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HEARINGS
BEFORE THE
CONSUMER SUBCOMMITTEE
OF THE
COMMITTEE ON COMMERCE
UNITED STATES SENATE
NINETY-FIRST CONGRESS
FIRST SESSION
ON

S. 2959

A BILL TO ESTABLISH AN INDEPENDENT CONSUMER COUNCIL AS AN INDEPENDENT NONGOVERNMENTAL ORGANIZATION TO REPRESENT THE ECONOMIC INTERESTS OF CONSUMERS OF GOODS AND SERVICES MADE AVAILABLE TO THEM THROUGH THE TRADE AND COMMERCE OF THE UNITED STATES BEFORE FEDERAL DEPARTMENTS AND AGENCIES, TO RECEIVE COMPLAINTS AND ARBITRATE VOLUNTARY ADJUSTMENTS THEREOF, TO GATHER AND DISSEMINATE INFORMATION FOR THE BENEFIT OF CONSUMERS, TO AUTHORIZE GOVERNMENTAL ASSISTANCE AND SUPPORT, AND FOR OTHER PURPOSES

Part 1

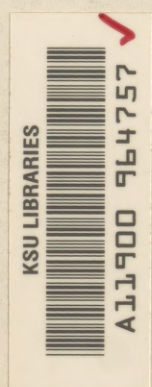
OCTOBER 16 AND NOVEMBER 3, 1969

Serial No. 91-43

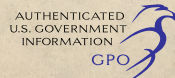
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CONTENTS

	Page
Opening statement by the chairman.....	1, 65
Text of S. 2959.....	2
Agency comments:	
Comptroller General.....	25
Interstate Commerce Commission.....	26
Civil Aeronautics Board.....	27

CHRONOLOGICAL LIST OF WITNESSES

OCTOBER 16, 1969

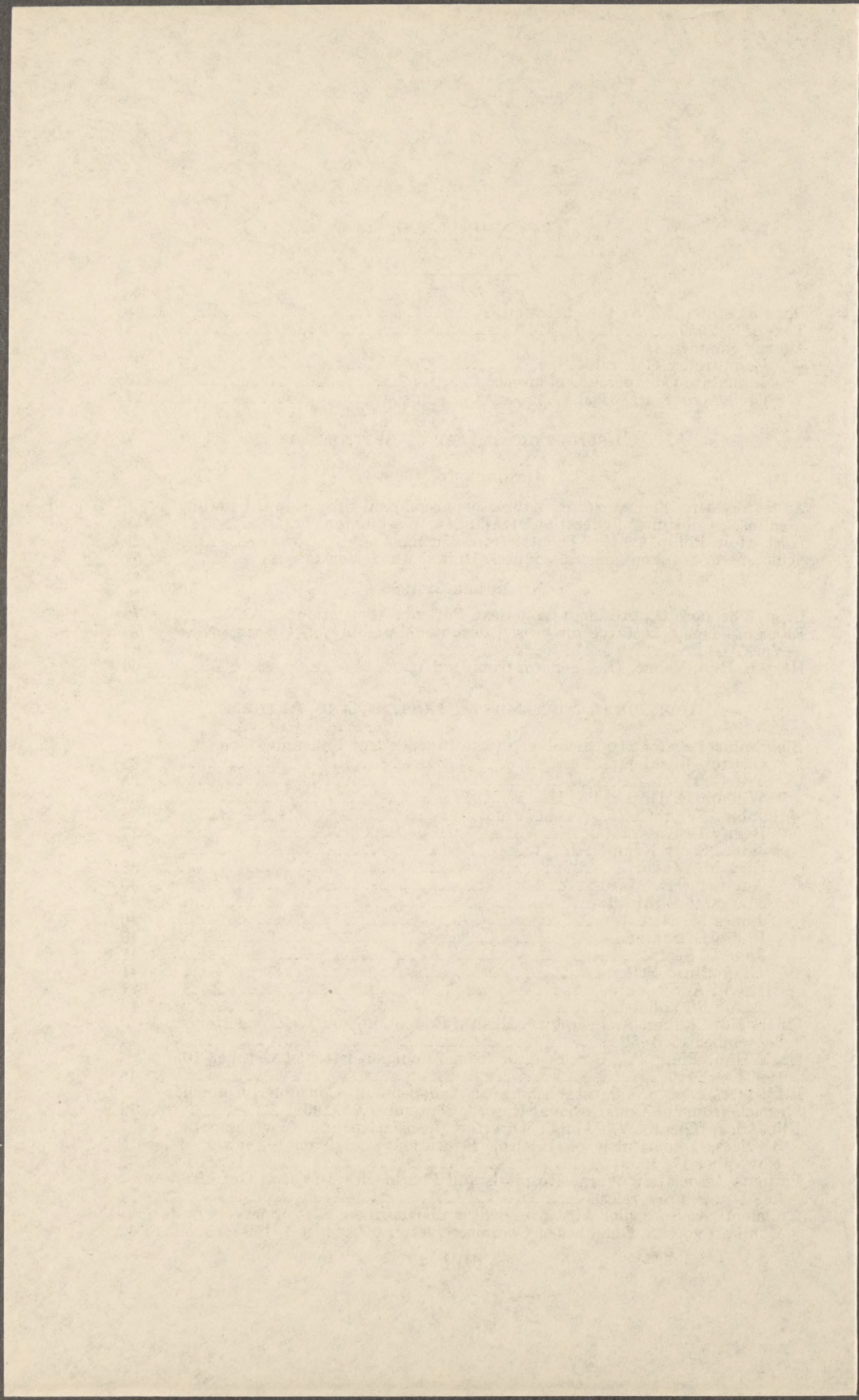
Angevine, Mrs. Erma, executive director; accompanied by Edward Berlin, counsel, Consumer Federation of America, Washington, D.C.....	48
Hart, Hon. Philip A., U.S. Senator from Michigan.....	29
Schlossberg, Stephen, general counsel, United Auto Workers.....	57

NOVEMBER 3, 1969

Cron, Theodore O., president, American Patients Association.....	72
Elberson, Don, executive director, Consumer Assembly of Greater New York.....	84
Hartke, Hon. Vance, U.S. Senator from Indiana.....	66

ADDITIONAL STATEMENTS, LETTERS, AND ARTICLES

Biographical sketches of members of the Independent Consumer Council:	
Clayton Buckhout.....	31
Tru Clark.....	35
William D. Drake, Ph. D.....	36
John J. Flynn.....	36
Benny L. Kass.....	37
James Scott Kemper, Jr.....	37
Olga M. Madar.....	38
Augustine R. Marusi.....	39
Margaret E. Moritz.....	39
James M. Nicholson.....	40
Philip G. Schrag.....	40
June L. Sears.....	41
Gary Burns Sellers.....	41
David A. Swankin.....	41
Aaron S. Yohalem.....	42
Finch, Hon. Robert A., Secretary, Health, Education, and Welfare, letter of September 15, 1969.....	44
Hart, Hon. Philip A., U.S. Senator from Michigan, letter of October 10, 1969.....	45
Introduction of a bill establishing an Independent Consumer Council, article from the Congressional Record, September 25, 1969.....	32
Kilpatrick, Glenn W., Acting Director, Legislative and Governmental Services, Department of Health, Education, and Welfare, letter of November 17, 1969.....	83
Patients Association Warns Hospitals and Pharmacies To Clean Out Useless Drugs, press release.....	74
Yohalem, A. S., senior vice president and chairman, Consumers Issues Committee, U.S. Chamber of Commerce, letter of August 1, 1969.....	42



INDEPENDENT CONSUMER COUNCIL ACT

THURSDAY, OCTOBER 16, 1969

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

The subcommittee met at 10 a.m. in room 5110, New Senate Office Building, Hon. Frank E. Moss (chairman of the subcommittee) presiding.

Present: Senator Moss.

OPENING STATEMENT BY THE CHAIRMAN

Senator Moss. The hearing will come to order. We have been a little tardy in starting, hoping that Senator Hart would be able to be here as the leading witness.

As you probably all know Senator Hart is the principal sponsor of the bill that is before us today, S. 2959, the Consumers Council Act.

Senator Hart was in Michigan last night and is landing this morning in an airplane and is expected to come directly to the hearing room. I observe he has not been able to get here as yet.

Rather than delay the other witnesses I think we will proceed but give him an opportunity to testify when he arrives. Senator Hart has to preside over a hearing himself this morning. Like every other Senator he is trying to keep about three or four balls in the air at once around here, and we will try to help him with his juggling act if we can.

It is a pleasure for me to begin the hearings on S. 2959, which is a bill proposing to create an independent Consumers Council. As a co-sponsor of the bill, I look forward to a productive hearing which will give my colleagues and me guidance as we attempt to construct an organization which will serve the pressing needs of the American consumer. I will place in the record a copy of the bill and agency comments thereon.

(The material referred to follows:)

Staff member assigned to this hearing: S. Lynn Sutcliffe.

(1)

91ST CONGRESS
1ST SESSION

S. 2959

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 1969

Mr. HART (for himself and Mr. Moss) introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To establish an Independent Consumer Council as an independent nongovernmental organization to represent the economic interests of consumers of goods and services made available to them through the trade and commerce of the United States before Federal departments and agencies, to receive complaints and arbitrate voluntary adjustments thereof, to gather and disseminate information for the benefit of consumers, to authorize governmental assistance and support, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Independent Consumer
- 4 Council Act".

1 FINDINGS OF FACT AND DECLARATION OF POLICY

2 SEC. 2. The Congress hereby finds and declares that—

3 (a) direct representation of consumer interests in
4 the formulation and implementation of policies of Gov-
5 ernment will aid in the free flow of interstate and foreign
6 commerce in consumer products;7 (b) the encouragement and support of research in
8 consumer products, the assembling and dissemination of
9 information on consumer products and trade practices are
10 appropriate matters of concern to the Federal Govern-
11 ment in the maintenance and promotion of a free market
12 system;13 (c) it is necessary and appropriate for the Federal
14 Government to support, complement, assist, and add to
15 programs for the development of research and the as-
16 sembling and dissemination of information on consumer
17 products and services as a means of promoting free
18 competition in a free market;19 (d) trade practices and goods and services which are
20 detrimental to consumers' economic and other interests
21 tend to obstruct the free flow of interstate commerce;22 (e) the establishment of a convenient and effective
23 means of consideration and voluntary settlement of
24 complaints of consumers concerning products and serv-
25 ices distributed or furnished through interstate or foreign

1 trade and commerce promotes the free flow of such
2 trade and commerce; and

3 (f) in order to implement these findings, it is the
4 purpose of this Act to establish an Independent Con-
5 sumer Council as an independent nongovernmental
6 organization for the purpose of carrying out the declared
7 policy of Congress to assist consumers, manufacturers,
8 and Government departments and agencies in the goal
9 of a free market economy in consumer goods and serv-
10 ices.

11 DEFINITIONS

12 SEC. 3. As used in this Act—

13 (1) The term “consumer” means a person who pur-
14 chases or otherwise acquires goods for use or services to
15 satisfy his needs rather than to resell them or to produce
16 other goods with them.

17 (2) The term “goods” means goods, wares, merchan-
18 dise, or commodities of any kind which are manufactured,
19 produced, or distributed for the use of consumers, as dis-
20 tinguished from economic goods intended for use in production
21 of other goods.

22 (3) The term “Council” includes the Independent Con-
23 sumer Council, any local unit thereof, and any person duly
24 designated to act for and on behalf of the Council.

25 (4) The term “Government agency of the United

1 States" means any department or agency in the executive
 2 branch of the Government of the United States, any inde-
 3 pendent board, commission, corporation, or other instru-
 4 mentality of such Government which is charged with the
 5 administration of any statute of the United States, and any
 6 officer of any such department, agency, or instrumentality,
 7 but does not include the Council.

8 (5) The term "government agency of a State" means
 9 any department, agency, board, commission, or other instru-
 10 mentality of the government of a State or any political sub-
 11 division thereof which is charged with the administration of
 12 any statute, regulation, or ordinance of such State or political
 13 subdivision, and any officer of such instrumentality.

14 (6) The term "State" means each of the several States
 15 of the United States, the District of Columbia, the Common-
 16 wealth of Puerto Rico, the Canal Zone, the Virgin Islands,
 17 Guam, and American Samoa.

18 ESTABLISHMENT OF THE INDEPENDENT CONSUMER

19 COUNCIL

20 SEC. 4. (a) The following persons: James M. Nichol-
 21 son, Clay Buckhout, Truman B. Clark, William D. Drake,
 22 John J. Flynn, Henry A. Hill, Benny L. Kass, James S.
 23 Kemper, Junior, Olga M. Madar, Augustine R. Marusi,
 24 Margaret S. Moritz, Philip G. Schrag, June L. Sears, Gary
 25 Burns Sellers, David A. Swankin, and Aaron S. Yohalem,

1 are created a body corporate by the name of "Independent
2 Consumer Council" (hereinafter referred to as the "Council"). The Council shall be known by such name, shall have
3 perpetual succession, and shall have the powers set forth in
4 this Act, subject to the limitations contained herein.

6 (b) The right to repeal, alter, or amend this Act at
7 any time is expressly reserved by the Congress.

8 ORGANIZATION OF THE COUNCIL

9 SEC. 5. (a) The first Board of Directors of the Council
10 shall be composed of the persons named in section 4 (a),
11 and the person first named therein shall serve as Acting
12 Chairman of the Board. Within ninety days after the date of
13 enactment of this Act the first Board of Directors shall meet
14 at the call of the Acting Chairman. At that meeting the first
15 Board of Directors shall adopt bylaws of the Council which
16 shall fix the number of persons and the names of the persons
17 who shall thereafter serve for the first regular term as members
18 of the Board of Directors and as the Chairman of such
19 Board for the term and under the conditions hereinafter set
20 forth in this Act. After the expiration of a Director's first
21 regular term, his successor shall be elected as specified in
22 the bylaws of the Council, which shall provide for such election
23 by local units in conformity with democratic principles
24 of election which shall be set forth with particularity in
25 such bylaws. Upon the expiration of a regular term of a

1 member of the Board, he shall be eligible for election for one
2 or more later terms, except that no person may serve as a
3 member of the Board for more than two consecutive regular
4 terms.

5 (b) (1) Except as provided in paragraphs (2) and (3)
6 of this subsection, the term of office of members of the Board
7 of Directors of the Council shall be five years.

8 (2) The first directors designated to serve for regular
9 terms at the first meeting provided for in subsection (a) of
10 this section shall continue in office in equal numbers for
11 terms of two, three, four, and five years respectively as
12 determined by lot at the first meeting of the Board of
13 Directors.

14 (3) Any Director of the Council appointed or elected
15 to fill a vacancy occurring before the expiration of the term
16 for which his predecessor was appointed or elected shall be
17 appointed or elected only for the remainder of such term. A
18 Director may serve after the expiration of his term until his
19 successor has taken office. A vacancy in the Board of Direc-
20 tors shall not impair the right of the remaining Directors to
21 exercise all the powers of the Council.

22 (c) A majority of the Board of Directors shall consti-
23 tute a quorum.

24 (d) After the first meeting of the Board of Directors as

1 hereinbefore provided, the Board of Directors shall meet
2 semiannually and at such other times as the Chairman of the
3 Board may deem necessary.

4 ADMINISTRATOR AND STAFF

5 SEC. 6. (a) The Council shall have an Administrator
6 who shall be appointed by the Board of Directors. The Ad-
7 ministrator shall be the chief executive officer of the Council
8 and shall administer the activities of the Council in accord-
9 ance with the bylaws of the Council and the directives of the
10 Board of Directors consistent with the provisions of this
11 Act.

12 (b) The Board of Directors may appoint and fix the
13 compensation of such additional officers and employees as it
14 deems necessary to carry out the objects, purposes, and func-
15 tions of the Council. The compensation of the Administrator
16 and such additional personnel shall be fixed by the Board at
17 rates in general conformity with rates prescribed by sub-
18 chapter II and subchapter III of chapter 53, title 5, United
19 States Code, for Government personnel engaged in the per-
20 formance of similar duties. Board members shall receive com-
21 pensation at the rate of \$100 per day for each day on which
22 they engage in the work of the Council, and shall be reim-
23 bursed for travel and other expenses incurred by them in the
24 performance of work of the Council.

1 NONPOLITICAL NATURE OF COUNCIL

2 SEC. 7. The Council, and its members, officers and direc-
3 tors as such, shall not contribute to or otherwise support or
4 assist any political party or candidate for elective public
5 office, nor involve in any manner the Council in any cam-
6 paign for elective public office.

7 OBJECTS AND PURPOSES OF COUNCIL

8 SEC. 8. (a) The objects and purposes of the Council
9 shall be to represent and promote the economic and other
10 interests of the people of the United States as consumers of
11 goods and services made available to them through the trade
12 and commerce of the United States.

13 (b) The functions of the Council include the following:

14 (1) to represent the viewpoint of consumers of
15 goods and services within the United States in the
16 formulation and implementation of policies of the Gov-
17 ernment of the United States and of the several States
18 which affect the economic and other interests of
19 consumers;

20 (2) to receive, evaluate, and negotiate voluntary
21 adjustments of complaints of consumers concerning con-
22 sumer products and services and trade practices detri-
23 mental to the economic and other interests of consumers,
24 and to receive, evaluate, and negotiate the voluntary

1 adjustment of complaints of consumers with Government
2 agencies of the United States and of the States;

3 (3) to receive, assemble, evaluate, act upon, and
4 disseminate information helpful to consumers of the
5 United States in performing their economic function
6 more efficiently;

7 (4) to consult experts on consumer education and
8 representatives of organizations engaged in fostering and
9 protecting the economic and other interests of consumers
10 of goods and services within the United States, for the
11 purpose of obtaining information, recommendations, and
12 suggestions necessary or desirable for the effective per-
13 formance of the functions of the Council; and

14 (5) to perform the duties hereinafter vested in the
15 Council.

16 LOCAL UNITS AND MEMBERSHIP

17 SEC. 9. (a) Bylaws of the Council shall include, but shall
18 not be limited to, provisions—

19 (1) for the organization and management of local
20 units of the Council by consumers within the several
21 States and within political subdivisions thereof;

22 (2) prescribing the powers, duties, and functions of
23 such local units in conformity with the powers, duties,
24 and functions conferred upon the Council by this Act;

1 (3) requiring that members of the governing body
 2 of each such local unit, and members of each such local
 3 unit chosen as delegates to such conferences as the
 4 Council may conduct, be elected by the membership of
 5 such local unit by procedures in conformity with demo-
 6 cratic principles of election; and

7 (4) providing for the election of members of the
 8 Board of Directors of the Council, on and after the
 9 expiration of the terms of members of the first board
 10 of directors, by such local units in conformity with demo-
 11 cratic principles of election.

12 (b) Membership in the Council and in local units thereof
 13 shall be open to all individuals in the United States who
 14 are consumers. The Council may specify from time to time
 15 in the bylaws of the Council a sum not to exceed -----
 16 ----- dollars per annum as a membership fee.

17 PERMANENT HEADQUARTERS OF COUNCIL

18 SEC. 10. (a) The permanent national headquarters of
 19 the Council shall be located in the metropolitan area of the
 20 District of Columbia, but its activities may be conducted in
 21 all States. The Board of Directors of the Council may from
 22 time to time conduct such conferences and establish such
 23 arrangements in cooperation with local units as the Board
 24 may determine to be convenient and effective in carrying
 25 out the objects and purposes of the Council.

1 (b) The Council shall maintain at all times in the
 2 District of Columbia a designated agent authorized to accept
 3 service of process for the Council, and notice to or service
 4 upon such agent, or mailed to the business address of such
 5 agent, shall be deemed notice to or service upon the Council.

6 REPORTS TO THE PRESIDENT AND CONGRESS

7 SEC. 11. The Council shall as soon as practicable after
 8 the 1st day of January of each year make and transmit to
 9 the President of the United States a report of its proceedings
 10 and activities for the calendar year next preceding, and a
 11 copy of said report shall be transmitted to the President of
 12 the Senate and to the Speaker of the House of Representa-
 13 tives.

14 PROHIBITION AGAINST DISTRIBUTION OF ASSETS AND
 15 ISSUANCE OF STOCK

16 SEC. 12. (a) No part of the income or assets of the
 17 Council or any local unit thereof shall inure to the benefit
 18 of any member, officer or director of the Council or any local
 19 unit thereof or be distributed to any such person except for
 20 the payment of duly authorized salaries and expenses, and
 21 neither the Council nor any local unit thereof may make
 22 any loan to any officer, director, employee, or member of
 23 the Council or any local unit thereof.

