuer could charge 25 cents per card a year and completely cover its losses if it shouldered the burden of fraud loss alone. Furthermore, the issuer has access to information about costs since it handles a large volume of credit card transactions over a long period of time and can make more enlightened decisions about liability insurance than can the individual credit card holder.

The ideal solution, it would seem to me, would be for the issuer to bear the entire risk and pass it to the card holder with a periodic service charge (about a quarter per year per card). As the Yale Law Journal points out, this would spread the losses equally throughout the system without incurring unnecessary administrative costs and would put pressure on the issuer to take steps to minimize fraud loss through such devices as voice prints, photographic identification or code devices.

The proposed Washington statute would seem to go a long way in this direction. It relieves the card holder from liability if reasonable notice is sent to the issuer. This shifts the risk to the issuer while at the same time giving the card holder strong incentive to be careful to report the loss immediately. In this respect, the proposed Washington statute is stronger than the statutes presently in effect in Massachusetts, Illinois and Minnesota, which allow the issuer to recover a statutory minimum.

The statute does not make it clear, however, who has to sustain the burden of proof in order to prevail in a legal action. This, of course, may be a critical factor. If the statute were interpreted as meaning that the card issuer had the burden of proving that he had exercised reasonable care in honoring the credit card, it would be extremely difficult for him to prevail in a lawsuit filed over an individual credit card transaction. It would also seem to me to be wise to add a provision to the statute requiring the issuer to notify the card holder that he will be relieved of liability if reasonable notice of loss of the card is sent to the issuer.

If the statute were enacted, however, I think it would be fair to say that Washington could count itself among the more progressive states in this important area.

Respectfully submitted.

STEVE ANDERSON.

WOLF, BLOCK, SCHORR & SOLIS-COHEN,
Philadelphia, February 20, 1970.

MR. THOMAS KENNEDY,
Counsel, Postal Operations Subcommittee,
Rayburn House Office Building, Washington, D.C.

DEAR TOM: As per today's brief telephone call, enclosed are ten copies of the statement of our client, The Gracious Lady Service, Inc. I trust that you will receive them in due course and have one printed in the record. Under separate cover letter, we are sending the statement to each of the members of the subcommittee.

We reiterate our request that we be notified if further hearings are to be held and our offer to appear if the subcommittee so desires.

Again, thank you for your assistance, and, of course, that of your secretary too, when I was in your office this past Monday. I look forward to receiving and reading your article in the next issue of the Montana Law Review, as well as receiving a copy of the record when it becomes available.

Sincerely yours,

DONALD K. JOSEPH,
FOR WOLF, BLOCK, SCHORR AND SOLIS-COHEN.

Enclosures.

STATEMENT OF THE GRACIOUS LADY SERVICE, INC., PHILADELPHIA, PA.,
BY IRVIN PENNER, PRESIDENT

The Gracious Lady Service, Inc., is submitting this statement in opposition to a single requirement found in legislative proposal H.R. 15103, one of the four bills on which this subcommittee has held hearings. We oppose that part of H.R. 15103 that would require a written application before a credit card could be sent through the mails. (§ 4001(c)(2); page 2, line 14 of the bill.) Gracious Lady takes the position that such a requirement is unnecessarily broad; that its effect will be to harm our business and competition generally; and that it deprives the consumer of a desired service. We believe that Congressman Olsen, when drafting this bill, may not have had in mind oral account solicitation by telephone, a method used by our company and others, and did not intend to declare this practice unlawful.

The Gracious Lady Service, Inc., is a specialized firm engaged by department stores, oil companies, banks, and others to market credit cards. Because of the wide range of its clientele, the company has had broad experience in all phases of credit card solicitation. Based upon that experience, Gracious Lady has devised a method of telephone solicitation which provides consumers with a proven service and which we believe avoids the evils inherent in the widespread, indiscriminate mailing of credit cards without the consumer's request, authorization or consent.

In light of this experience, probably greater than that of anyone else in the field regarding oral telephone solicitation, we would have been eager to testify at the recent hearings, as we had previously testified before the Federal Trade Commission and legislative bodies, had we only known that they were to cover H.R. 15103. If further hearings are to be held, we would be willing to appear, to share our experience, and to answer any questions the committee might have arising from this statement or otherwise.

It would be well to start by describing our method of oral account solicitation, which we feel is fair to the public. In the name of its client, Gracious Lady contacts prospective credit card holders by telephone and describes the client's services. We prepare a fact sheet pertaining to each client for the use of our telephone interviewer. Attached is the fact sheet we have prepared for Woodward & Lothrop, a well-known Washington, D.C., department store. Our interviewer answers questions and affords the consumer the opportunity to obtain a credit card. Our calls are polite and, if at any point the consumer indicates for any reason that she is not interested, the call is concluded graciously. After our interviewer has provided information about our client and the consumer has authorized the issuance of a credit card, our interviewer asks detailed questions of the consumer to obtain information of credit worthiness such as place of employment, residence, and references.

A fundamental difference between our method and the unsolicited approach is that we never engage in a promiscuous, broadside credit card distribution regardless of credit worthiness. Thus, our procedure should allay fears repeatedly mentioned by members of the subcommittee as well as those found in testimony before it, especially that of Royal E. Jackson, Chief, Division of Bankruptcy, Administrative Office of the United States Courts, that unsolicited credit cards become bonuses to lower income groups on the verge of bankruptcy who are not equipped for the modern, sophisticated credit system.

We believe that statutes regulating credit card evils should recognize our form of issuing a credit card. Our experience is that the public welcomes such calls and that only a very small number, far less than 1% of the persons contacted, objects to our call. The overwhelming percentage *appreciates* information about an available service and values the invitation to take advantage of it. Reasons for not requesting the card offered by our client are practical ones such as preference for using cash or preference for another store. And the calls quite obviously please those who request and use the cards. For them the opportunity to receive a credit card by *oral application* is a real and recognized convenience. Consumer appreciation is evidenced by the extraordinarily high percentage of accounts used by the recipients as opposed to the rather low percentage of use for unsolicited credit cards.

After careful study of the proposed bills and the record of four separate day's hearings before this subcommittee, we are convinced that the concerns voiced about the evils of unsolicited credit cards do *not* apply to cards solicited over the telephone. Indeed, a credit card delivered pursuant to oral request is not an "unsolicited credit card." The orally solicited card is mailed with *request, authority, and consent*.

However, proposed bill H.R. 15103 would make our clients criminals for issuing a credit card even though the consumer had made an oral request and authorization to us. It is clear that these bills, if enacted into law, would so handicap telephone solicitation as to destroy its feasibility. Thus, a service to the consumer as well as the major viable alternative to the unsolicited credit card approach would be destroyed.

As Chairman Nix has indicated in a press release announcing these hearings, the practice to be prohibited or regulated is "the mass mailing of unsolicited credit cards" whereby issuers "draft (people) into credit card plans by sending them *unsolicited* for credit cards . . ." (emphasis supplied). We agree, and we understand the dangers flowing from the promiscuous distribution of credit cards that runs roughshod over large numbers of unwilling consumers. We further agree that this practice increases the likelihood of cards being criminally misused and of law suits being threatened for "debts run up by thieves."

In contrast, credit cards solicited by the *oral* method are not often misappropriated and fraudulently used by unknown parties. Certainly, there is no reason for believing that an orally requested card is more likely to be misappropriated than one which has been requested in writing. First, the intended recipient of an orally solicited card is *aware before delivery* that a card is being sent to him. Further, during our phone calls, we confirm the name and street address of applicants and we alert them to expect the card. Thus delivery to a wrong address is most unlikely. Clients tell us that they receive far, far fewer complaints of misappropriation and fraudulent use from telephone solicited cards as against unsolicited cards. Because we engage in this meaningful conversation with the card holder just before a card is issued, we eliminate the abuse stemming from the unsolicited approach.

Stating our position as simply as possible, to protect the consumer the law need only require that an application for the credit card be made. It need not require that that request be *in writing*. The latter requirement, while providing no extra safeguard for the public, would gravely impair the telephone method of account solicitation and would unnecessarily inhibit the use of a fair competitive practice.

We must recognize the psychology of the consumer. When she has requested a card and consents to its issuance, she considers the transaction complete. With this attitude, the matter no longer commands her immediate attention and she simply may not take the extra step to solemnize her decision in writing. Nor should she be required to do so. We accept, indeed favor, the general approach of the four bills presently before this committee restricting unsolicited credit cards. For example, a perfectly legitimate restriction provides the consumer with a defense or a limit on liability in a suit for goods purchased where the card was fraudulently used, as is done in proposed bill H.R. 15103. However, we feel that statutes should not be drawn so that they extinguish legitimate and desirable activity in addition to the evils they are designed to eliminate.

Our experience has amply demonstrated that oral request is quite enough, and the almost universal lack of complaint is irrefutable testimony that no valid interest is served by requiring a *written* authorization. The matter is an elementary one of offer and acceptance which has been the basis of all consensual commercial dealings. As a rule, written acceptance is not required for a valid contract, and it can hardly be denied that such a requirement would unduly restrain the flow of commerce.

Whether or not Congress decides to prohibit the practice of sending credit cards without request or consent, it ought to be pointed out that the *further* requirement of having that consent in *writing* seems unwise for this additional reason: The credit industry is a dynamic and growing one and the imposition of any hard-and-fast rule may produce unforeseen and mischievous consequences. As one example, those already established in the field and who have used indiscriminate mass mailings will remain in a permanently advantaged position. Newcomers to the marketplace should not be left without oral solicitation, a most fair and effective method of establishing themselves competitively. This same argument applies to established firms venturing into a new territory.

In his statement to this subcommittee, H.R. 15103's sponsor Congressman Olsen stated that it was "based in large part on state statutes." (Olsen statement, p. 6). A review of the statutes of all thirteen states mentioned by Congressman Olsen and listed in the statement in the record by Robert M. Rhodes for the Council on State Governments reveals not one where the distribution of a credit card mailed upon oral request, authorization, or application is made a crime. The furthest any state statute has gone is to restrict or eliminate liability where the recipient did not request or accept the card in writing (Alaska) or affix his signature to the card (Massachusetts) or otherwise use the card (*e.g.* California, Illinois, New York).

We submit that the additional burden imposed—that no card be mailed except upon an application or request in writing—is not logical; to the contrary, it will cause positive harm as has already been demonstrated. In fact, at least one state, Connecticut, *explicitly* recognizes the desirability of permitting mailing upon oral authorization.

The American Retail Federation has taken the same position in testimony before both the Federal Trade Commission and Senator Proxmire's Financial Institutions Subcommittee. The Federation is a national trade association representing more than 800,000 retail establishments of all types across the country. The ARF testified that it is "sufficient that a card holder has requested a credit card—*either orally or in writing*—for him to be deemed to have accepted it." (Apparently since the Federation, like us, was unaware that the hearings before this subcommittee on January 28 and February 4 were to include H.R. 15103, it did not reiterate this testimony in its January 28, 1970 statement "concerning H.R. 13244 and H.R. 14346.")

Of the four bills before the committee, we note that H.R. 14897 as well as H.R. 15103 require that all credit cards be sent by registered mail regardless of whether they are in response to a request or are totally unsolicited and sent without the prospective card holder's knowledge. We are in agreement with the testimony that, as to requested cards, registered mail would create inconvenience to the public, add burdens to the Post Office, and increase costs to the issuers (over twenty-fold what it now costs) which should outweigh the marginal, at most, added protection to the consumer.

The Gracious Lady Service, Inc., has no objection to correcting any evil or unfair practice—as long as the corrective action is tailored to the specific need. We want to emphasize that in its desire to correct admitted abuse, Congress should not go so far as to do a disservice to consumers and to competition generally.

We hope that we have pointed out in this Statement that the telephone method of solicitation used by The Gracious Lady Service, Inc., and others, is an eminently fair method of competition which provides a needed service both to consumers and to its retail clients. If, therefore, Congress decides to promulgate any statute in this matter, we strongly urge that provision be made to permit delivery of credit cards upon express application or request, either *written or oral*.

Appendix A

Suggested Amendment

H.R. 15103

Page 2, line 14 - add after "a written" the words "or oral"

Appendix B

Connecticut Statute

[UNSOLICITED CREDIT CARDS]

[§ 6331]

Sec. 1. [Acts 1969, P. A. No. 136]
[Distribution of unsolicited credit cards.]

(a) No person, company, partnership or corporation shall engage in the practice of mailing or the distribution in any form of any credit card, charge plate or any like instrument or device to any other person, firm or corporation unless such other person, firm or corporation has previously made a request therefor in writing or verbally.

(b) Any person, company, partnership or corporation which violates the provisions of subsection (a) of this act shall be fined not more than one hundred dollars for each

card, plate, instrument or device so mailed or distributed.

(c) The provisions of this act shall not apply to the renewal of any credit card, charge plate or like instrument or device unless the recipient has previously indicated in writing his intention that such renewal not be effected nor shall it apply to the replacement of any such instrument or device by the issuer thereof during the period such instrument or device is in effect.

[Approved May 15, 1969, effective January 1, 1970.]

[Interest—Usury appears on page 13,691]

§ 6317 Connecticut

© 1969, Commerce Clearing House, Inc.

the Gracious Lady
service INCORPORATED

1819 JOHN F. KENNEDY BOULEVARD
PHILADELPHIA, PENNSYLVANIA 19103

TO: Gracious Lady
Interviewing Staff

DATE: AUGUST 1969

FROM: Elsie S. Houde
National Supervisor

SUBJ: WOODWARD & LOTHROP, Inc.

FACT SHEET FOR THE GRACIOUS LADY CHARGE ACCOUNT SOLICITATION

NAME OF STORE: WOODWARD & LOTHROP, Inc., Washington, D.C.,
endearingly known as "Woodies".

LOCATIONS: The WASHINGTON STORE (two buildings)
10th, 11th, F & G Streets, N.W.
Washington, D.C.

SUBURBAN STORES
Chevy Chase, Md.
Wisconsin and Western Avenues

7 CORNERS STORE
Intersection of Route 50 and Route 7
Near Falls Church, Va.

WHEATON PLAZA STORE
Wheaton, Md.

EASTOVER STORE
Eastover Shopping Center
Eastover, Md.

PENTAGON STORE (Mostly Wearing Apparel)
In the PENTAGON, Washington, D.C.

PAROLE PLAZA STORE
Annapolis, Md.

IVERSON MALL STORE
Branch Avenue
Hillcrest Heights, Md.

LANDMARK STORE
Landmark Shopping Center
Alexandria, Va.

Area Code 215 • LOcust 8-7036

WESTERN REGIONAL OFFICE: 16760 BOYLE AVENUE, FONTANA, CALIFORNIA 92335—Area Code 714 • 822-4046

MID-WEST REGIONAL OFFICE: 224 S. MICHIGAN AVENUE, CHICAGO, ILLINOIS 60604—Area Code 312 • MA 7-5950

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PRINCE GEORGE PLAZA STORE

East-West Highway
Hyattsville, Md.

TYSONS CORNER STORE

Tysons Corner Center
McLean, Va.

New Store to open in Columbia, Md.

TYPE OF STORE:

Fine complete department store

Budget to Better Merchandise of excellent quality
and complete assortments of wanted items.

Most nationally advertised brands and many private
labels as well. Wonderful sales of timely merchandise.
Advance notices, in many instances, to our Charge
customers for first choice of outstanding values prior
to public announcements.

Known for QUALITY...VALUE...STYLE...AND
...SERVICE

SATISFACTION GUARANTEED

MANAGEMENT:

Mr. Lothrop Luttrell, Chairman of the Board
Mr. Andrew Parker, Vice Chairman of the Board
Mr. Edwin K. Hoffman, President
Mr. Chester A. Carter, Credit Manager
Mr. Edward Cozzie, Office Credit Manager

A FEW OF THE
SPECIAL FEATURES:

Fine Fashions for Women

An Outstanding Men's Store

A Children's World

Complete Furnishings for Your Home

A TEA ROOM in the WASHINGTON STORE,
with delightful Fashion Shows daily at lunch time

An Interior Decorating Studio
(\$25.00 consulting fee, which is cancelled if an
order of \$300.00 or more is placed)

-3-

FREE Shop At Home Service
 Carpeting...Draperies...Slip Covers...Upholstering

Model Rooms... 6th Floor...Washington Store

A Travel Service

A Shoe Repair Shop

A Dry Cleaning and Fur Storage Plant

A Repair Center

An Engraving Department

A Radio and TV Repair Service

A Jewelry and Watch Repair Service

Charles of the Ritz Beauty Salons

Wonderful Toy Departments

Stamp and Coin Collection

PARKING:

THE DOGGETT...downtown parking attached to our
 North Building on 10th between G & H Streets...
 average priced

NEVER GET WET... go right into our North Building
 (our G Street Store) and tunnel to our F Street Store

SUBURBAN LOCATIONS...tremendous FREE parking
 facilities for thousands of cars

STORE HOURS:

The WASHINGTON STORE

Tues., Wed., Fri., Sat.,	-	9:30 AM to 6:00 PM
Mon. and Thurs.	-	9:30 AM to 9:00 PM

The SUBURBAN STORES (Except Chevy Chase and Annapolis)
 Daily and 6 nights a week - 10:00 AM to 9:30 PM

CHEVY CHASE STORE

Tues., Wed., Sat.,	-	10:00 AM to 6:00 PM
Mon., Thurs., Fri.,	-	10:00 AM to 9:30 PM

-4-

ANNAPOLIS STORE

Wed., Thurs., Sat.	-	10:00 AM to 6:00 PM
Mon., Tues., Fri.	-	10:00 AM to 9:30 PM

PHONE ORDERS:

It's ALWAYS FUN to shop in person, but when this is not possible, we're ... AS CLOSE AS YOUR TELEPHONE

CALL THE STORE'S PERSONAL SHOPPER SERVICE

or

THE STORE'S TELEPHONE ORDER BOARD SERVICE
Open 24 hours a day

To place an order from our ads or from stock, call the ORDER BOARD SERVICE - 783-7600

WE MAIL TOO:

Yes, we'll mail ANY PLACE IN THE WORLD, so if you're a family who travels, get to know our Personal Shopper. She'll shop for you and send it wherever you are, Overseas or in the States.

DELIVERY SERVICE:

EXCELLENT...in our Regular Delivery Area...
FREE Delivery for orders of \$5.00 or more with account.

\$.50 charge for delivery of any purchase under \$5.00.
\$2.00 delivery charge on all bulk items such as furniture and appliances delivered from the Shirley Warehouse.

There is a minimum of \$3.00 on C.O.D. orders, and a fee charged of 35¢ from \$3.00 to \$50.00. Amounts over \$50.00 have no C.O.D. fee.

NEVER MISINFORM A CUSTOMER:

Don't guess! If you don't know, ASK YOUR SUPERVISOR.

Watch the store ads to keep up to date.

Never knock the competition; but with your knowledge and enthusiasm, make a friend for the fine store you represent.

Our Store has EVERYTHING for the HOME and for EVERY MEMBER of the FAMILY.

IT'S MORE CONVENIENT TO SHOP WITH YOUR
WOODWARD & LOTHROP SHOPPING PLATE.

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TYPES OF ACCOUNTS:

NOTE: This section is NOT to be used in presentation but is for the Interviewer's general information if questioned. If question is asked relative to payments or terms, the entire section MUST be covered.

NOTE: Full disclosure of the terms will be sent to the customer by Woodies in accordance with Regulation Z of the Truth in Lending Act.

Optional Terms Account

(Indicated by the letter "R" or "T" preceding your account number in upper left hand corner of your monthly statement)

This plan is designed for your every day shopping convenience.

Under the terms of this account, it may be paid in full each month before the next closing date which is reflected on each billing statement and thus avoid any finance charge or you may pay a minimum of 1/5 (20%) of the balance each month. However, if you elect to pay other than in full, a finance charge is computed by a periodic monthly rate of 1 1/2% (annual percentage rate 18%) on the first \$500.00 and 1% (annual percentage rate 12%) on the excess over \$500.00 or rates not in excess of those permitted by law. These rates are applied to the "Previous Balance" without deducting payments or credits.

Continuous Budget Account (CBA)

(Indicated by the letter "C" preceding your account number in upper left hand corner of your monthly statement)

This plan is a revolving account designed for the customer who prefers to budget payments over a ten-month period.

This revolving type of open-end credit account permits you to pay in full each month before the next closing date which is reflected on each billing statement and thus avoid any finance charge or you may pay a minimum of 1/10 (10%) of the credit limit, which you selected, each month. If you elect to pay the minimum or pay any amount other than in full, a finance charge is computed at the periodic monthly rate of 1 1/2% (annual percentage rate 18%) on the first \$500.00 and 1% (annual percentage rate 12%) on the excess over \$500.00 or rates not in excess of those permitted by law. These rates are applied to the "Previous Balance" without deducting payments or credits.

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CYCLE BILLING:

Customer is billed once a month on a special billing date which is determined by the first initial of the last name.