24 (b) Neither the Council nor any local unit thereof shall
 25 have power to issue any shares of stock or other evidence

1 of proprietary interest in capital, or to declare or to pay any
2 dividend, its objects and purposes being limited solely to
3 the rendition without profit of a service to consumers in
4 order to protect and promote the interests of consumers in
5 the trade and commerce of the United States.

6 REPRESENTATION OF CONSUMERS IN THE PUBLIC
7 INTEREST

8 SEC. 13. (a) Whenever there is pending in or before
9 any Government agency or court of the United States or
10 any State any investigation, hearing, or other proceeding
11 except a criminal proceeding which may, in the opinion
12 of the Council, affect the economic and other interests of
13 consumers within the United States, the Council through
14 its duly designated attorney may intervene and, pursuant
15 to the rules of practice and procedure of that agency or court,
16 may enter an appearance in that proceeding for the pur-
17 pose of representing the interests of such consumers.

18 (b) Upon any such intervention, the Council, through
19 its attorney, shall present to the agency or court, subject
20 to the rules of practice and procedure thereof, such evidence,
21 briefs, and arguments as it shall determine to be necessary
22 for the effective representation of the economic and other
23 interests of such consumers. The attorney of the Council
24 designated by the Council for such purpose shall be entitled
25 to enter an appearance before any Government agency of

1 the United States without other compliance with any re-
2 quirement for admission to practice before such agency for
3 the purpose of representing the Council in any proceeding.

4 STUDIES AND CONSUMER COMPLAINTS

5 SEC. 14. (a) It shall be the duty of the Council and its
6 local units to conduct studies, and to receive and evaluate
7 complaints from consumers of the United States without
8 regard to membership in the Council, concerning—

9 (1) consumer products and commercial and trade
10 practices employed in the production, distribution, and
11 furnishing of goods and services to or for the use of
12 consumers which may be detrimental to their economic
13 or other interests; and

14 (2) governmental action or inaction on the part
15 of Government agencies of the United States and of
16 the States detrimental to the economic or other interests
17 of consumers.

18 (b) Upon receipt of any complaint disclosing the distri-
19 bution of a product, the rendering of a service, or the use of
20 any commercial or trade practice detrimental to the economic
21 or other interests of consumers within the United States in
22 any consumer products industry or by any producer, distribu-
23 tor, or supplier of consumer goods or services, or govern-
24 mental action or inaction detrimental to the economic or other

1 interests of consumers, which in the opinion of the Council
2 does not violate any law of the United States or any State,
3 the Council or a local unit thereof may undertake to provide
4 for the adjustment of that complaint with the consent of the
5 parties to the controversy through voluntary negotiation or
6 arbitration. If in the opinion of the Council such practice is
7 in violation of any law of the United States or any State, the
8 Council shall refer the complaint to the Government agency
9 whose regulatory or other authority provides the most effective
10 available means to obtaining appropriate relief or to proceed
11 against such violation of law.

12 (c) If the Council finds that no equitable voluntary ad-
13 justment of the complaint can be obtained, that no public
14 law has been violated or if violated the Government agency
15 having jurisdiction to enforce the law violated fails to act or
16 is dilatory in action, that in its opinion legal remedial action
17 is available by individual or class action for relief, and the
18 matter involved in the complaint has sufficient economic
19 effect upon consumers generally, the Council, subject to
20 applicable statutes and rules of practice and procedure, may
21 (1) furnish legal and other assistance necessary to the filing
22 and prosecution of an appropriate remedial action in a State
23 or Federal court of competent jurisdiction, or (2) institute
24 and prosecute a class action to obtain appropriate civil relief
25 for the benefit of a designated class of consumers.

1 (d) The Council may provide for the training of persons
2 in local areas in the practice of the adjustment or settlement
3 of consumer complaints through voluntary negotiation or
4 arbitration. Such persons may be used by the Council and
5 its local units in any voluntary negotiation or arbitration
6 entered into for the adjustment of consumer complaints. If
7 deemed more convenient or effective, the Council may em-
8 ploy the services of any arbitration organization whose per-
9 sonnel are trained and experienced in the techniques and
10 processes of negotiation and arbitration. Such negotiators or
11 arbitrators shall be responsible to the local unit of the
12 Council in the local area in which the consumer complaint
13 involved arose.

14 (e) The Council shall publish from time to time and
15 disseminate to the public, in such manner and form as the
16 Council may determine to be most effective, information
17 concerning—

- 18 (1) the functions and duties of the Council; and
19 (2) problems encountered by consumers generally
20 within the United States, including particular commer-
21 cial and trade practices which are detrimental to the
22 economic interests of consumers.

23 PUBLICATION OF PRODUCT INFORMATION

24 SEC. 15. (a) The Council shall formulate and publish
25 criteria for the comparison of specific consumer products or

1 categories of such products which will facilitate the determi-
2 nation of values by consumers. Such standards may be de-
3 termined by the Council, derived from government depart-
4 ments and agencies, from non-Government organizations, or
5 from cooperative programs with manufacturers of such
6 products.

7 (b) The Council shall publish from time to time in useful
8 form such information for consumers with respect to such
9 specific products or categories of products affecting con-
10 sumers. It may distribute such publications to public libraries
11 and such other depositories as it deems in the interest of
12 consumers. It shall encourage and promote programs for
13 the distribution of such product information, with or without
14 compensation, through electronic systems and information
15 media of all kinds, public organizations, private businesses,
16 educational institutions, and other organizations. It may
17 operate or cooperate with other organizations in the operation
18 of programs and systems for that purpose.

19 (c) Such product information may be made public only
20 in a form disclosing factual information with respect to such
21 products, and not as recommendations of a product of any
22 particular producer, or any division or subsidiary thereof, over
23 the product of another.

24 (d) Nothing contained in this Act shall be construed
25 to authorize the Council to engage in any program of testing

1 for the purpose of recommending as among the products of
2 different producers, the relative merits or suitability of
3 products of any class or type over other products of the same
4 class or type or to publish any such recommendation.

5 SURVEYS AND INVESTIGATIONS

6 SEC. 16. (a) It shall be the duty of the Council in the
7 public interest—

8 (1) to conduct surveys and investigations with re-
9 spect to matters involved in the production and distribu-
10 tion of consumer products and services which affect the
11 economic and other interests of consumers;

12 (2) to determine the extent of existing information
13 relating to goods affecting consumers in the possession of
14 Government agencies of the United States useful to con-
15 sumers which is not published in a form useful to con-
16 sumers by such agencies in the performance of their
17 functions; and

18 (3) to collect, analyze, and disseminate to the pub-
19 lic information obtained through such investigations and
20 surveys in such manner and form as may be best adapted
21 for public information and use by consumers.

22 CONSULTING SERVICE AND COOPERATIVE ACTIVITIES

23 SEC. 17. (a) In the performance of its functions, the
24 Council is authorized to—

1 (1) appoint and defray the expenses of such advisory
2 committees as it may determine to be necessary for
3 the effective performance of its functions;

4 (2) designate representatives of the Council to
5 serve on such committees as the Council may determine
6 to be necessary or desirable to maintain effective liaison
7 with Government agencies of the United States or any
8 State, and with nongovernmental organizations which
9 are engaged in activities related to the functions of the
10 Council; and

11 (3) to the extent authorized by law, use the services,
12 personnel, facilities, and information, of Government
13 agencies of the United States or any State and of
14 private agencies and instrumentalities with the consent
15 of such agencies and instrumentalities, with or without
16 reimbursement.

17 (b) Upon request made by the Council, each Government
18 agency of the United States is authorized and directed—

19 (1) to make its services, personnel, facilities, and
20 information available to the greatest practicable extent
21 to the Council in the performance of its functions; and

22 (2) subject to provisions of law and regulations
23 relating to the classification of information in the interest
24 of national defense, to furnish to the Council such readily
25 available information, suggestions, estimates, and statis-

1 tics as the Council may determine to be necessary for the
2 performance of its functions.

3 GENERAL POWERS

4 SEC. 18. (a) For the purpose of carrying out its func-
5 tions the Council shall have power to—

6 (1) sue and be sued in its corporate name in any
7 court of law or equity of the United States or any State;

8 (2) acquire, hold, and dispose of interests in real
9 and personal property;

10 (3) establish, maintain, and operate such labora-
11 tories, reference libraries, and other facilities as it shall
12 determine to be required for the performance of its
13 functions;

14 (4) enter into and perform such contracts, leases,
15 cooperative agreements, or other transactions as it may
16 determine to be necessary on such terms as it may deter-
17 mine to be appropriate;

18 (5) make, issue, rescind, or amend bylaws, regula-
19 tions, and rules, not inconsistent with this Act, Govern-
20 ing its organizational structure and the manner of its
21 operation and the exercise of its functions;

22 (6) adopt, alter, and use an official seal which shall
23 be published in the Federal Register and be judicially
24 noticed;

25 (7) engage in, and support, by grant or contract,

1 research with respect to, and development of, objective
 2 standards for nonperishable manufactured goods affect-
 3 ing consumers;

4 (8) charge and collect membership dues, subscrip-
 5 tion fees, and other fees for services rendered; and

6 (9) receive money and other property donated, be-
 7 requested, or devised, without condition or restriction
 8 other than that it be used for the purposes of the Council;
 9 and to use, invest, reinvest, sell, or otherwise dispose of
 10 such property and the proceeds thereof for the purpose
 11 of carrying out the functions of the Council.

12 (b) The Council shall not accept during any fiscal year
 13 any gifts, grants, or donations of money from any single
 14 source other than appropriations made under this Act in
 15 amounts which exceed in the aggregate 15 per centum of the
 16 total amount of all gifts, grants, and donations of money ac-
 17 cepted by the Council during that fiscal year from all sources
 18 other than appropriations made under this Act.

19 BOOKS AND RECORDS; INSPECTION

20 SEC. 19. The Council and each of its local units shall
 21 keep correct and complete books and records of account and
 22 shall keep minutes of the proceedings of its members, Board
 23 of Directors, and committees having any of the authority
 24 of the Board of Directors; and the Council shall keep
 25 at its principal office a record of the names and addresses

1 of its members and units entitled to vote. All books and
2 records of the Council may be inspected by any member or
3 local unit entitled to vote, or the agent or attorney thereof,
4 for any proper purpose, at any reasonable time.

5 AUDIT OF FINANCIAL TRANSACTIONS

6 SEC. 20. (a) The accounts of the Council shall be
7 audited annually, in accordance with generally accepted
8 auditing standards, by independent certified public account-
9 ants or independent licensed public accountants, certified or
10 licensed by a regulatory authority of a State or other political
11 subdivision of the United States. The audit shall be con-
12 ducted at the place or places where the accounts of the
13 Council are normally kept. All books, accounts, financial
14 records, reports, files, and all other papers, things, or prop-
15 erty belonging to or in use by the Council and necessary
16 to facilitate the audit shall be made available to the person
17 or persons conducting the audit; and full facilities for verify-
18 ing transactions with the balances or securities held by deposi-
19 tories, fiscal agents, and custodians shall be afforded to such
20 person or persons.

21 (b) A report of such audit shall be submitted to the
22 Congress not later than six months following the close of the
23 fiscal year for which the audit was made. The report shall
24 set forth the scope of the audit and shall include such state-
25 ments as are necessary to present fairly the Council's assets

1 and liabilities, surplus or deficit with an analysis of the
2 changes therein during the year, supplemented in reasonable
3 detail by a statement of the income and expenses of the
4 Council during the year including the results of any publish-
5 ing or other commercial-type endeavor carried on by the
6 Council, together with the independent auditor's opinion of
7 those statements. The report shall not be printed as a public
8 document.

9 LIQUIDATION

10 SEC. 21. Upon final dissolution or liquidation of the
11 Council, and after discharge or satisfaction of all outstanding
12 obligations and liabilities, the remaining assets of the Council
13 may be distributed in accordance with the determination of
14 the Board of Directors of the Council and in compliance with
15 the bylaws of the Council and all Federal and State laws
16 applicable thereto.

17 EXCLUSIVE RIGHT TO NAME, EMBLEMS, SEALS, AND

18 BADGES

19 SEC. 22. The Council shall have the sole and exclusive
20 right to use the names "Independent Consumer Council." The
21 Council shall have the exclusive and sole right to use, or
22 to allow or refuse the use of, such emblems, seals, and badges
23 as may be adopted and used by the Council in carrying out
24 its program. Nothing in this Act shall interfere or conflict
25 with established or vested rights.

SAVING PROVISION

2 SEC. 23. Nothing contained in this Act shall be con-
3 strued to alter, modify, or impair any provision of any Act
4 providing for the regulation of the trade or commerce of
5 the United States, or to prevent or impair the administration
6 or enforcement of any such provision of law.

APPROPRIATIONS

8 SEC. 24. There are hereby authorized to be appropriated
9 to the Council such sums as may be required to carry into
10 effect the provisions of this Act.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., October 23, 1969.

B-139310

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

DEAR MR. CHAIRMAN: This is in reference to your letter of September 30, 1969, requesting our comments on S. 2959. The bill provides for the establishment of an Independent Consumer Council as an independent nongovernmental organization to represent the economic interests of consumers of goods and services made available to them through the trade and commerce of the United States before Federal departments and agencies, to receive complaints and arbitrate voluntary adjustments thereof, to gather and disseminate information for the benefit of consumers, to authorize governmental assistance and support, and for other purposes.

Fundamentally, the bill involves matters of policy for determination by the Congress and therefore we have no recommendation with respect to its enactment. However, we have the following comments concerning specific provisions of the bill.

Section 18(a)(4) authorizes the Council to enter into and perform such contracts, leases, cooperative agreements, or other transactions as it may determine to be necessary on such terms as it may determine to be appropriate for the purpose of carrying out its functions. This language is extremely broad and obviously could include grants, loans or cost-sharing agreements. We suggest that the bill be modified to clearly provide the transactions intended to be authorized under section 18(a)(4). Section 18(a)(7) authorizes the Council to engage in, and support, by grant or contract, research with respect to, and development of, objective standards for nonperishable manufactured goods affecting consumers. Since section 18(a)(7) provides for grants and section 18(a)(4) may provide for grants, loans, and cost-sharing agreements, we suggest that criteria be established as to when or under what circumstances each such type of financial assistance should be utilized.

We question whether the formula covering the acceptance of gifts, grants, and donations as defined in subsection 18(b) is workable. The subsection limits the amount of a gift, grant, or donations from any one source to 15 percent of the total of all gifts, grants, and donations accepted during the fiscal year. Technically, under this formula the first gift could not be accepted. Nor could it be known until the end of the fiscal year whether a gift were in excess of 15 percent of the total. We suggest that the formula be modified to make it workable.

We note also that the bill does not contain provisions requiring recipients of financial assistance to keep adequate cost records and authorizing the Council, and, in the case of Federal financial contributions, also the Comptroller General to have access to the recipients' records for the purpose of audit and examination. We recommend the inclusion in the bill of the following "records and audit" provisions applicable to recipients of financial assistance from the Council:

(a) Each recipient of assistance under this section shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Council shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this section. The Comptroller General of the United States or any of his duly authorized representatives shall also have access to such records for the purpose of audit and examination of any fiscal year operations where a portion of such operations are financed with Federal funds.

Section 20 provides for annual financial audit of the accounts of the Council by independent certified public accountants or independent licensed public accountants. In addition, we suggest that, since section 24 provides for the appropriation of Federal funds, the Council be made subject to audit by the General Accounting Office so long as any part of its operations are financed by Federal funds and that S. 2959 be amended to include the following:

The financial transactions of the Council for any fiscal year during which Federal funds are available to finance any portion of its operations may be

audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. Any such audit shall be conducted at the place or places where accounts of the Council are normally kept. The representative of the General Accounting Office shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by the Council pertaining to its financial transactions and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files papers and property of the Council shall remain in possession and custody of the Council.

Page 19, line 19 contains the word "Governing" which should be "governing."
Page 22, line 20 contains the word "names" which should be "name."

Sincerely yours,

ROBERT F. KELLER,
Assistant Comptroller General of the United States.

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., October 31, 1969.

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

DEAR CHAIRMAN MAGNUSON: This is in response to your request of September 30 1969, for the Commission's views on S. 2959, a bill, "To establish an Independent Consumer Council as an independent nongovernmental organization to represent the economic interests of consumers of goods and services made available to them through the trade and commerce of the United States before Federal departments and agencies, to receive complaints and arbitrate voluntary adjustments thereof, to gather and disseminate information for the benefit of consumers, to authorize governmental assistance and support, and for other purposes.

The basic question presented by this bill involves a matter of judgment that only the Congress can determine. Nevertheless, I wish to point out aspects of the bill which warrant consideration.

Section 4(a) designates by name the membership of the Council. I recognize only James M. Nicholson, Commissioner of the Federal Trade Commission, and otherwise have no knowledge of the individuals named or their background and qualifications. The bill, in this respect, departs from the customary practice of merely specifying the number of individuals, or some guidelines, to membership and the method of appointment.

Only a few provisions of the bill have a direct bearing on the Commission. For example, section 13 provides for intervention by the Council in proceedings before a Government agency such as the Commission "pursuant to the rules of practice and procedure of that agency." Various agencies of the Government, such as the Department of Agriculture and the Department of Transportation, have appeared in numerous Commission proceedings in the past, and no difficulty would be expected from similar participation by the Council.

Section 14(b) provides that the Council may refer a complaint "to the Government agency whose regulatory or other authority provides the most effective available means to obtaining appropriate relief or to proceed against such violation of law." The Commission's Bureau of Enforcement is routinely engaged in activities designed to require carriers to observe provisions of the Interstate Commerce Act. The Commission is always concerned by violation of the act, whether by those presently regulated or those unlawfully conducting operating without certification, and is most anxious to bring violators into compliance.

Section 16 specifies a duty of the Council, among other things, to determine the amount of information relating to goods affecting consumers in the possession of agencies that is useful to consumers, but which is not published in a form useful to consumers, and directs the Council to collect, analyze, and disseminate such information to the public. While the Commission does not have information relating to goods, the provision may be construed to cover such information as we do have. For that reason, the provision should be limited to that information

which is available and not prohibited from disclosure by any applicable Federal statute such as section 20(7) of the Interstate Commerce Act.

In general, while the proposed Council would be both "independent" and "nongovernment," at the same time it has certain attributes of a Government agency. For example, Section 11 requires an annual report to the President, with copies to the Congress; Section 18(a) (6) provides the Council shall have power to adopt and use an official seal which shall "be judicially noticed." Section 24 authorizes the appropriation of public funds required to carry into effect the provisions of the bill. If it is intended that the Council is to be "independent" and "nongovernmental" as stated, certain changes appear to be needed. On the other hand, if it is intended that the Council is to be responsible to the President or the Congress, it might be well to spell it out.

With these general comments on the bill, I will conclude by pointing out that the interest of consumers is considered by the Commission in its deliberations as the Interstate Commerce Act specifically contains the mandate of the broad public interest.

Sincerely,

GEORGE M. STAFFORD,
Acting Chairman.

CIVIL AERONAUTICS BOARD,
Washington, D.C., November 4, 1969.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your letter of September 30, 1969, requesting the Board's comments on S. 2959, referred to as the "Independent Consumer Council Act."

S. 2959 would create a corporate "Independent Consumer Council", whose Board of Directors would be composed of non-political members elected by local council units. The headquarters of the Council would be located in the District of Columbia, and provision would be made for the organization and management of local units of the Council by consumers within the several States. The Council would be authorized, among other things, to intervene in Federal agency and court proceedings (other than criminal proceedings) affecting the interests of consumers, and to present evidence in such proceedings; to receive and evaluate consumer complaints, including complaints with respect to governmental agency action or inaction; to negotiate for the adjustment of complaints or institute actions for the benefit of consumers; to formulate and publish criteria for the comparison of specific consumer products; and to conduct investigations with respect to matters involved in the production and distribution of consumer products and services, and to collect, analyze, and disseminate to the public information obtained through such investigations. Federal agencies would be authorized and directed to furnish information to and cooperate with the Council in the performance of its functions. Additionally, the bill provides that nothing contained therein shall be construed as altering or modifying any statute providing for the regulation of trade or commerce, or preventing or impairing the administration of such statute.