SHOPPING PLATE:

The WASHINGTON SHOPPING PLATE (Blue and White plastic) is used for the OPTIONAL TERMS ACCOUNT.

Each customer is assigned an IBM number by Washington Shopping Plate Service of which Woodies are a participating member. This plate can also be used at:

The Hecht Co.	Lansburgh's
Frank R. Jelleff, Inc.	Raleigh Haberdasher
S. Kahn Sons Co.	Julius Garfinkel & Co.

where the Shopping Plate will be honored IF THE CUSTOMER HAS AN ACCOUNT there.

SPECIAL SHOPPING PLATE for The Continuous Budget Account (CBA). ONLY Woodies issue this plate. It is a maroon and white plastic plate enclosed in a small maroon envelope and is used only for this account.

ACCOUNT GOOD:

When customer has received confirmation of the account and her Shopping Plate in the mail, the account is good for

<u>HUSBAND</u>	<u>WIFE</u>	<u>or ANY AUTHORIZED BUYER</u>
It may be used as a convenience for		
<u>IN PERSON</u>	<u>TELEPHONE</u>	<u>or MAIL ORDER SHOPPING</u>

If customer has any questions regarding verification of identity of Interviewer she may call the Washington Store (DI 7-5300) and ask for Mr. Cozzie who will confirm that we represent Woodies.

INFORMATION NECESSARY FOR THE CREDIT APPLICATION

PLEASE PRINT NAME AND ADDRESS (legibly write the balance of the application)

Get FIRST names -- not initials. If common last name, (Smith, for example) get middle initial, too, please.

Married couple -- must have HUSBAND'S first name -- wife's, too.

TRY to get at least 1-1/2 years RESIDENCY and NEVER LESS THAN one (1).

This does not mean they MUST LIVE at present address for 1-1/2 years, but you MUST show all addresses for preceding 1-1/2 years.

Be sure to say St., Dr., Rd., Lane, Pl., Ave., etc.

Also, CITY, ZIP CODE AND STATE or DISTRICT.

Indicate if the applicant OWNS or RENTS.

EMPLOYER -- ALWAYS get at least two (2) years employment, and be SURE to get POSITION, as well as PLACE OF EMPLOYMENT. Exact addresses are helpful if she knows it, but don't press. Get address if small firm, new firm or self employed. Also, if large firm with several addresses or government employee.

CREDIT REFERENCES -- Try to get at least 2 credit references (open or closed accounts). STORES, BANKS, LOAN COMPANIES, all good.

BANK -- Name of bank, branch used important, too.

DATE application.

Write... GLS/your own three initials as instructed by Supervisor.

SPECIAL CASES

WIDOW - of whom (get as much information here as possible - tactfully). Be sure to get deceased husband's first name.

RETIRED - from what firm, please. Show former company, address, position and years there.

SELF-EMPLOYED - what line of business, NAME of it, business address, years there.

NEWLYWEDS - all past references, address, etc., on husband, PLEASE.

Special Cases, Cont'd

SERVICEMEN - branch of Military, Rank, Serial Number. Also get permanent family home address, if possible.

NOTE: Since August 1st, the serial number and person's Social Security Number are one and the same.

GOVERNMENT EMPLOYEE - Branch of government (federal, etc.), Department, location, position, years there.

FORMER ADDRESS - must get street and number, city and state or District.

UNION MEMBERS - such as carpenters, electricians, plumbers, etc., GET NAME of UNION AND LOCAL UNION NUMBER, location, trade and years affiliated.

CREDIT REFERENCES from another town - be sure to get address where family lived when they were using credit in another area.

LIGHT APPLICATION, not much credit information, but family has a Store Account - put it down, showing NAME OF RELATIVE AND RELATIONSHIP (mother, sister, etc.) and address. This helps a lot.

WIFE WORKS, TOO -- say so. Get name and address of her employer, position, and how long there. It makes a stronger application.

DIVORCED or SEPARATED - Is she working? Treat as single applicant obtaining employment, credit references, bank, etc. Use TACT.

NOTE: You may put it down if you get a favorable impression or have additional information that will help store, but USE GOOD JUDGMENT.

After Woodward & Lothrop account is opened, Shopping Plate will be sent by mail from store, with confirming letter and full disclosure of the CREDIT TERMS.

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON POSTAL OPERATIONS,
OF THE COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C., November 6, 1969.

(Letter sent to State attorney generals.)

DEAR SIR: The Subcommittee on Postal Operations of which I am chairman is holding hearings on bills which will have the effect of restricting the widespread mailing of unsolicited credit cards.

In order to consider this legislation in the proper framework it is necessary for us to know what the situation as to credit cards is in each of our states. It is our understanding, for example, that states such as Massachusetts, New York, Illinois, California and Maryland have statutes limiting liability for credit card holders or those who have credit cards stolen, either before or after they reach the hands of the intended person.

Would you review for us the situation in your state and any legislation that has recently been passed? It would be very helpful. Many attorney generals were quite cooperative during our obscenity hearings and the statements made to the Committee by attorney generals was quite an addition to our hearing record, which will be published shortly.

Thank you for all of your help and interest. Please forward your reply to Thomas R. Kennedy, Subcommittee Counsel, Subcommittee on Postal Operations, Room B345b Rayburn Building, U.S. House of Representatives, Washington, D.C. 20515.

Sincerely,

ROBERT N. C. NIX, M.C.,
Chairman.

(Some of the replies received by the subcommittee, in answer to the above request, follow:)

STATE OF ALABAMA,
OFFICE OF ATTORNEY GENERAL,
Montgomery, Ala., November 13, 1969.

THOMAS R. KENNEDY, Esq.,
Subcommittee Counsel, Subcommittee on Postal Operations, Rayburn Building,
U.S. House of Representatives, Washington, D.C.

DEAR MR. KENNEDY: Enclosed is Senate Bill 205, Act No. 1116, which became effective September 12, 1969. This Act deals with crimes and offenses relating to the misuse of credit cards.

Alabama has not enacted legislation limiting liability of credit card holders for lost or stolen credit cards. Legislation passed prior to Act No. 1116 has been included in the Alabama Code at Title 14, Section 217.

If we can be of further service to your Committee in this or any further matter, please let us know.

Sincerely,

MACDONALD GALLION,
Attorney General.
By TABOR R. NOVAK, Jr.,
Legal Research Aide.

OFFICE OF THE ATTORNEY GENERAL,
Phoenix, Ariz., November 25, 1969.

Re Unsolicited credit card legislation.

Hon. ROBERT N. C. NIX, M.C.,
Chairman, Subcommittee on Postal Operations,
Washington, D.C.

DEAR CONGRESSMAN NIX: Enclosed please find a copy of the recently passed credit card statute. This statute is an effort to comprehensively regulate the fraudulent use and manufacture of a credit card. It does not, however, protect civilly the person who receives an unsolicited credit card in the mail.

It is my opinion that federal legislation in the area proposed is essential, due to the fact that such mailings almost always cross state lines. I personally have received at least ten unsolicited credit cards from two or possibly three major oil companies. While it is entirely probable that the normal civil law and common law, without the enactment of statute, will protect the person from the use of an

unsolicited credit card, assuming he can afford to hire a lawyer and prove the facts, I think a federal statute would control the traffic in a much more acceptable manner.

If we can be of any additional assistance to you, please do not hesitate to contact us.

Very truly yours,

GARY K. NELSON,
The Attorney General.

STATE OF CONNECTICUT,
ATTORNEY GENERAL'S OFFICE,
Hartford, November 17, 1969.

THOMAS R. KENNEDY,
Subcommittee Counsel, Subcommittee on Postal Operations, Rayburn Building,
U.S. House of Representatives, Washington, D.C.

DEAR SIR: Your letter of November 6, 1969 to Attorney General Killian has been referred to me for reply. You request information as to Connecticut laws restricting the distribution of unsolicited credit cards.

The 1969 Session of the General Assembly has passed Public Act #136 effective January 1, 1970 which is directly on point as it is entitled "An Act Concerning the Distribution of Unsolicited Credit Cards". I am enclosing herewith a copy for your reference.

The 1969 General Assembly has also passed an act concerning credit card crimes, Public Act #750 and an act concerning solicitation of insurance contracts from credit cardholders, Public Act #669. I have also enclosed copies of these acts.

I have found no other applicable reference to credit cards in the General Statutes of the State of Connecticut.

Please contact the writer if you need further information on this subject.

Very truly yours,

ROBERT K. KILLIAN,
Attorney General.
By WILLIAM S. KAPLAN,
Assistant Attorney General.

Enclosure.

PUBLIC ACT NO. 136

An act concerning the distribution of unsolicited credit cards

Be it enacted by the Senate and House of Representatives in General Assembly convened:

SECTION 1. (a) No person, company, partnership or corporation shall engage in the practice of mailing or the distribution in any form of any credit card, charge plate or any like instrument or device to any other person, firm or corporation unless such other person, firm or corporation has previously made a request therefor in writing or verbally.

(b) Any person, company, partnership or corporation which violates the provisions of subsection (a) of this act shall be fined not more than one hundred dollars for each card, plate, instrument or device so mailed or distributed.

(c) The provisions of this act shall not apply to the renewal of any credit card, charge plate or like instrument or device unless the recipient has previously indicated in writing his intention that such renewal not be effected nor shall it apply to the replacement of any such instrument or device by the issuer thereof during the period such instrument or device is in effect.

SEC. 2. This act shall take effect January 1, 1970.

Certified as correct by

Legislative Commissioner.

Clerk of the Senate.

Clerk of the House.

Approved _____, 1969.

Governor.

STATE OF DELAWARE,
STATE DEPARTMENT OF JUSTICE,
Wilmington, Del., December 16, 1969.

THOMAS R. KENNEDY, Esq.,
Subcommittee Counsel, Subcommittee on Postal Operations, Rayburn Building,
U.S. House of Representatives, Washington, D.C.

DEAR SIR: The letter of November 6, 1969, from Congressman Robert N. C. Nix, to Attorney General David P. Buckson, concerning proposed legislation restricting the mailing of unsolicited credit cards, has been referred to me for reply.

The Delaware Legislature has a bill pending at the present time which would prohibit the unsolicited distribution of credit cards. The bill has been passed by the House and, we understand, will probably be acted upon by the Senate when the Legislature reconvenes in January. If a copy of the pending bill would be of assistance for your present purposes, a copy can be obtained from the Legislative Reference Bureau, Dover, Delaware.

Delaware has a statute at the present time which sets criminal penalties for the fraudulent use of credit cards. This statute may be of interest also and is set forth in Title 11, *Delaware Code*, §558.

We trust this information will assist in your work on this matter.

Sincerely,

RUTH M. FERRELL,
State Solicitor.

THE DEPARTMENT OF LAW,
STATE OF GEORGIA,
Atlanta, November 13, 1969.

Mr. THOMAS R. KENNEDY,
Subcommittee Counsel, Subcommittee on Postal Operations, Rayburn Building,
U.S. House of Representatives, Washington, D.C.

DEAR MR. KENNEDY: This will acknowledge the Honorable Robert N. C. Nix's letter of November 6, 1969, to the Attorney General wherein information was sought concerning this State's laws concerning credit cards.

This State has few laws concerning credit cards and none at all which would limit the liability for credit card holders or those who have credit cards stolen, either before or after they reach the hands of the intended person.

Enclosed are xerox copies of the existing "credit card" laws in this State.

I trust the above and enclosed information will be of assistance.

Yours very truly,

ARTHUR K. BOLTON,
Attorney General.
MATHEW ROBINS,
Assistant Attorney General.

STATE OF IDAHO,
OFFICE OF THE ATTORNEY GENERAL,
Boise, November 26, 1969.

HON. ROBERT N. C. NIX,
House of Representatives,
Subcommittee on Postal Operations,
Rayburn Building, Washington, D.C.

Attention: Mr. Thomas R. Kennedy, subcommittee counsel.

Dear Sir: This office is in receipt of your recent inquiry pertaining to credit card legislation.

In answer to your question, there are no statutes existent in the *Idaho Code* which restrict the mailing of unsolicited credit cards or which limit liability for credit card holders who have credit cards stolen, either before or after they reach the hands of the intended person.

I hope this information will be useful to you.

Very truly yours,

RICHARD GREENER,
Assistant Attorney General,
(For the attorney general).

WILLIAM J. SCOTT, ATTORNEY GENERAL,
STATE OF ILLINOIS,

Springfield, November 12, 1969.

HON. ROBERT N. C. NIX,
Member of the U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN NIX: This will acknowledge receipt of your letter dated November 6, 1969 pertaining to the above subject matter.

You can find in Illinois Revised Statutes 1967, Ch. 121½, the following quoted paragraphs from "An Act defining and limiting the liability of persons in whose names credit cards are issued.":

Paragraph 381.—

"§ 1. (a) No person in whose name a credit card is issued without his having requested or applied for the card or for the extension of the credit or establishment of a charge account which that card evidences is liable to the issuer of the card for any purchases made or other amounts owing by a use of that card from which he or a member of his family or household derive no benefit unless he has indicated his acceptance of the card by signing or using the card or by permitting or authorizing use of the card by signing or using the card or by permitting or authorizing use of the card by another. A mere failure to destroy or return an unsolicited card is not such an indication. As used in this Act, 'credit card' has the meaning ascribed to it in Section 17-1 of the Criminal Code of 1961, except that it does not include a card issued by any telephone company that is subject to supervision or regulation by the Illinois Commerce Commission or other public authority.

"(b) When an action is brought by an issuer against the person named on the card, the burden of proving the request, application, authorization, permission, use or benefit as set forth in Section 1 hereof shall be upon plaintiff if put in issue by defendant. In the event of judgment for defendant, the court shall allow defendant a reasonable attorney's fee, to be taxed as costs."

Paragraph 382.—

"§ 2. (a) Notwithstanding that a person in whose name a credit card has been issued has requested or applied for such card or has indicated his acceptance of an unsolicited credit card, as provided in Section 1 hereof, such person shall not be liable to the issuer of the card for any amount in excess of the applicable amount hereinafter set forth, resulting from a use of that card from which he or a member of his family or household derives no benefit or which he has not authorized or permitted:

"Card without a signature panel, \$25; Card with a signature panel, \$75.

"(b) When an action is brought by an issuer against the person named on a card, issuance if which has been requested, applied for, solicited or accepted and defendant puts in issue any transaction arising from the use of such card, the burden of proving benefit, authorization, use or permission by defendant as to such transaction shall be upon plaintiff. In the event defendant prevails with respect to any transaction so put in issue, the court may enter as a credit against any judgment for plaintiff, or as a judgment for defendant, a reasonable attorney's fee for services in connection with the transaction in respect of which the defendant prevails."

The 76th General Assembly this year enacted Senate Bill 765, "An Act regarding the use of credit cards" which will be found in the new volumes of the Illinois Revised Statutes in Chapter 121½, at paragraphs 385 and 386. This new Act provides as follows:

"Section 1. As used in this Act: (a) 'Credit Card' has the meaning set forth in Section 17-1 of the Criminal Code of 1961, as now or hereafter amended; (b) 'merchant credit card agreement' means a written agreement between a seller of goods, services or both, and the issuer of a credit card to any other party, pursuant to which the seller is obligated to accept credit cards; and (c) 'credit card transaction' means a purchase and sale of goods, services or both, in which a seller, pursuant to a merchant credit card agreement, is obligated to accept a credit card and does accept the credit card in connection with such purchase and sale.

Section 2. Except to the extent provided in a merchant credit card agreement, a seller shall not be liable to the issuer of a credit card, or to any other party to a merchant credit card agreement or that party's agent or representative, for loss or damage to the issuer or other party resulting from a failure of the holder or user of the credit card to pay any obligation arising from a credit card

transaction, provided that the seller has fully performed its obligation under the merchant credit card agreement and has not breached any of its obligations to the purchaser in the credit card transaction."

Very truly yours,

WILLIAM J. SCOTT,
Attorney General.

STATE OF KANSAS,
OFFICE OF THE ATTORNEY GENERAL,
Topeka, Kans., November 13, 1969.

Re Unsolicited credit cards.

MR. THOMAS R. KENNEDY,
Subcommittee Counsel, Subcommittee on Postal Operations, Rayburn Building,
U.S. House of Representatives, Washington, D.C.

DEAR MR. KENNEDY: This is to acknowledge receipt of a letter dated November 6, 1969, from Mr. Robert N. C. Nix requesting information about state laws affecting the mailing of unsolicited credit cards.

Our legislature has not enacted legislation to regulate this type of mailing. I believe they were considering this topic last year, however.

Enclosed is a recent opinion rendered by this office regarding this matter.

We would certainly appreciate receiving a copy of the findings of the committee if at all possible.

Very truly yours,

KENT FRIZZELL,
Attorney General.

By
LANCE W. BURR,
Assistant Attorney General.

Enclosure

OCTOBER 8, 1969.

Hon. JACK W. JANSSEN,
Senator, 23d District,
Lyons, Kans.

DEAR SENATOR JANSSEN: You have inquired as to whether or not any personal liability is involved for a recipient of an unsolicited credit card which becomes lost, stolen or misplaced before any usage is made or before said credit card has been signed.

Since the issuance of unsolicited credit cards is a fairly recent development, there is little authority directly on point. It is the opinion of this office, however, that the recipient of an unsolicited credit card who has taken no positive action to accept or use such credit card should not be held personally liable. It should further be noted that the nature of the credit card itself may affect the liabilities of the holder.

First of all, the liabilities of the holder must be provided for by contract.

"While there are not many cases actually deciding the point, the more recent cases recognize that the party to whom a credit card, plate or coin is issued should not ordinarily be held liable for unauthorized purchases made thereon by a third party, in the absence either of a contract specifically providing for liability, or some degree of fault on the cardholder's part." (See 15 ALR3d 1086 at 1088.)

Thus we see that under the general rule a contract stipulating liability upon the holder must be present in order for him to be held personally liable.

Since a contractual relationship must exist in order for there to be liability upon the recipient, there must be a valid offer and acceptance. In Kansas, an express contract exists only where there is mutual meeting of the minds upon any contractual proposition. (*In re Estate of Rogers*, 184 Kan. 24, 30, 334 P.2d 830 [1959]) Until the recipient of an unsolicited credit card communicates an acceptance to the sender, or shows an acceptance by usage of the credit card, then he has not accepted the terms of the offered contract. "Silence will not of itself constitute an acceptance." (*McGlone v. Lacey*, 288 F.Supp. 662, 665 [1968])

Another reason exists for not holding the innocent recipient responsible in this situation. The nature of the business of sending out unsolicited credit cards should preclude the sending company from holding the innocent recipient liable.

"The holder of a credit card is not liable for purchases made thereon by a third party where the carelessness of the card issuer contributed most to the loss, under the principle that where one of two innocent parties must suffer

because of the actions of the third party, the one whose negligence or conduct occasioned the loss must bear it." . . . (15 ALR3d 1092)

We hope this will be of some service to you.

Very truly yours,

KENT FRIZZELL,
Attorney General.

COMMONWEALTH OF KENTUCKY,
OFFICE OF THE ATTORNEY GENERAL,
Frankfort, December 19, 1969.

Re Unsolicited credit cards.

Hon. RICHARD N. C. NIX,
House of Representatives, Subcommittee on Postal Operations, Committee on
Post Office and Civil Service, Washington, D.C.

DEAR CHAIRMAN NIX: I appreciate your invitation to comment on the above-noted matter.

In August 1968, I appointed a Consumers' Protection Council in Kentucky, composed of representatives from business, labor, education, home economics, farm bureau, senior citizens and youth to advise me on consumer affairs. One of the topics considered by the Council was the matter of unsolicited credit cards. Enclosed, please find copies of correspondence received from BankAmericard and Master Charge concerning the inquiry conducted by our Council in this matter.

As of this date, there is no Kentucky statute regulating unsolicited credit cards. As a result of interest generated, in part, by the Consumers' Protection Council, a bill may be introduced in the 1970 Kentucky General Assembly regulating credit card distribution.

Enclosed for your information, please also find a copy of a report by the Kentucky Legislative Research Commission on Consumer Credit Plans. Pages 31-34 specifically discuss this problem.

I hope this information will be of use to you. If we can be of help in the future, please don't hesitate to contact us.

Sincerely yours,

JOHN B. BRECKINRIDGE,

THE ATTORNEY GENERAL,
CONSUMER PROTECTION DIVISION,
Baltimore, Md., November 10, 1969.

Mr. THOMAS R. KENNEDY,
Subcommittee Counsel, Subcommittee on Postal Operations, Rayburn Building,
U.S. House of Representatives, Washington, D.C.

DEAR MR. KENNEDY: Congressman Robert N. C. Nix, Chairman of the Subcommittee on Postal Operations of the Committee on Post Office and Civil Service, recently wrote to me requesting my views concerning credit card legislation which has been introduced in Maryland. Congressman Nix suggested that I forward this information directly to you.

During the 1969 session of the Maryland Legislature, a number of bills with respect to credit cards were introduced in the legislature. One bill which would have outlawed the sending of unsolicited credit cards failed in Committee as did another bill which would have placed a monetary limit of \$75 in cases where a credit card was lost or stolen and before the company had been notified by the holder. The bill which was enacted, and a copy of which I am enclosing, provides in effect that no liability can result in any case of an unsolicited credit card until such time as there has been either acceptance in writing or actual use of the card itself.

Many citizens have indicated their concern as to what effect it might have on their credit if an unsolicited card addressed to them were lost or stolen prior to acceptance. The bill which was enacted would completely eliminate any possibility of liability in such cases.

I understand that during the 1970 session of our legislature, which begins in late January, a number of bills will be introduced which would also attempt to restrict both the sending of unsolicited cards and the liability with respect to

these cards. If you would like copies of these bills, I will be happy to make a note of that fact and forward them to you as soon as they have been prepared.

Trusting the above information will be of some assistance to you, I remain
Sincerely,

FRANCIS B. BURCH.

Enclosure.

ARTICLE 83, SECTION 21C.—1969 CUMULATIVE SUPPLEMENT

§ 21B. Assumption of risk of loss, theft or unauthorized use of credit card issued without request.

When a credit card or card of identification for credit is issued to a person in the absence of a prior request or application for such card by that person or an authorized agent of that person, such card shall not be deemed to have been accepted until such person signifies acceptance in writing or uses such card to obtain credit. Until such acceptance takes place, the person issuing the card shall be presumed to have assumed the risk of the loss, theft, or unauthorized use of such card and shall be barred from any recovery for damages occasioned by such loss, theft, or unauthorized use in any action against the person to whom the card was issued. The provisions of this section shall not be applicable to cards issued to renew or replace existing cards originally applied for or accepted by the cardholder. (1969, ch. 252, § 1.)

Editor's note.—Section 2, ch. 252, Acts 1969, provides that nothing in the act applies to any event or occurrence prior to July 1, 1969. Section 3 of ch. 252 provides that the act shall take effect July 1, 1969.

THE COMMONWEALTH OF MASSACHUSETTS,
DEPARTMENT OF THE ATTORNEY GENERAL.
Boston, December 16, 1969.

THOMAS R. KENNEDY,
*Subcommittee Counsel, Subcommittee on Postal Operations, Rayburn Building,
U.S. House of Representatives, Washington, D.C.*

DEAR MR. KENNEDY: Pursuant to the request of Robert N. C. Nix, M.C., I am enclosing herewith a copy of Chapter 253, Section 12E of the Massachusetts General Laws, which limits the liability on the unauthorized use of credit cards. The effect of this statute, which was effective January 1, 1969, is to limit liability on "accepted credit cards" to \$100, and even then, only when certain requirements have been met.

I am also enclosing proposed legislation relative to unsolicited credit cards, which I have submitted for consideration at the next legislative session of the Massachusetts General Court. The effect of this proposal is to remove all liability for debts arising from use of a credit card which was not in fact requested by the card holder.

I have publicly indicated my opinion that the practice of mailing unsolicited credit cards is contrary to the best interests of the consumer. It unfairly subjects the consumer to possible unknowing or inadvertent responsibility for the loss or theft of an unsolicited card, and is particularly troublesome because the consumer may remain unaware of his rights.

The situation clearly has reached the point of affecting interstate transactions. Consequently, to effectively regulate distribution and use of credit cards, it would appear appropriate that Federal legislation should be presented before the United States Congress.

Thank you very much for the opportunity to present my views on this subject. As you can see, the consuming public of Massachusetts has some protection but, in my opinion, not enough.

Very truly yours,

ROBERT H. QUINN,
Attorney General.

Enclosure.

§ 12E. Unauthorized use of credit cards; liability of cardholder; definitions.

In this section the following words and phrases shall, unless the context otherwise requires, have the following meanings:

"Adequate notice", a writing which is conspicuous and which is printed on the credit card or on each periodic statement.

"Conspicuous" refers to any term or clause which is so written that a reasonable person against whom it is to operate ought to have noticed it.

"Credit card", any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor or services on credit.

"Accepted credit card", any credit card which the cardholder has requested in writing or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor or services on credit. A renewal credit card shall be deemed to be accepted if it is issued within one year after a prior card has been paid for or used. A credit card issued in connection with a merger, acquisition or the like of card issuers or credit card services in substitution for an accepted credit card shall be deemed to be an accepted credit card.

"Card issuer", any person who issues a credit card.

"Cardholder", any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

"Unauthorized use", a use of a credit card by a person other than the cardholder who does not have actual, implied or apparent authority for such use and from which the cardholder receives no benefit.

A provision imposing liability on a cardholder for the unauthorized use of a credit card shall be effective only if the card is an accepted credit card, the liability imposed is not in excess of one hundred dollars, the card issuer gives adequate notice to the cardholder of the potential liability, the unauthorized use occurs before the cardholder has notified the card issuer of the loss or theft of the card or of any unauthorized use, and the card issuer has provided a method whereby the user of the credit card can be identified as the person authorized to use it, including without limitation a place on the card for the photo or signature of the holder.

Except as hereinbefore provided, a cardholder incurs no liability from the unauthorized use of either an accepted or an unaccepted credit card.
Added by St. 1968, c. 394, § 1, eff. Jan. 1, 1969.

THE COMMONWEALTH OF MASSACHUSETTS

AN ACT Relating to liability for the use of unsolicited credit cards

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. Chapter 255 of the General Laws is hereby amended by striking out section 12E, as inserted by section 1 of chapter 394 of the acts of 1969, and inserting in place thereof the following section:—

Section 12E. Notwithstanding the provisions of section 37A through 37C inclusive of chapter 266 of the General Laws, no person shall be held liable in any manner for the debts resulting from the use of a credit card or like device unless the person to whom the card was originally issued had indicated a desire to obtain the card either orally or in writing, other than by on the card itself.

OFFICES OF THE ATTORNEY GENERAL OF MISSOURI,
Jefferson City, November 13, 1969.

Mr. THOMAS R. KENNEDY,
Subcommittee Counsel, Subcommittee on Postal Operations, Rayburn Building,
U.S. House of Representatives, Washington, D.C.

DEAR MR. KENNEDY: By letter of November 6, 1969, Congressman Nix has requested information on credit card laws in our state.

The most recent statute pertaining to credit cards is section 561.415, RSMo Supp. 1967, enacted in 1961. That statute imposes certain penalties for the fraudulent use of credit cards. A photocopy of that section is enclosed.

The problems caused by the mailing of unsolicited credit cards are definitely on the increase in Missouri. It is my belief that steps should be taken at the federal level to curtail the practice, or at least to alleviate some of the problems.

Very truly yours,

JOHN C. DANFORTH,
Attorney General.

CHRISTOPHER S. BOND,
Chief Counsel, Consumer Protection Division.

STATE OF NORTH CAROLINA,
DEPARTMENT OF JUSTICE,
Raleigh, November 12, 1969.

Mr. THOMAS R. KENNEDY,
Subcommittee Counsel, Subcommittee on Postal Operations, Rayburn Building,
U.S. House of Representatives, Washington, D.C.

DEAR MR. KENNEDY: With respect to the inquiry of Congressman Robert N. C. Nix, North Carolina in 1969 adopted specific legislation as to open-end credit plans (including revolving credit card plans) authorizing interest or finance charges not exceeding $1\frac{1}{2}$ per cent per month on the amount remaining unpaid after twenty-five days from the billing date. Where there is a direct loan (as from a bank through a bank credit card) the lender may collect interest and service charges which shall not exceed $1\frac{1}{4}$ per cent per month computed on the average balance outstanding of the previous month.

The statute specifically provides that in the above described situations, the extension of credit or the loan may not be secured by real or personal property or any other thing of value. The above provisions are included in Chapter 1303 of the North Carolina Session Laws of 1969, and have been codified as Section 24-11 of the General Statutes of North Carolina.

Very truly yours,

ROBERT MORGAN,
Attorney General.
HARRY W. MCGALLIARD,
Deputy Attorney General.

STATE OF NORTH DAKOTA,
ATTORNEY GENERAL,
Bismarck, N. Dak., November 13, 1969.

Mr. ROBERT N. C. NIX, M.C.
Chairman, U.S. House of Representatives, Subcommittee on Postal Operations,
Committee on Post Office and Civil Service, Washington, D.C.

DEAR MR. NIX: This is in response to your letter of November 6, 1969, wherein you inquired as to laws regarding credit cards presently in force in North Dakota.

The 1969 session of the North Dakota Legislature enacted chapter 423 of the Session Laws of 1969, which has subsequently been compiled as chapter 51-14.1 of the North Dakota Century Code. It provides essentially that a provision imposing liability on a cardholder for the unauthorized use of a credit card is effective only if the card is accepted by the holder, and only to amounts of \$500.00. Also, the issuer must give adequate notice of potential liability, and the unauthorized use must have occurred before the cardholder has notified the issuer of loss of the card or unauthorized use.

Very truly yours,

ROBERT P. BRADY,
Special Assistant Attorney General.

OFFICE OF THE ATTORNEY GENERAL,
STATE OF OHIO,
Columbus, November 12, 1969.

Hon. ROBERT N. C. NIX,
U.S. House of Representatives,
Washington, D.C.

DEAR SIR: In answer to your letter of November 6 regarding the mailing of unsolicited credit cards, the Ohio General Assembly enacted Section 1319.01, Ohio Revised Code, effective November 18, 1969, which relieves a person from liability for use of a credit card when he has not previously requested or used the card provided it is not a replacement for a card lawfully issued. The section reads as follows:

Sec. 1319.01. A cardholder who receives a credit card from an issuer, which such cardholder has not requested nor used, shall not be liable for any use made of such credit card which has not been authorized by such cardholder, unless

such credit card is in replacement or renewal of a credit card previously requested or used by the cardholder.

If we can be of any further assistance to you, please call upon us.

Sincerely,

PAUL W. BROWN,
Attorney General.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
DEPARTMENT OF ATTORNEY GENERAL,
Providence, R.I., November 12, 1969.

MR. THOMAS R. KENNEDY,
Subcommittee Counsel, Subcommittee on Postal Operations, Rayburn Building,
U.S. House of Representatives, Washington, D.C.

DEAR MR. KENNEDY: Chairman Robert Nix's letter of November 6, 1969, addressed to the Honorable Herbert F. DeSimone, Attorney General of the State of Rhode Island, requested information of a mailing of unsolicited credit cards has been referred to me for reply.

Legislation limiting liability for credit card holders or those who have credit cards stolen was introduced in 1969 General Assembly but the legislators did not pass same. I do understand that legislation relative to the mailing of unsolicited credit cards will be introduced in the January 1970 Session of the General Assembly.

If you are desirous of any additional information, may I suggest that you write to the Office of Legislative Council, State House, Providence, Rhode Island.

Very truly yours,

AMERICO CAMPANELLA,
Administrative Assistant, Assistant Attorney General.

STATE OF SOUTH DAKOTA,
OFFICE OF ATTORNEY GENERAL,
Pierre, November 14, 1969.

MR. ROBERT N. C. NIX, M.C.
Chairman, Subcommittee on Postal Operations,
U.S. House of Representatives, Washington, D.C.

DEAR MR. NIX: Your letter addressed to the Attorney General of South Dakota, Gordon Mydland, has been referred to this writer for answering.

Please be advised that I am enclosing herewith a thermofax copy of the four statutes that South Dakota has with reference to credit cards solicited and unsolicited, and liability for misuse, as well as termination of liability thereunder.

I hope this will provide you with the information you are seeking, and if not, please so advise.

Yours very truly,

R. JAMES ZIESER,
Assistant Attorney General.

Enclosure.

CHAPTER 54-11

CREDIT CARDS

Section.

- 54-11-1. "Credit card" defined.
- 54-11-2. Unlawful use of credit card as misdemeanor—Penalty.
- 54-11-3. Notice of cancellation or revocation of credit card.
- 54-11-4. Unsolicited issuance of credit card prohibited—No liability for misuse by others.

54-11-1. "Credit card" defined.—The term "credit card" as used in this chapter means an identification card or device issued by a business organization authorizing the person or entity to whom issued to purchase or obtain goods, property or services on credit.

54-11-2. Unlawful use of credit card as misdemeanor—Penalty.—Any person who for the purpose of obtaining money or for the purchase of goods, property, or services on credit, uses a credit card issued to another person or entity without

the consent of the person or entity to whom issued, or knowingly uses a credit card which has been revoked or canceled or has expired, or uses a falsified, mutilated, altered, or counterfeit credit card shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

54-11-3. Notice of cancellation or revocation of credit card.—For purposes of this chapter notice of the cancellation or revocation of a credit card may be given either by telegraph or in writing by certified mail. In the absence of proof of earlier delivery notice in writing by certified mail directed to the person to whom the card was issued at the address shown on the card or the last-known address, if deposited postpaid in the United States mail, shall be prima facie evidence that it was given on the second day after the date it was deposited. However, in lieu of such certified letter, a telegram addressed to the person to whom the card was issued at the address shown on the card or the last known postoffice address of such person, if sent and filed in the office of a telegraph company serving the address locality, shall be prima facie evidence that it was given two days after it was filed.

54-11-4. Unsolicited issuance of credit card prohibited—No liability for misuse by others.—No credit card shall be issued unless its issuance was requested nor shall any person who has not so solicited or has not accepted or utilized an unsolicited credit card be liable to the person who issued it or honored it for its misuse by others.

OFFICE OF THE ATTORNEY GENERAL,
CONSUMER PROTECTION BUREAU,
Burlington, Vt., November 24, 1969.

THOMAS R. KENNEDY,
*Subcommittee Counsel, Subcommittee on Postal Operations, Rayburn Building,
U.S. House of Representatives, Washington, D.C.*

DEAR MR. KENNEDY: The letter of The Honorable Robert N. C. Nix concerning the widespread mailing of unsolicited credit cards has been referred to this office for handling. I am personally pleased that the Subcommittee will be looking into this area of credit abuse.

In the State of Vermont, no specific legislation directed to the problem has been enacted. Indeed, I would be pleased to receive copies of such legislation from you if that would be a function of your office. It may well be that such legislation will prove to be needed by the State of Vermont.

At present the well known bank credit cards such as Bank Americard and MasterCard are relatively new to the Vermont credit scene. The former card has been in use for perhaps nine months and the latter for only three to five months. The banks which have been mailing these cards on an unsolicited basis are just beginning to generate complaints about this practice. It is our intention to contact the banks which are sending unsolicited cards and obtaining written agreement from them that any charges made on said cards prior to receipt by the named card holder would not be charged against the unwitting recipient. It is my present feeling that this course of action coupled with adequate press coverage of the agreement should meet the problem.

With regard to the other national credit cards such as those of oil companies, this office has received no complaints of abuses in the little more than two years of its existence. I believe that this is attributable to the small size of the State as well as to the lack of any substantial metropolitan area. The Chittenden County area, which is the most "urban" of the Vermont counties, has but 85,000 persons.

If this office can be of further help to you in developing information in this area, we would be happy to cooperate with you.

Very truly yours,

JAMES M. JEFFORDS,
Attorney General.
By WILLIAM A. GILBERT,
Assistant Attorney General.

THE ATTORNEY GENERAL OF TEXAS,
Austin, Tex., November 14, 1969.

HON. ROBERT N. C. NIX, M.C.,
*Chairman, U.S. House of Representatives, Subcommittee on Postal Operations of
the Committee on Post Office and Civil Service, Washington, D.C.*

DEAR SIR: I wish to acknowledge receipt of your recent request for any legislation that the State of Texas may have recently passed or on its books concerning the unrestricted widespread mailing of unsolicited credit cards.

Enclosed is a copy of House Bill No. 1006, enacted by the 61st Legislature and codified as Article 1555c Vernon's Civil Statutes, relating to the theft of credit cards. Enclosed also is a copy of House Bill No. 448 concerning unsolicited credit cards, which was introduced in the Texas House of Representatives but was never enacted into law.

We hope that this information will be of assistance to you.

Yours very truly,

CRAWFORD C. MARTIN,
Attorney General of Texas.

Enclosures.

A BILL TO BE ENTITLED—

AN ACT

Relating to the delivery or sending of a credit card to a person who has not made and signed a written application for the card; providing for a criminal and a civil penalty; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. No person, firm, corporation, or other private entity may send or deliver or cause to be sent or delivered to another person a credit card or other card which authorizes the person, upon presentation of the card, to receive goods or services on credit unless the person to whom the card is sent or delivered has made and signed a written application for the card.

Sec. 2. A person who violates the provisions of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$200. Each card sent or delivered in violation of this Act constitutes a separate offense.

Sec. 3. (a) A person, firm, corporation, or other private entity who violates any of the provisions of this Act is subject to a civil penalty of not less than \$200 nor more than \$500 for each card unlawfully sent or delivered.

(b) Any county or district attorney may bring suit in the name of the State of Texas to recover the penalty.

(c) A suit to collect the penalty may be brought in the county where the defendant resides or where the violation occurs.

Sec. 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

CRIMES—THEFT, ETC.—CREDIT CARDS**CHAPTER 813 ⁶⁸****H. B. No. 1006**

An Act defining offenses relating to theft, use, possession, purchase, sale, retention, forgery, fraud, possession of equipment or materials, and other activities connected with credit cards; prescribing penalties; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Definitions

Section 1. As used in this Act:

(1) "Cardholder" means the person or organization named on the face of a credit card to whom or for whose benefit the credit card is issued.

(2) "Credit card" means any instrument or device, whether known as a credit card, credit plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value on credit.

(3) "Expired credit card" means a credit card which is no longer valid because the term shown on it has elapsed.

(4) "Issuer" means any person, firm, corporation or financial institution which issues a credit card, or its duly authorized agent.

(5) "Receives" or "receiving" means acquiring possession or control or accepting as security for a loan.

(6) "Revoked credit card" means a credit card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

Theft by taking or retaining possession of card taken

Sec. 2. A person who takes a credit card from the person, possession, custody, or control of another without the cardholder's consent, or who, with knowledge that it has been so taken, receives the credit card with intent to use it or to sell it, or to transfer it to a person other than the issuer or the cardholder, is guilty of credit card theft and is subject to the penalties set forth in Section 13(a) of this Act.

Theft of credit card lost, mislaid, or delivered by mistake

Sec. 3. A person who receives a credit card that he knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder, and who retains possession with intent to use it or to sell it or to transfer it to a person other than the issuer or the cardholder, is guilty of credit card theft and is subject to the penalties set forth in Section 13(a) of this Act.

Purchase or sale of credit card of another

Sec. 4. A person other than the issuer who sells a credit card or a person who buys a credit card from a person other than the issuer is

⁶⁸ Vernon's Ann.P.C. art. 1555c, §§ 1-15.

guilty of credit card theft and is subject to the penalties set forth in Section 13(a) of this Act.

Obtaining control of credit card as security for debt

Sec. 5. A person who, with intent to defraud the issuer, a person or organization providing money, goods, services, or anything else of value, or any other person, obtains control over a credit card as security for debt, is guilty of credit card theft and is subject to the penalties set forth in Section 13(a) of this Act.

Dealing in credit cards of another

Sec. 6. A person, other than the issuer, who during any 12-month period receives, on giving of any consideration, credit cards issued in the names of two or more persons which he has reason to know were taken or retained under circumstances which constitute credit card theft, is guilty of credit card theft and is subject to the penalties set forth in Section 13(a) of this Act.

Forgery of credit card

Sec. 7. (a) A person who, with intent to defraud a purported issuer, a person or organization providing money, goods, services, or anything else of value, or any other person, falsely makes or falsely embosses a purported credit card or utters such a credit card, is guilty of credit card forgery and is subject to the penalties set forth in Section 13(b) of this Act.

(b) A person other than the purported issuer who possesses two or more credit cards which are falsely made or falsely embossed is presumed to have violated this section.

(c) A person "falsely makes" a credit card when he makes or draws, in whole or in part, a device or instrument which purports to be the credit card of a named issuer but which is not such a credit card because the issuer did not authorize the making or drawing, or alters a credit card which was validly issued.

(d) A person "falsely embosses" a credit card when, without the authorization of the named issuer, he completes a credit card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder.

Signing credit card of another

Sec. 8. A person other than the cardholder or a person authorized by him who, with intent to defraud the issuer, or a person or organization providing money, goods, services, or anything else of value, or any other person, signs or writes his name or the name of another person on a credit card, violates this subsection and is subject to the penalties set forth in Section 13(a) of this Act.

Fraudulent use or representation

Sec. 9. (a) A person who, with intent to defraud the issuer, a person or organization providing money, goods, services, or anything else of value, or any other person, (i) uses for the purpose of obtaining money, goods, services, or anything else of value a credit card obtained or re-

tained in violation of any provision of Sections 2-8 of this Act or a credit card which he knows is forged, expired, or revoked, or (ii) obtains money, goods, services, or anything else of value by representing without the consent of the cardholder that he is the holder of a specified card or by representing that he is the holder of a card and such card has not in fact been issued, is guilty of an offense and is subject to the penalties set forth in Section 13(b) of this Act.