The Federal Aviation Act imposes the duty upon the Board to regulate the air transportation system in the overall public interest, including individual consumer interests. Furthermore, the Consumer Credit Protection Act, also known as the Truth in Lending Act, makes the Board responsible for enforcing that Act's provisions with respect to air carriers and foreign air carriers. Under the Board's regulations, consumers or their representatives may, in appropriate cases, invoke the Board processes, intervene in Board proceedings, or challenge the Board's actions in the courts. Consequently, the Board would be affected by enactment of the legislation in that the Council would be added to those persons authorized to participate on behalf of consumers in Board proceedings. The Board does not object to this, but it defers to the views of other agencies more directly concerned with the representation of consumer interests as to whether the Council should be established.

The Board notes with favor that the bill would not impair performance of its existing functions for the protection of consumer interests.

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

Sincerely yours,

SECOB D. BROWNE,
Chairman.

Senator Moss. In hearings on this legislation, the Subcommittee for Consumers will focus on three consumer needs and examine the way in which an Independent Consumer Council could serve these needs. In initial hearings the subcommittee will review the need for a consumer advocacy center equipped to represent the American consumer before governmental agencies and departments; and the hearings will solicit opinions on the best way to meet that need. In a second phase of hearings the subcommittee will examine existing complaint, receipt, and settlement procedures and explore the ways in which the Independent Consumer Council could assist the consumer by receiving his complaints and working to resolve them. Finally, we will want to investigate the need for product information dissemination and define the Council's proper role in such activity.

I had expected my distinguished colleague, Senator Hart, to launch the voyage toward an independent consumer council and he will be here during the hearing.

We are fortunate also to have with us today Mr. Stephen Schlossberg, general counsel for the United Auto Workers. Mr. Schlossberg represents an organization with great advocacy experience, much of which is consumer oriented.

Mr. Schlossberg's testimony, I am sure, will be very helpful to the committee. Other witnesses today will represent the Consumer Federation of America, Mrs. Erma Angevine and Mr. Ed Berlin, so we will receive their views also.

Before proceeding with the hearings, I would like to reflect for a moment on the necessity for consumer representation before Government agencies. Many people will argue that the staffs of the agencies, themselves, perform this representative function—that the consumer interest is protected by the people in Government who serve us. But last night in preparation for these hearings I was reviewing some comments from different commissioners in various agencies, and I was struck by the comments of Nicholas Johnson, Federal Communications Commissioner. In response to the assertion that "the staff of the Commission was representative of the public," that they will effectively represent these citizens who remain silent, Commissioner Johnson said this: "My 3-year experience at the Commission has demonstrated to me, to my sorrow and regret, that this is simply not the case. In case after case—instances too numerous to list—the Commission's staff has simply acquiesced (or been forced to acquiesce) to the industry's most extravagant demands." And why? Because "the adversary process which operates in our courts, for example, simply does not exist in many of the proceedings before the FCC, and as a result the Commission's staff is primarily given only one view."

Then Commissioner Johnson went on to cite language from James Landis' report to President Kennedy: "* * * it is the daily machine-gun-like impact on both the agency and its staff that makes for industry orientation on the part of many honest and capable agency members as well as agency staffs."

In my opinion it is time we declare a moratorium on this "daily machinegun-like impact." It is time for consumer advocates to disarm the advocates of special interests who have created for themselves such impenetrable bastions within the agencies and departments of Government.

Senator Moss. Senator Hart has arrived, and I would like to have the Senator lead off, since he is the principal sponsor of the bill.

I have indicated, Senator, that I knew you were flying in this morning and might have been delayed a little by transportation problems, but I was anxious to have you lead off and not being sure just when you could be here, I had asked Mrs. Angevine to begin and she had completed only about the first page of her statement and kindly offered to step aside and we will put your testimony as the beginning testimony and then put hers following immediately, so she can pick up at the correct place.

STATEMENT OF HON. PHILIP A. HART, U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator HART. Mr. Chairman, thank you, very much. It would have been an unprecedented thing in a congressional hearing to have somebody who's really an expert lead off. You almost broke precedent.

I think there is a good chance that this Congress, the 91st, will establish a permanent voice for the consumer in this Federal Government. Those chances improved greatly, Mr. Chairman, when you joined in preparing and introducing S. 2959, a bill to establish an Independent Consumer Council, and then moved swiftly to call these hearings.

It is clear to me and will become very clear to the people of this country, that the public has a good and effective friend in the chairman of the Consumer's Subcommittee.

The questions yet to be answered are what form that consumer voice will take and from where and with what authority will it speak.

We do not lack for proposals—a permanent consumer office in the executive branch, a post in the President's office, a cabinet department, an advocate in the Justice Department, an independent Government agency, and of course, S. 2959.

This hearing was called to consider S. 2959, but I think it would be shortsighted to restrict testimony to our bill alone.

Let me explain.

Supporters of consumer-protection legislation have been asking which of the various proposals they should back.

The question is too narrow, for it implies that only one can be backed or that none of the proposals are compatible.

Both implications are incorrect.

The correct answer is, quite simply, the consumer needs a total package to give him a diverse voice to promote and protect his interest.

The total package consists of: A permanent office of consumer affairs in the executive branch to give the consumer a high-level voice in development and implementation of Government policy.

An Independent Consumer Council, to give the consumer, among other services, an advocate free to criticize public officials and Government agencies.

The two proposals, which should become a single package, do not necessarily overlap.

The Independent Consumer Council proposal contains authority to dispense systematic and comparative information about consumer products and to establish an ombudsman at Federal and local levels.

The bill to establish a permanent office for consumers in the executive branch gives the consumer a voice in the subtle and intricate kind of maneuvering involved in formulating and carrying out Government policy.

The only area of overlap lies in the "advocacy" or "peoples' council" function. I would argue that a consumer advocate within the Government structure can never be as effective as one who is independent. I think this is true whether the advocate be in the office of the President, in the Justice Department, or in an independent Government agency.

An effective advocate cannot have his hands tied by the restraints of administrative policy.

Further, the history of independent Government agencies in this country indicates that often they are the ones who most require a hand on the shoulder or an eye over creating another independent Government agency to act as a consumer advocate before other Government agencies in my book makes very little sense.

Another drawback to the independent agency approach is the role the Bureau of the Budget plays in the governmental process. As you know, budgets for all independent Government agencies go through the Bureau of the Budget, thereby making these agencies something less than independent of the executive branch to the extent that personnel and payroll and desks and office space are essential, the Bureau of the Budget has a very real voice in the functioning of those so-called independent agencies.

In addition, the Bureau reviews and approves at least some answers these agencies make to congressional inquiries. I am sure all of us in the Congress can cite examples.

I ran into this problem very recently, while awaiting a report from the Federal Trade Commission on franchise pending before the anti-trust subcommittee. I discovered that the report was being held up in the Bureau of the Budget rather than at the FTC. The Budget Bureau was attempting to get the FTC to make its report conform to that of the Justice Department and the Department of Commerce.

In this case the FTC insisted on its original position, but I am compelled to ask:

On how many other occasions, have the reports of independent Government agencies been compromised by restraints imposed by the Bureau of the Budget?

The problem is doubly compounded if the advocacy function is taken away from an independent Government agency and placed in a department of the executive branch. That solution gives whatever administration is in Office inordinate muscle over agencies which are supposed to be arms of Congress—which are supposed to be independent of the executive branch.

Even more basic, it is difficult for a consumer advocate within the executive branch to function separately and apart from general administration policy. There is a very current example of that. Mrs. Knauer, the President's Consumer representative, recently suggested the consumer needs better ingredient information than now offered.

Mr. Angevine, I would say amen to that. But what wasn't mentioned is that the truth-in-packaging law gives HEW authority to

require just the kind of ingredient information Mrs. Knauer thinks the consumer needs right now.

But what is the administration doing to see to it that HEW has the funds to do the job? That question is answered in a letter I ask be printed in the record from the Secretary of HEW, Mr. Finch. He stated that \$733,000 would be needed to do an optimum job in implementing the truth-in-packaging bill. What the letter did not say was that their request was zero. HEW asked for \$60,000, but the Bureau eliminated even that.

I would also like to put in the record a letter addressed to Senator Magnuson, chairman of the Appropriations Subcommittee for HEW, which gives the chapter and verse on that.

Senator Moss. Those letters will appear in the record at the conclusion of your testimony.

Mr. HART. I suggest it is too much to expect Mrs. Knauer as a member of the administration, to condemn either HEW or the Bureau of the Budget for ignoring the need for funds to implement and enforce consumer legislation as asked by Congress, too much perhaps to expect her to condemn the administration for not asking for money to support a function that she is out making speeches about the necessity of.

These are a few of the reasons I believe that it is imperative that the consumer advocate be "independent." Without independence—true independence—his effectiveness would be doubtful.

Therefore, I urge this subcommittee consider favorably a two-part consumer act:

One title establishing an Independent Consumer Council; the other, a permanent office of consumer affairs in the executive branch.

This package would set priorities among the various consumer bills now pending in Congress and give the consumer the voice within Government and the advocate free of Government restraints needed to protect and promote his interests, his very legitimate interests.

Supporters of consumer orientation can unite behind this package in a concerted effort to give the consumer the representation we all feel he should have in Government.

Mr. Chairman, in the interest of saving the time of your subcommittee, I will submit for the record a copy of my remarks when we introduced S. 2959. That statement outlines in some detail the organization and purposes of the Independent Consumer Council.

I would also like to place in the record the remarks you made at that time and biographies of the persons named as members of the board of directors in the bill. And finally, I would like to substitute an updated biography for Mr. Clay Buckhout, senior vice president of the American Association of Advertising Agencies.

(Committee inserts follow:)

BIOGRAPHY OF CLAYTON BUCKHOUT, SENIOR VICE PRESIDENT, AMERICAN
ASSOCIATION OF ADVERTISING AGENCIES

MAY 1, 1969.

Clay Buckhout was appointed Senior Vice President in charge of the Washington Office in April 1968, and the office was opened in early 1969. The purpose of the office is to achieve with government a greater understanding and appreciation of the element of advertising within the selling function of business and

the resulting contribution that the advertising industry makes to economic growth. One function of the office is to make advertising advice and specialized knowledge available to the government as a contribution to the solution of the problems of the moment.

Buckhout, on leave of absence from Time, Inc. where he was a Corporate Vice President and senior advertising and marketing executive, has been closely associated with the fields of marketing and of communications throughout his working career. He joined Time, Inc. in 1939 as assistant to the general manager of Life and was appointed advertising manager of the magazine in 1947. He became advertising director of Life in 1948 and was elected a vice president of Time, Inc. in 1957. Between 1948 and 1961, under Buckhout's direction, Life's advertising revenue increased from \$81,700,000 to \$138,000,000. In July 1961 he left Life, having been promoted to a corporate post in the company, working directly with Chairman of the Board Andrew Heiskell on projects connected with Time, Inc. magazines and other company interests in the United States and abroad.

Born in New York City on June 13, 1910, Buckhout attended Loyola School in New York and was graduated from Fordham University in 1932. He took graduate work in transportation at Columbia University, after a brief period in which he did research in Europe for major airlines. He was one of the original members of General Air Express in 1933 and 1934, leaving that company prior to its merger with the Railway Express Company.

In 1934 Buckhout joined the New York Stock Exchange firm of McDonnell & Company, serving as a statistician and later as a branch manager. He left the company in 1938 to become Vice President and Advertising Manager of Balsa Wood Company of Brooklyn and Ecuador. He left the firm to join Time, Inc. the following year.

During World War II, on special assignment from Life, he was responsible for publishing the Army-Navy Journal of Recognition, together with various other recognition manuals. In 1957 he was honored by Fordham University with its award for achievement in the field of communication arts. He is a trustee of Finch College, New York City.

Both professionally and personally, Buckhout is interested in the problems of marketing and distribution. He is a director of the Advertising Council, Chairman of its Planning and Steering Committee, and on the Executive Committee of the Council.

He is past International Vice President and Chairman of the International Committee of Sales & Marketing Executives-International, a member of the SME-I board and its executive committee. Until June 1, he is also a member of the National Marketing Advisory Committee of the U.S. Department of Commerce. He was a founding trustee of the Marketing Science Institute and was on the MSI Executive Committee.

Buckhout is also active in a number of other trade and professional associations. Prior to moving to Washington, he was an Executive Committee member and vice Chairman of the Board of the Brand Names Foundation and member of the board of the Advertising Research Foundation. He is also a member of the United States-Japan Trade Council. In the publishing field, he served as Chairman of the Magazine Advertising Bureau for four terms and was on its Executive Committee. He also served on the boards of the Magazine Publishers Association and the Publishers Information Bureau.

He is married to the former Martha Morgan of New York City. They have two daughters, Mrs. Jerome K. Chase and Mrs. George T. Poillon. The Buckhouts maintain a residence at The Watergate in Washington and a home at Mt. Pleasant Farm, St. Michaels, Maryland.

[From the Congressional Record, Sept. 25, 1969]

S. 2959—INTRODUCTION OF A BILL ESTABLISHING AN INDEPENDENT
CONSUMER COUNCIL

Mr. HART. Mr. President, for 10 years—starting with Senator Kefauver's first foresighted proposal—the Senate regularly has been asked to give consumers an organization to help them with their special problems.

His original idea was a Department of Consumers, which would absorb the consumer functions of several existing agencies. This idea has remained alive in Congress—and is yet today, with Representative Benjamin Rosenthal its able sponsor.

Senator Kefauver, 4 years later, amended the proposal to be an Office of Consumers—leaving consumer functions in existing agencies but continuing plans for representation of consumers before Federal agencies and dissemination of product information.

In 1965, with Senator Kefauver taken from us, I undertook the lead in the Senate efforts to establish the Office of Consumers. While I will not accuse myself of half-hearted enthusiasm, I must honestly admit I felt unsure with the plan. This was not because I thought it would not be helpful but that it was not the best assistance we might conjure up for consumers.

By the last Congress, I had a modified proposal—for a National Consumer Service Foundation—which advanced the product information dissemination by using a nationwide computerized network.

Still, I kept tugging, attempting to produce the better plan for consumers that I remained convinced was possible.

Today I am introducing what I think is that better plan.

This proposal—for an Independent Consumer Council—makes two breaks from previous thinking—breaks which will give control to those it is to serve and which should increase effectiveness.

First, it will be far more independent of Government.

Only a cockeyed optimist can expect any agency established as an arm of the executive or Congress not to reflect constantly the prides and prejudices of its master.

If top appointments also are made by either the executive or Congress, the control of philosophy is even more absolute.

It simply is not realistic—and ignores human nature—to establish a consumers' watchdog on Government under those conditions and expect it to perform fully up to anticipation.

The Independent Consumer Council will neither be established as an arm of either branch of Government nor will it—after formation—be governed by appointees of either branch.

The initial Board members are named in the enabling legislation I submit today. But hereafter, positions on that Board will be filled by ballot of its local units.

Granted some funding will come from Federal appropriations—but it is planned that this should not be the major source of financing.

Thus the Board—and the Council—is in the complete control of its constituency, with no middlemen.

The second break this proposal makes from other envisioned consumer agencies is to establish local units.

This facet—in the months I have been discussing it—is what has caught the most generally admiring attention.

Alienation of citizens from their government is a source of great distress to many on both sides of the aisle in this body; it certainly is to me.

It is not youth alone who feel that their government—Federal and local—has taken on many aspects of a foreign power.

I fear a majority of our citizens see government as inaccessible and seemingly irresponsible to their needs and desires. Even those who assign no evil intent are frustrated almost beyond endurance by the maze of bureaucracy which forecloses getting a simple answer to a simple question. They simply cannot discover the right number to call, the right door on which to knock or the right address to write.

Basically the functions of the Council are three.

First, it would serve as an ombudsman.

The local unit would be the one-stop complaint center for gripes against government—Federal and local. No longer need a consumer—as a novice fumbling his way—endure being switched from office to office, from agency to agency simply to get something to which he is entitled.

The Council's experienced staff could make it almost simple to get a street light replaced, a sidewalk repaired, a tax bill adjusted or a social security check processed.

Anyone who questions the need for this help should direct his attention to the mushrooming growth of "Action Line" type columns in metropolitan—and even weekly—newspapers.

These have performed a great service—not only in solving individual problems but in educating consumers as to how to cope with similar ones.

The only complaint I have heard on the columns comes from publishers. They fear that the columns very popularity might be producing adverse public relations. So vast is the number of complaints that only a few can be dealt with in print. A majority of the people are left unaided—and probably more upset than when they started.

Obviously the answer is not to expect newspapers to devote the majority of their space to such columns but to try to perform the service so as to serve more consumers. This the Consumer Council could do.

The local units also would be a funnel for complaints consumers have about products or service they purchase.

In all fairness, I think the growth of the consumer movement in many ways has damaged unjustly many businessmen. Awakened consumers, determined to get full value from each dollar, are not too inclined to give business the benefit of the doubt.

Yet, let us face it: The customer is not always right—old saws to the contrary. In fact, if European experience under the ombudsman system is typical, the complainant is right only a small fraction of the time.

Figures there are that only 50 percent of complaints—after initial examination—are worthy of investigation and only about 10 percent worth remedial action.

If the facts are remotely similar here, a vast majority of the time businessmen are being bad mouthed when they do not deserve it.

On the other hand, a good percentage of the time consumers do deserve adjustments—which most find are hard to come by when they seek them alone.

And, as long as 90 or some related percentage of complainants think they are right—even if they are not—and receive no satisfaction their disenchantment with business grows and festers.

The second significant role for the council would be to serve as “peoples counsel.” As such, it would be the voice of the consumer before government—and also the prod to see that agencies implement and enforce consumer legislation once it has been enacted.

To date, we have expected governmental agencies to represent consumers—and have criticized them if we thought they failed. I submit that perhaps the fault in the past has been not with the agencies but with the system which we expect them to operate.

First and foremost agencies are judges. As such they are presented with documented and forceful arguments from the special interests. But, when they turn to the other side of the courtroom for the representative of the public, the seat is vacant.

Absent a brief for consumers, agencies are forced to rely more on intuition than fact to comprehend the consumers’ side. Unfortunately for consumers, statistics, charts, and several talented spokesmen tend to overwhelm the persuasiveness of intuition.

No judge should have to operate in such a system. The Council would be expected to fill the existing void.

As peoples counsel, the Council also would appear in lawsuits to argue for the consumer. Further, under proper circumstances, it would be authorized to initiate suits on behalf of consumers to obtain economic relief.

The third and final role of the Council would be to disseminate product information. Supplied by manufacturers, government testing and testing done by the Council, this information would be disseminated with the most modern of technology available.

As I envision it, we would have a network nationwide of computerized outlets from which—at the deposit of a coin or two—the consumer would receive a printout of information on the product in which he is interested.

Then, at his leisure in his home, he could analyze the facts—far more complete than those now available to him for product decisions—and decide which model would best suit his needs.

The Council would not recommend one brand over another. But it would supply sufficient information for the consumer to balance the individual models against his needs. More and more, consumers do not accept the notion that the advertising claims alone must be their only basis for a shopping decision.

Mr. President, as I said at the beginning, for 10 years Congress has continuously propped up consumers’ hopes that “any day now” they would get a full-time, fully staffed organization to help them.

The performance here has been like the popular stage play, "Promises, Promises."

I sense consumers have stopped asking "When?" and today are demanding "Now." We must deliver. Hopefully this proposal for an Independent Consumer Council will catch the imagination and support of sufficient Members of Congress to do just that.

There has been some question raised as to whether this bill is inconsistent with other bills which would establish a statutory Office for Consumers in the executive branch. The answer is "absolutely not." In my book they would complement each other. My feeling is that the primary consumer need is an advocate—free from both Government and industry ties.

But such an advocate would lead a much easier life if there existed a statutory consumer post within the Government.

Given permanent status, a Esther Petersen, Betty Furness, or Virginia Knauer, would have additional tools with which to work with in the Government in the consumer interest. This is good. This is necessary. And much benefit will come of such a post.

But basically, such a post still is subject to the conflicting demands within the executive branch requiring compromise and, ultimately, direction by the President.

"Independence" is the key to a truly successful consumer effort. But the Independent Consumer Council would find its work simplified and its effectiveness increased if there existed a permanent consumer post within the executive structure.

Mr. President, I ask unanimous consent that the bill be received and referred to the Committee on Commerce.

The PRESIDING OFFICER. The bill will be received and, without objection, will be referred to the Committee on Commerce.

The bill (S. 2959) to establish an Independent Consumer Council as an independent nongovernmental organization to represent the economic interests of consumers of goods and services made available to them through the trade and commerce of the United States before Federal departments and agencies, to receive complaints and arbitrate voluntary adjustments thereof, to gather and disseminate information for the benefit of consumers, to authorize governmental assistance and support, and for other purposes, introduced by Mr. HART, for himself and Mr. Moss, was received, read twice by its title, and referred to the Committee on Commerce, by unanimous consent.