(b) Notice of revocation shall be sent by United States mail, registered or certified, return receipt requested. Such notice shall be effective from and after the date the cardholder or his agent signs the return receipt.

Fraud by person authorized to provide goods or services

Sec. 10. (a) A person who is authorized by an issuer to furnish money, goods, services, or anything else of value upon presentation of a credit card by the cardholder, or any agent or employees of such person, who with intent to defraud the issuer or the cardholder, furnishes money, goods, services, or anything else of value upon presentation of a credit card obtained or retained in violation of any provision of Sections 2-8 of this Act or a credit card which he knows is forged, expired, or revoked is guilty of an offense and is subject to the penalties set forth in Section 13(b) of this Act.

(b) A person who is authorized by an issuer to furnish money, goods, services, or anything else of value upon presentation of a credit card by the cardholder, or any agent or employee of such person, who, with intent to defraud the issuer or the cardholder, fails to furnish money, goods, services, or anything else of value which he represents in writing to the issuer that he has furnished, is guilty of an offense and is subject to the penalties set forth in Section 13(a) of this Act.

Possession of machinery, plates or other contrivance or incomplete credit cards

Sec. 11. A person other than the cardholder possessing two or more incomplete credit cards, with intent to complete them without the consent of the issuer or a person possessing, with knowledge of its character, machinery, plates, or any other contrivance designed to reproduce instruments purporting to be the credit cards of an issuer who has not consented to the preparation of such credit cards, is guilty of an offense and is subject to the penalties set forth in Section 13(b) of this Act. A credit card is "incomplete" if part of the matter other than the signature of the cardholder, which an issuer requires to appear on the credit card, before it can be used by a cardholder, has not yet been stamped, embossed, imprinted, or written on it.

Receipt of money, goods, services

Sec. 12. A person who receives money, goods, services, or anything else of value obtained in violation of Section 9 of this Act, knowing or believing that it was so obtained, is guilty of an offense and is subject to the penalties set forth in Section 13(a) of this Act.

Penalties

Sec. 13. (a) A person who is subject to the penalties of this subsection shall be fined not more than \$1,000 or imprisoned in the penitentiary not more than two years, or both.

(b) A person who is subject to the penalties of this subsection shall be imprisoned in the penitentiary not more than seven years.

Act not exclusive

Sec. 14. This Act shall not be construed to preclude the applicability of any other provision of the criminal law of this state which presently applies or may in the future apply to any transaction which violates this Act, unless such provision is inconsistent with the terms of this Act.

Severability

Sec. 15. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Emergency

Sec. 16. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 22, 1969, by a non-record vote; House concurred in Senate amendments on May 31, 1969, by a non-record vote; passed by the Senate, as amended, on May 29, 1969: Yeas 31, Nays 0.

Approved June 14, 1969.

Effective Sept. 1, 1969, 90 days after date of adjournment.

THE PLASTIC JUNGLE

WEDNESDAY, FEBRUARY 4, 1970

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON POSTAL OPERATIONS OF THE
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C.

The subcommittee met at 10:05 a.m., in room 210, Cannon House Office Building, Hon. Robert N. C. Nix (chairman of the subcommittee) presiding.

Mr. NIX. The subcommittee will come to order.

Last week the stock market fell to a 1963 low. The New York Stock Exchange average loss for a share of common stock for last week was \$2.39. On Thursday the market had dipped to the 1966 recession level, with an average loss of 52 cents a share and on Friday the market fell back in 1 day another 3 years to 1963 lows, which were recorded immediately after the assassination of President Kennedy. Why? Observers cited high interest rates imposed by the Federal Reserve Board, for the sake of halting inflation. Interest rates are at a 110-year high.

This same Federal Reserve Board has at the same time before this subcommittee opposed any limitation on credit by mail, through the means of mass distribution of unwanted and unsolicited credit cards which draw 25 percent in interest and discount charges. Why does the Federal Reserve Board lead the fight on behalf of credit cards which stimulate impulse buying, when American credit is overextended at 1929 levels, and at the same time require high interest rates that destroy the financing of homes and hammer down stock prices.

The answer is that the Federal Reserve Board favors high interest rates, whether they inflate or depress market conditions, because the Board favors profits for the banking system.

Today the consumer is paying 23 percent of his after-tax income in interest charges, double the ratio of 20 years ago. In 1960 he paid 19 percent of his after-tax income in interest charges. If the mass distribution of unsolicited credit cards is not checked, this 23 percent in interest charges will increase, because credit card companies charge a total of 25 percent in interest and discount charges as compared to charges of 12 percent for the normal consumer loans. Mortgage, business, and consumer funds are already being poured into credit card plans.

The business community and the consumer are both overextended in credit. In 1969, non-Federal debt exceeded gross national product by 45 percent, a jump from the 1960 level of 26 percent.

Credit cards are replacing checks as a means of exchange. The cost for maintaining a checking account is small. The cost of maintain-

ing a credit card account involves 18 percent on the unpaid portion over 30 days for consumers and up to 7 percent in discount for the merchant who sells the debt to the credit card company. This is a total of 25 percent added to the cost of goods and services. Adding 25 cents as a carrying charge to the shopper's dollar is inflationary and in a day of overextended credit, it may lead to a depression as well. When we all owe to each other more than any of us can earn, our promises to pay are worth little and the result is a depression.

Yet, the American Banking Association and other banking institutions oppose restrictions on the mailing of unsolicited credit cards. Why? They say that limitations on the mailing by the million of these credit cards will prevent banks who have not cut themselves in on the "credit card craze" from doing so. They will miss that 25 percent in return. It would be unfair to allow only some banks to take that much away from the consumer, when all banks would like to do so.

Credit card plans have difficulty in getting established because the consumer and the small businessmen really don't want them. In order to convince retailers to join credit card plans, credit card companies tell him that all of his customers have their credit card. They can only be sure of this if they have mailed out unsolicited credit cards to almost every consumer. What the merchant does not understand is that use will be limited to something like 19 percent in 6 months. This is a greater use than that resulting from requesting voluntary applications. Applications result in only a 1-percent response according to the Marine Midland Bank of New York.

The merchant is pressured into joining the plan and paying the high discount rate because he thinks the vast majority of his customers may use the credit cards. The consumer is pressured into using the credit card because he may not be able to pay by check in many places. Many hotels in New York City will not accept checks, but they will accept credit cards.

The total of all debt, Government and private, is \$2 trillion. This is twice our gross national product. In 1929, debt was 71 percent of gross national product. It seems to me that the Government must control the more inflationary forms of credit and turn as much of impulse buying credit into housing and other needed items.

Credit cards need regulation, regardless of whether some banks are not yet taking 25 percent in interest charges away from merchants and consumers. The control of mass mailing by credit card companies is one step in that direction, and a step I hope we will take.

This morning our first witness is one of the distinguished Members of the Congress of the United States from the State of Minnesota. I am particularly pleased to have him here today, and I know of his longstanding interest in the subject that we are interested in in this subcommittee.

I welcome the Honorable Joseph E. Karth. You may proceed, sir.

STATEMENT OF HON. JOSEPH E. KARTH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. KARTH. Thank you very much, Mr. Chairman. I appreciate the opportunity that you and the subcommittee have afforded me.

The subject of these hearings—unsolicited credit cards—is one I have publicly been concerned with and have felt very strongly about

for almost 2½ years. In my testimony before the Federal Trade Commission on September 10, 1969, I stated that unsolicited credit cards, while viewed as an innovative marketing device by some, are in fact a menace to many millions of Americans. I would repeat and underscore that conviction here today.

Mr. Chairman, the credit card phenomena, and particularly unsolicited credit cards, is something relatively new in our society. Since 1950, when only a small number of the exclusive travel and entertainment cards were available to an elite few, there has been a 50-fold increase in the credit card business. The largest spurt in credit card growth has occurred during the last half of this past decade, with major growth coming in the unsolicited field and particularly from banks and master charge plans. In the last quarter of 1969, it was estimated that Americans would buy more than \$50 billion worth of goods and services with credit cards.

It is also estimated that between 200 to 300 million credit cards are outstanding in the United States. Admittedly then, on the face of things, it would appear that the new plastic money represents yet another whopping American business success. And, of course, in view of recent reports in the Wall Street Journal and elsewhere, news of "yet another success" in our business community would be welcome.

But in all seriousness, Mr. Chairman, the booming credit card adventure has unfortunately been plagued by its own troubles, which in themselves have been fast growing.

Consider the National Better Business Bureau report that \$20 million are now being lost in the United States each year through illegal use of credit cards by thieves. That is big crime, Mr. Chairman, not big business. Or listen to the September 2, 1968, issue of Newsweek in which their business editors indicate that an estimated \$30 to \$50 million are lost in the United States from theft and fraud of credit cards, with organized gangs of card thieves operating in nearly all of the 50 States. That is even bigger crime.

The spectacular rise in the use of credit cards has not, therefore, despite claims of consumer benefit, been without major social difficulty. Nearly every responsible periodical and newspaper in the country has carried accounts during the past 36 months scoring the flagrant economic and social abuses which have hounded the creative efforts of our credit card entrepreneurs. These disturbing accounts have ranged from reports of thievery, blackmarketing, and even Mafia activities to charges that credit cards—especially unsolicited ones—promote the rising flood of bankruptcy in the country and contribute to the current runaway inflation.

And if anyone, and particularly the pro-credit card experts on the Federal Reserve Board, still thinks in 1970 that inflation is not boosted by unwise distribution of unasked-for credit, listen to the warning sounded by our esteemed colleague, the chairman of the House Banking and Currency Committee, the Honorable Wright Patman.

In a syndicated column on January 18, 1970, entitled "The Flood of Funny Money," Chairman Patman was quoted as saying, "To suggest that credit card usage is not inflationary is ridiculous. For every \$100 a customer charges with a credit card, the bank collects \$18 from the customer in interest per year and \$5 from the merchant. For the banks' \$2 billion annual business through credit cards, that is a \$230

million profit. And if that is not contributing to inflation," says Chairman Patman, "I'll eat my hat."

I suspect the assessment of our colleague from Texas and the several journalistic accounts I have cited merit some consideration. In my opinion, the spectre of credit cards' impact on crime alone should be enough to raise a warning flag. As I reported during my appearance before the Federal Trade Commission, the National Better Business Bureau has warned that 1.2 million credit cards are lost each year in this country, with another 300,000 stolen. If indeed \$30 to \$50 million are being lost to thieves as a result, then I think Congress in its preoccupation with fighting crime clearly has a well-defined target area for discharging its responsibility.

In the 1967 Postmaster General's Annual Report, it was indicated that the fraudulent use of credit cards rose 819 percent over a 3-year period. In his 1968 report, the Postmaster showed that since 1963, 1,000 cases of fraud have been detected, with special focus being given elements of organized crime. Of 97 arrests made in fiscal year 1968, two notorious cases did, in fact, involve major organized crime.

Other sources say that post office employees themselves are sometimes involved, or should I say tempted, in organized mail theft or fraud cases. With a going rate of up to \$100 for a stolen card—not to mention its purchasing potential—it is easy to see how this problem has grown. It is, therefore, not at all improper for Congress under the leadership of this subcommittee to curb those irresponsible marketing activities which thrust the good credit of unwitting Americans upon the mercy of organized racketeers and petty thieves.

Mr. Chairman, while I cannot lay claim to wide-ranging expertise in the intricate consumer finance field, I can understand with perfect clarity the anger and anguish of innocent consumers who are vexed by monopolistic peddlers of unwanted credit. You do not have to be an expert to understand the plight of an honest citizen whose credit rating has been jeopardized by a stolen credit card or a berserk computer. So, as the first Member of Congress to offer legislation to curb the indiscriminate mailing of unsolicited credit devices, I want to congratulate and commend this subcommittee and you, sir, for holding these hearings.

If it please the subcommittee, during the balance of my remarks I would like to outline briefly some of the difficulties encountered in getting Federal action in this field. Although I will not read them, I would also like to include excerpts from some of the letters of irate consumers who have written my office, as well as certain comments made before the House Banking and Currency Committee hearings on bank credit cards. Finally, I will summarize briefly the major evils inherent in unsolicited credit devices showing how the provisions of my bill should provide a viable solution.

My first efforts to stir Federal action to curb unsolicited credit cards began on October 4, 1967. On that date, I wrote Postmaster Lawrence O'Brien concerning the feasibility of submitting legislation designed to limit the transit of unsolicited credit cards through the mails. In late October of the same year, 1967, I received a reply from the Post Office General Counsel, saying that such a requirement on the mailing of credit cards would be rank discrimination.

In view of this reply, I again wrote to Mr. O'Brien on October 24, reiterating my request and expressing my astonishment at the response of the General Counsel. Meanwhile, the Federal Trade Commission had been contacted by both the Post Office Department and myself in the above regard.

In the absence of effective action from the Post Office, I began to draft legislation. On November 2, 1967, my bill, H.R. 14045, was introduced and assigned to the House Judiciary Committee where it, and since then, others like it, have been deadlocked during both the 90th and 91st Congresses.

However, my hopes for some progress were renewed this past summer when the Federal Trade Commission issued its notice of hearings on the subject with a proposed regulation under consideration. On September 10, I appeared as leadoff witness on behalf of the regulatory measure and was delighted at the time that the administration appeared to favor such a move. Since then, to my knowledge, the Federal Trade Commission has not publicly given notice of their position. Therefore, it is with both hope and apprehension that I appear here today.

I will now offer some quotes from consumer letters to my office and the testimony of Betty Furness before the House Committee on Banking and Currency.

A California couple wrote me—

I have lately received credit cards from four gasoline companies and none were requested by me. I complained to my local postmaster citing the risk I stood if the cards were lost in the mail—and received no help from them.

A man from Pennsylvania wrote and I quote—

I have recently been victimized by having my Esso Credit Account transferred to Humble Oil Company which I did not know existed! This second credit card was stolen from my mail box and used for five months without my knowledge. I am still fighting this purported past due account and I am highly embarrassed by it.

A man from California wrote—

I have been receiving an increasing number of unsolicited credit cards. I have returned several of the cards with vehement comments to the management, which seemingly has accomplished nothing.

A person from New Rochelle, N.Y., said—

Shouldn't there be a truth-in-credit-cards law requiring a notice to the customer—stating that their use costs the vendor six cents out of every dollar he gets? This contributes to more inflation buying—over 300 million credit cards in circulation and 100 million more next year.

Mr. Chairman, on November 8 and 9, 1967, the House Committee on Banking and Currency held hearings concerning legislation to prohibit federally insured banks from issuing unsolicited credit cards.

While the provisions of my bill extend beyond restrictions on banks alone, still at those hearings the testimony of Betty Furness, the then President's Special Assistant on Consumer Affairs, bears directly upon the broad consumers' issues at stake.

She pointed out that unsolicited credit cards issued by big banks act as an unfair restraint of trade for smaller banks and what is worse, the practice muscles in on the item-by-item transactions of retail merchants who must depend upon banks for credit.

She pointed out, further, that the consumer ends up paying interest twice for the convenience of using his unsolicited bank credit card. She stated, and I quote:

Millions of small people heretofore have not been out this extra money. Now, when you go into a store and buy a hundred dollar suit of clothes, the bank will get some 3, 5, 7 percent of that money and that means billions of dollars in the course of a year or two would flow from small business concerns into the banks, representing, really, a double payment, because the banks not only get this 3, 5, 7 percent that the small businessman pays, but the customer also must pay the bank up to 18 percent interest on the balance owed.

Mr. Chairman, in conclusion I would like to quickly sum up the principal evils which I think unsolicited credit devices represent to the American consuming public.

First, unsolicited credit cards expose the public to an unnecessary inflationary influence. There is no reason why—despite the cries of entrepreneurs to the contrary—anyone should have to pay the double interest that certain types of these cards represent.

Second, certain of these credit devices lead to an unnecessary restraint upon trade. Massive capital available to big banks, big oil companies and big chain retailers, among others, makes possible an incursion into the market unavailable to the small business operation. And there just is not any question about it. This represents a monopolistic practice that reduces competition and cannot, in the final sense, lead to the betterment of the consumer's welfare.

Third, the issuance of unsolicited credit cards—loose and unasked for credit, if you will—represents a fundamental intrusion into an individual's right of freedom of choice in economic matters. I do not believe the public should be subjected to this form of antithrift and economic harrassment.

Finally, this is an important social problem that has grown in size. What happens, for example, when these unasked-for instruments of convenience are lost or stolen during transit in the mails?

The mounting evidence suggests that the loss of one's good name and credit rating is too often the result. Growing mail theft and fraud argues compellingly for curbing this practice.

In view of the seriousness of this, in the 90th Congress I went forward with the introduction of my bill, calling for restriction of mailing of unsolicited credit cards. This legislation offered an important alternative which fairly recognized the needs of both the public and commercial concerns.

My bill, offered again during this Congress as H.R. 240, provides the following:

One, all unsolicited credit cards must be sent by registered mail and delivered only to the addressee.

Two, return postage must be guaranteed if the enclosed credit card is refused or undeliverable.

Three, envelopes containing unsolicited credit cards must bear notice of "credit card enclosed" and indication that it may be refused.

I believe this legislation, if enacted, will provide an important first step in rectifying and inequitable marketing practice. I hope the subcommittee will consider my proposal carefully and will move aggressively to protect the public from unnecessary abuse and harassment in every way it can.

Thank you very much, Mr. Chairman and members of the subcommittee. If there are any questions, I would be happy to try to answer them.

Mr. NIX. In order to in some measure dispel your apprehension and renew your hope, I can assure you that this subcommittee is going to take positive action in this field.

Mr. KARTH. Thank you very much, Mr. Chairman.

Mr. NIX. I appreciate the fact that you came. I was aware of your longstanding interest in this subject and the contributions you have made toward its solution. I think your statement categorizes the consensus of those who have appeared before the subcommittee, with the exception possibly of the representatives of the banks; and I can understand their disenchantment with the efforts to curb the practice that they have been engaged in.

But despite them, and while the credit card as such in my opinion is a welcome addition in commercial dealings, the present practice is so offensive and wrong and it should be corrected.

So I thank you personally, and I know I reflect the views of the members of the subcommittee, both those who are here and those who are not here, when I repeat that you have made a great contribution.

Mr. Daniels?

Mr. DANIELS. Thank you, Mr. Chairman.

I wish to congratulate my colleague for his strong interest in this particular field. I do not have any questions to ask.

I concur in and wholeheartedly endorse the sentiments expressed by our chairman, and I feel that this is an area where there is a great need for action on the part of the Congress because of the fact that many, many thousands of innocent people are being taken advantage of and imposed upon.

I want to assure you, Mr. Karth, that this subcommittee proposes to take action in this area. Now, whether or not the committee will concur in the recommendations you have made I do not know, because we may have individual ideas. But I want to assure you that I feel as you do, and as many other Members of Congress feel, that this is an area where the Congress should take some action, particularly with respect to unsolicited credit cards.

Mr. KARTH. Thank you very much, Mr. Daniels.

Thank you again, Mr. Chairman.

If there are no questions, I just want to again state my extreme pleasure in having had an opportunity to appear before you and the members of the subcommittee.

Mr. NIX. Thank you very much.

Our next witness is Mr. C. Venarde, manager, advertising and sales promotion department, Shell Oil Co., New York, N. Y.

We welcome you, sir, and you may proceed.

STATEMENT OF CLIFFORD VENARDE, MANAGER OF ADVERTISING AND SALES PROMOTION DEPARTMENT, SHELL OIL CO., NEW YORK, N. Y.

Mr. VENARDE. Mr. Chairman and members of the committee, my name is Clifford Venarde. I am the advertising and sales promotion manager for Shell Oil Co., in New York and I welcome the opportunity to appear before this subcommittee and respond to the pro-

posed House of Representatives bills H.R. 13244, H.R. 14346, H.R. 14897, and H.R. 15103.

Incidentally, I am mindful of Congressman Wilson's bill, H.R. 15032. It is not listed in my text, but my understanding is that it would propose to prohibit the mailing of unsolicited credit cards; so that comments I might make this morning concerning that kind of bill would be apropos to that bill as well.

Shell has been interested in the various governmental proposals which would affect the mailing of unsolicited credit cards. This is evidenced by the testimony of Mr. W. J. Bittles, Jr., general manager, Retail Marketing, before the Federal Trade Commission on September 10, 1969, and by the written submission of Shell's views to the Subcommittee on Financial Institutions of the Senate Committee on Banking and Currency, on December 17, 1969. Copies of each have been respectively marked exhibits "A" and "B" and are being submitted today with the request that they be entered into the record.

Mr. NIX. Without objection, they will be entered in the record at the conclusion of your testimony.

Mr. VENARDE. Thank you, Mr. Chairman.