Mr. HART. Mr. President, I also ask unanimous consent that the biographies furnished to us by the members of the board of directors be printed in the RECORD, together with a letter from Aaron S. Yohalem.

(There being no objection, the biographies and letter were ordered to be printed in the RECORD, as follows:)

BIOGRAPHICAL SUMMARY OF TRU CLARK

Truman B. Clark, 48, President of the Tappan Division of The Tappan Company (Mansfield, Ohio), was born in Boston, Massachusetts, October 21, 1920. He moved to Mansfield with his family in 1935. After graduating from Mansfield Senior High School in 1938, he attended the Engineering College of the Ohio State University at Columbus, Ohio. He left there in his senior year to join Bell Aircraft Corporation as a project engineer at Buffalo, New York and Marietta, Georgia from 1942 through 1945.

He began his career with Tappan in 1946 as a District Sales Manager. In 1949 he placed fourth in the Tappan National Sales Contest. After a successful tour of duty in sales, Clark returned to Mansfield to become Manager of the War Products Division. In 1952 he became an assistant to the Vice President of Manufacturing and in 1954 was appointed Director of Engineering. In 1958 he was advanced to the position of Works Manager. Two years later he assumed the leadership of the Mansfield operation as its Manager.

Elected to the Board of Directors of The Tappan Company in February 1962, he moved to Los Angeles in March of 1962 to assume the duties of Executive Vice President and General Manager of O'Keeke & Merritt Company, a wholly owned Tappan subsidiary. Under his guidance sales grew substantially and in 1964 he was promoted to President and General Manager.

In August of 1966 he returned to Mansfield to become President of the Tappan Division and assumed leadership of the Mansfield, Ohio and Murray, Kentucky operations. In addition to this responsibility, Tru is a member of the Executive Committee of The Tappan Company which is the parent organization of all the

corporate divisions. With his background in engineering, sales, manufacturing and administration, plus his penchant for getting the job done, he led the Tappan Division to a turnaround during 1967.

As a family man, he and his wife, Joan, are raising six attractive daughters and two young sons in a manner to be emulated. They reserve many weekends for their children and their friends. Favored recreational activities are sailing, family outings (including travel trailer trips) and hiking.

Tru's business record places him among those who are men of accomplishment. In short, Truman B. Clark is a man among men and an able leader of our Tappan teams.

WILLIAM D. DRAKE, PH. D. IN INDUSTRIAL ENGINEERING, UNIVERSITY OF MICHIGAN, 1964

Professor William Drake is presently Chairman of the University-wide Ph.D. Program in Urban and Regional Planning at the University of Michigan. He is a past member of the Independent Study Board appointed by the U.S. Secretary of Commerce for assessing the impact of governmental policies on regional economic development. In 1965-66 Dr. Drake served as Deputy Executive Secretary for Technology on the President's Commission on Technology, Automation, and Economic Progress.

He is also a member of the Board of Directors of the Consumers Union.

RÉSUMÉ: JOHN J. FLYNN

Address: (Home) 954 Military Drive, Salt Lake City, Utah 84108. Telephone:

XXXXXXXXXXXX

(Office) College of Law, University of Utah, Salt Lake City, Utah 84112.

Born: April 10, 1936, Chelmsford, Massachusetts.

Marital Status: Married (Shiela A. Flynn), 3 Children (John 6, Siobhan 5, Timothy 3).

Education: Primary: Chelmsford Massachusetts Public Schools 1942-1950; Chelmsford High School 1950-1954. College: Boston College, Chestnut Hill, Massachusetts, B.S. 1958 (with honors). Law School: Georgetown Law Center, Washington, D.C., L.L.B. 1961. Graduate School: University of Michigan Law School, S.J.D. 1967.

Honors: 3 year scholarship, Georgetown Law Center; W. W. Cooke Fellow, University of Michigan 1961-1963; Order of Coif; Board of Editors, Georgetown Law Journal; Graduate of the Year 1961.

Publications (Representative List):

Federalism and State Antitrust Enforcement. (Michigan Legal Publications 1964).

49 Geo. L. J. 322 (Juvenile Delinquency Proceedings).

49 Geo. L. J. 144 (Evidence).

48 Geo. L. J. 594 (Interlocutory Appeals).

1966 Utah L. Rev. 351 (State Government).

1966 Utah L. Rev. 311 (Federalism).

51 A.B.A. J. 229 (Federalism).

52 Cornell L. Q. 829 (Antitrust).

53 Iowa L. Rev. 983 (Antitrust) reprinted.

1 Antitrust L. & Econ. Reprints Vol. 1.

1967 Utah L. Rev. 152 (Antitrust).

22 Vanderbilt L. Rev. 103 (Antitrust).

45 Texas L. Rev. 1301 (Antitrust).

Bar Membership: Member, Massachusetts Bar, Boston Bar, American Bar Association, A.B.A. Antitrust Section, Applicant, Utah Bar Association.

Legal Experience: Professor of Law, University of Utah 1963-Present. Visiting Professor of Law, University of Michigan 1966. U.S. Labor Department Intern 1960. Consultant in several major antitrust and unfair competition cases. Witness before Senate Antitrust Subcommittee and Senate Constitutional Amendments Subcommittee.

Fields of Specialization: Antitrust; Unfair Competition; Regulated Industries; Securities Regulation; Corporations; Patents; Trademarks and Copyright.

Community Service: Chairman; Board of directors, Community Mental Health Center. Board of Directors, Big Brothers of Utah. Board of Directors, American Civil Liberties Union, Utah Affiliate.

DR. HENRY A. HILL

Dr. Henry A. Hill, president of Riverside Research Laboratory, Inc., of Haverhill, Massachusetts. His doctorate in organic chemistry was granted by the Massachusetts Institute of Technology and he has held several posts with major chemical companies. He is a member of the National Commission on Product Safety and the Advisory Council to the Senate Consumer Sub-Committee. Dr. and Mrs. Hill and their son Anthony reside in Watertown, Massachusetts.

BIOGRAPHICAL STATEMENT OF BENNY L. KASS

Mr. Kass is a practicing attorney in Washington, D.C., specializing in the area of consumer affairs. He is a consumer consultant to a number of organizations, including the National Legal Aid and Defender Association and the National Consumer Law Center. Prior to entering into legal practice, he was Assistant Counsel to the Senate Subcommittee on Administrative Practice and Procedure—a position he held from November, 1965–March, 1969.

Mr. Kass received a Bachelor of Science degree in Journalism from the Medill School of Journalism, Northwestern University, in 1957. In 1960, he was awarded an L.L.B. degree from the University of Michigan Law School. In 1967, he received his Master of Laws degree from the George Washington University Law School. Mr. Kass received an American Political Science Association Fellowship and spent 1967 studying the office and institution of Ombudsman. He is a member of Mayor Washington's Committee on Economic Development and Chairman of its Consumer Affairs Subcommittee.

From August of 1962 to November, 1965, he was Counsel to the Government Information Subcommittee (the Moss Subcommittee) of the House of Representatives. Prior to that, he served a year with the Air Force during the Berlin crises.

Mr. Kass was admitted to the Bar of the District of Columbia in September, 1960. He is a member of the American Bar Association and the Federal Bar Association. He is married to the former Salme Lundstrom and has one daughter, Gale, born April 25, 1966, and one son, Brian, born in July of 1968. They reside in Chevy Chase, D.C.

Mr. Kass was recently appointed a Commissioner from the District of Columbia to the National Conference of Commissioners on Uniform State Laws. He was appointed to this position by Mayor Walter Washington on August of 1969.

BIOGRAPHY: JAMES SCOTT KEMPER, JR.

Title: President.

Company: Lumbermens Mutual Casualty Company.

Principal business: Insurance.

Business address: Mutual Insurance Building, Chicago, Illinois 60640.

Business phone: (312) 561-8000.

Other business affiliations:

Current: President, Kemperco, Inc., American Manufacturers Mutual Insurance Company; American Motorists Insurance Company; Kemperco Reinsurance Company; Chairman of the Board, Iowa Kemper Mutual Insurance Company; Economy Fire & Casualty Company; Richland-Knox Mutual Insurance Company; Director, Empire State Mutual Life Insurance Company; Stewart-Warner Corporation; The Calumet Publishing Company; Chairman of the Board of Trustees, The Insurance Institute of America, Inc. and The American Institute for Property and Liability Underwriters; Trustee, Underwriters Laboratories, Inc.

Former: Antitrust division, Department of Justice; private practice, New York, Chicago and Los Angeles.

Civic activities:

Current: Director, National Industrial Conference Board; National Council on Alcoholism, Inc.; President and Trustee, The James S. Kemper Foundation; Director, Boys' Clubs of America; Chicago Boys' Clubs; The American Red Cross, Mid-America Chapter; Member, Advisory Council, School of Business, Northwestern University; Trustee, The College of Insurance (New York); Wesley Memorial Hospital (Chicago); U.S. Council of International Chamber of Com-

merce; American Enterprise Institute; Member, Senior Advisory Board, National Strategy Committee of the American Security Council; Director, Freedom Studies Center of the Institute for American Strategy.

Former: Lieutenant Commander, USNR World War II.

Home address: 530 Ash Street, Winnetka, Illinois 60093.

Home phone: (312) HI 6-7658.

Family names: Wife, Joan Hoff Kemper. Daughters, Linda; Judith; Sons, James S. III; Stephens; Robert.

Education: Lawrenceville School, Lawrenceville, New Jersey, Yale University, A.B.; Harvard University, LL.B.

Fraternal affiliations: Alpha Sigma Phi.

Church affiliation: Episcopal.

Birthdate: April 8, 1914.

Birthplace: Chicago, Illinois.

Club affiliations: Chicago Club; Bohemian Club, San Francisco; Metropolitan Club, Washington, D.C.; Glen View Club; Saddle and Cycle Club; Economic Club of Chicago.

Kemper board affiliations: Director, Lumbermens Mutual Casualty Company; Kemperco, Inc.; American Manufacturers Mutual Insurance Company; American Motorists Insurance Company; Federal Mutual Insurance Company; Fidelity Life Association; Federal Kemper Life Assurance Company; Economy Fire & Casualty Company; Sequoia Insurance Company; Iowa Kemper Mutual Insurance Company; Richland-Knox Mutual Insurance Company; Kemperco Reinsurance Company; Extel Corporation.

BIOGRAPHICAL SKETCH OF OLGA M. MADAR

Olga M. Madar, a member of UAW Local 769, was elected to the UAW International Executive Board as a board member-at-large at the 1966 convention, the first woman to achieve that distinction. Prior to that time, she had been director of the union's Recreation Dept. for 19 years.

She is currently director of the union's Dept. of Recreation and Leisure-Time Activities, the Dept. of Conservation and Resource Development, the servicing section of the Technical, Office and Professional Workers Dept. (TOP) and the newly-established Dept. of Consumer Affairs.

A native of Sykesville, Pa., she was graduated from Detroit's Northeastern High School in 1933 and received her Bachelor of Science degree from Eastern Michigan University in 1938. She now lives on Detroit's east side.

Her working career included jobs on the assembly line at the Chrysler Kercheval Plant and the Bower Roller Bearing Plant, both in Detroit, and at the Ford Willow Run Bomber Plant at Ypsilanti, Mich., during World War II.

She also worked as a recreational therapist at the Ypsilanti, Mich. State Hospital, taught school at Flat Rock, Mich. and then worked as recreation director for the now defunct UAW Local 50.

Prior to her election to the board, she had been on the staff of the International Union for 21 years, assigned to the Recreation Dept. After being appointed director of that department by UAW President Walter P. Reuther, her first assignment was to work with the union's Fair Practices Dept. to eliminate racial discrimination in organized bowling—a goal which was finally achieved in 1950. She also established the first UAW retirees centers.

As TOP Dept. servicing director, she has participated in major contract negotiations for white collar workers.

Currently one of her major projects is the campaign against water and air pollution and for conservation of our natural resources.

She is an officer or member of dozens of civic, recreational, professional, cultural and social work groups, including the American Youth Hostels, the UAW Retired Workers Activities Centers Board, the National Association of Social Work, the National Gerontological Society, the American Parks and Recreation Assn., the Michigan United Fund, the Michigan Welfare League and United Community Services of Metropolitan Detroit.

For eight years, she was a Detroit Parks and Recreation Commissioner and a board member of the Huron-Clinton Metropolitan Authority. As city recreation commissioner, she helped to establish the city's multi-purpose centers for senior citizens and the Inter-Departmental Council on Aging.

Miss Madar was also instrumental in the establishment of a pilot program in Detroit called DART (Deprived Areas Recreation Team), geared to improving

park and recreation facilities for inner city residents and to insuring maximum citizen participation in recreation planning and decision making.

Miss Madar has received numerous civic awards. Recent honors include a citation from the American Camping Association "for her support in the field of recreation and conservation and leadership in creating interracial-interfaith policy;" a citation from the Michigan United Conservation Clubs as "forest and park conservationist of the year;" the Fellowship Award of the Recreation Association of Michigan, and selection as one of Detroit's "Top Ten Working Women."

AUGUSTINE R. MARUSI

Augustine R. Marusi, chairman and president of Borden, Inc., joined the Borden Chemical Division in 1939 at its research laboratory in Bainbridge, N.Y.

A native of New York City, Mr. Marusi was graduated as a chemical engineer from Rensselaer Polytechnic Institute, Troy, N.Y., in 1936. He returned to Rensselaer in 1963, when he was awarded the honorary degree of Doctor of Engineering.

In 1946, following service with the U.S. Navy as commander of a minesweeper in the Pacific, Mr. Marusi returned to the Borden Chemical Division as sales manager at Kernersville, N.C. A year later, he was transferred to Brazil as a director and general manager of Alba, S.A., Borden's principal South American chemical operation.

Mr. Marusi returned to New York in 1952 and was named a vice president of the Chemical Division in charge of development. He became president of the Chemical Division in 1954, was elected a vice president of the parent company in 1955, a member of its board of directors in 1959, and an executive vice president in 1964.

Since February 1, 1967, Mr. Marusi has served as president of Borden, Inc., and since November 1, 1967, as its chief executive officer. On August 1, 1968, he assumed the additional position of chairman.

Mr. Marusi is a director of Chemical Bank, the American Sugar Company, the Bank of America, New York, The Advertising Council, Inc., the Grocery Manufacturers of America, Inc., the National Association of Manufacturers, and the National Industrial Conference Board, and a trustee of the Broadway Savings Bank, New York, N.Y., the Committee for Economic Development, the Rensselaer Polytechnic Institute. He is also a director of the Economic Club of New York.

BIOGRAPHY—MARGARET E. MORITZ

Born in St. Paul, Minnesota. Raised in So. Pasadena, California. Presently living in White Plains, New York.

Education: Graduate of U.C.L.A. 1936. Graduate work at U.C.L.A., University of Washington and College of Chinese Studies, Peking, China

Family: Late husband was Executive, International Committee, YMCAs of the U.S. and Canada. Died 1968. Four children.

Professional Experience: Associate Executive, YWCA of U.C.L.A., 1937-1940. National Staff, YWCA, Topeka, Kansas, 1940-41. Library Aide, Wutridge School, Pasadena, 1962-64. Specialist, World Fellowship Education, International Division, YWCA of the U.S.A., 1968-

Volunteer Experience: YWCA Boards, New York and California. President YWCA of Pasadena, California 1964. National Board YWCA, 1952-68.

Served on following committees:

College University; Personnel; Leadership Development; National Nominating; Public Affairs; Convention Planning.

Girls Scouts: Brownie and Girl Scout Leader, Council Member.

League of Women Voters of White Plains: Vice-President, Board Member.

Volunteer Service Bureau of Westchester County: Chairman—Two conferences for training of Board Members.

President, Episcopal Church Women, St. Bartholomew's Church, White Plains, New York.

Foreign Travel: Asia, Europe, Middle East and Africa. (Lived in China one year 1948.)

BIOGRAPHY OF JAMES M. NICHOLSON, COMMISSIONER

Nominated by President Johnson as an FTC Commissioner on December 5, 1967. Confirmed by Senate Commerce Committee on December 12, 1967 and by U.S. Senate on December 13, 1967. Sworn in office on January 5, 1968 for a term that expires on September 25, 1969.

Political affiliation : Democrat.

Born : July 11, 1928 at Oklahoma City, Oklahoma.

Education : Attended public schools in Oklahoma City, Oklahoma; Washington, D.C.; Silver Spring, Maryland; Fairhaven, Massachusetts; Hempstead and Sea Cliff, New York. A.B. degree, Knox College, Galesburg, Illinois, 1952. JD degree, Law School of the University of Michigan, 1954.

Career : Upon graduation from law school, Commissioner Nicholson began to practice law in Indianapolis, Indiana. From 1958 until his confirmation, he was a partner in the law firm of Cadick, Burns, Duck & Neighbours in Indianapolis, specializing in corporate law. Democratic nominee for the U.S. Congress from the Sixth District of Indiana in 1966. Admitted to Bars of Indiana; Federal District Courts; Court of Appeals, Sixth Circuit; and Supreme Court of the United States.

War service: Enlisted and served on active duty with the U.S. Navy from 1946 to 1948. Commissioned in the U.S. Army Reserve from 1950 to 1955.

Affiliations:

Chairman, Advisory Board of the Indiana School for the Deaf. Indianapolis Bar Association (Past Vice President, Member of Board of Managers), Indiana State Bar Association (Past member of House of Delegates, former Editor, *Res Gestae*; Co-author of Institute books on various legal topics).

American Bar Association (member of Sections of Antitrust, Administrative Law, and Taxation). Lawyers Association of Indianapolis (Past Director and Treasurer). American Judicature Society, Lawyers Club of Indianapolis.

Character and Fitness Committee for the Third Supreme Court Judicial District of Indiana by appointment of Indiana Supreme Court Barristers Society, University of Michigan Law School. University Club of Indianapolis.

Phi Gamma Delta Fraternity, Phi Alpha Delta Law Fraternity. St. Paul's Episcopal Church, Indianapolis. St. Luke's Episcopal Church, Bethesda, Maryland. Brotherhood of St. Andrew.

Marital status: Married to former Joan Barnes of Muncie, Indiana. They have four sons: James E., 17; William C., 15; Thomas B., 12; and John A., 9.

 PHILIP G. SCHRAG

Assistant Counsel of NAACP Legal Defense and Educational Fund, Inc., Suite 2030, 10 Columbus Circle, New York, N.Y. (212 JU 6-8397), and of its National Office for the Rights of the Indigent (NORI). Mr. Schrag directs the Fund's consumer protection test litigation, including the recent case of *Sniadach v. Family Finance Corp* (June 9, 1969), in which the U.S. Supreme Court abolished prejudgment wage garnishment. The Fund's consumer protection litigation docket also includes a case testing the availability of consumers' class actions in New York (*Hall v. Coburn Corp.*), a consumer's action for punitive damages against a ghetto department store, and a test of consumer standing to enforce Section 43a of the Lanham Trademark Act of 1946. The Fund also plans a program of test litigation under the Truth-in-Lending Act and Regulations.

Chairman, Consumers' Advisory Council, New York City Dept. of Consumer Affairs. The Council, appointed by Mayor Lindsay to set goals and perform studies for the new municipal consumer protection agency in New York, has drafted a model municipal consumer protection act which has been introduced in the City Council at the Mayor's request. The Council has also published an analysis of the Uniform Consumer Credit Code, and is conducting an extensive investigation of retail installment sales and credit practices and abuses in New York.

Author of "Bleak House 1968: A Report on Consumer Test Litigation", 44 N.Y.U. Law Review 115.

Lecturer in Law, Columbia University Law School, teaching a course in consumer protection law in the fall of 1969.

Education: A.B. Harvard College, 1964 (magna cum laude); L.L.B. Yale Law School 1967.

JUNE L. SEARS

Mrs. June L. Sears, Extension Home Economist, is employed with the Michigan State University Cooperative Extension Service.

In May, 1968, Mrs. Sears, Wayne and Oakland Counties Extension Home Economist, received a USDA citation for her outstanding service from Orville Freeman, Secretary of Agriculture. Mrs. Sears was cited for "unusual insight and understanding of people living under adverse conditions and for providing enlightened leadership to develop their desires to learn and gain self-respect by doing things for themselves."

Her work with low-income families in the two-county area has gained her state-wide and national recognition. Her office is in Wayne. She was recently named to the National Advisory Council to the U.S. Food and Drug Administration. In 1966 she was cited by the Negro Business and Professional Women's Association of Detroit for outstanding service. She is also in "Who's Who in American Women."

Mrs. Sears earned her B.S. and M.S. degrees from Wayne State University. She was named family living agent for the Michigan State University Cooperative Extension Service in 1963 after two years teaching home economics at Southwestern High School, Detroit. She is married and the mother of four children. Two of the children are at Eastern Michigan University and the other two (twins) are at home.

RÉSUMÉ: GARY BURNS SELLERS

Address: 14 Snow's Court N.W., Washington, D.C. 337-7246.

Marital Status: Married 9-11-68, Dorothy Davidson.

Education: Cranbrook School, Bloomfield Hills, Michigan. Graduated 1953. Wesleyan University, 1955, 1956, Middletown, Connecticut.

University of Michigan, 1954, 1957, A.B. 1957.

University of Michigan, Psychology: 1957-1960.

University of Michigan Law School, LLB, 1963.

Graduate Work: University of Michigan, Psychology and Graduate Work, 1957-1960. University of Michigan Law School, LLB, 1960-1936.

Professional Experience: Covington & Burling, Washington, D.C., 1963-1965. Preparation of briefs (before various regulatory agencies), legislative histories, and associated tasks, coverage of Congressional hearings and Supreme Court arguments on firm related business.

U.S. Bureau of the Budget, Washington, D.C., 1965 to 1969. Served as legislative attorney and program and budget examiner for Federal oil, energy and scientific research programs. Also drafted model State legislation and argued case before the Council of State Governments. Drafted and coordinated legislation for the White House for presentation to Congress.

Center for Study of Responsive Law, June, 1969—present. Serving as Counsel.

DAVID A. SWANKIN

David A. Swankin, former executive director of the President's Committee on Consumer Interests, assumed duties as the Washington representative of Consumers Union on August 15. Swankin, a lawyer and economist, was director of the Labor Department's Bureau of Standards.

In his new position with the nonprofit consumer testing and advisory organization Mr. Swankin works with and is available to governmental bodies and agencies that deal with the consumer and writes for *Consumer Reports* and other CU publications.

Mr. Swankin, 35, has held several Federal consumer posts. Before serving as executive director of the President's Committee in 1965 and 1966, he was executive secretary of the President's Consumer Advisory Committee and executive assistant to the President for Consumer Affairs, Mrs. Esther Peterson. In 1966, he co-authored a report that examined consumer programs of European governments and their relevance to Federal programs in the United States.

In announcing Swankin's appointment as Washington representative, the executive director of Consumer Union, Walker Sandbach, said:

"Although CU has not had a Washington representative for some years, we feel that the tempo of consumer activities at the Federal level is such that it is now desirable to reactivate that position. With a man of Mr. Swankin's experi-

ences and abilities serving as the organization's eyes and ears in the Capitol, *Consumer Reports* will now be able to react more quickly to the need for certain in-depth stories about governmental issues affecting the consumer."

Mr. Swankin was appointed in 1968 as the director of the Bureau of Labor Standards, the same agency where he began his government career as a management intern in 1957. He had served as a staff assistant to the Assistant Secretary of Labor in 1962 and 1963, and as chief of the Section of Collective Bargaining in the Bureau of Labor Statistics in 1931.

Educated in public schools in Boston, he graduated from Brandeis University in 1954 with a B.A. degree. He received a master's degree in economics from the University of Wisconsin in 1957 and a law degree from George Washington University in 1962.

Mr. Swankin resides at 1604 Chimney House Road, Reston, Va.

AARON S. YOHALEM

Aaron S. Yohalem is one of the food industry's leading spokesmen on consumer affairs.

He attended New York City schools and after graduating from New York University Law School in 1934, Mr. Yohalem became an associate of the law firm which counseled The Best Foods, Inc. He officially joined that company in 1943 as its corporate secretary and thereafter served successively in the posts of vice president and assistant to the president, and executive vice president in charge of all operations. He was elected to the firm's Board of Directors in 1953.

In 1958 when Best Foods merged with Corn Products, he was elected vice president in charge of the Best Foods Division. In 1960 he was elected senior vice president of the company, and in 1963 joined the Board of Directors. He is currently a senior vice president and executive assistant to the president of CPC International Inc.

Mr. Yohalem has served as consultant to various government departments, testified before a number of Congressional committees, and has taken an active role in public affairs for the Grocery Manufacturers of America and the National Association of Manufacturers. He is now serving as chairman of the United States Chamber of Commerce Consumer Issues Committee. He is also a Director of the U.S. Chamber of Commerce and a Member of the Board of Trustees of the American Freedom from Hunger Foundation.

CPE INTERNATIONAL, INC.,
Englewood Cliffs, N.J., August 1, 1969.

Senator PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: You have paid me a signal honor by inviting me to serve on the first board of directors of the Independent Consumer Council, should your bill to create this organization be enacted into law.

As you know, I have no illusion that consumer problems do not exist. But I do not believe that the best interests of consumers and the economic system as a whole would be well served by the establishment of an agency, in or out of government, which would have the responsibilities your bill would assign the council. Accordingly, as I have explained, I must reserve the right to oppose this bill.

Nevertheless, should Congress enact this legislation, responsible businessmen should be willing to participate in the leadership and direction of the proposed Independent Consumer Council in order to give it whatever benefit they can of their experience and judgment in the performance of the organization's responsibilities.

Thus, even though I may oppose this legislation publicly, in good conscience I cannot refuse to let my name be listed among the initial group of proposed directors. If Congress finds that the public interest requires the creation of the council, I will do all in my power to contribute to a balanced resolution of the complex problems facing consumers, government and business.

I am grateful for the confidence you have shown in me by your invitation.

Sincerely yours,

A. S. YOHALEM,
Senior Vice President and Chairman,
Consumer Issues Committee, U.S. Chamber of Commerce.

Mr. Moss. Mr. President, it is, indeed, a pleasure for me to join the distinguished Senator from Michigan (Mr. Hart) in introducing a bill that would establish an Independent Consumer Council to represent and serve American consumers.

As chairman of the Subcommittee for Consumers of the Committee on Commerce, I have been actively trying to improve the lot of American consumer. In legislative oversight hearings and in hearings examining new legislative proposals I have encountered certain recurrent consumer problems.

The most disturbing problem to me is this: Within many existing governmental agencies the consumer interest is without effective representation. Only on rare occasions have advocates of consumer interests effectively participated in the formulation of important governmental policies or far-reaching agency decisions. In contrast, the advocates of special interest are very adept at penetrating the inner corridors of Federal and State administrative and legislative offices.

Periodically there have been inroads which reverse the general trend. Witness the recent action by the Federal Communications Commission when it appointed two of its staff members to represent consumer viewpoints during closed discussions about rate increases. But this action simply reinforces my fear that in most governmental decisions the consumer interest is often overlooked entirely or given secondary status. Such a situation should not persist.

I am aware of the fine efforts of certain consumer-oriented groups within existing departments. Dianne McKaig's efforts within the Department of Health, Education, and Welfare, for example, have been monumental; but she would be the first to admit that her strenuous efforts have given only slight consumer orientation to health, education, and welfare policy.

The President's Advisor on Consumer Interests has also been trying to provide consumer orientation in the different departments of the Government. Each time Mrs. Knauer bites into a good American hot dog she probably gets indigestion by recalling the battle she waged with the Secretary of Agriculture over the permissible level of fat. Her victory may have been Pyrrhic—she may have won the battle but in all likelihood will lose the war.

Another problem facing the consumer is the way business firms listen to his complaints. The American consumer, in seeking to have his complaints heard, finds that the correspondence computers of American business are rather hard of hearing. The attrition of consumers in their battle with computers is great. Today it is questionable whether that pert young thing behind the customer complaint window can hear any better than the computer, for many times she is as curt as she is pert.

There are State and Federal governmental mechanisms for handling consumer complaints and there are such nongovernmental organizations as the Better Business Bureaus. I will want to explore their efficacy in hearings. I am also anxious to learn about the American Arbitration Association's proposals for mediation service in our large urban areas.

A third consumer problem is the lack of dissemination of product information which enables the consumer to make a rational choice in the marketplace. The governmental dissemination of objective product information—not endorsements of products but standardized information about them—is nonexistent. Only a recent law suit caused the Veterans' Administration to make public important test information on hearing aids. Nongovernmental dissemination of product information is not always designed to lead to rational consumer choice. By far the largest product information input is advertising. Seals of approval are not much more reliable. And too few people are readers of such publications as Consumer Reports which disseminates at least some objective production information.

Given the above mentioned recurrent consumer problems, I wholeheartedly support the objectives of the proposal for an Independent Consumer Council. In my view such an organization could serve very well the needs of the consumer.

By providing for the creation of local consumer units, the bill adopts a "grass-roots," nonpolitical, and independent orientation that is absolutely essential if consumer problems are going to be minimized. The national Council with a board of directors elected by local groups gives the consumer a vehicle for national coordination and national attack on common problems. In many ways the organization parallels that of many large corporations whose regional offices radiate from the central corporate spoke. The businessman has found that the tension and dialog between its regional offices and the home office foster creative solutions to the problems which he confronts. A similarly organized consumer organization could meet with similar success.

Because the Council by law could not engage in political activities, it would continually serve as a vehicle for the citizen as consumer. There could be no ulterior motives, real or imagined, assigned to the board of directors who would be selected in a democratic fashion from various regions of the country.

The Council's independence from existing governmental structures would make it an ideal vehicle for conducting objective and sound studies of governmental and business policies which daily affect the lives of each of us as consumers. Such an input would be invaluable. Think of a study of competition policy which approaches the subject from the standpoint of the consumer free of certain business bias or preconceptions about governmental approaches for implementing such policies.

Because of the potential the Independent Consumer Council offers the American consumer, I have joined my distinguished colleague from Michigan, Mr. Hart, in cosponsoring this legislation. I do not view this bill as a substitute for more intelligent governmental organization and approach to consumer problems, but I do see it as an important vehicle for fulfilling certain needs of the American consumer.

My colleagues and I on the Subcommittee for Consumers of the Senate Commerce Committee will use the bill introduced today as a "working paper" for more fully defining the means of meeting the consumer's need to have representation when governmental policies are formulated, to have effective avenues for hearing and justly disposing of consumer complaints, and to have objective product information disseminated.

After fully exploring these areas in committee, I feel my distinguished colleagues and I will be in a position to make some final judgments on the legislation and report favorably to this body a bill which will improve the lot of the American consumer. And if an Independent Consumer Council is created, I would hope that our hearing record would serve as a useful resource for the board of directors in launching their program.

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,

Washington, D.C., September 15, 1969.

Hon. PHILIP A. HART,

Chairman, Subcommittee on Antitrust and Monopoly Legislation, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of July 17 regarding implementation of the Fair Packaging and Labeling Act.

To answer your specific question, the Department's Consumer Protection and Environmental Health Service estimate that an optimal program to undertake the next phase in administration and enforcement of the act would require an additional 118 positions and \$733,000 for fiscal year 1970 above the level of the President's budget request.

While it is true that implementation of the Fair Packaging and Labeling Act has not proceeded as rapidly as we might have liked, within the confines of a budget, which, of necessity, must be constrained priorities have to be established and hard choices have to be made. In the field of consumer protection, the Department has attempted to place maximum emphasis on those areas, such as the manufacturing and marketing of prescription drugs, which pose the greatest potential hazard to the health of the American public. Through the annual appropriations process, the Congress has tended to reaffirm this selection of priorities.

This is not to say that activities related to the Fair Packaging and Labeling Act have been at a standstill. On the contrary, all of the Section 4 mandatory regulations for foods have been developed and published, and regulations for drugs, cosmetics, and devices will become effective on December 31, 1969. The work accomplished thus far permits us to concentrate on the development of Section 5 discretionary regulations and methods of enforcement of the Act.

In closing, let me assure you that we in the Department share your concern for the protection of the consumer. Certainly, we intend to press forward as vigorously as possible in those programs directed towards this objective. Thus, at my request, the Assistant Secretary for Health and Scientific Affairs will look into the possibility of redirecting resources within the confines of the President's 1970 Budget to accelerate implementation of the Fair Packaging and Labeling Act.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

ROBERT A. FINCH,
Secretary.

OCTOBER 10, 1969.

Senator WARREN MAGNUSON,
*Chairman, Labor, Health, Education, and Welfare Subcommittee of Senate
 Appropriations Committee, Washington, D.C.*

DEAR MR. CHAIRMAN: The Truth in Packaging bill was signed into law by the President on November 3, 1966. The bill received almost unanimous support of the Congress. The effective date of the act was July 1, 1967. Regulations under the mandatory provisions promulgated by HEW took effect on July 1, 1968, and regulations by the FTC took effect September 10, 1969.

No regulations have yet been prepared under the discretionary provisions of the bill although the bill allows the agencies involved to deal with such problems as slack fill, oversized packages, cents off, and ingredient information.

At the time the bill was passed I pointed out that its effectiveness would be directly proportional to the effort and vigor which the designated agencies involved were prepared to devote to the law.

Recently many Senators and, indeed, the President's own consumer spokesman have raised questions about the adequacy of the legislation to solve the problems consumers face in this area. My reply has been to encourage the Federal Trade Commission and the Food and Drug Administration to carry out the responsibilities and obligations the law imposes upon them.

On July 17, I wrote a letter to the Secretary of HEW asking what funds would be necessary to do an adequate job of implementation and enforcement.

On September 15 I received a reply, which is enclosed, stating in part that "an optimal program to undertake the next phase in administration and enforcement of the Act would require an additional 118 positions and \$733,000 in fiscal year 1970 above the level of the President's Budget request."

The President's Budget request was exactly "nothing." Not one penny has been requested by the administration for implementation and enforcement of the Act. And the Appropriation bill passed by the House reflects this. It too carries absolutely no monies for this purpose.

It is my understanding the HEW initially requested \$65,000 but even that amount was cut out by the Bureau of the Budget. This means that HEW personnel assigned to enforce and implement this bill will be cut from the two assigned in fiscal 1969 to "no one" in fiscal 1970.

The consumer is entitled to something better than this action, particularly in view of the four years it took to pass this legislation. It should not be scuttled now by lack of funds.

Therefore I appeal to the subcommittee handling HEW appropriation to insist that sufficient funds be appropriated to effectively give to the consumer the advantages the Truth in Packaging promises but cannot deliver without sufficient funds to do the job.

In addition, I would greatly appreciate an opportunity to testify before your subcommittee on this and several other items in the appropriations bill for HEW.

Sincerely,

PHILIP A. HART.

Senator Moss. Thank you, Senator. Those documents you referred to will be printed in this record so they will show the additional information that is furnished by those introductory statements at the time the bill is introduced.

I was pleased to have you emphasize that there is a need, perhaps, for a package approach here. We are not talking just about a consumers counsel. There are areas where we can have additional consumer representation within the family of the Federal administration, but that the need, as you stress it, is for a truly independent body, not subject to direction and coordination or coercion of any sort from the administration.

And we don't have to condemn any administration, that is just natural when an administration puts its family together, it expects to be able to direct them in the ways that it thinks they should go. And it has fallen on the Budget Bureau to be sort of that coordinating

agency and they do exert a great deal of influence and direction over the other agencies of Government who must clear through there.

As the bill was drafted, Senator Hart, it is perhaps not clear whether or not the council would appear before congressional hearings and offer pertinent testimony on consumer matters.

Was it your intention that the Council could appear before congressional hearings and serve as a consumer advocate in the legislative branch as well?

Senator HART. Yes. And for double strength in making the legislative history, I will ask you, Mr. Chairman, if it was not your understanding and intention, when we drafted this bill?

Senator Moss. Well, I think it should be so. Certainly that would be one place that could be very effective to have a fully independent voice. As the Senator recalls, we have had a series of acts on pure foods that have required continuous inspection, to wit: Meat and then poultry, and finally the last one was fish. Suddenly on fish we had a sort of a turnaround in that the administration witnesses came up then saying they didn't think it was necessary to have continuous inspections on fish products, fish, and fish products, when they were prepared for market, canned, or however else they are prepared to go to market.

And in delving into it to see why there should be any differences between fish and the meat products that had already been governed, for which the administration had testified affirmatively, for continuous inspection, it turned out that there has been quite a little hassle downtown among the agencies, and having wrestled all around with some on one side and some on the other, it finally had all been brought together into one point of view, so that some, whom we could find from outside sources, who had been strong advocates of continuous inspection, had to come before the subcommittee and testify that they didn't think continuous inspection was required and its requirements were so onerous that they then testified for an intermittent or spot check inspection.

It seems to me that that illustrates what can happen when the administration coordinates the policy. Does the Senator have a feeling of that sort out of that experience?

Senator HART. I have a very deep feeling about that fish bill. And I have a very vivid memory of the turnaround, a precise 180-degree shift. And nobody is going to tell me that that is what we voted on last November. We can't explain the shift between the Johnson administration for continuous inspection and the Nixon administration for something that in language would almost suggest it was continuous, but in fact it is not.

And an independent consumer council could make very clear in a legislative hearing that this shift has occurred and push for an explanation more fully than what has been offered to date.

Senator Moss. I appreciate that. As the Senator is aware, bills come on that affect various economic interests, producers and others, and they have representatives come before the Congress and testify on those bills and this is entirely appropriate, there is nothing sinister about it, they should be here to do that, testify in the open.

But what the Consumers Council could do is offer the counterweight to talk about the interests of the consumer completely relieved of any

of the economic factors that compel the others or persuade the others that they should be in and giving their point of view.

It is only by having an independent, fully independent consumer council, can we have an adequate counterweight. So we do in effect have a sort of advocacy situation before the committee itself.

Is that what we are trying to say?

Senator HART. That is our purpose. I think we sometimes wonder why the logic of this does not persuade everyone to join. It isn't that it lacks logic, it is its truth, and because that is the situation that would result, not everybody does want it that way.

It is not that the people disagree that this would be the effect and value of an independent voice; it is that the interests that are less broad than the public understand full well it would be independent and do precisely this and that is why they don't join us in this.

Senator Moss. I would understand that you would think it would be advisable, and within the purview of the independent consumers council to undertake surveys and investigations on the outside, for example on your automobile safety factors, other things of this sort, and bring them to the attention of the congressional committees, as well as to the administrative agencies of the Federal Government.

Senator HART. I do, Mr. Chairman. I think that while we can be a little less sure as to precisely how this function would unfold, the chances are that an independent consumers council would be more apt to come up with a sound—I use this overworked expression now—priority list on consumer affairs than those of us in Congress.

You courageously take on consumer issues, others of us do, but given the other responsibilities, we are apt to latch on to one by an act of circumstance, which is not really as important or damaging as certain others.

This independent consumer voice, I think we could anticipate, would be likely to conduct such investigations, establish a set of priorities, and bring to Congress' attention in a more effective priority sense consumer issues than will happen if you and I have to react to an occasional instance.

Senator Moss. For instance this problem of auto repair that you are trying to get straightened out now, the consumer survey would have been of great assistance in that, in getting that into focus, to where we might be able to deal with it appropriately rather than having been picked up and trying to work it simply through the staff of the committee of the Congress.

Senator HART. That is right. Actually, we got into the automobile repair cost study as a result of trying to figure out what could be done to reduce automobile insurance rates. That isn't a very—I think it is appropriate that we be busy with both things, but an independent consumer council probably could have had all this, of course, years ago.

Senator Moss. We do appreciate having you come, Senator. Of course you are vice chairman of this subcommittee, and were it not that I know you have to chair another committee, I would not permit you to depart at this time, but tell you to take a seat on this hearing.

But I know you have a conflicting obligation. As I said when I first opened this, you are like many other Senators, trying to keep about three committees in session all of the time and one has to again assign priorities and go where the demand seems to be greatest.

If you are chairing the committee, I suppose that is the greatest demand.

Senator HART. Mr. Chairman, you have been very kind. I will establish for the record my defenses in detail for leaving: It is to go to the Antitrust Committee where today we will hear from three automobile manufacturers on the subject of automobile repairs, costs, what design can do. One of them is a foreign car.

And I hope the record at the end of those hearings will establish that whatever Detroit is failing to do, Germany has even failed to do at a greater rate.

Senator Moss. Thank you, Senator Hart.

Senator Moss. Our next witness is Mrs. Erma Angevine, executive director of the Consumer Federation of America. And Mr. Ed Berlin would probably like to accompany her to the table.

**STATEMENT OF MRS. ERMA ANGEVINE, EXECUTIVE DIRECTOR,
AND EDWARD BERLIN, COUNSEL, CONSUMER FEDERATION OF
AMERICA, WASHINGTON, D.C.**

Senator Moss. We are pleased to have you both with us this morning and look forward to having your testimony.