We hope the subcommittee will carefully consider the contents of these exhibits. Among other things, they contain information in support of Shell's basic position that substantial consumer business benefits and conveniences are provided by the unsolicited mailing of credit cards, a matter which we judge to be of significance to this subcommittee's hearings today.

Consistent with that position, we have not, and do not oppose the establishment of minimum standards to be followed by card issuers which would provide reasonable consumer protection, if a real need for such regulation or legislation is in fact found to exist.

Today we are responding to this subcommittee's consideration of four House bills: H.R. 13244 and H.R. 14897, which would severely restrict the mailing of all unsolicited credit cards, and H.R. 14346 and H.R. 15103 which would prohibit such mailings.

Before discussing the provisions of these bills, I think it in order to observe that much of the testimony which has been heard to date by this subcommittee concerns the so-called "general purpose" type of credit card, which may be used by the consumer for a wide variety of credit purchases.

Shell's credit card, however, is used primarily for the purchase of petroleum products dispensed into, or, for automotive products attached to, the automobile of the person offering the card. The Shell credit card user charges an average of \$25 per month on his card for such needs. And for years the vast majority of them have been paying their bills regularly and on time. We do not believe that a credit card such as Shell's can be viewed as a major contributor to inflation, to runaway impulse buying, to the ruination of the credit standing of the individual, nor indeed to the lack of sufficient housing funds in the United States, as has been voiced by some members of the committee in speaking about general purpose types of cards.

Since we strongly believe that unsolicited credit card mailings provide a consumer convenience and perform a competitive function in today's marketplace, we are opposed to H.R. 14346 and H.R. 15103 which would prohibit the mailing of unsolicited credit cards.

There are several good reasons for this, all of which are set forth in our prior presentations submitted as exhibits "A" and "B."

In brief, however, we believe that whether a Shell credit card has been obtained through solicited or unsolicited means, it serves as a convenience to the consumer and confers benefits upon him such as: (a) financial safety to the user; (b) a way to maintain accurate expense records; (c) a means to cope with an emergency for essential services; (d) an ability to take advantage of limited special offers; and (e) making it possible to purchase essential car maintenance and safety items when required.

Credit cards also benefit the retailer; in our case, particularly Shell service station dealers, by making it possible for these businessmen to increase their sales and profits. And Shell does not charge its dealers for the use and benefits of its credit card.

Lastly, one of the most important reasons for allowing the continuation of unsolicited credit card mailings was pointed out by Senator Proxmire on December 4, 1969, in his opening statement of hearings on S. 721—

A prohibition of unsolicited credit cards would insulate from effective competition the companies that have already sent out unsolicited credit cards.

For these reasons, we reiterate our opposition to H.R. 14346 and H.R. 15103 which would prohibit unsolicited credit card mailings.

Turning next to the question of regulation as distinguished from prohibition; as I mentioned previously, Shell does not oppose reasonable regulations governing unsolicited credit card mailings, which are designed to provide minimum consumer safeguards, if a genuine need is in fact demonstrated. From our own standpoint and experience, we feel that Shell Oil Co. has developed appropriate regulations for its mailing of unsolicited credit cards which we believe dispel the need for regulatory legislation as proposed by H.R. 13244 and H.R. 14897.

Shell's unsolicited credit card mailings are not authorized until a careful credit check of each proposed recipient has been made by a local credit bureau, using credit criteria established by Shell. This is to assure that Shell's credit cards are mailed to those who understand how to use credit and can afford and do meet their credit obligations.

The names of the intended recipients are computer checked against our existing credit card customer file before cards are mailed. This practice avoids any duplication, and when coupled with the credit check, provides a method of mailing which is not indiscriminate.

The unsolicited credit cards are embossed and mailed from one central source as third-class mail at the single piece rate of 6 cents per item. As you are probably aware, third-class mail is not forwarded unless requested by the sender; Shell does not make such requests. We mark our mailing pieces "Do Not Forward"—Address Correction Requested—"Return Postage Guaranteed." This procedure helps eliminate the risk that the intended recipient will not receive the cards and has contributed to our very low rate of mail interception; in fact, in our experience mail interceptions are virtually nonexistent.

In addition, our envelope carries the words "Also Enclosed Valuable Credit Cards." This may add some risk to misappropriation from the mails; however, Shell utilizes this procedure to insure that the addressee will clearly be aware of the letter's contents and will not care-

lessly discard the letter where it might be stolen or misappropriated after delivery.

Shell's mailings also include an enclosed postpaid envelope so that the recipient may safely return the cards through the mails if he does not want them and does not destroy them.

One of the purposes of H.R. 13244 and H.R. 14897 is to restrict unsolicited credit card mailings to "Registered Mail—Delivery to Addressee Only." The reason for this requirement appears to be one of making certain that the intended recipient, and no other person, receives the cards.

Under Shell's procedure, as just outlined, we know from experience that most of the intended recipients receive the cards. Only an infinitesimal number of our unsolicited credit cards are known to be intercepted in the mails—.000127 percent in the year 1968; and also fraud losses resulting from unsolicited mailings are not so disproportionate to fraud losses from cards which have been requested. This should by no means imply, however, that Shell is unconcerned with the fraudulent use of a credit card and the potential liability of the rightful holder of such card. Accordingly, if we send a bill to a customer who was sent a card via our unsolicited mailings and he denies ever having received our card, we immediately assume a case of mail interception. No more statements are sent. No impersonal automated "past due" notices are mailed. Instead, Shell contacts the person to whom the card was sent; and if Shell learns that the recipient of the unsolicited card did not make the purchase, the charge is written off and no attempt is made to collect. No information is given to a credit bureau. Even if an unsolicited credit card was thus intercepted, no injury would result to the customer.

In addition, we agree with the view expressed by former Federal Board Chairman, William McChesney Martin, Jr., in his letter of October 28, 1969, to the chairman of this subcommittee, that the use of "Registered Mail—Delivery to Addressee Only," would subject many intended cardholders to a substantial burden. For example, most intended recipients of Shell's unsolicited credit cards are selected heads of households, most of whom, I am sure you will agree, work away from home during the day. If only the addressee can sign for delivery of the cards mailed and he is not available, a notice of arrival is left and mail is returned to the post office. The burden then shifts to the addressee. If he can arrange to be there, he may notify the post office to redeliver that mail—or he will be required to go to the post office, identify himself and pick it up. Either way this would involve expense and inconvenience for the intended cardholder. In fact, since a large percentage of the population commutes substantial distances for work and are not at home during regular postal hours, many of the intended recipients would be subjected to the additional inconvenience of having to use Saturday mornings to obtain such mail.

The registered mail requirement alone, whether coupled with an "Addressee Only" provision or not, would also create special handling problems for the postal services because of the increased volume of registered mail which the proposed regulation covering unsolicited credit card mailings would bring about.

Moreover, we suspect most such registered mail could not be delivered by the carrier on his regular route and therefore would be

returned to the post office. If such mail is not called for at the post office within 5 days, the post office issues a second notice to the addressee, provided the maximum retention period as specified by the sender has not expired. If the sender names no specific period, the post office must hold the mail for 10 days before returning it to the sender; however, if the sender so requests, it must be held up to 60 days, placing still further handling and security burdens on the post office. Of course, if the addressee never calls for it, the post office must return it to the sender. Hence, a "Registered Mail—Addressee Only May Accept" requirement would certainly place substantial new burdens on the post office; and a requirement of "Registered, Insured Mail—Delivery to Addressee Only," as H.R. 14897 provides, would only serve to compound such burdens.

The implementation of such requirements by the post office might very well call for the modification of some existing postal regulations. For example, what would the postman accept as proper identification from the addressee if he alone may sign for registered mail; this might require revised postal procedures and require substantial added time for delivery when compared to practices today, where any competent member of a household is permitted to accept and sign for registered mail. The likelihood of a recipient not getting a credit card mailed under Shell's carefully developed procedure does not justify the type of burdens which the "Registered Mail," "Insured Mail," and "Delivery to Addressee Only" provisions of H.R. 13244 and H.R. 14897 would place upon the consumer and the postal services. Such requirements would destroy the public convenience aspect currently attendant with unsolicited credit card mailings and have the effect of reducing competition for those issuers who wanted to mail unsolicited cards for the first time.

Another provision of H.R. 13244 would require envelopes to state on the outside, "Unsolicited Credit Card—Addressee May Refuse" and also require that the sender pay an additional charge for return postage if refused. Shell is not opposed to an endorsement on the the face of the envelope indicating that unsolicited credit cards are enclosed. Neither does Shell oppose the payment of an additional charge covering the cost for any such mailing returned to Shell. As I indicated to you earlier, Shell has been following a similar practice for some time by printing on the envelope the statements, "Valuable Credit Cards Enclosed"—"Do not Forward"—"Address Correction Requested"—"Return Postage Guaranteed."

However, in line with our previous comments opposing such requirements as "Registered Mail," and "Addressee Only May Accept," Shell would also be opposed to a provision requiring that the face of the envelope be marked "Addressee May Refuse." If the addressee is to be offered the option of accepting the mail or refusing it at the time of delivery, as the postman is trying to obtain the addressee's identification and his signature, or at the time this process takes place at the post office, where the addressee may have to go to call for it, then further added burdens will be placed upon postal authorities to make sure that the addressee is in fact given such option and understands it before he makes his decision. Under Shell's procedure the addressee still has such an option; he can destroy the cards if he does not want them or he can return them in a postpaid self-addressed envelope

which Shell provides. This is not burdensome for the recipient; he can think about it at his leisure and the postal service does not have the involvement.

In summary, we are opposed to the H.R. 13244 and H.R. 14897 because the "Registered Mail"—"Delivery to Addressee Only"—"Insured Mail"—"Addressee May Refuse" provisions would impose unnecessary inconvenience and burdens on the post office and the consumer recipient. Our experience and practices do not indicate that a real need for such legislation does in fact exist.

As indicated earlier, we are also opposed to H.R. 14346 and H.R. 15103 which would prohibit unsolicited credit card mailings, because such legislation would eliminate a public convenience, would unfairly stop competition from moving ahead in the issuance of credit cards, and would do harm to many thousands of small retailers who benefit from them.

Thank you for the opportunity to appear in behalf of Shell Oil Co. Mr. NIX. Thank you, Mr. Venarde.

I would like to make the observation that Shell has been most circumspect in its operations.

Mr. VENARDE. Thank you.

Mr. NIX. I gather from what you have said that you oppose the legislation mentioned in your statement because the requirements exacted by that legislation have been in substance met by the practices used in Shell's dealings?

Mr. VENARDE. Yes.

Mr. NIX. But you do favor some type of regulation; is that correct?

Mr. VENARDE. No; I do not think, Mr. Chairman, we are in favor of some type of regulation because we are of the opinion that a real need for regulation does not exist.

Mr. NIX. Let me put it to you this way. If we assume that the operations conducted by Shell are proper operations and offer no opportunity for damage to others, would you say that the same can be said of others in the same field?

Mr. VENARDE. I am not able to speak of the petroleum industry in general, nor of the banks in any detailed, knowledgeable way, Mr. Chairman. You have had more information about that than I have.

But it seems to me that all issuers of credit cards, some who indeed began recently to issue credit cards, are beginning to adopt safeguards and practices which do protect the consumer. It is my personal feeling that if it is not in existence at this moment, it is going rapidly that way; and that in a very short period of time such issuers would adopt practices and safeguards to alleviate any complaints or concerns that the subcommittee may have at this moment.

Mr. NIX. Well, I can assure you that the testimony that has been submitted to this subcommittee overwhelmingly supports the position that other companies, banks and others who are dealing in the dissemination of unsolicited credit cards do not utilize the methods that Shell has, not by any means.

If we sat here in this subcommittee and did nothing because Shell is circumspect, we would then place the general public in the continuing position of being damaged by a practice that is pernicious, to say the least.

Shell is to be complimented.

The objections you have expressed to the three bills that you mentioned I think should impel this subcommittee to look carefully into those areas. I agree to that. But to say that because one great organization has exerted every effort to protect the general public and to protect those who receive the credit cards, and that great company has refrained from charging its dealers a percentage as is done generally by others; to say that because all of this is good would also be saying that we must overlook the bad because of this one good. I do not think that is proper procedure.

Mr. Daniels?

Mr. DANIELS. Thank you, Mr. Chairman.

Mr. Venarde, I understand from your testimony that Shell uses a great deal of caution by making a check through a local credit bureau on persons to whom it mails credit cards, to make sure that they know how to use credit and that their credit rating, I presume, is sound.

In view of the fact that your company goes through this trouble and expense, would there be any objection to legislation which would require a sender of a credit card to first write to the sendee a letter asking if they desire a credit card to be mailed to them, rather than directly mailing an unsolicited card to the person in the first place? May I have your view on that question?

Mr. VENARDE. Well, it seems that the consumer is reluctant to go through that process. It does not provide a convenience that he seems to want.

Mr. DANIELS. What is the basis for that?

Mr. VENARDE. I say that because—and I think these details are set forth in one of our exhibits—in a test that we made of that kind, the people who were asked to request a card turned out to be about 14 percent, as I recall, whoever requested them and used them; and of the group who were sent the card unsolicited, if I recall the figure, it was about 38 percent who eventually used those cards. So apparently it provided a considerable convenience to those who did not have to return and request the card.

Mr. DANIELS. I do not agree with that reasoning. The reason why you approve the unsolicited card mailing is because you find that you receive a greater acceptance of that practice; and secondly, because it is more profitable to the sender. That is the way I look at it.

Mr. VENARDE. I do not know about the latter.

Mr. DANIELS. During the recent recess of Congress I happened to be away from home for several weeks; to be exact: 3 weeks. When I returned home I found a lot of junk mail. It filled a whole carton, a large carton, about a foot and a half long and about 15 inches wide. I could tell by just looking at the envelopes that it was junk mail. I did not ask for it.

Now, to me it was an annoyance and an inconvenience to even pick that stuff up. It flooded my hallway. And then I had to go through that mail and carefully examine it to make sure that I was not throwing something worthwhile away or a letter containing some valuable material or checks.

How about the inconvenience to the sendee? You people do not take that into consideration in your argument.

Mr. VENARDE. Well, I hope we do. We do consider that there is a slight inconvenience to the recipient if he receives one of our unsolicited credit card mailings. He does have to either do much as you do, cut them up, tear them up, throw them in the wastebasket because he does not want it, or return it in the postpaid envelope.

The degree of that inconvenience to the recipient of that kind of mail is, of course, one of the questions you are considering.

Mr. DANIELS. If the recipient does not cut it up and he throws it in the wastepaper basket, and on its course to the incinerator or the dump it happens to be picked up by someone and then unlawfully used, it puts him through the further inconvenience, trouble and expense of probably a lawsuit, unless he proves satisfactorily to the sender or, in the event of a suit, to the court, that he did not receive that card; he did not order the merchandise and had nothing to do with it.

Mr. VENARDE. We would not sue a person who found himself in such circumstances, Congressman. As I indicated, if we did find that he had lost it, we would —

Mr. DANIELS. How many credit cards did Shell issue during the year 1968?

Mr. VENARDE. I do not know that I have the exact figure, Mr. Congressman. I can collect it, though, and provide it for this subcommittee if it is of consequence.

Mr. DANIELS. At page 6 of your statement you said: "Only an infinitesimal number of our unsolicited credit cards are intercepted in the mails—0.000127 percent." I would appreciate it if you would advise this committee of the exact number of credit cards that were issued during the year 1968, and what that percentage amounts to in actual numbers.

Mr. VENARDE. I would be glad to do that. I hope the subcommittee will consider that information as confidential—because of competitive reasons—the number we issued; and we would request that on submission. But we would be delighted to furnish this to you.

Mr. DANIELS. I would make that request of the chairman, and I am sure it will be held confidential.

Mr. NIX. Without objection, it will be so ordered.

Mr. DANIELS. I would also like to know the amount of fraud losses resulting from cards which were either stolen or lost, because you say the amount involved is not so disproportionate to the amount of credit extended.

Mr. VENARDE. There are some figures in one of our exhibits that set that matter forth, sir, and I think that perhaps would suffice for the committee.

However, it seems to me I have another one here which says—and maybe this would answer your question—that in 1968 our total losses due to the fraudulent use of unsolicited credit cards spread over our total 1968 automobile gasoline sales amounted to .00004 cent per gallon. Again, an infinitesimal amount due to unsolicited cards. Perhaps that would suffice.

And there is additional information in Mr. Bittles' exhibit, Mr. Congressman.

Mr. DANIELS. As the chairman pointed out in his remarks, Shell apparently takes greater precautions to insure the safe mailing and

delivery of your credit cards than other firms that are engaged in this practice. However, a great hazard has been imposed upon the public. Many people have been hurt, their credit destroyed or greatly damaged by virtue of the fact that many innocent people are not being careful in the disposition of the credit card in the event they do not want it, or the fact that sometimes they are stolen in the mail; and as a consequence they have suffered damage.

I just have one other question. You say, of course, that you do not feel there is any legislation needed in this field. But if this committee were to enact legislation and unsolicited credit cards were authorized to be mailed out under certain terms and conditions, whatever the judgment and wisdom of the committee may be, and it develops that a sendee of an unsolicited credit card, which was not received, was subsequently sued by the sender, and the sendee had to defend himself in court, under those circumstances would you have any objection to the sendee having a claim against the sender for damages that he has incurred in trying to protect his reputation or protecting himself against loss?

Mr. VENARDE. I do not think I can answer that at this moment, sir. I think I would have to look at the legislation; and it would be a matter on which I would have to consult with our attorneys.

After consideration and advice we would make a decision; but I could not answer that from here.

Mr. DANIELS. Well, I want to give you a specific example. Perhaps you can answer this question. I do not use credit cards. My wife does, but I do not. The only credit cards that I possess are those furnished to me by the U.S. Government—telephone and Western Union.

But I do receive each year, especially after the commencement of a new term of Congress, credit cards. We have many business firms here in Washington that mail credit cards to us. Hotels mail us credit cards. I am very, very careful about their disposition. I usually cut them up and throw them in the wastepaper basket. But there is a possibility that a credit card, unsolicited, mailed to me may be stolen and someone thereafter may use that card and forge my name in receiving the merchandise.

Now a claim is made against me, or I receive a bill for the charges that have been incurred. I deny having received the card or having used the card. Someone else must have done so. But the sender does not believe my story and sues me.

You can see the ramifications that are involved from such a situation.

No. 1, it affects my credit.

No. 2, it affects my standing as a Member of Congress.

No. 3, I would have to engage a lawyer to defend me and pay his fee.

So, after a trial, the case is thrown out of court. It is dismissed; no cause for action. Why should I not have a cause of action against the sender for all the trouble, inconvenience and expense and for the damage that it has done to my reputation? Do you not feel I should have a cause of action?

Mr. VENARDE. Perhaps you should. Under our procedures, we would never institute such an action because if a card is mailed unsolicited and is never received or never accepted, we would not—after finding such to be the case—institute such proceedings.

Mr. DANIELS. You are talking about Shell?

Mr. VENARDE. Yes.

Mr. DANIELS. And I concurred with the chairman's remarks that Shell does employ a good procedure and is very cautious and careful about the mailing out of unsolicited credit cards.

But how about another firm that is not as cautious and careful as you? That is the situation I would like to point out to you and ask: Why should I not have a cause of action?

Mr. VENARDE. Perhaps you should. That is about as far as I could go in any kind of answer.

Mr. DANIELS. And if such a situation would not arise with Shell, why should Shell object to such a remedy or a right being vested in the sendee of the unsolicited credit card?

Mr. VENARDE. The only reason I say —

Mr. DANIELS. You say you would not sue; so when you do not have to worry about the provision. It would not affect you.

Mr. VENARDE. That is correct.

Mr. DANIELS. Would you object to such a provision? And if so, why?

Mr. VENARDE. Under the circumstances of our practices, I would not object to it.

Mr. DANIELS. All right. Thank you.

Mr. NIX. You know, Mr. Venarde, ever since the questions have been raised on the unsolicited sending of credit cards, I have been intrigued by the question put by Mr. Daniels, the first question I think it was. "What do you think about letters being written to persons whose names are on your list and asking them if they would like to have a credit card sent to them?"

Now, the thing that constantly plagues me is this. Here is an individual who has a job; he loses it; but he anticipates something big and he gets a credit card. He knows that his assets are not sufficient to make the debt that he is going to make; but nevertheless, in anticipation of future earnings, he makes it.

He is unable to resist the temptation of spending.

Strangely enough, I tear up all credit cards, as Mr. Daniels does, so that I will not be subjected to the temptation of overspending.

But this man does, and he does not get the job. His credit, of course, would be destroyed because he is going to be sued by almost any company other than Shell.

I just feel that Mr. Daniels' suggestion would be a better practice because when he gets the letter asking whether or not he would like to have a credit card sent to him, he has a choice then. It is not in his hand; it is not that temptation; and he either tears it up or throws it away, and he relieves himself of the burden of temptation.