Mrs. ANGEVINE. Thank you, Mr. Chairman. My name is Erma Angevine. I am executive director of the Consumer Federation of America. The Consumer Federation of America is an organization of some 140 consumer-oriented groups all around the country. Among these groups we have millions of members in all 50 States. We are very pleased to have this opportunity to express the views of this group on S. 2959 before this subcommittee.

While we would welcome the opportunity to speak in support of this before any forum, we most welcome the opportunity to share our thoughts with this distinguished body. For you gentlemen, perhaps better than any committee of the Congress, can appreciate the frustration the consumers feel when, after a long, hard effort to secure the passage of consumer protection legislation, little, often nothing, is done to effect its implementation. I am thinking of the flammable fabrics legislation, of the Radiation Protection legislation, and of the Fair Packaging and Labeling legislation.

May I say we are delighted you are holding oversight hearings on that latter piece of legislation and are discovering what consumer complaints are about that law.

Each of you who make up this committee I know are able to add to our list of frustrations in laws that have been passed. With all of these experiences in mind, the need to rethink our approach seems clear. If years upon years of investigative hearings which catalog the problem faced by consumers in depressing detail and culminate in corrective legislation are not enough to assure responsive implementation—if congressional oversight hearings are not enough to prod agencies to discharge their mandates—it is time that we pause to consider what must be done.

S. 2959, in our view, gives us the answer. It recognizes what even a neophyte student of government accepts: Our Government is a responsive one; it reacts to demands, to pressures, to advocacy.

We are convinced that until a mechanism is developed that guarantees to the American consumer the ability to make his views known to his government, that assures that his position will be forcefully and fully advocated, little will really be accomplished in the area of consumer protection.

For one thing it is unrealistic to expect that every subject matter of consumer concern can or should be the subject of legislative attention. The interests of consumers are not narrow and finite; they extend to every decision made by our government agencies on the Federal, State and local levels. They extend from decisions in specific cases—such as the establishment of tariff charges—to the broadest questions of resource allocation. And though the Congress may diligently instruct every agency to follow a standard which is appropriately sensitive to consumer considerations, unless and until the consumer's presence is guaranteed at every decisionmaking stage, little will be accomplished if the past is prologue.

It is for this reason that the delegates to the recent annual meeting of the Consumer Federation of America pledged our organization to work for the establishment of an effective consumer advocate. It is for this reason that the delegates, specifically, adopted a resolution committing our federation to work for the expeditious enactment of Senator Hart's Independent Consumer Council proposal. And it is in this spirit that I come before you this morning.

We know from experience the advantages of advocacy. One example comes particularly to mind. The recent hearings conducted by the Department of Agriculture inquiring into the fat content that should be permitted in sausage products. Because fat replaces protein it was obvious that the Department's determination would have a profound effect on consumers, particularly those least likely to be heard from, the young and the economically disadvantaged.

The Department, possibly in response to a public outcry objecting to the fat level which it proposed, decided to hold a public hearing. At that hearing witnesses testified and were cross-examined, not only by attorneys for industry, but by our counsel as well.

And the record that was compiled left the Secretary no alternative but to reject not only the fat level recommended by industry, but also that proposed by the Department itself, in favor of one more cognizant of consumer needs.

Decisions of Government agencies should to the greatest extent practicable be made following a public hearing. But the mere guarantee that there will be such a hearing offers no assurance that the consumer position will be advocated. Often the subject matter under consideration will be complex requiring the presence of technical experts. Industry will have its experts present; consumers will not.

I would like to point out one thing that happened just yesterday which clarifies this I think. We get calls all of the time from consumers asking what should we do about cyclamates, or what should be done about MSG. We don't have any chemists working for the Consumer Federation of America. If these consumers cannot depend on the information they get from the Food and Drug Administration, which they say they cannot, then they are caught in the squeeze between an industry statement that these are not going to hurt people, and their own feeling that children who are getting cyclamates and

MSG are in fact hurt. The consumer is bewildered about where to get honest facts based on real solid information that is substantively arrived at and distributed.

I think that the consumer is always at a disadvantage when we are talking about experts. The consumer is in general a generalist. As we have said to several committees of the Congress that are now exploring different aspects of this same problem, if participatory democracy is to work, a greater equality of participation will have to be guaranteed. That is why we all need an independent consumers advocate, consumers and business interests alike. We all stand to lose unless something dramatic is done, and done expeditiously, to rectify the sense of frustration that is permeating this country, frustration at a vested interest Government that has too often turned a deaf ear to the plea of the forgotten consumer.

In the context of these general observations, and with the understanding that our support of S. 2959 is unequivocal, we should now like to focus on several specifics in the proposal. We are pleased that S. 2959 recognizes the need to provide to the consumer representation in proceedings which may have no apparent economic impact. We have reference to the whole range of environmental considerations, from the promulgation of water quality standards to the designation of wilderness areas to the development of parklands.

As our environment becomes more and more threatened, the preservation and development of that which remains becomes more and more acute. These are resource decisions which affect each and every one of us in the most basic sense. Yet who speaks for us and in opposition to a powerful industry lobby that seeks authority to ravage a unique primitive area for its mineral deposits or to pollute one of our few remaining pure streams with industrial wastes.

Consumers care about their environment. They are entitled to a voice in determining what happens to it. We are pleased that the Consumer Council will give it that voice.

We are also pleased to note the extent of the Council's authority under section 14(c). Too often consumers with valid claims must forgo them because of their inability to obtain legal representation to prosecute for the nominal amount that may be involved. Yet to the individual consumer the amount may be not at all nominal. Class actions may be one solution. But beyond that it is appropriate to furnish, as section 14(c) would authorize the Council to do, legal assistance in the prosecutions of such claims.

If we may, we should also like to comment upon a few areas where we think modifications of S. 2959 would be appropriate. Specifically, we question whether the operative language of section 13 is not too narrow. That section gives the Council the authority to intervene in pending action. Nowhere, however, is it at all clear that the Council can itself initiate action. Since so much of our frustration stems from what we view to be an unconcerned agency or worse, one that seems to view its mandate to be the unquestioned acceptance of business judgments, this absence of authority is significant.

I think I caught from the colloquy between the two distinguished Senators that they do have in mind having the Council initiate action. This is something we are hopeful will be clarified.

We all recognize the value of being able to file a complaint of excessive utility rates with a regulatory commission. And what of a petition requesting more stringent air quality standards, or better common carrier service, or seeking a cease-and-desist order against deceptive industry trade practices. If every Government agency was truly the vigilant watchdog and protector of the consumer interest there might be no need to arm the Council with authority to initiate, but then again there might be no need for the Council. Until that day comes we need both a council and one with authority to move into whatever area its presence is needed.

We also recommend that the Council be not only authorized, but instructed, to recommend legislative changes whenever it deems such changes to be appropriate. The Council will gain an insight into the workings and responsiveness of Government agencies not enjoyed by anyone before. It no doubt will discover many structural and operational deficiencies. It should be encouraged to bring these to the attention of the Congress.

Finally, in view of the status of the Council it is not at all clear that the Freedom of Information Act will apply. That act attempts to give meaning to one of the very basic rights which must be guaranteed every consumer: The right to know what is going on within his government. There is no conceivable justification for permitting the Council to operate in anything but a completely open manner.

It must be recognized that one possible danger with the creation of a formal consumer spokesman is that other consumer voices will be ignored because they will be unable to amass the expertise that will be available to the Council. And I speak as a representative of one of those groups that will not have that expertise.

Consumers are not always able to speak with one voice. Positions will differ on many issues and every effort should be made to insure the effective presentation of all positions. While it is unrealistic, and indeed possibly undesirable, to expect the Council to advocate competing consumer viewpoints, the information which it accumulates, the analysis which it prepares, and the data which it compiles should be freely available to all so that a full presentation of competing considerations will at least be facilitated.

In closing let me anticipate and answer one question that may arise. Let me also state we completely agree with what Senator Hart said, except that we would add a third consumer representation. Over the past several months we have supported legislative proposals which would establish a utility consumers counsel, to make statutory the consumer affairs office in the White House, and now an independent consumer council.

To some people this may seem overzealous or inconsistent. But we believe it is neither one of those. We think all three of these are very necessary to protect the consumer. I would like particularly—since the Senator has covered the two—to express why we include the utility consumers counsel. That is an area which is very specialized. It takes advocates that know utility ratemaking, the way rates are arrived at, what the industry figures mean. This is such a specialized field that we believe the consumer must have an advocate that can understand the industry spokesmen and respond with adequate information so that a commission can make a wise decision.

We think that this kind of representation is essential for consumers.

Mr. Chairman, we thank you for this opportunity to present our views on S. 2959. We hope that the speed with which this subcommittee has moved to consider this important piece of legislation is indicative of a general mood prevailing in the Congress that the consumer must be represented in the decisionmaking process.

We thank both you, Mr. Chairman, and Senator Hart for once again demonstrating sensitivity to the needs of consumers and for willingness to accept the leadership to insure that those needs are satisfied.

With your permission, Mr. Chairman, I would like to have Mr. Edward Berlin, CFA's counsel, add some specific observations as an attorney.

Senator Moss. Thank you, Mrs. Angevine. We would be most pleased to have Mr. Berlin make such comments as he would care to make and then I may have a question or two I would like to ask one or both of you.

Mr. BERLIN. Thank you, Mr. Chairman:

I am indeed delighted to be able to participate in these very needed deliberations. From my 8 years in Government service, both at the Justice Department, and in a so-called independent regulatory agency, I have become convinced of the soundness of the remarks that you read of Commissioner Johnson.

I would, as Mrs. Angevine indicated, like to offer for your consideration several specific suggestions which I think are directed toward making the independent consumer council a truly independent one and perhaps a little more able to discharge the important functions that you would give to it.

Mrs. Angevine pointed out in her prepared remarks that one of the sections we are truly delighted with is section 14(c) because it truly represents a very great step forward.

As you know too well, Mr. Chairman, consumer claims are often of a very nominal nature. As a result it is not always possible for the individual consumer to obtain the necessary legal assistance that he requires in order to be able to prosecute those claims. That is why we are very pleased to see that the resources and legal expertise of the council will be available to facilitate the collection of those nominal types of interests where they represent the general consumer problems.

We are concerned, however, whether there might not be built into section 14(c) a condition precedent which would preclude the council to seek judicial relief. I have reference to the language which suggests, or at least can be read as suggesting, that the council will be free to go to court only after there has been nonaction by the agency that should have responsibility for redressing the particular consumer grievance.

There are situations, and hopefully there will be other situations developed by this Congress, where a consumer would be able to litigate his right, both before administrative agencies and before the courts.

I would hope that the legislation would not require the council to defer going to court while a protracted and perhaps useless administrative proceeding is underway.

Secondly, as Mrs. Angevine again pointed out, we are delighted that the council will be able to focus on other than economic issues, prin-

cially environmental concerns which have been very much a concern of yourself, Mr. Chairman. But we wonder whether or not there should not be some specific reference to environmental concerns in the very important statement of policy in section 2.

Section 2 no doubt will be read into the mandate of the consumer council. The consumer council will no doubt look to section 2 for guidance in instructing him as to how he should discharge the responsibilities which you are delegating to him.

I would hope you would include within that statement of policy a very strong concern for the environmental problems that are confronting consumers, and that at least will help give definition to the other interest language which we find in section 13 and elsewhere in the bill.

Also this has reference to section 2 and is a very technical suggestion. Section 2, in three subdivisions, talks about interstate and foreign commerce. As I understand the bill, the intention is to establish local prototypes of the independent consumers council on the State and possibly even the local level.

I would hope that the councils on that level would be able to operate and discharge their functions with respect to wholly intrastate activities. It may well be, again, that the language of section 2 could be misread as to suggest that this type of enforcement activity representation activity, was intended to be precluded. I am also concerned about the definition of consumer in section 4, because as I read it, it would seem to preclude the representation of consumer groups. I am thinking particularly of cooperative groups.

As you know, Mr. Chairman, in the inner-city areas, particularly, we are seeing the formation of a great many tenant cooperatives. Hopefully these cooperative organizations will enjoy the benefits of being able to participate in group purchases, group consuming activities. Yet the definition of "consumer" as it is now drafted would seem to include purchases and activities other than an individual.

Perhaps this can be corrected by supplying a separate definition for the word "person" which is not now defined in the legislation.

Senator Hart very properly pointed out the need, and of course this whole legislation is directed at the need for a truly independent consumer advocate.

My experience at the Justice Department certainly made very clear to me that the interests of the U.S. Government, the interests of the Justice Department, as the attorney, as counsel for the U.S. Government, are not always consistent with what I would view to be the interests of the individual consumer. The Justice Department represents another kind of big business, big government. I would hope—and as I review the legislation—the Independent Consumer Council is to be truly independent of the Justice Department.

As you know, the Justice Department considers itself to be the controlling advocate for all agencies of the Government. I would hope that the legislative history that follows this, the enactment of this piece of legislation, will make it very clear that it is this committee's intention and the Congress' intention, to completely free the independent consumer advocate from any directional control of the Justice Department either before regulatory agencies, which would not be unusual, or before courts of appeals, which again would not be un-

usual, but before the Supreme Court as well, which would be somewhat unusual.

I was delighted to hear from your colloquy with Senator Hart that you certainly intend the consumer advocate to be a legislative advocate as well. But that does present the problem of freeing him from the Budget Bureau's control.

I would hope again, since I have no solutions to offer along those lines, that the legislative history would at least make clear that you expect the council to report directly to the Congress without any need to go through the compromising and conciliatory process of the Budget Bureau.

Finally, of course, I endorse without qualification the suggestion in the legislation that the by-laws of the council are to be drafted in accordance with democratic principles.

There is one democratic principle which I think is worthy of specific reference in the legislation rather than leaving it to the board of directors to implement on their own. I have reference to the notion of one man one vote.

As the legislation is presently drafted, it would be possible for the the board of directors to assign votes in determining corporate policy on the basis of membership contribution or number of shares of membership subscribed to by an individual consumer.

I for one would hope that this would not be possible. I know that it is your intention to strive for the broadest possible membership. I also hope that you will make a specific finding that no individual's voice in controlling the direction of this council should exceed that of anyone else's.

Thank you.

Senator Moss. Well, thank you, Mr. Berlin, for your very well thought out questions and comments about the language of the act and suggestions of areas where you think it should be clarified, expanded, but improved to achieve the general overall objective that we have. It is through having pointed out an intelligible comment of this sort that we can refine the language while we are in this hearing process and before we begin to, what we call mark up the bill. So I appreciate your testimony. I understand on the lesser consumer councils, the ones to be State or perhaps community, that you are anxious to have the definition clearly say that these may operate in intrastate commerce matters, and that therefore the definition of jurisdiction should be broad enough that they would have this function to perform.

Do you mean by that can we broaden it enough by covering all goods that affect interstate commerce, or how would you want its wording changed there?

Mr. BERLIN. I confess I did not do my homework perhaps as well as I should have. I cannot recall any instance where the Congress went beyond "affecting interstate commerce" language. My offhand reaction would be that I would hope that we could, because just as consumer claims often are so nominal, they also are often so very local in character. With your permission, might I subscribe to the affecting language this morning, but have some time to perhaps focus on slightly broader language and communicate with you if I am successful?

Senator Moss. You certainly may. In fact, I would invite that. We would be most pleased to have you submit a memorandum or letter, suggestions of any sort, as we go through these hearings. We are going to have some additional hearings, so there will be adequate time to do it. We will make it a part of the record for the subcommittee to consider. I do certainly appreciate the great work that the consumer federation does, is doing here this morning and continues to do; knowing the limited resources that the federation has, I marvel that you are able to accomplish as much as you do.

It is an inspiration, really, to find you working so well in this consumer field, one that is neglected, as was pointed out earlier, the advocacy of the consumer has not been notable in our economy in this country. So I am pleased to have both of you fine people here this morning and have your endorsements of the bill before us with some suggestions for improvements, slight suggestions, I might say, I think it is a pretty wholehearted endorsement that you have brought and I am very pleased about that.

Some observers might argue about your success in the hot dog fat controversy, that this indicates the consumer already has an effective voice in Government policy and decisionmaking. Is this so, or is the hot dog case unique?

Mrs. ANGEVINE. The hot dog case, I would say, is not unique. It was perhaps the right time with the right information. We have cyclamates and MSG and we are not getting the consumer voice heard. I think that you do not always get an open hearing, an opportunity to be heard.

Secondly, it is very difficult for consumers to get the precise information needed. Mr. Berlin spent a great deal of time sorting out, going through all of the records of the Agriculture Department and other records that he could get hold of, to prepare adequate information so that we could make a substantive addition to the hearing record on the hot dogs. Other consumers spoke out there also. Most consumer groups are not able to have access to adequate research information to present a document that will stand up against industry documents prepared by professionals. We were very fortunate in having Mr. Berlin. We were also fortunate in having access to his ability in cross-examining witnesses of industry and of the Department of Agriculture. Again, other consumer groups had no one to cross-examine witnesses.

In this case, this was unique, this was the one and only time consumers cross-examined industry and department witnesses. All of our resources were used on one issue, however. Others, equally important, were of necessity ignored.

Senator Moss. Well, weren't you fortunate also that Mrs. Knauer was persuaded and did speak up opposing Agriculture on this?

Mrs. ANGEVINE. Yes, I think Mrs. Knauer and the weight of the Jean Mayer statement on nutrition were decidedly to the advantage of the consumer.

Senator Moss. I think it is obvious that we need to have access to technical expertise in many of these things. Which brings me to your recommendation that we have both a utilities consumer council as well as a general consumer council. Do you think it is preferable to have

them as separate entities, or might they be combined provided we did have the expertise available?

Mrs. ANGEVINE. I am not sure that they could be combined. Certainly I think they must both exist, that the one is so very, very valuable because of its unique characteristics. I think also that Senator Metcalf's bill is very helpful in that it provides for there to be funds to help the States and to help get research in this area. This kind of funding will help prepare some experts that at this point do not exist, as you, Mr. Chairman, well know. So that we do wholeheartedly support the Metcalf bill. And I see no reason why it should conflict with the other package of consumer bills.

The easy explanation would be to simply point to the magnitude of the consumer representation problem which plainly calls for a whole range of solutions. The more precise explanation is that each of these proposals is addressed to a somewhat different problem. It is essential that there be consumer representation within the Federal Government; it is equally important there be strong advocacy coming from without addressed not only to Federal agencies, but to State and local agencies as well where consumer representation is as essential but even harder to come by. As to the proposal for a utility consumer counsel our position is easily explained. The problem of gas, electric, and telephone rates are so technical and so complex that a specialized consumer representative must be developed. You will find that those industries turn to specialized experts in the presentation of their positions; consumers, who pay the bill for all of that, should be entitled to no less.

Senator Moss. Well, certainly there is a field of expertise, a very concentrated field, in this utility service. Perhaps the way it would get sharpened direction would be to be independent just in the utility service field. But I just as a general question wanted to see whether you thought it might be part of this council which would be much more wide-ranging and less specialized than the things to which it turned its attention, but ought to be nevertheless staffed and have very available to it an equal amount of expertise in chemistry or nutrition or whatever else it is that is needed to be able to deal adequately with the type of specialized knowledge and information and research available on the other side, since this is an advocacy proceeding, to the other side, in order to force them to prove their case and to be able to assert for the consumer the point of view that should be advanced for him.

Well, thank you very much, Mr. Berlin and Mrs. Angevine. We are pleased indeed to have you come and testify, to analyze the bill that we have and to be able to make some suggestions to us. As I indicated earlier to Mr. Berlin, we will welcome additional comments you have after hearing the testimony here or that will come out in subsequent hearings, you are not foreclosed, in fact, you are invited to make additional comments and suggestions, because we are embarking on somewhat a new field and as such we know we must proceed with caution and foresight and try to design leagues that will produce a workable, manageable organization that is of value to the consumer if we are going to proceed at all in the consumer field.

Mrs. ANGEVINE. Thank you very much, Mr. Chairman.

Senator Moss. We will now have Mr. Stephen Schlossberg, general counsel, United Auto Workers of America.

I compliment Mr. Schlossberg and the United Auto Workers for the great interest they have in this field and the fine work they have done in consumer matters.

We are pleased to have you with us today.

**STATEMENT OF STEPHEN SCHLOSSBERG, GENERAL COUNSEL,
UNITED AUTO WORKERS**

Mr. SCHLOSSBERG. Thank you, Mr. Chairman.

I have to return the compliment and compliment you and Senator Hart for what you have done for the American consumer. I think we all owe you a debt of gratitude and we are very happy to be here today to lend our voices to this hearing.

I think if any American might properly be called the forgotten American as a result of our history, it would be the consumer. We have seen magazine articles and discussions recently about the forgotten American, in quite a different context. But it seems to me that the American consumer is truly the forgotten American.

I want to say that we are particularly grateful also to the Consumer Federation of America and we associate ourselves with their position. We are proud to say Paul Wagner from UAW who is here with me today is a member of the Board of the Consumer Federation of America.

Mr. Chairman, if I may, before I begin reading from my prepared remarks, I would like to say that we feel there is a great urgency to what your committee is doing, indeed, what the Congress is doing, because if there is to be a new day for the American consumer, if this really is an idea that has reached its time, then it will have to be born, it will have to come to fruition through the United States Congress.

We do not think that we can depend upon this administration, an administration that appointed first as its consumer representative, the Special Assistant to the President, one who would not shed a conflict of interest. In an administration that has shown such callous disregard for the American consumer, we do not expect to get the kind of relief we need and the kind of leadership we need for consumers. If we are going to get that relief, Mr. Chairman, it is going to come from the Congress. So we are particularly happy to be here to lend our voices to those of others in support of the great work you are doing. I will begin now with my prepared statement.

Mr. Chairman, it is with pleasure that I appear before this subcommittee on behalf of the United Auto Workers and its 1,600,000 members in almost every State to add our strong support for the early enactment of S. 2959, the independent consumer council bill. We are especially pleased to be here for several reasons:

First, the subcommittee has established its sincere concern for the American consumer and for the countless difficulties that beset him in these technologically socially, and politically, complex times.

Second, we are delighted to again lend our efforts to those of a truly dedicated consumer champion, the sponsor of S. 2959, Senator Philip Hart. As we all recall, it was Senator Hart who was responsible for the appointment by the President of a Special Assistant for Consumer Affairs, and it was he that led the hard and tedious fight for truth-in-packaging legislation.

Third, the legislation under consideration today is directed at the single most pressing domestic problem—that of giving to each and every one of us a sense of participation.

Senator Hart summarized the problem quite aptly almost a year ago in an address delivered as part of Duke University's distinguished speakers program when he said:

The cardinal issue permeating our society is the alienation of the citizen from the institutions which control his life.

Everyday minute decisions affecting his existence are made by silent forces—forces which he feels not a part, which have not consulted him as to options. Small wonder if he feels small and insignificant. The wave of dissatisfaction can reflect itself in "copping out" or strong dissent, and at times open rebellion. We see this not along among the poor. We see it and we hear it from all categories in our society and it reflects the discontent one feels in being a digit in a giant computer.

The popular theme goes on and I believe it is true, to this effect: Unless we restore to our citizens a sense of participation, of relevance; unless the citizen is persuaded that his voice can be made meaningful in the control of his destinies, then this monumental experiment of ours in democratic government can fall under the weight of the insensitivity of its own institutions.

We share these views; we share those concerns; we share the belief that in S. 2959 we have the foundation on which we can build a responsive Government—one that is of the people, by the people, and for the people. For S. 2959 proceeds on two very basic principles; that there must be public participation in the decisionmaking processes and that participation must emanate from the grass roots in a truly democratic fashion.

Undoubtedly, it will be asked how a program for that type of representation can ever expect, as section 2(a) promises, to "aid in the free flow of interstate and foreign commerce.

But we in the labor movement have no difficulty with that notion. It wasn't too many years ago when the popular rhetoric of the times prophesied that the effort to organize workers and to guarantee to them a voice in the decisions made about their wages and working conditions would be ruinous of industry; would result in the delays and bottlenecks that would prejudice all concerned.

Today, even our most avid opponents are forced to concede the folly of those admonitions. Far from falling in ruin at the hands of organized labor, American business, through the assistance of labor, has reached growth levels never predicted by even the most optimistic spokesmen. At the same time, the interest of the working man and woman have been represented and their place in the decision-making process that determines all of the characteristics of employment has been assured.

But the interests of the American worker, as we in the UAW have proven, are much broader than the issues deliberated at the bargaining table. They include questions of interest rates, of utility rates, of transportation service, of radiation safety, of air and water pollution standards, of environmental protection generally.

In short, they include all of the issues deliberated before every branch of Government, whether it be Federal, State or local.

The UAW has recognized the priority which must be given to bringing the voice of the public to bear on the important issues of our day.

We have responded by establishing a top level department concerned exclusively with matters of consumer and environmental protection and we have joined with brother unions in the Alliance for Labor Action, in trying to achieve these goals. We believe these commitments are significant, but we are the first to concede that they only begin to scratch the surface of what minimally must be done.

The American consumer must be assured that when decisions are made which affect his economic destiny or the quality of his environment, that his voice will be heard and that his wishes will be considered.

S. 2959 will make a major contribution to this end and it will do it in a most meaningful way—by stimulating local involvement. Just as a national union would be of questionable utility without strong local constituencies, a centralized public representative could not hope to promote the interest of its constituents without being built on a mechanism that insures local participation and, indeed, control.

For all of these reasons, the UAW commends S. 2959 to this committee, to the Congress and to the administration as a legislative proposal that deserves our unified and enthusiastic support. We have all talked about the need to make government more responsive; S. 2959 will give the American people the opportunity to judge the sincerity of our pronouncements. With our position clearly recorded, we should now like to offer a few suggestions as to how S. 2959 might be modified slightly to better realize its objectives.

We are concerned with the membership provisions of S. 2959, both as they relate to participation on the board of directors and as they apply to participation by individuals in the corporation itself. Under the terms of section 9(b): "membership in the council and the local units thereof shall be open to all individuals in the U.S. who are consumers." Since we are all consumers, presumably, we all will be entitled to membership and, through it, to a voice in controlling the direction and efforts of the council and its consumer advocates and representatives. That is all to the good. We support the proposition advanced today by the Consumer Federation to provide for membership of cooperative and other groups as persons on local levels in these subcouncils that would be set up. I believe much of this could be done through the legislation of history and through minor revision.

We all know that business has the resources and ability to, and has, advocated its position with eloquence. The whole thrust of this proposal is to supply equality of representation to the other side of the equation.

The inequality of bargaining power between the consumer and the purveyor of goods and services to the consumer has not only increased the price of those goods and services and diminished the quality, it has adversely affected the quality of American life. Unfortunately, those concerned only with profits and personal rewards have no time for quality and value. It is, too, an unfortunate fact of life that bureaucrats and regulatory agencies in general are sensitive to those with money and power. All of these considerations seem to us to make this bill a moral imperative and social and economic necessity.

Once established, the voice of the Consumer Council will be respected as the voice of the consumer, of the general public. We must, therefore, guard against its dilution, its capture by those who would weaken the effectiveness of consumer representation.

We strongly urge that every effort be made to assure that the Council is as effective a representative of the public interest as is possible. Two suggestions come to mind:

First, no individual who has in excess of a prescribed economic interest in business enterprise should be eligible for membership on the Council's Board of Directors.

What we are talking about here, Mr. Chairman, is an elemental consideration, really a simple enlargement of the old maxim that no man can serve two masters. While it is possible to be a consumer, while the head of General Motors and the head of Standard Oil, the head of any large corporation or a large stockholder is in a somewhat different position when he sits down at a table to represent consumers. He is not merely a consumer—his major interest is in his dominant economic role. It is the old question of conflict of interest. What we are suggesting here is that since no man can serve two masters, if the call of the commercial master is too great, he should not be given a seat at the Consumer Council's table.

Second and finally, we are in total agreement with Senator Hart that the Independent Consumer Council should be truly independent of Government. An effective council can be expected to step on many Government toes, and it need not have to tread lightly in recognition of budgetary needs. At the same time, we must recognize that the Council's resource needs, if it is to be geared up for full effectiveness, will not be insignificant and its revenue-producing potential will be minimal. I assume it will get money not only from consumer organizations and pro bono publico organizations such as UAW, but from foundations and other such groups. That money market is not an easy one to work. We think that the committee ought to recognize that at this time. The dilemma is to give it both financial security and independence.

Ideally, the initial funding should be such as to endow the Council in perpetuity. Realistically, in these times of economic restraint, that type of funding will not be possible.

We suggest that there is another alternative and that is to employ a fundraising technique that has been suggested for the funding of presidential campaigns—permitting a dollar checkoff on tax returns, with that dollar earmarked for the Council. In this way, we will not only help to secure appropriate funding for the Council, while at the same time protecting its political independence, but we will be encouraging broad membership participation by the citizens. We commend that proposal.

Mr. Chairman, we thank you for permitting us this opportunity to offer the views of the UAW on this important piece of legislation; we commend the members of this subcommittee for their dedication to solving the problems which beset the American consumer; and we congratulate you and Senator Hart for your vision and dedication to the American consumer and for your commitment to realizing for the consumer the ability to function intelligently in the marketplace and to participate in the governmental decisionmaking process. Thank you.

Senator Moss. Thank you, Mr. Schlossberg for a very thoughtful statement and one that will be helpful to us. Your suggestion of the \$1 checkoff on the income tax form is a very good one. This frankly

is something that has bothered me, as to how we were going to get adequate funding for councils, local and national, without being subjected back into the additive process that we have talked about, that has some control over where the money will flow and, therefore, might be controlling on the amount of resources that would be available to the councils.

Moreover, it seems to me your suggestion is very good and ought to be considered, because it gives the individual citizen taxpayer some feeling that independent of his Government he can put a dollar over there for this Council that is his advocate. In some way he just shears that away from going into the Federal Treasury, in effect, because it is earmarked for a definite purpose. So that is a good suggestion and one that I am sure we will want to consider. I am pleased to have it come from your fine organization which you represent, too, because the work that UAW has done in all of these various fields of pollution and resources and utility rates and so on has been one of the very fine contributions that we have had.

I admire the foresight of the leadership in the organization to do this sort of thing.

Your suggestion about limiting the membership on the councils to an individual or making ineligible, let us say, an individual who has a large connection with some producing industry and, therefore, is a producer as well as a consumer gives me a little trouble. As Senator Hart was saying, we should have the one-man, one-vote principle and these people presumably would be elected. So we are in a conflict there as to whether certain names must then be removed and not be available for election because of that interest. What do you think of this conflict, that first of all we must trust the individuals to have each an opportunity to select, but yet deny them selection of certain people?

MR. SCHLOSSBERG. Well, I am suggesting to you, Senator, that the consumer has, unfortunately, been shortchanged in many ways by just the kind of thing I am talking about. Let me give you a few instances and then I will try to be more responsive to your question.

Throughout our history many scholars and just ordinary people have complained about the fact that the so-called regulatory agencies are usually regulated by people who come from, and later return to, the very industries they are supposed to regulate and police. And quite often the so-called regulatory agencies do not work for the national good, to regulate these industries—this is a harsh criticism, I know, Senator—but quite often these industries are regulated for the benefit of the regulated rather than the general public. We have seen this on a local level, not only in government, if my wife has a complaint about whether a cleaner ruined a garment that is sent in—it is not the kind of thing you would go to law about, maybe it is an inexpensive sweater or blouse or something, and they ruined it. They have set up something called the Institute of Dry Cleaning, and you can go there and they will tell you that the blouse does not clean very well, it is not worth anything, but if you have to have something, give her a dollar. Now this Institute of Dry Cleaning is paid for by the dry cleaners, it is run by the dry cleaners. I would not want to submit my damaged blouse to them for appraisal. Now I think it is perfectly obvious that if we are going to see the giants of industry stand by idly and watch some-

thing that has a great potential, a great potential not only in terms of the actual good it can do, but the light and attention it can focus on national problems affecting consumers, that they are going to take an interest in that entity and likely try to dominate it.

Now, we know that there was an antitrust action brought by the United States against the four automobile manufacturers, and against the Automobile Manufacturers Association. The present Attorney General has tried to kick that under the table and work out a consent decree with the court. Some of us have objected to that. But what I am trying to say is this industry is going to look after its own best interests. And if you get a man who is clever enough to hire the image makers and decide to make a play for this kind of position, he can win in this country, the image maker can get him elected unfortunately to a post like this, I believe, and his influence would be inordinate on the Council.

Now, I say that we often set regulations, some people are required to be lawyers to be members of certain commissions, some agencies require one person from one party and another person from another party. Sometimes the Congress has provided in legislation that the terms of members of an agency be staggered. I see nothing wrong with providing this agency, which is to protect the interests of consumers, with a limitation, either on holdings or on business office directly, that would limit a certain kind of person from becoming a member of that national board. I believe if these things were clearly spelled out that these people would not try to become members of the board. I mean they would get the message. I do not think that most people in this country are as insensitive as Judge Haynsworth, who would stretch the concept of ethics to the very last inch before he lets it pop. Most people in this country are sensitive to these kinds of questions.

Senator Moss. Well, I thank you for your response. I think there is one additional argument that might be advanced and that might be in keeping the channels of communication open by having at least one or two members that fit into this category as part of a larger council. But I understand your point and I think you have made it very well and this I am sure will be very carefully considered by the committee when we look at marking up this bill.

This Council of course is going to have several functions. It is going to be for settling disputes, and for advocacy of a point of view, and dissemination of information on products. So it is rather broad in its functions that way. It is hoped that we could get members on the Council who would have particular abilities in all of these areas. Well, I do thank you for your very fine testimony and your endorsement, really, of this bill, rather fully and your specific comments about it. This is the beginning or opening of a series of hearings, because we are exploring a new field, and I think all of the witnesses we have had this morning, however, have indicated a sense of urgency of moving on, and not delaying beyond the time that we can fashion a really workable statute. So before I recess the hearing for this morning, I would take this opportunity to thank all of the witnesses who have appeared today for their general support of the concept of an independent nonpartisan consumer advocacy center within an independent consumer organization, and this suggests the approach outlined in S. 2959 is a very viable one.

To my own way of thinking, there is one critical function that an independent consumer advocate could perform. As Bess Myerson Grant has said: "Consumers are victimized more now by rising prices than by deception and fraud." And yet many of the anti-inflationary policies adopted by the administration put the entire burden of the cure upon the average American—upon middle class and poor consumers.

An independent consumer advocate could serve as a watchdog on the administration's efforts to cure inflation. He could demand that the administration look carefully and in detail at the impact of its policies on consumers.

Mr. McCracken, the President's economic adviser, discusses often and freely the impact of inflation and the Administration's policy on business expenditures, financial markets, and international concerns. But he nowhere explains what happens to the various consumer interests that are also a part of our economy.

An independent advocate could raise the questions of consumer interests. He could ask whether the burden of inflation's cure is distributed justly among all consumers or whether some are bearing more than their fair share. An independent consumer advocate's questions would require the Administration to weigh consumer interests more carefully in arriving at its basic decisions on economic policy.

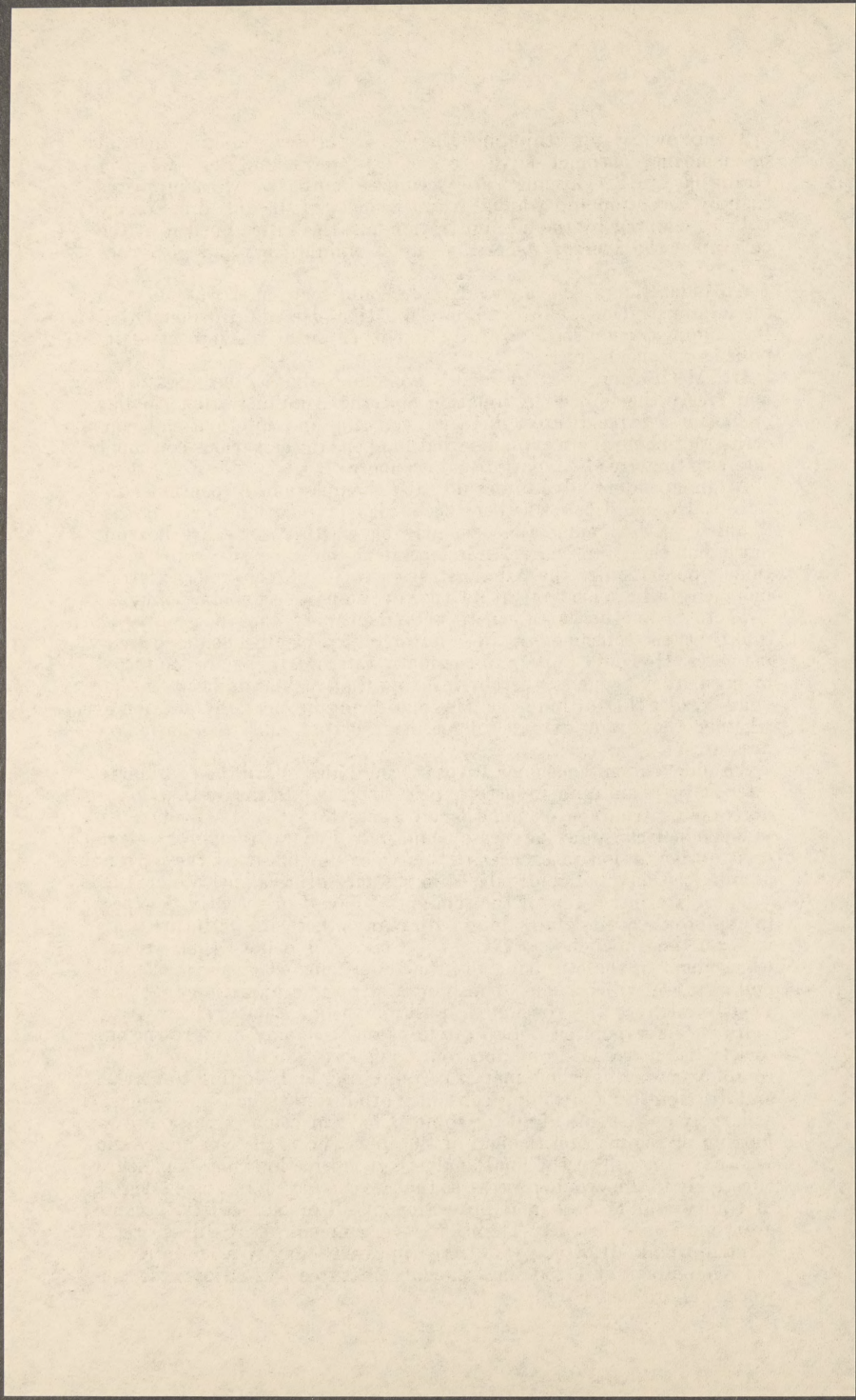
There is another area where an independent consumer advocate could protect consumers against unwarranted or ill-considered price increases. He could appear in the many rate hearings now conducted by regulatory agencies, thereby insuring that regulators hear another voice besides that of industry. He could bring up the vital question of whether the grant of rate increase might not add to inflationary pressures.

An independent consumer advocate could also guard the consumers' interest by examining industry's price increases to insure that it has not taken advantage of inflationary times to fatten its profits. An independent consumer advocate could urge Federal regulatory agencies to take action in such cases, his voice unmuffled by the current administration's policy of silence in the face of great price increases.

There are just a few of the thoughts I have had recently. I expect to explore them in detail, along with many others, in the future hearings on the Independent Consumer Council. I believe that we will learn much in these hearings on the Independent Consumer Council and that we will be able to fashion a strong organization that will greatly advance the consumers' position in our economy.

As we have pointed out so often, as our economy has grown, our society has increased in number, our transportation has improved, the complexity of this whole matter of preparing and sending to market and distributing and selling consumer products has had its emphasis so largely on the side of all the things I have mentioned, without ever looking at the man on the end of the line, who is the consumer, and who pays the bill in the final analysis. It is time his voice was heard effectively in this whole process, so that we can have a lightened degree of equity and fairness and protection of all of our society, because everyone is a consumer. Thank you very much, Mr. Schlossberg. I want to thank all of you who have appeared today. We are in recess.

(Whereupon, at 11:50 a.m., the subcommittee was adjourned, subject to call of the Chair.)



INDEPENDENT CONSUMER COUNCIL ACT

MONDAY, NOVEMBER 3, 1969

U.S. SENATE,
COMMERCE COMMITTEE,
CONSUMERS SUBCOMMITTEE,
Washington, D.C.

The subcommittee met at 10 a.m. in room 5110, New Senate Office Building, Hon. Frank E. Moss (chairman of the subcommittee) presiding.

Present: Senator Moss.

OPENING STATEMENT BY THE CHAIRMAN

Senator Moss. The subcommittee will come to order.