I do not see how that could do any great disservice to a company like Shell or any other company.

And as to adding an additional burden of mailhandling on the post office, I might say that this committee is in the process of revamping the post office, and we will certainly take care of that. There would not be any additional burden.

But I think it is an idea worth pursuing, and I think we in this subcommittee will give it great consideration.

Do you have anything else, Mr. Daniels?

Mr. DANIELS. I have no further questions, Mr. Chairman.

Mr. NIX. I want to thank you very much for your appearance.
 Mr. VENARDE. Thank you, sir.
 (The exhibits A and B follow:)

EXHIBIT A—SUBMISSION BY W. J. BITTLES, JR., GENERAL MANAGER OF RETAIL MARKETING, SHELL OIL CO., TO THE SUBCOMMITTEE ON FINANCIAL INSTITUTIONS OF THE COMMITTEE ON BANKING AND CURRENCY, U.S. SENATE, ON S. 721

Shell Oil Company would like to respond to the proposed Senate Bill 721.

Briefly, S.721 would amend the Truth in Lending Act by requiring the Federal Reserve Board to prescribe regulations governing the conditions under which card issuers may issue credit cards which the cardholder has not requested in writing, and would add provisions to limit the liability of credit card holders and intended recipients of unsolicited credit cards where there has been an unauthorized use of the credit card. The bill would apply to credit cards of both bank and nonbank issuers.

The widespread mailing of unsolicited credit cards is not a new development. Shell Oil Company, along with many other companies, has been engaged in the mailing of credit cards on an unsolicited basis for several years. This practice is sometimes criticized by individuals who overstate the problems and who do not recognize the substantial consumer and business benefits and conveniences served by the credit card, whether it is solicited or unsolicited. Shell Oil Company's practices and experiences with unsolicited credit card mailings are more fully set forth in the statement of W. J. Bittles, Jr., General Manager—Retail Marketing, Shell Oil Company, made before the Federal Trade Commission, Washington, D.C. on September 10, 1969, a copy of which is attached hereto as Exhibit "A".

Briefly stated, Shell does not oppose the overall intent of S.721 requiring minimum standards to be followed by card issuers and of providing consumer protection. Shell is concerned, however, with the question of whether there is truly a need for such legislation.

REGULATIONS GOVERNING ISSUANCE OF UNSOLICITED CREDIT CARDS

Section 2 of Bill S. 721 would require the Federal Reserve Board to prescribe, (1) Regulations governing the conditions under which unsolicited credit cards may properly be issued; and (2) Minimum standards for card issuers in checking the credit worthiness of prospective cardholders in order to (a) protect the consumers against overextending themselves through the use of unsolicited credit cards, and (b) when the issuer is a Federally insured bank, to safeguard the safety and soundness of the bank. Shell Oil Company has developed safeguards, which it believes to be proper, governing conditions under which it issues unsolicited credit cards.

Shell's unsolicited credit card mailings are not authorized until a careful credit check of each proposed recipient has been made. Shell requests names and addresses of residents of census tracts from reputable list suppliers such as R. L. Polk or R. H. Donnelly. These names are computer checked against our existing credit card customer file to avoid duplication. The names are then sent to a local credit bureau for individual credit screening in accordance with criteria prescribed by Shell. As an added precaution, Shell makes checks of the screening work performed by the local credit bureaus. This is done by ordering credit reports on a sample of the list names in order to verify the reliability of the credit approvals. If errors are noted, the credit bureau's appraisal work is reviewed to ensure that the approved individuals meet Shell's criteria. As a final check before mailing, the remaining names are again compared against Shell's existing credit card customer files to remove any duplication by the persons who may have opened an account in the interim.

For some markets it is more economical to secure lists of names from the local credit bureaus, so Shell also employs that source from time to time. Local bureaus use criteria similar to Shell's in developing such lists. In any case we examine and evaluate the lists before purchase.

The foregoing procedures demonstrate that the intended recipients of our unsolicited mailings are carefully selected and that our mailings are not indiscriminate; consequently, by and large Shell's credit cards are mailed to those consumers who understand how to use credit and can afford and do meet their credit obligations.

Many people have expressed concern over the mail theft of unsolicited credit cards. Such losses do occur; however, in Shell's experience they are rare. We believe the low rate of mail interception is in large part attributable to Shell's system of mailing. The unsolicited cards are mailed third-class at the non-bulk rate of six cents per item and the Post Office is requested not to forward any of the letters but to return them along with any address changes indicated. Returning, instead of forwarding, letters to those who are or have moved, protects against the risk of mail interception. Shell's envelope carries the words "Also enclosed valuable credit cards". This may add some risk to misappropriation from the mails, however, Shell utilizes this procedure to ensure that the addressee will clearly be aware of the letter's contents and will not carelessly discard the letter where it might be stolen or misappropriated after delivery.

Shell's mailings also include an enclosed postpaid envelope so that the recipient may safely return the cards through the mails if he does not want them or does not destroy them.

Strict internal security is observed from the time the cards are embossed. Shell embosses and mails credit cards from only one location, Tulsa, Oklahoma.

The foregoing procedures are based on knowledge acquired from handling unsolicited credit cards over several years. This experience does not indicate that there is a need for Section 2 of the bill, Shell therefore recommends against its enactment.

CONSUMER LIABILITY FOR UNAUTHORIZED CREDIT CARD USE

Section 3 of S. 721 deals with the liability of the holder of a credit card and would protect him against unauthorized use of the card. Specifically, it prescribes that a cardholder's liability shall be limited to a maximum of \$50 for any unauthorized use of a credit card issued in his name. This liability would be effected only if:

- (1) The cardholder had accepted the card by requesting, signing, using the card.
- (2) The card issuer had adequately notified the holder of his potential liability under the card.
- (3) The card issuer had provided a means of identifying the user of the card as a person authorized to use it.
- (4) The unauthorized use occurred before the holder had notified the issuer that an unauthorized use had occurred or may occur as a result of loss or theft of the card.
- (5) The card issuer, upon receipt of such notice, had taken steps to guard against the unauthorized use of the card.

Shell Oil Company does not oppose the intent of this section of the bill if there is a need for Federal legislation of a uniform liability to the cardholder for the unauthorized use of his credit card. Of course the question of a recipient's liability for fraud losses when he fails to receive a card which has been mailed to him can arise from the mailing of a requested card as well as an unsolicited card. In addition, cards which have been accepted and are in use can be, and sometimes are, misappropriated and fraudulently used.

We accordingly agree, therefore, that a matter of major concern in all instances of fraudulent use of credit cards is the potential liability of the rightful holder of the card. Under Shell's policy a customer *not* receiving an unsolicited card mailed to him, has *no* liability. If a Shell credit customer's card, even after long use, has been lost or stolen and even if he fails to notify Shell, his liability is limited to a maximum of \$100 or less as provided by state statute. Of course if he does notify Shell that the card has been lost or stolen he incurs no liability. The rightful cardholder is thus well protected from unlimited liability.

Relative to the acceptance of unsolicited credit cards, a Shell card recipient is considered to have accepted the card and is mutually liable for charges only if one or more of the following conditions has taken place:

- (1) Payment by the customer of a prior bill.
- (2) A prior written acknowledgment from the customer advising that he received the card and either used it or authorized its use.
- (3) A prior telephone call from or to the customer through which it is disclosed that he received the card and either used it or authorized its use and such call is confirmed by letter from Shell.
- (4) An independent inquiry by Shell that establishes the customer has used the card or authorized its use.

Shell assumes complete responsibility for establishing that one or more of those requirements have been met. If none are, the card is considered not to have been accepted and any balance is written off and the account closed.

As concerns the question of sufficient notification, Shell believes that it provides adequate notice to the cardholder advising him of his potential liability. The following notice is included in all unsolicited mailing packages. "Cards are permanent—unless revoked. Read instructions on back of card. If lost or stolen, notify Shell Oil Company immediately. Starting with the first authorized purchase, you are responsible for all purchases until notice of such loss or theft is received by Shell. Your liability in the event of loss or theft is limited to \$100." On the reverse side of our credit card a similar notice of potential liability is currently provided. The \$100 limit is primarily established to get the cardholder to exercise due care in the use and handling of the card and to stimulate prompt reporting of lost or stolen cards. The lower limit of \$50 as proposed by Section 3 of the bill would not place a reasonable responsibility on the cardholder. Accordingly, the greater limit of \$100 is judged more appropriate by Shell.

As we construe the provision requiring the issuer of the card to provide a method by which the user can be identified, it is not a problem to Shell. Shell and Shell's independent service station dealers accept the responsibility of identifying the credit cardholder as the person authorized to use the card. The service station has a method to identify the user of a credit card not generally available to the ordinary retail store; namely, the license number of the vehicle. All Shell dealers are instructed to include this license number in the invoice used to record the sale. In the case of a substantial sale, the Shell dealer also has instructions to check the driver's evidence of ownership, usually the vehicle's registration certificate.

Foreseeably, other identification requirements such as pictures and/or signatures might be required under S. 721. However, because personal appearances are so easily and readily changed, they are often of little value for identification. Signatures, which are usually viewed by sales attendants and clerks and not by handwriting experts are also of doubtful value in establishing identification. For these reasons Shell believes that the inclusion of such requirements would be unnecessary.

As concerns taking appropriate action to advise merchants, which in Shell's case are its dealers, of the possibility that an unauthorized use of a lost or stolen credit card may occur, Shell has established a nationwide computer service known as SCAP (Shell Credit Authorization Program). Each dealer has his own code number which he uses to call an operator at the computer center to question any purchase over a prescribed amount or which he might suspect. In seconds the operator replies with the status of the questioned card, either authorizing the dealer to accept the charge or indicating that credit should not be accepted because the card has been lost or stolen or because credit, for other reasons, is no longer authorized. The computer's memory bank is continually updated so that the system provides an excellent and efficient way to advise dealers that an unauthorized card use may be attempted.

The foregoing indicates that Shell has taken steps to protect the potential liability of its credit card holders, eliminating the basic need for Section 3 of S. 721.

In summary, Shell reiterates that it does not oppose the overall intent of S. 721 if a real need for such legislation is found to exist. It is Shell's belief, however, that it has established reasonable standards which do prevent the overextension of credit, provide adequate notice of potential liability, protect cardholders from unlimited liability and which notified merchants-dealers when an unauthorized credit card use may occur. Shell accordingly does not favor enactment of S. 721.

EXHIBIT "B"

STATEMENT BY W. J. BITTLES, JR., GENERAL MANAGER RETAIL MARKETING,
SHELL OIL CO.

My name is W. J. Bittles, Jr. I am General Manager of Retail Marketing for Shell Oil Company which includes responsibility for all service station and related marketing activities. Included in these activities is the responsibility for Shell's Credit Card program.

Today in response to your invitation I shall deal with the business considerations behind our mailing of unsolicited cards. Mr. Simon's legal arguments will be submitted following this statement.

In addition to speaking for Shell, I would like to speak on behalf of the independent dealers who sell our products at Shell service stations. Our credit card mailings are made primarily to support sales at those stations.

We believe that criticisms of mailing unsolicited cards fall into four general areas: that the mailings are a nuisance to private citizens; that they promote fraudulent misuse of credit; that they tempt the unsophisticated into spending more than they can afford; and that the mailings are unfair to unbranded marketers and other smaller segments of the industry.

Accordingly we would like to answer the criticisms by making the following points:

1. The consumers welcome our cards, and the nuisance factor is minimal.
2. Our company follows excellent security procedures to prevent fraudulent misuse of cards, and such fraud is in fact minimal.
3. Our company credit screens potential credit card recipients to eliminate indiscriminate mailings to those whom we consider irresponsible spenders and poor credit risks.
4. The mailing of unsolicited cards and alternate credit arrangements are available to all segments of the industry.

We believe that it would be against the public interest to prohibit unsolicited credit card mailings.

NUISANCE OR BOON?

We have reason to believe the Commission's interest in the practice of unsolicited mailings is based in part on indiscriminate mass mailings of bank credit cards some three years ago. Much of the adverse material received by the Commission is a consequence of those mailings. That problem was dealt with by the Federal Reserve System's Board of Governors, to whom the banks are answerable. After careful consideration the Board concluded that "legislation forbidding the unsolicited mailing of credit cards would seem unnecessary and undesirable . . ." We know of no reason why Shell should operate under more stringent credit card rules than the banks.

Our company is not insensitive to consumer reaction to credit card mailings. We have sampled this reaction periodically, and our experience has convinced us that most consumers appreciate receiving the unsolicited cards.

In a study we conducted in 1964, we mailed to two test groups. One was a control group to whom unsolicited cards were mailed in the normal manner. The other was a group to whom we mailed application forms instead of the cards. Through April of this year, 38.3 percent of the control group that received cards had used them. Only 14.4 percent of the second group had applied for and had used the cards. Apparently many prospective customers are deterred by the effort of filling out application blanks but are pleased to receive unsolicited cards and to use them.

In mid-1968 we coded 14,657 return envelopes in mailings to Dayton, Ohio, and Westchester County, New York. Only 164, or 1.1 percent, returned their cards. We recently undertook another study in the Los Angeles/Orange County area, in which some 215,000 unsolicited cards were mailed in slightly more than a month. So far we have received unfavorable comments from only five recipients verbally, and from only three in writing. We estimate, based on past experience, that about 86,000 of those people eventually will use those cards.

Whether it has been obtained through solicited or unsolicited means, the credit card serves the needs of today's society and confers on the consumer several benefits.

The most obvious benefit is the degree of financial safety it affords the user. When cash is stolen it is gone. If a credit card is stolen, the loss to the owner, is limited or nothing. If a Shell credit card holder notifies us that his card is lost or stolen, he will incur no liability after such notification. The credit card is convenient. It serves as a means of identification and provides a means of maintaining expense records for such things as income tax returns. It often provides a means of obtaining services or products in an emergency. It allows a holder to take advantage of special offers available for a limited time, when he is short of cash. With an automotive credit card, the holder may not have to defer the purchase of essential items of proper car maintenance and safety because of a lack of immediate cash—items such as tires, mufflers, headlights and brakes. So, indirectly, the credit card contributes to traffic safety.

There also are benefits for the service station dealer who as a small businessman is a concern of the Commission. Behind our promotion of credit card usage

is the underlying objective of causing new people to patronize Shell stations. Once the dealer makes the acquaintance of a new customer, he can do his best to make him a regular customer.

Currently about 37 percent of all gasoline sold by Shell dealers is purchased with Shell credit cards. About one-fourth of this amount is bought with unsolicited cards. An analysis of records we have kept over the last four years for three of our major markets indicates that in 1968 the unsolicited credit card mailings to those markets contributed an average of \$2,617 additional gross profit per dealer for the year 1968 from gasoline sales alone. Viewing this sales volume as incremental, the gross profit figure would be close to the net profit. The tabulation follows:

	Number of dealers	Additional gross profit
Los Angeles.....	817	\$2, 694
Chicago.....	440	2, 354
Washington, D.C.....	141	2, 986

This does not include additional profits the dealer could make from items other than gasoline, i.e. from tires, batteries, accessories, repairs and other goods or services the dealer may choose to sell or render. Based on industry average sales and gross profit ratios for the above geographic areas as published in National Petroleum News, we estimate the additional profits from these items could average as much as \$2,300 per dealer for those dealers for the year 1968.

A criticism of mailing unsolicited cards is that the recipient is put to the burden of returning cards to the sender if he doesn't want them. Shell's mailings include an instruction that reads: "If you do not plan to use this card, destroy it or return it in the enclosed postpaid envelope." Neither stuffing a postage-paid envelope nor running a pair of scissors through a card places an onerous burden on the recipient.

In summary on this point, we would say that the typical American consumer does not regard these unsolicited credit cards as a nuisance. On the contrary, he frequently welcomes them.

WHAT REALLY ARE THE CHANCES OF MISUSE?

The Commission states it has reason to believe that "unsolicited credit cards often are lost in the mails and the intended recipient is unaware that there is a card or that an account is established in his name."

Shell's unsolicited cards definitely are not "often not in the mails." In our experience such losses do occur but are rare, in fact they are statistically almost non-existent. The low rate of mail interception is in large part attributable to Shell's system of mailing. We mail third-class at the non-bulk rate of six cents per item and request the Post Office not to forward any of the letters but to return them with any address change indicated. Our envelope carries the words: "Also enclosed valuable credit cards." This is to ensure that the addressee will know of its contents.

We also observe strict internal security in handling all blank and embossed credit cards. We emboss and mail our cards from only one location at Tulsa, Oklahoma.

The Commission states it has reason to believe that the unsolicited cards "are often misappropriated and fraudulently used by unknown parties, and the intended recipient of the credit card is put to the often considerable burden of demonstrating to the billing company that the goods or services were not ordered or purchased."

This danger is eliminated by Shell's procedures. If we send a bill to a customer and he denies ever having received our card, we assume a case of mail interception. No more statements are sent. No "past due" notices are mailed and there is no inconvenience.

Shell regards a recipient as liable for charges only if one of the following circumstances has taken place:

1. Payment by the customer of a prior bill;
2. A prior written acknowledgement from the customer that he received the card and either used it or authorized its use;

3. A prior telephone call from or to the customer through which it is disclosed that he received the card and either used it or authorized its use and such call is confirmed by letter from Shell;

4. An independent investigation by Shell that establishes the customer has used the card or authorized its use.

Shell assumes complete responsibility for establishing that one or more of those requirements have been met. If none are, any balance is written off and the account closed. No information, of course, is given to a credit bureau.

With regard to the Commission's concern about potential fraud losses, the following tabulation shows the difference in fraud loss between the solicited and unsolicited type of card:

	Regular	Unsolicited	Total
Sales (thousands) 1968.....	\$707,768	\$222,358	\$930,118
Fraud loss, bad debts (thousands).....	580	303	883
Percentage of sales.....	0.082	0.136	0.095

It is obvious from these figures that the overall fraud loss from either type of card is small when compared with total sales generated by each.

There is a major difference with respect to fraud exposure between an oil company's credit card and the card of a department store or bank. Fraud occurs at the point of sale and that is where it can be most easily detected. The service station has a check not generally available to the ordinary retail store—the license number of the vehicle. All Shell dealers are instructed to include the license number on the invoice used to record the sale. In the case of substantial sales, the Shell dealer also has instructions to check the driver's evidence of ownership, usually the vehicle's registration certificate. These procedures serve as a powerful deterrent to fraudulent use of Shell's credit card.

Another characteristic of the oil company card that minimizes potential fraud is the fact that it is primarily a single-purpose seller's card, used mainly for buying gasoline. The average monthly billing for Shell credit customers is only \$25, and any unusual activity of a Shell card results in an inquiry. With a general purpose card, large purchases such as appliances, furniture, etc., can be made without attracting any undue attention. Consequently, the potential of fraud is magnified.

Although the possibilities of fraud are less with its card, Shell does not minimize the seriousness of the problem. We have taken steps to protect Shell, the dealer and the customer from potential fraudulent use of the card.

We have established a force of specially trained security officers who coordinate our fraud investigation efforts, obtain evidence, recover credit cards and initiate prosecutions against defrauders. Last year 163 prosecutions were instituted for fraudulent use of Shell cards.

About six percent of the cases of credit card misuse handled by our security force are due to mail interceptions. The remainder are attributable to credit cards being lost, stolen or misused after the customer had obtained it from the company.

The service station is our first line of defense against fraud. Our traditional means of detecting fraud at the point of sale was through a list of the numbers of lost, stolen or uncollectable cards. To cope with our growing credit business, however, we instituted last April the Shell Credit Authorization Program. Under this program, for which Shell pays the entire cost, we employ the National Data Corporation, a specialized computer service. Each Shell dealer has his own code number which he uses to call an operator at NDC to question any purchase over a minimum amount, or which he might suspect. In seconds the operator replies with the status of the questioned card.

The computer's memory bank is continuously updated. It also is programmed to take note of any card that has been used to make unusually large purchases over a short period of time, which information is received from dealers calling for credit authorization. This early warning feature makes it more difficult for anyone to use a card fraudulently.

Shell also has an incentive system for dealers to turn in stolen cards if they can be obtained by peaceful means. A reward of from \$20 to \$100 is paid, depending on the degree of misuse of the card.

A matter of major concern in all instances of fraudulent use of credit cards is the potential liability of the rightful holder of the card. We would reiterate

that in cases of a customer not receiving an unsolicited card mailed to him, he has no liability. If he receives the card and uses it and then it is stolen, and if he never reports the theft to us, his liability is limited to a maximum of \$100.

Miss Betty Furness, former Special Assistant to the President for Consumer Affairs, previously had called for adequate warning to the consumer about his potential liability in cases of misappropriation. Shell's practices do make this warning clear. We include periodic notices in monthly statements advising the customer of possible liability, and adequate notice to this effect is being provided on the reverse side of the card itself.

The Commission expressed belief that the card holder's credit standing could be jeopardized by billing errors. Such errors fortunately are infrequent, and of course there is no distinction between errors that occur on unsolicited and solicited card accounts. The important thing is how Shell treats the customer who has received an erroneous bill. The vast majority of customers advise us of billing errors at the time of remittance, and we promptly rectify any errors. If the so-called error is actually a disputed charge, we determine the facts and credit the account when appropriate.

In summary on the whole question of fraud, we maintain that we have established excellent controls to keep fraud to a minimum, that if an unsolicited credit card is intercepted the intended recipient is protected fully, that no information is ever sent by Shell to a credit bureau, outside agency or attorney unless a contract has been established and the account becomes seriously delinquent. In short, we use every means consistent with prudent business practice to protect our valued customers.

INDISCRIMINATE MAILINGS?

The practice of unsolicited mailings has been criticized as being indiscriminate and a temptation to the unsophisticated to buy goods they cannot afford. We believe that with Shell's procedures this is not likely to happen.

As to the criticism of tempting people to overspend, we again point to the single-purpose nature of our card which has an average monthly billing of \$25. A customer can use only so much gasoline in a month, or so many tires or batteries over an extended period of time, so the temptation to overextend one's finances is relatively small.

Unsolicited credit card mailings are not authorized until a careful investigation has been made. First we determine if Shell has an adequate number of service stations in a particular market. We review the latest census tract maps of this market and make a physical survey to eliminate the industrial/commercial sections. We then request names and addresses of residents of these census tracts from reputable list suppliers such as R. L. Polk or Reuben H. Donnelley. These names are computer checked against our existing credit card customer file to avoid duplication. We then send the names to a local credit bureau for individual credit screening.

For some markets it is more economical to secure lists of names from the local credit bureaus. Local bureaus use criteria similar to Shell's in developing their lists of "preferred risk" names. In any case we examine and evaluate such lists before purchase. As an additional precaution, we make our own checks of the screening work performed by the local credit bureaus. We do this by ordering credit reports on a sample of the list names in order to verify the reliability of the credit approvals. If errors are noted, we review the credit bureau's appraisal work to ensure that the approved individuals meet Shell's criteria. As a final check before mailing we again compare the remaining names against Shell's existing credit card customer files in an effort to remove any duplication by persons who may have opened an account in the interim.

In summary, the foregoing procedures demonstrate that the recipients of our unsolicited mailings are carefully selected and that our mailings are not indiscriminate.

AN UNFAIR COMPETITIVE ADVANTAGE?

We strongly disagree with the thought that unsolicited credit card mailings may confer a competitive advantage over competitors who do not use them.

As businessmen, we believe we ought to have the right to offer credit—solicited or unsolicited—to potential customers whenever it is judged that it is a sound and profitable marketing technique. Competitors should have the same right.

The mailing of unsolicited credit cards is one element of what could be termed the "marketing mix" of competing marketers. Those marketers who choose not to use unsolicited credit card mailings are under no restraint from doing so. The

whole question is one of business judgment, based on marketing expertise. Some gasoline retailers may choose to sell only for cash. Others may use a bank credit card system. Others may use seller-type credit cards. Or, as is often the case, a dealer may offer personal credit to valued customers.

A consideration is the fact that the proposed Trade Regulation Rule would discriminate against marketers seeking to expand into new areas. Prohibition against the future mailing of unsolicited credit cards would tend to freeze the present geographical distribution patterns of the credit cards of established marketers.

CONCLUSION

We believe the information in the foregoing has shown:

1. that complaints relative to our practice of mailing unsolicited cards have been minimal;
2. that reports of fraudulent misuse of oil company cards are exaggerated and that our cards do not easily lend themselves to misuse;
3. that our company carefully screens the people who will be receiving our cards and that oil company credit is not the type that lends itself to overspending;
4. that no marketer is being put at an unfair disadvantage by the mailings; and finally,
5. that the public interest is not in jeopardy.

For all these reasons, we feel it would be inappropriate for the Commission to proceed with its proposed Rules.

Mr. NIX. I ask unanimous consent for the statement of Hon. John Dunne, State senator from New York and chairman of the Special Subcommittee on Credit Cards be inserted in the record.

(The statement referred to follows:)

THE SENATE,
STATE OF NEW YORK,
Albany, February 4, 1970.

HON. ROBERT N. C. NIX,
Chairman, Postal Operations Subcommittee of the House Post Office and Civil Service Committee, U.S. House of Representatives, Washington, D.C.

DEAR SIR: In accordance with a telephone conversation had today by my office with you, I enclose for entry into the record of proceedings before your subcommittee, in connection with its hearing on unsolicited credit cards, 25 copies of my statement plus 10 copies each of the bills referred to as pending before the Senate of New York State.

Please allow me to express my appreciation to you for the courtesies extended, not only for the invitation but also for permitting me to submit this statement under the circumstances. I regret that the weather conditions prevented my reaching Washington in time to present these remarks in person.

I hope I shall have the privilege and pleasure of meeting you in person sometime in the near future and I shall be watching with interest the results of your hearing.

With best personal regards, I am,

Sincerely,

JOHN R. DUNNE.

Enclosure.

STATEMENT OF JOHN R. DUNNE, NEW YORK STATE SENATOR

Mr. Chairman and subcommittee members, the ubiquitous—and, more particularly, unsolicited credit card and its effect upon American society is a topic to which state legislatures are increasingly addressing themselves.

As we appear to be approaching the era of a checkless-cashless society, "plastic-credit" or, as it is referred to by its detractors, the "plastic menace" or the "plastic jungle" has clearly become a way of life for millions of American consumers. And with this change, have come a multiplicity of problems for the consumer for whom government, at all levels, has an obligation to provide positive and responsible protection.

The legislative proposals being considered by this committee indicate deep research into many aspects of the credit card industry. Consequently, I will avoid

a rehearsal of the steps which have led from the humble beginnings of that industry to a point where today the American family possesses an average of eight credit cards. Rather, I would like to submit for your consideration what we have found in New York State.

As the credit capital of the world, and fast-becoming a leading center for credit card operations, New York showed an early concern for credit card abuses—not only criminal fraud, but also commercial misuse.

Our investigations, beginning in 1966, were prompted by the heavy incidence of fraudulently obtained airline tickets bought with lost or stolen credit cards—cards which came within the categories of “travel and entertainment cards” and airline credit cards. Local prosecutors, who discovered the increasing trend among the underworld to traffic in these cards, also found that convictions were difficult to obtain due to loopholes in the State's penal statutes with the result that criminal use of cards was a highly profitable venture with minimal risk. Even when convictions were obtained, the statutory penalties were light since the intrinsic value of the plastic itself was deemed to be but a few cents and the theft was only petit larceny. The New York Credit Card Crime Act of 1969 made three major legal revisions to the Penal Law: one, the theft of a credit card was made grand larceny punishable by up to four years in prison; two, established the value of airline tickets at the face value of the tickets when they were obtained through the criminal use of credit cards, instead of the value of the paper on which it was printed; three, certain statutory presumptions were created to aid in the prosecution of criminals. During the course of our study, an avalanche of new credit cards—the bank credit card, in particular—appeared throughout the state, bringing new problems for the consumer as well as an intensification of prior problems faced by law-enforcement officials.

Organized crime, aware that the credit card now had greater and freer acceptance by the public and merchants alike, found its traditional sources inadequate to meet its needs and required a large scale source of credit cards for its rapidly increasing criminal operations. Its forces invaded the United States mails which had been utilized by the credit card industry as the single most effective means for the distribution of their cards. Large quantities of the easily detachable, card-containing envelopes were part of mass distributions and were being intercepted wholesale and funneled into the criminal traffic. Despite many precautions by the card-issuers, the rate of thefts increased sharply.

To give you some idea of the proportions these thefts have assumed, consider four very recent cases involving one of New York's largest banks in the distribution of its credit cards:

With respect to first class mail, there have been numerous instances of mass thefts by postal employees. In Bronx County a postal employee stole 110 pieces of first class mail containing 220 credit cards and supplied them to an organized credit card group who subsequently used the cards to make fraudulent purchases totaling approximately \$100,000. The group was subsequently arrested and successfully prosecuted.

Another situation in Manhattan resulted in the arrest of a postal employee for stealing over 100 pieces of first class mail containing credit cards which were sold to an organized group. He was subsequently re-arrested after being identified as a user of the stolen cards.

Another case in point concerns the arrest of two men on November 7, 1969 charged with grand larceny, forgery and other violations of the penal law. At the time of their arrest they had in their possession four pieces of registered mail containing credit cards addressed to persons other than themselves.

With respect to some specific cases concerning losses resulting from undelivered mail, 18 items of registered mail were reported never received by the addressees during the month of December 1969. Postal Inspectors have advised us that they have in their possession registered receipts purportedly evidencing delivery of these items. Direct communications with the addressees, however, indicated that these persons did not receive the mail and did not sign the registered receipts. Investigation is continuing.

While the issuers had their problems, the intended cardholder—the consumer—was plagued by a great many problems of his own—but none of his own making. We cannot ignore the widely increasing annoyance and resentment of the general public for rapidly multiplying junk mail and the intrusions into his personal privacy, for the receipt of the unasked for—and in many cases unwanted—credit card has created anxiety and uncertainty in the public's mind, and in some instances inconvenience, embarrassment and expense. As a reaction, some called

for legislation providing an outright ban on the issuance of any and all unsolicited credit cards.

Just last month the New York Senate Codes Subcommittee on Credit Cards held a hearing on proposals to ban or regulate the distribution of unsolicited credit cards in New York State by "unsolicited credit card," I mean that which is issued to the consumer without his prior request. This particular method of distribution has led to widespread consumer abuse and created significant problems for New York's law enforcement agencies.

For instance, in one case uncovered by our subcommittee, a man in Brooklyn one day began receiving bills for merchandise that he had never purchased. Inquiry revealed that he had been mailed an unsolicited credit card which was intercepted before reaching him. The issuer acknowledged that the man was under no obligation to pay for the goods and had him execute certain sworn statements to the effect that he had never received the card, together with a statement that he did not wish any more cards issued to him. Sure enough, some time later he received another bill for additional purchases never made by him. As it turned out, despite his written demand that no new card be sent to him, another card was mailed off to him and it, like the first, was intercepted en route. The matter was not cleared up until the New York State Attorney General's office intervened.

In another case, a petroleum company sent an unsolicited credit card to a prominent New York State Supreme Court Judge. The card was stolen from the mail and some \$400 worth of purchases were made on it. A service station attendant, apparently involved in a conspiracy with the thief, honored the card for the same automobile several times in one day and accepted charge slips on which the judge's name was obviously misspelled. Whether the company involved pursued the judge for payment is not a matter of record.

Another common experience is the issuance of an unsolicited credit card to persons not sophisticated enough to understand the nature and extent of the obligation assumed by its use. In one case, a bread-winner, unaccustomed to paying interest charges of 18% a year, fell so far behind in his payments that the dunning tactics employed by the issuer eventually caused him to lose his job together with many accrued benefits.

In yet another case, a young female office employee, earning little more than \$100 per week, received an unsolicited credit card in the mail and promptly ran up charges amounting to almost \$4000. Her only explanation was that she enjoyed buying gifts for her friends. This may sound like an extreme case, and it probably is. But ponder this: if this girl had walked into a bank and demanded a \$4000 signature loan, she most certainly would have been refused. And yet, that is exactly what this bank in effect did when it issued her its unsolicited credit card.

Then there is the well publicized case of the thirteen year old boy on Long Island who received not one, but two, credit cards in the mail, conferring upon him up to \$500 worth of credit. Investigation revealed that he had been issued the cards as a "customer" of the bank—a classification conferred on him by reason of a savings account which never had more than \$150 on deposit. His parents were highly displeased, to say the least.

At the opposite end of the spectrum is the story of the 96 year old lady who received, not an unsolicited credit card, but bills totaling \$1600 for merchandise she never ordered. The issuing bank pressed her for payment and its efforts did not cease until a local Justice of the Peace intervened in her behalf. He convinced the bank that she couldn't have possibly ordered the goods in question because she lived alone on a pension amounting to \$114 a month and, except to be taken to the bank once a month, she hadn't left her house in 20 years. Incidentally, she maintained a savings account at the issuing bank with a balance of \$167. That is why she was "selected" to receive a credit card.

Likewise, local and state law enforcement officials in New York are unanimous in their belief that the unregulated distribution of credit cards through the mail encourages crime and places an added burden on law enforcement. Indeed, this particular method of distribution has facilitated the passage of the credit card into the criminal's stream of commerce. As a result, money and manpower which are crucial to the struggle against narcotics, violence and the other varieties of criminal activity which are plaguing our cities are unnecessarily employed in the effort to curb credit card abuses.

The public interest requires that immediate action be taken to eliminate these problems. While states may enact stringent penal laws to deal with credit card frauds and cheats, such proscriptions necessarily operate after the fact. Only the federal government, endowed with the power to regulate interstate commerce as well as that which passes through its mails, can effectively nip in the bud those serious abuses spawned by the unsolicited credit card.

Accordingly, notwithstanding the economic advantages admittedly associated with the widespread distribution of unsolicited credit cards, I urge the Congress to enact legislation designed to put an end to the indiscriminate mailing of unsolicited credit cards. Congress may choose to ban all credit cards from the mails or only those for which no prior request has been made. In the alternative, Congress may decide to allow the mass mailing of credit cards provided the intended recipient has received reasonable prior notice of its mailing and the opportunity to decline its issuance. Regardless of which formula is settled upon, the interstate aspects of the credit card business and the relative unenforceability of a state's laws beyond its own borders mandate the implementation of uniform, federal regulations.

All of the proposals appearing in the bills before this subcommittee today are also pending in New York State in one form or another. If I may, I would like to give this subcommittee the benefit of knowledge gained by my subcommittee concerning some of these proposals.

With respect to those provisions in H.R. 13244 and H.R. 15103, requiring delivery of credit cards by registered mail, statistics made available to my subcommittee indicate that this mode of delivery may not significantly safeguard the credit cards from loss or theft while in transit. One large New York bank recently experimented with mailings of its solicited credit cards, using both registered mail and certified mail. The results of this experiment showed that slightly less than 1/20 of 1% of those sent by first class mail failed to arrive at their intended destination and were subsequently used, as compared to 1/30 of 1% of those sent by registered mail.

Likewise, another bank engaged in the mailing of almost one half million unsolicited credit cards between June, 1969 and January, 1970. In this case, the percentage of first class letters containing cards stolen and used was .053 while the percentage of registered mail letters containing cards stolen and used was .142, or a ratio of 3 to 1. In addition, in the summer of 1969, during a single week, a group of three major banks in New York City mailed out two million credit cards by first class mail, each of which was preceded by a pre-mailer. Reported losses or theft totaled about 250.

Hence, it appears that a registered mail requirement may not necessarily achieve the objective of its sponsors, namely, to provide a better means of assuring that credit cards are not intercepted before reaching the intended recipient. Moreover, businessmen being businessmen, the increased but unnecessary cost will undoubtedly be passed onto the already-beleaguered consumer.

Perhaps the Congress would consider the following proposal as an alternative to an outright prohibition of the distribution of unsolicited cards. Our Legislature has presently before it a bill to require that a card issuer mail a written notice to any prospective cardholder informing him that the issuer intends to send a credit card to that individual in the near future. At least 30 days prior to issuance of the card, the card-issuer shall mail to the prospective cardholder by first class mail, written notice that it intends to issue a credit card in the individual's name and that he need not accept this offer. In order to give this option meaning, this pre-mailer shall contain a business reply postcard addressed to the issuer with a printed message indicating that the individual does not want it. All consumer need do is to sign his name to the card and drop it in the mail—an easy, convenient, no-cost means of indicating his wishes.

Finally, H.R. 13244 would require an additional intended safeguard in the mailing of credit cards, namely, that the envelope in which the card is mailed, bear a legend on the outside: "unsolicited credit card." Our experience in New York indicates that such a notice actually enhances the possibility of the card's going astray in the mail and falling into the hands of a thief. In fact, this practice was so soundly denounced last year at the hearings of our subcommittee that a major oil company immediately ceased this practice. Such a requirement, in my opinion, would best be omitted from any prospective legislation.

You and I share the obligation to move in a responsible fashion to protect the consumer public as well as the health of our economy and I wish to thank you for providing me with the opportunity to give you my views.

Mr. NIX. The subcommittee will now receive the statement of the Honorable William D. Ford.

STATEMENT OF HON. WILLIAM D. FORD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. FORD. Mr. Chairman, the volume of unsolicited credit cards sent to American consumers each year is steadily increasing. This increased volume has created a growing public concern over the need for consumer protection in regard to the practice of mailing these cards.

The witnesses appearing before our committee presented a strongly documented case for legislation that will give the consumer some protection from theft of, and misbilling under, unsolicited credit cards.

I have introduced a bill identical to Mr. Hanley's H.R. 13244 to show my strong support for his approach to solution of the problem. This legislation would put reasonable requirements on the mailing of unsolicited credit cards. It would require the sender to send them by registered mail, deliverable only to the addressee in an envelope bearing the warning "unsolicited credit card—addressee may refuse" in large easily seen letters. In the event the addressee refuses the cards, the sender must bear the cost of return postage.

Many constituents write and ask what they should do with unwanted unsolicited credit cards. They are annoyed and confused by these cards. I have been unable to advise them of a practical way to protect themselves under the present law and that is why I have introduced and am supporting this legislation.

I have also received letters from constituents who were billed on an unsolicited credit card for purchases they never made. They are justly indignant to find their credit ratings in jeopardy, the threat of a costly lawsuit hanging over their heads and the incredible impersonality of a computer that neither cares nor listens to their pleas for correction of their bills.

If these people were protected by H.R. 13244, they could simply refuse to accept delivery from the mailman and be spared all of this annoyance and hardship. Those who wish to accept an unsolicited credit card would be free to do so under this legislation; but they would be doing so by their own choice.

The testimony at these hearings clearly shows that the potentially tragic consequences allowed by the present method of mailing unsolicited credit cards are not isolated and do constitute a very real danger for the consumers of this country.

The consumer needs immediate, real and effective protection. He does not need more delay, more uncertainty, and more form letters from a computer.

I believe that the protection offered by H.R. 13244 is better than an outright ban on the mailing of unsolicited credit cards. Any such ban would certainly be challenged as violating the constitutionally protected right against impairment of contract.

There is nothing wrong with credit cards and H.R. 13244 is not meant to impair their legitimate use. There should not be an outright ban so long as we can accomplish the objective of protecting the consumer without impairing the legitimate interests of commerce.

I would strongly urge that the issuance of unsolicited cards should not be prohibited, but it should be curbed in the interest of minimizing fraud and organized crime in the credit card business and in the interest of reducing hardships and costs to consumers and to banks and retailers as well.

My bill H.R. 14605, would permit the issuance of unsolicited credit cards only if they were sent by registered mail together with adequate notice of the contents so that delivery could be refused. The certainty that the addressee rather than a dishonest or incompetent person would receive the card would make the unsolicited credit card more a legitimate and beneficial merchandising device, than an annoyance, and source of loss and opportunity for crime.

Mr. Nix. The statement by Hon. Charles H. Wilson will now be heard by the subcommittee.

STATEMENT OF HON. CHARLES H. WILSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WILSON. Mr. Chairman, before I proceed with my statement, I want to congratulate you on the hard hitting and penetrating hearings you have held on the unsolicited credit card menace. Because of the vital importance of this matter, I'm grateful for your giving me the opportunity to speak out on this subject.

Mr. Chairman, as a member of the Subcommittee on Postal Operations, I have followed closely the testimony of bankers, businessmen, and government officials on the unsolicited credit card problem. It has long been obvious to me that remedial legislation is necessary.

I, therefore, introduced legislation—H.R. 15190—to remedy the free-wheeling, indiscriminate mailing of credit cards by banks and other business interests. I choose to call these credit cards mailbox thieves.

My bill would ban unsolicited credit cards from the mails unless: (1) They are sent by registered mail; (2) The envelopes are clearly marked as containing credit cards; and (3) The sender agrees to pay return postage.

H.R. 15190 also provides for penalties of up to 2 years in jail and/or \$1,000 in fines for noncompliance. I feel my legislation goes straight to the heart of the problem. It provides the consumer with the choice of refusing or accepting unrequested credit cards while, at the same time, preventing these credit cards from falling into the hands of fraudulent users.

Mr. Chairman, there are many reasons why the passage of my bill is necessary—indeed, vital. It has been pointed out that unsolicited credit cards stimulate inflation since they enable and encourage people to go into debt and enable and encourage people in debt to go further into debt. In less than 2 years, outstanding credit—generated by unsolicited bank credit cards—has more than doubled—from \$633 million in 1967 to \$1.3 billion in 1969. Additionally, the Chief Postal Inspector, William J. Cotter, testified that at least 75 percent of the recipients of these unsolicited credit cards did not initially desire the cards. Further, while there were in 1958, 80,300 nonbusiness bankruptcy cases, in 1968, only 10 years later, the number had climbed to

183,000—almost $2\frac{1}{2}$ times as many. Even more striking, in 1948, just prior to a year of recession, the number of nonbusiness bankruptcy cases was less than 14,000. It is likely, Mr. Chairman, that most, if indeed, not all, of the increase in nonbusiness bankruptcy cases can be attributed to the indiscriminate and uncontrolled use of credit cards.

It has been pointed out that unsolicited credit cards are important contributors to the staggering rise in crime. The black market for credit cards is extremely lucrative and stolen credit cards can command prices of up to \$500. In his testimony, the Chief Postal Inspector stated that credit card thefts have increased over 700 percent in the last 4 years. The total losses due to credit card frauds run from a minimum of \$20 million to perhaps double that amount and it is significant to note that oil companies alone are the victims of 16,000 credit card frauds a year.

It has been pointed out that the mailings of these unsolicited credit cards are indiscriminate and bear no relationship to the receiver's ability to accept the inherent financial responsibility. In my own State of California, one oil company recently distributed 2 million unsolicited credit cards and among the recipients were 5-year-old children, dead persons and persons with demonstrably poor credit ratings.

There is no doubt, Mr. Chairman, that the credit card situation has mushroomed out of control—and, for obvious reasons. Because the moment one irresponsible business or bank resorts to unsolicited credit card mailings, all others must follow suit to maintain their competitive position (that is, to help put consumers further in debt)—whether they wish to or not. Therefore, I must again stress the importance of creating a strong law to control these highly undesirable practices.

To succeed in curbing this mailbox thievery, it is necessary that we all work together—the private citizen, the business community, the Congress, and, of course, the executive branch. I know of the public's interest in this matter; I know of the business community's interest in this matter; I know of the Congress interest in this matter; but, quite frankly, I fail to understand the position of the White House in this matter.

On November 19, 1969, Mr. Robert L. Meade, representing the White House, before this subcommittee strongly supported an outright ban on the mailing of unsolicited credit cards. Yet, less than 1 month later, on December 7, before the Senate Banking and Currency Subcommittee on Financial Institutions, Meade no longer supported a total ban. What happened? Why did the administration soften its earlier opposition to mass mailing of unsolicited credit cards? What type of pressures did the administration yield to? I submit, Mr. Chairman, that the banks and other financial institutions who are obviously profitting from this procedure contacted their friends in the administration and persuaded them to alter their stated policy. But, of course, the administration needed a "public" reason for such an abrupt turnabout. So, the quick minds at the White House went right to work and developed qualifying argumentation which is, if I may say so, ludicrous. Mr. Meade now feels that a law banning mailing of unsolicited credit cards would give banks and stores that have already done so an unfair advantage over those planning to initiate the procedure. This is certainly fascinating reasoning. I can't help but think, Mr. Chairman,

that this is like a rancher refusing to fence in his cattle after the first raid by some rustlers for fear of being unfair to any other rustlers that might be in the vicinity. If we carry this twisted logic into other Government programs, why not allow stock manipulators an open season on the market to make sure that everyone has a fair chance to gouge the small investor. Or possibly, the Food and Drug Administration could allow the sale of thalidomide so that everybody could get a fair crack at any profits.

Mr. Chairman, I hope I'm not being unfair. But, the unsolicited credit card is a very serious threat to the consumers of our country, as well as to its economy, and, as such, I would hope that the administration would aid the Congress in its attempts to solve the problem instead of protecting the special interests that are profiting from this unsavory practice.

I know that this committee is concerned and is anxious to develop a remedy. I hope that my bill, H.R. 15190, will aid you in this endeavor.

In closing, let me again extend my appreciation for the opportunity to voice my concern and to present legislation that I feel will be of help. Thank you, Mr. Chairman.

Mr. Nix. Thank you. That concludes the hearing for today. The subcommittee will stand adjourned.

(Whereupon, at 11 a.m., the subcommittee was adjourned.)

(The statements which follow were received for inclusion in the hearing record:)

STATEMENT OF ROBERT M. RHODES, WASHINGTON OFFICE, COUNCIL OF
STATE GOVERNMENTS

Mr. Chairman, to correlate with Senator Dunne's remarks, I believe a general survey of state action in response to the problem of unsolicited credit cards would be beneficial to the Subcommittee's consideration of this issue.

To date, thirteen states have enacted legislation limiting liability in cases involving the fraudulent use of unsolicited credit cards. With your permission I would like to enter the text of these statutes into the hearing record for further Subcommittee study.

Two states, Connecticut and South Dakota, prohibit the issuance of unrequested credit cards. Eleven states protect the unwary recipient of an unrequested card by exempting him from liability incurred by an unauthorized use of the card. (These states are Illinois, Maryland, Massachusetts, Minnesota, New Mexico, Alaska, California, New York, North Dakota, Ohio, and Wisconsin.) Such statutes almost uniformly hold that a cardholder is not liable for any unauthorized use of an unaccepted card. Acceptance is generally defined as requiring a written request, or a signing or use of the card, or an authorization for use by the holder. In Massachusetts, the holder of an accepted card can be held liable for up to \$100 if he has been informed of the potential liability; and the unauthorized use occurs before notification of the issuer of the loss; and the issuer has provided a method whereby the cardholder can be identified as the person authorized to use it. From this brief survey it is evident many of the most effective state provisions have been incorporated into federal bills.

One particular innovation, I believe not yet evidenced in the bills before you, is contained in the Illinois and New Mexico statutes. I am referring to a statutory rule of evidence which mandates that when an action is brought by an issuer against the cardholder, the burden of proving the request or authorization is on the issuer if the question is put in issue by the holder. In addition, if there is judgment for the defendant, the court is required to award the holder a reasonable attorney's fee. Such procedures deter frivolous action on the part of the issuer and encourage more intensive pre-action investigation. I commend these provisions to your consideration.

Finally, it is significant to note the Council of State Governments Committee on Suggested State Legislation is presently drafting suggested legislation to regulate liability on accounts incurred by unauthorized uses of unsolicited credit cards. Such legislation will be considered by the Committee this Spring, and if approved, will be distributed for consideration by every state legislature. Such action is indicative of the concern states are showing for consumer interests, and I sincerely hope this Subcommittee will consider relevant state experience and expertise in the final deliberations and drafting of the bills before us today.

STATEMENT OF HON. JAMES C. CORMAN, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF CALIFORNIA

Mr. Chairman and members of the committee, I appreciate the invitation you have extended to me to appear before your Committee to express my views on the subject of unsolicited credit card mailings.

The case against this business practice can be stated simply. Three hundred million credit cards presently are in circulation in the United States, and 100 million are being added each year. One and one-half million unsolicited cards are lost or stolen each year. The price today on a stolen credit card is put at \$100 in the circles of organized crime. Postal officials have reported that these mass mailings have caused mail fraud cases to increase seven-fold in recent years. The possibility of liability to which consumers are exposed by stolen cards is in itself sufficient reason for Congressional action.

In 1967, when I introduced my first bill to curb the distribution of unsolicited credit cards, over a million such cards were being lost each year. About 300,000 were being stolen, and a substantial portion of these were being taken from mail boxes and used fraudulently. In the press statement released when the bill was introduced, I pointed out that more than 140 million credit cards were expected to be issued or renewed, and from previous experience we could expect that thousands of these cards would reach unscrupulous persons who would use them dishonestly.

When I reintroduced the bill in 1969, my press release noted that of the 1.5 million credit cards lost or stolen in 1968, a substantial number were taken from mailboxes. These thefts resulted in more than \$100 million worth of fraudulent business, up from \$20 million in 1966.

My bill would require all unsolicited credit cards to be sent by registered mail, with return postage guaranteed if the letter is refused or undelivered, and with the envelope having the following statement on its face: "Unsolicited credit card—addressee may refuse." I recognize that few businesses could afford a total mailing under these conditions, but they could restrict their mass mailings to an informative letter, enclosing a return post card for indication of interest in receiving a credit card. The cost of sending the requested card by certified mail to a doubtlessly smaller list would not be prohibitive. It merely would be the cost of sound, responsible business practice.

Last fall, in testimony before the Federal Trade Commission with regard to its proposed trade regulation rule on the same subject, I stated that whatever protective action is finally developed, either by enactment of legislation or by retulation of the FTC, the interest of the public would be well served. I repeat that statement to you, and if this Committee formulates effective legislation to protect the consumer from the incredible burden of receiving unsolicited credit cards, I will support such legislation, albeit my approach is different from that contained in the bills referred to your Committee.

My approach is not intended to cure all of the problems associated with the credit cards. Many difficulties have surfaced as the use of these cards have expanded. But, the provisions of my proposal, I believe, will provide adequate protection for consumers against the hazards of unsolicited mailing.

Constituents have informed me of experiences with unsolicited credit cards that had catastrophic results, such as payment of large debts that they have had to assume and which they could ill afford because the cards on which the merchandise was charged to their accounts were stolen from the mail. I have read about many experiences of such piled-up charges as to preclude payment within the customary time limit, resulting in impaired credit ratings for families. We are all agreed, I am sure, that a bad credit rating in today's world is not an enviable position for anyone to be in, especially for those who must have credit to take care of their mounting family needs.

Since banks have begun their widespread mailings of unrequested cards, these experiences have multiplied many times over throughout the country. The stories appear in newspapers, magazines, trade journals, even on the television screen.

I do not object to credit cards and I doubt that anyone would want to relinquish the convenience of having them. That is not the issue here. But, neither can we ignore the problems that they create, and especially the very serious problems arising from the unparalleled increase in the mailing of the unsolicited card.

I would like to emphasize that in protecting the consumer I do not want to handicap banks or business houses that wish to offer credit to the public, but I do believe that every safeguard must be offered to the consumer whose business is wanted. Business has not, to my knowledge assumed any responsibility for the unfortunate and often tragic results of its own actions; in fact, there is enough evidence to support the belief that, while in general business is concerned about the overall issue of the fraudulent use of credit cards, it does not believe that the mailing of unsolicited cards should be controlled in any way.

Mr. Chairman, the unsolicited distribution of credit cards has exposed the consumer to the most unconscionable exploitation. The results have been nothing short of outrageous, and unless some restrictions are imposed, the situation is bound to worsen. The consumer must find protection from these abuses. The responsibility for his protection must lie with the federal government, and Congressional legislation in his behalf is long, long overdue.

STATEMENT OF WILLIAM J. COTTER, CHIEF POSTAL INSPECTOR, POST OFFICE
DEPARTMENT

Mr. Chairman, I appreciate the opportunity to again appear before this Subcommittee to discuss on this occasion the fraudulent use of credit cards as such usage becomes known to us in our enforcement of the Postal Laws. You have indicated, Mr. Chairman, that you desire testimony as to the total amount of fraud practiced in this area and a description of some of the methods employed by those who commit these frauds.

The Subcommittee is well aware of the phenomenal expansion of the credit card industry within recent years—an expansion which would tend to indicate that the system provides a service which consumers find beneficial and merchants and other business enterprises seem to find competitively essential. Whatever else the credit card may offer, it's most marketable feature, from the consumer's standpoint, is perhaps convenience—and the more places and purchase situations in which it can be used, the more valuable and convenient it becomes. Understandably, it is this very same feature which has made it so increasingly attractive to the criminal element. In a very real sense, the small plastic card is now the key to a veritable cornucopia of services and products just as eagerly sought after by the crook as by the honest consumer.

Essentially, the Postal Crimes with which the Inspection Service must contend fall into two broad groupings, both of which have been significantly affected by the expansion of the credit card system—(1) those acts which involve a criminal misuse of the Postal System and (2) those which involve a criminal attack on mail entrusted to the System for safe handling and delivery.

The Postal System is criminally misused when a purchase is made with a credit card by one who has no intention of paying. Irrespective of the manner in which the card was acquired, the Mail Fraud Statute (Section 1341, Title 18 U.S. Code) has been violated. The Postal Laws are also violated when an envelope containing a credit card is stolen while cloaked with postal protection, which protection includes the very vulnerable period during which it may be resting after delivery in a house or apartment letter box. The Subcommittee will thus appreciate that our law enforcement problems in this area have expanded no less dramatically than has the credit card system itself.

We have no way of knowing how much credit card fraud there is in terms of dollars and cents. Such a figure can be obtained only from the industry itself. It should be remembered that by no means do we investigate all instances of credit card misuse.

The Postal Inspection Service is no more able to police the credit card system than it is to police the insurance industry, the franchising, or the numerous other systems of business enterprise which cannot function without use of the mails.

As a general policy we investigate only those cases of credit card misuse where the card may have initially been the subject of postal theft, or where its fraudulent use occurred on a fairly large scale, monetarily and/or geographically. In the final analysis we can consider only those cases that are brought to our attention by credit card issuers or users of the system. Many instances of misuse, very likely the majority of such cases, are investigated solely and to conclusion by industry investigators and/or local law enforcement personnel.

The Subcommittee's second area of interest concerns methods and techniques by which fraud in the credit card context may be practiced. A learned Judge observed some years ago that schemes to defraud are as infinite in variety as man's own unlimited capacity for ingenuity and planning. Many credit card frauds, however, are unique in simplicity for they can be practiced by anyone who can obtain the necessary instrumentality—a credit card not readily traced to him. Unlike medical frauds, insurance frauds and a host of others, the perpetrator needs no extensive props or knowledge of the business. He need only acquire one or more cards not quickly traceable to him. On the other hand some credit card frauds are devised with great care and design.

In actual use of the card, most fraud operators—certainly the successful ones—appear to the vendor as nothing more or less than bona fide shoppers or travelers. In writing up a charge slip, the vendor is hard put indeed to distinguish a "buy now—pay later" customer from a "buy now—pay never" crook. By the time he learns the difference, often many weeks or even months later, he finds it difficult to recall the specific transaction or to identify the operator.

Essentially, fraudulent credit card schemes vary only in the process by which the card or cards are acquired. And how may they be acquired? Most often the card has been *stolen*, either by the user or someone else who sold or traded it until it eventually reached the current user. It may have been stolen in a house burglary, a car theft or burglary, a purse snatching, a street mugging or robbery. Many reach, in one fashion or another, the possession of bar maids, bellhops, prostitutes, etc., while some are stolen from house and apartment letter boxes and from intransit postal custody. Cards have been stolen from issuing companies themselves and at embossing plants where they are manufactured.

A second source derives from the submission of *falsified applications* to issuing companies. Several cases I will describe later will illustrate this method.

Cards have been extorted from businessmen owners on threat of physical violence and counterfeiting has been practiced in this area.

The extent to which stolen cards may be fenced and traded, in criminal circles for maximum exploitation, is illustrated in one case currently under investigation. A credit card owner from Billings, Montana was assaulted and robbed on December 2, 1967, in Kansas City, Missouri. He was relieved of five credit cards including those issued by Sears, Roebuck & Co., J. C. Penney, Co., and several oil companies. During the next 10 months his cards were used by a variety of truck drivers in States ranging from Illinois to California. Postal Inspectors and industry investigators have now uncovered an organized ring of credit card swindlers based on two Mid-Western Cities, who have systematically used, in interchangeable fashion, stolen credit cards and auto and truck license plates to obtain in excess of \$100,000 in products and services during the past year. Cards used by the gang have been traced back to purse snatching, muggings, service station burglaries occurring in localities stretching from Ohio to Honolulu. Four members of the conspiracy have thus far been arrested and two convictions have occurred to date.

Schemes to obtain cards through written application are varied as to detail. The scheme may simply involve an application in a fictitious name in the hope that the issuing company will make no credit or other check. It may, on the other hand, represent an advance planning program of extreme sophistication designed to defeat just such a check.

Last month two individuals were indicted in the Western Judicial District of Pennsylvania on charges of mail fraud arising out of a credit card scheme which has operated since 1967. The gang's activities have occasioned a loss which may reach several millions of dollars to major oil companies, banks, airlines, car rental agencies, hotels, and such credit card companies as Diners Club and American Express. The case continues under investigation, but the Subcommittee might find interest in the *modus operandi*.

An impressive firm name was created in the base city of the moment and an effort made to join the local credit bureau. A second distant city was then

chosen and a telephone answering service in the latter city was contracted to receive all mail and telephone inquiries. It was represented that a branch office of the firm was soon to be established in the second city and the answering service was given a list of personnel soon to be transferred to that city. Callers were not to be told that they were in fact speaking to an answering service but rather to the temporary branch office of the company. The operators joined the local credit bureau under similar misrepresentations.

With this stage of the scheme completed the operators were in a position to mail credit card applications in the names of the fictitious branch employees to banks, department stores, oil and other issuing companies. The address used was the answering service, which dutifully forwarded the cards and credit inquiries to the conspirators at the base city. Once secured, the cards were sold or used to obtain cash, services, or merchandise easily converted into cash. This particular scheme or variation of it, has been operated by its two principal architects, both of whom are now indicted, in Chicago, Illinois; Cleveland, Ohio; Denver, Colorado; Dallas, Texas; Youngstown, Ohio; and Orlando, Florida. The investigation, as I have said, is far from completed and more indictments are expected.

Three swindlers are presently under indictment in New Jersey for fraudulently *intercepting credit cards* issued to bona fide users. The scheme was simple and effective, at least to the point of obtaining products and services estimated to be in excess of \$50,000 before apprehension took place. The promoters would first identify bona fide card holders by such casual means as picking up charge slips discarded by customers at gasoline stations. Posing as the true card holder, they would then write the issuer stating they had recently moved and requesting a new card be issued and sent to the new address—usually a post office box rented by the operators for this purpose. Not only did they thereafter have use of a card of established credit reliability, but were in a position to intercept monthly statements and thus delay industry detection that a fraud was underway.

Credit cards obtained *through extortion and counterfeiting* generally involve organized crime in its most sinister form. On Monday this week Salvatore "Bill" Bonanno, son of Joseph "Joe Bananas" Bonanno, and an associate, Peter Notaro, were sentenced to prison terms on mail fraud and other charges arising out of the use of a card extorted from a travel agent on threat of physical harm. A third conspirator in the case, Samuel "Hank" Perrone, was previously shot to death outside his Brooklyn, New York warehouse before the case was presented to the Grand Jury.

A scheme to divert Diners Club cards from the company's distribution office in Maspeth, New York to organized criminal groups was uncovered by Diners Club Security Agents and Postal Inspectors in 1967. Hundreds of bona fide as well as counterfeit cards had reached criminal hands with a total loss of nearly one million dollars to Diners Club before industry investigators, local police, and Postal Inspectors stopped the operating by effecting over 50 arrests.

The principal scheme centered around one Alphonse Confessore, a mechanic, who serviced the embossing machines used in making the Diners Club cards. By gaining access to a mailing list of valid accounts and stealing hundreds of blank cards, he was in a position to manufacture duplicate cards which were then fenced through criminal channels for use literally throughout the world. Confessore and certain associates were convicted on October 15, 1969. A little over a month later Confessore was murdered and dumped in the street in Ozone Park, New York.

Some 63 persons have been arrested since 1967 in one conspiratorial type case in New York, New York involving spurious American Express cards duplicated in somewhat similar fashion as were those of Diners Club, cards stolen from company possession and cards stolen from the mails. Again organized criminal elements were deeply involved.

The introduction of "all purpose" credit card systems in recent years, primarily promoted by banks, provides the possessor, honest or dishonest, with a card of almost unlimited value. One such system alone claimed over 18 million card holders on June 1, 1969 with over 400,000 merchants enrolled in 49 States and 44 foreign countries.

I referred in my testimony last November to the unhappy experience in Chicago during late 1966 when five Chicago banks recruited some 60,000 merchants into a unified system and made unsolicited mailings of millions of cards.

Very soon the banks reportedly began losing as high as \$50,000 per day. By August 1967 fraud losses to the five banks approximated 12 million dollars as *credit card thieves and dishonest merchants combined* to give the banks a very expensive lesson into the "dos and don'ts" of credit card mailings.

To date, some 30 major participants in these Chicago frauds have been indicted for mail fraud with 22 already convicted. Numerous others have been prosecuted on local charges and several postal employees have been convicted of mail theft.

On the positive side, the Chicago experience with bank cards, and indeed all of the cases I have described here, have served to generate a much more effective communication between the internal marketing and security departments of credit card companies.

Additionally, they have served to promote cross-communication within the industry in the interests of augmenting its security capability, improving audit trails, developing sound alarm and detection procedures, etc. The Postal Inspection Service has stimulated such communication by active participation in national, regional and local meetings of industry and law enforcement representatives looking to the prevention of credit card frauds.

Perhaps most encouraging of all from my view is the increasingly close liaison now being established between credit card companies and Post Offices to the end that credit cards may be mailed in the most secure fashion possible. As a Service, we will continue to endeavor to apprehend those who commit postal related crimes; however, we recognize so very well that it is infinitely better to erect safeguards against the commission of crime in the first place than to apprehend and prosecute after the fact.

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