I am pleased to open the second of a series of hearings we have planned on the Independent Consumer Council. Since our last hearing on October 16, President Nixon has delivered two messages directly concerning the consumer—his inflation message and his consumer message. Although I am pleased that the President has finally demonstrated his interest in the consumer, I feel that these messages graphically demonstrate the need for a nongovernmental entity such as the Independent Consumer Council that will be able to act vigorously on the consumer's behalf.

In his message on inflation, President Nixon noted, as though it were inevitable, that some persons more than other persons would bear the brunt of actions to control inflation. In this I cannot agree with the President. Every possible effort must be made to insure that the burden of fighting inflation falls equitably on each person in this country. The administration's economic policy should not benefit one part of the population—and I am sure that it does not benefit consumers—at the expense of other parts. An Independent Consumer Council, controlled by the consumers and outside of the Government, would speak out forcefully on inflation. The President would not prudently ignore its authoritative demands to correct inequitable policies.

The President's consumer message delivered just last Thursday was billed as the "most significant set of Presidential recommendations concerning consumer interests in our history." But his bill of consumer rights was proclaimed by President Kennedy on March 15, 1962, and Congress has been working since then to secure those rights. The present Congress already has under consideration bills protecting the consumer far more than does President Nixon's message. An Independent Consumer Council could immediately expose the inadequacies of the President's program and fight for greater vindication of consumer interests.

In my opinion, the primary weakness of the President's message is its neglect of the vital need to create a strong consumer organization that would first define the consumer interests and then forcefully serve as advocate of these interests before the Federal Government, the State governments, and the business world. The proposal for an Independent Consumer Council would fulfill that need. It envisions an organization that will seize the initiative and develop genuine consumer programs.

Let me leave these rather general remarks and turn to the matters at hand. We are fortunate today to have three witnesses who promise interesting and informative testimony on several problems of immediate concern to consumers. I expect that they will point out several specific ways in which the Independent Consumer Council will be effective in aiding the consumer.

I am very pleased that Senator Hartke, chairman of the Surface Transportation Subcommittee, and also a member of this Subcommittee for Consumers, will lead off the testimony and share with us his expertise on the ICC and the consumer. Ted Cron, of the American Patients Association, will follow Senator Hartke with what appears to be disquieting evidence of slow action on the part of the FDA to protect consumer's interests in matters of drug efficacy. Our final witness will be Mr. Don Elbertson, executive secretary of the Consumer Assembly of Greater New York, who will point out possible courses of action in dealing with consumer problems in inflationary times.

We are also pleased to have all of these witnesses come to testify before us today and help us to compile a record that we should have for the consideration of the subcommittee and the full committee. Our first witness is the senior Senator from Indiana, my colleague, Senator Vance Hartke, and we will ask you to proceed now.

STATEMENT OF HON. VANCE HARTKE, U.S. SENATOR FROM THE STATE OF INDIANA

Senator HARTKE. Good morning, Senator Moss. First let me congratulate you on the fine work you are doing in this committee, and I think it is quiet evident by some of the legislation and some of the action that is coming forward that this type of innovation and initiative is certainly necessary in this field.

This morning I am pleased to offer testimony on S. 2959. My experience as chairman of the Senate Subcommittee on Surface Transportation has convinced me that today the consumer's voice too often goes unheard by the very agencies which have been established to protect his interest.

In oversight hearings into the policies and practices of the Interstate Commerce Commission which the Subcommittee on Surface Transportation conducted last June, we examined consumer representation in that agency's operation. I was dismayed. There was very little evidence that the ICC has ever considered consumers at all. Any protection they have extended to the consumer has been by accident rather than by conscious design.

Our examination of the ICC consumer policies was limited in scope, but it does make a strong case for creation of a consumer advocate.

Domestic surface transportation—the industry over which the ICC has jurisdiction—is of great importance to the consumer. Transportation charges and services are a significant element in the cost of consumer products and in the quality of every citizen's life. No consumer can escape the impact of the decisions made by the ICC.

The ICC maintains that consumer interests are protected in its proceedings in three ways: (1) consumer interests emerge from the adversary contest between shippers and carriers; (2) various Government departments and agencies appear in ICC hearings in defense of consumer positions; and (3) the Commission itself, as its basic mission, protects public and, thereby, consumer interests.

Unfortunately, the ICC's contention of adequate consumer representation does not withstand examination.

Take the shippers versus the carriers. The contest between shippers and carriers involves transportation economics. To the extent that the contest results in appropriate transportation decisions, the consumer is that much benefited. But other interests of consumers do not necessarily emerge in shipper-carrier contests. Shippers in competitive industries generally fight for the lowest possible transportation rates because any increase in rates must be absorbed from their own profits. However, in the concentrated industries such as automobiles and steel where competition is not an important factor in determining retail prices, increases in transportation rates are simply passed along to the consumer. Such industries have little incentive to fight for low transportation rates and the consumer must pay the bill.

There are other issues in transportation where shippers' arguments do not automatically provide a defense of the consumer's interest. Shippers may be interested in a transportation system designed to meet their needs for large-scale shipments. Such a system and such a design may be totally inappropriate for the consumer trying to move his household goods from one city to another.

Large shippers have expert staffs able to analyze and take advantage of the complicated tariffs that we have today. But no consumer, regardless of his sophistication, can find his way through the tariff maze. He is unable to determine for himself how much it will cost to make his shipment and he must rely on the word of the transportation salesman. The consumer would be benefited by simpler tariff schedules, even though rates for some commodities might be raised. Public disclosure is one of the surest means of protecting the public but only if what is disclosed can be understood.

With regard to other governmental agencies, the ICC asserts that the Departments of Defense, Transportation, and Agriculture, and the General Services Administration appear in ICC hearings in representation of consumer interests.

While it is true that the interests advocated by these agencies are at times the same as consumer interests, it is by no means true that they are always the same. The Department of Agriculture is charged with defense of the farmer and will not be inclined to intervene in cases having no effect on the farmer. The Department of Transportation is interested primarily in developing national transportation policy. It may often neglect consumer aspects in order to present other issues of significance to the overall transportation picture.

Finally, Government agencies simply do not appear before the ICC in very many cases. Of nearly 5,000 protests filed last year, only 77 were filed by agencies of Federal or State Government. The Department of Transportation itself is severely limited in manpower resources available to present cases before the ICC. It has just four attorneys assigned to such work and their efforts are by no means solely devoted to consumer issues.

With regard to protection by the ICC itself, the ICC has suggested that both its Bureau of Accounts and its Bureau of Enforcement do appear in its hearings to represent consumer interests. But the expertise of the Bureau of Accounts is confined to such issues as line-haul costs, platform costs, and terminal costs. It does not develop expertise in matters of consumer economics. It does not present the Commission with information on the effect of transportation rates on retail prices. Thus, its representation of the consumer is limited to issues of very narrow scope.

The Bureau of Enforcement occasionally presents consumer issues to the Commission. Its primary function, however, is to investigate violations of the ICC statutes and to represent the ICC in court.

An example of the manner in which the Bureau of Enforcement represents the consumer is shown in a recent rail merger case. The Bureau's attorney simply called a conference of the attorneys for the railroads involved in the case and required them to introduce information and arguments representative of opposing interests, such as shippers and consumers.

I can only imagine that the carriers made a weak argument for the consumer in that case. I cannot see how the Commission can claim that an opposing interest will provide any kind of adequate representation for consumers. I fear that this example is representative of the Bureau's efforts, and also, that it shows the greatest extent of consumer representation by the ICC staff.

The ICC also asserts that the Commissioners themselves, as part of their basic mission, protect the consumer in their decisions. There is, however, very little evidence to support this contention. Little concern for the consumer appears in the ICC's reports. In fact, the Commissioners tend to view their decision as having only indirect impact on consumers. During our hearings the Commissioners repeatedly referred to shippers as the "consumers" about whom they should be concerned.

The Commission's mode of operation itself militates against adequate consideration of the consumer interest. The ICC rarely forms policy; it simply reacts to complaints. It decides cases brought before it largely on the basis of information brought by the parties to the case. Since shippers and carriers are its primary complainants, the ICC finds itself confined to the problems, and to the solutions, of the shippers and carriers.

A recent case may illustrate more vividly the ICC's lack of consideration of consumer interests. *Ex Parte 259* was one of the largest cases handled by the ICC in recent years. That it follows by only a year *Ex Parte 256*, another very large case, only increases its significance. In the two cases the railroads asked for general tariff increases totalling \$700 million. Both requests were granted by the ICC on the

ground that rate increases were urgently needed to keep the railroads from bankruptcy.

With regard to the shippers versus the carriers, the shippers protested the increase. The case was decided on the basis of data presented by the railroads. The other parties argued that they did not possess the capability of gathering the data required and that the railroads did not produce all of the data which the ICC had previously said would be required. The Commission granted the increase based on this one-sided record before them. It does not appear to me that the contest between shippers and carriers produced any consideration whatever of consumer interests.

In those two cases, what about other Government agencies? Only the Department of Agriculture intervened in the case. The Department of Transportation did not participate.

The Department of Agriculture strenuously urged the ICC to look into other factors than those presented in the railroads' data and to use its own staff to develop the requisite data. The Department of Agriculture itself did not possess the capability to develop such information.

The Department of Agriculture did present commodity price arguments, but they were related to farmers' positions and not to consumers' positions. Thus, although the Department of Agriculture did make substantial contributions to the proceedings, they were not the same kind of contributions that a consumer advocate could have made.

The ICC did invite a representative group of State utility regulatory commissioners to sit with them in hearing arguments in the case and in the initial conferences of the Commissioners. However, the State commissioners did not present argument, evidence or expert opinion. They simply offered comments as invited guests of the ICC.

What is the record of the ICC itself in this important case? I am afraid that the Commission provided the consumer no more adequate representation than did the shippers, carriers, or other Government agencies.

The Commission refused, despite repeated requests by the Department of Agriculture, to have its cost section introduce data that would give the Commission a broader view of the case. The Bureau of Enforcement did not appear during the hearings, despite the obvious impact of the case on consumers and the equally obvious lack of consumer parties.

The Commission did not take the opportunity presented by these requested increases to review whether the requested rates as a whole, or for any particular commodity, contributed significantly to inflationary pressures. The Commission did not determine whether the requested rate structure was discriminatory—whether, for example, the increased rate bore more heavily on low-income families than on other classes of consumers.

All in all, I think that the record in *Ex Parte 259* presents a rather dismal picture. Neither the Commission nor any other entity appeared to introduced consumer interests into the decisions. It simply responded to the demands of the moment and to the complaints of the transportation industry.

Now, I want to talk about fresh fruits and melons, which is a pending case.

Since the completion of our hearings, a case has developed in which a group has intervened on behalf of consumers.

Eastern railroads have requested a 21-percent increase in rates on fresh fruits and melons for shipment from the west to the east coasts. The usual protestants in such cases, the western growers, did not appear. Only eastern grocery chains protested the increases. The consumer group, not yet on record as to the merits of the case, has simply requested suspension of the increases and an opportunity to take part in a hearing on the merits of the increase.

The appearance of the consumer group, the first time such a thing has happened in ICC history, has made a noticeable difference in the case. While the initial arguments followed the traditional path of disputes over transportation economics, subsequent developments have responded to consumer issues.

The railroads and the grocery chains are devoting argument and information to the consumer group's points.

I am hopeful, in this one case at least, that the ICC will take note of the effect of increases in transportation rates on retail prices.

What will this mean for the consumer? It may result in a denial of the rate increase—a savings of about \$8 million. If it does not, at least the consumer will not have been a victim of the system in this case. His position will have been weighed along with that of carriers and shippers.

This case means that the ICC will have an unadulterated look at consumer issues. It will have presented interests other than those to which it has limited itself for the last 80 years. It may even be prompted to think about the broader policy ramifications of its decision.

In closing, I must mention another recent case that disturbs me greatly. The railroads have asked for still another general rate increase—6 percent across the board—in *Ex Parte 262*. Thus far no consumer representative has been able to enter an appearance in the case. And, despite the ICC's protestations of concern for the consumer, the ICC has not directed its staff to make sure that consumer interests are represented. I am afraid that the lessons of consumer needs have not been fully learned by the ICC and another important case will be decided without adequate consideration of those needs.

I wish to make it clear that I am not, by my remarks, attempting to indict either the Interstate Commerce Commission or the industry which it regulates. But I am concerned that the views of the consumer be brought to the forefront in the regulatory process. My experience to date is that this can best be done and, perhaps, can only be done effectively where there is some counsel available who is independent of all interests involved except for the interests of the consumer. It is for that reason that I strongly urge favorable action on S. 2959.

Senator Moss. Thank you very much, Senator Hartke. This is a very fine statement. Your concern for surface transportation and your knowledge of the ICC are particularly helpful to us in this consumer hearing. Do the statutes limit the ICC in some way? Is that the reason it is not geared to let consumers intervene.

Senator HARTKE. No. We went into this in quite some detail with the ICC. I had every Commission member present at that time. I attempted to develop some type of general overall policy inside the Commission as to what its attitude was. It was quite evident that the

only real force which prevents them from acting is the individual Commission members. In other words, they are limited by their attitude.

The National Transportation Act of 1940 establishes such criteria as safe, adequate, economical, and efficient. They are told to foster sound economic conditions in transportation. They are also told not only to consider the interest of the shippers and carriers, but to consider the interest of the people as a whole. I think they perhaps recognize this, but I am not too sure that they can get out of their own bureaucratic snarl in which they are involved at the present time. They are the oldest Commission and therefore have been somewhat in the position of tending to follow the actions of their predecessors.

Senator Moss. Encrusted a bit by tradition?

Senator HARTKE. Right. I think they are even in a position where the status quo is about 1895.

Senator Moss. If we could get consumers represented before the ICC, what kind of factors might the ICC consider in weighing consumer interests?

Senator HARTKE. First of all, inflation is such a prominent issue today. The ICC could take into account the effect its decisions would have on inflation, whether they would contribute to the inflationary pressures today. Another factor is whether their action would affect retail prices. A common mistake made in economics today is to equate an overheating of prices, which we have today, with an overheating of the economy. We have an overheating of the prices today, but not an overheating of the economy. This is one factor that should be considered by the ICC. Also, it should consider whether the items under review are necessities or luxuries—whether its decision is going to affect low-income groups more severely than any other group. Also, it should consider what effect its decisions might have on retail purchasing patterns and also on the availability of goods.

For example, an increase in the rates for fruit might mean that certain areas would be prevented from having fruit, especially in low-income sections, because of the severe increase in prices.

Another question, which is constantly before us in the whole Commerce Committee, is which mode of transportation is going to be most severely affected and in what manner.

Senator Moss. In what areas might an Independent Consumers Council, if it were created, act to benefit the consumer in addition to rate matters?

Senator HARTKE. One subject about which most people have a lot of complaints is the question of loss and claims on damages to shipments, especially small shipments. The Independent Consumer Council could make sure there is protection for small shippers and that there is a system which does not require lawyers to get all the benefit of any type of claim that is filed. Sometimes it takes the full amount of the claim to pay the lawyer's fees. In addition to this, I think simplification of the tariffs schedules would be very appropriate and very helpful.

Senator Moss. I certainly appreciate your contribution, Senator Hartke, and we have not often thought of the consumers over in this field of rates and transportation, but it is one of the very vital areas. As you point out, when an application is involving \$700 million in

rate increases—one application—you can see the great impact that that would have on consumers and on the economy generally. So—

Senator HARTKE. I might mention that outside of the actual processing and packaging of materials, that transportation is the number one item in practically every consumer item in the marketplace. It is even greater than the actual production cost.

Senator MOSS. You were referring to the fresh fruits and vegetables case that is being heard. We often are shocked when we hear the spread between the price that is paid at the field after the crop is harvested and what it is going for in the grocery store. What you are saying is a big slice of that, and most of the difference there, is transportation.

Senator HARTKE. That is right.

Senator MOSS. Thank you very much. I appreciate it. Unless you are otherwise involved, I would like to have you take your seat with the committee here. I know you have another couple commitments. Thank you very much, Senator Hartke.

Our next witness will be Mr. Ted Cron of the American Patients Association.

We are very pleased to have you come testify before us today, Mr. Cron, and look forward to hearing from you.

STATEMENT OF THEODORE O. CRON, PRESIDENT, AMERICAN PATIENTS ASSOCIATION

Mr. CRON. Thank you very much, Mr. Chairman.

It is a privilege to appear before your subcommittee this morning and speak in favor of S. 2959. You and Senator Hart have once again earned the deep appreciation of consumers and their advocates for proposing new mechanisms and new strategies for bringing equity into the American marketplace. I would submit, Mr. Chairman, that enlightened businessmen also realize the good that accrues to commerce when order and equity are written into the law. As Senator Hart noted—and correctly so—when S. 2959 was introduced on September 25, “Awakened consumers, determined to get full value from each dollar, and not too inclined to give business the benefit of the doubt. Yet, let us face it: The customer is not always right—old saws to the contrary.” When consumers and businessmen are adversaries for tradition’s sake or because there is no other way to redress a grievance, then the marketplace needs help. In the view of our association, the proposed Independent Consumer Council seems directed at this serious problem of resolution of issues only by fighting them out. That is a costly process for all concerned; hence, we support the idea of a council that offers another, more constructive approach.

Our association was founded in October 1968, with the same objective: To develop a mechanism through which the consumer could participate constructively in the development of national health policy. We think it is quite clear, Mr. Chairman, that health—managed totally by the providers of health care—can become a major national illness. The cost of medical care services, designed and priced solely by the medical community, has risen 27.1 percent over the past 3 years, compared to a rise of only 15.9 percent for all other consumer prices during the same period. When the medical care component is

added, the overall Consumer Price Index for the past 3 years then rises to 17.5 percent.

The health industry, dominated by the medical community with no countervailing force to oppose it or with which to seriously bargain, is an inflationary industry. It hits the consumer not once but twice: In his pocketbook, where the money reserve is dwindling, and in the treatment environment itself, where confidence is dwindling. With your permission, Mr. Chairman, I would prefer leaving the general issue in those general terms and would move on to describe for this committee the position the consumer is in concerning the health field, the lack of support from Government, and the need for a mechanism such as the Independent Consumer Council.

The members of this subcommittee, and especially its chairman, are well versed in the state of our so-called nonsystem of health care. The indexes are all too familiar: Hospital admissions and outpatient visits continue to rise, yet more American males die at an early age—between their 40th and 50th birthday—than is the case in most of the world's industrialized countries; after nearly a decade of maternal and child health care programs, including mass immunization programs, the United States is 12th in infant mortality; although the number of physicians has increased from 208,000 in 1959 to approximately 305,000 in 1969, their distribution is so uneven that 5,000 communities in America have no resident doctor at all.

The list of inequities in the health marketplace can be extended almost without end. The consumer of health products and services is more a victim than a consumer. The American Medical Association has defended the situation as a model of private enterprise. The American Patients Association condemns the present health environment as simply chaotic. And from that chaos comes not any great national well-being, but rather, an increased incidence of disease and the appearance of completely new disorders. For example, along with the spectacular expansion of our drug supply has come the increased danger of adverse drug reactions. We now estimate that about 4 percent of all hospital admissions are a result of adverse drug reactions. Once in a hospital, the chance of having an adverse drug reaction goes up sharply; reports show anywhere from 10 to 23 percent of patients admitted to hospitals having an adverse reaction to drugs given to them while they were hospitalized.

Mr. Chairman, at 1967 hospital prices, the cost of admitting patients for just adverse drug reactions alone was \$377 million. Extrapolating from Public Health Service data on out-of-hospital drug reactions—those requiring medical attention but not hospitalization—we estimate—again in 1967 dollars—a social cost of \$133.8 million, assuming only 1 day's disability per drug reaction.

The drugs involved have been both prescription and over-the-counter drugs, so that the specific example I offer today is directly related to the consumer: He buys it directly and suffers the consequences.

While I was Assistant Commissioner of the Food and Drug Administration, from 1966 to 1968, I became familiar with these kinds of facts. I also became familiar with the possible responses Government could make to provide a greater measure of consumer protection. These responses are limited in scope as they have been framed

here in the halls of the Congress. They may be even more severely limited if those who administer the law chose to do so passively. Our association attacked this very problem at a press conference on the 23d of October. With your permission, Mr. Chairman, I would like to offer for the record a copy of the press release and its two attachments and at this time merely highlight for you what the particular issue was.

Senator Moss. Thank you. The release in full and its attachments will go into the record.

(The information referred to follows:)

PATIENTS ASSOCIATION WARNS HOSPITALS, PHARMACIES TO CLEAN OUT
USELESS DRUGS

WASHINGTON, D.C., October 24.—Hospitals and pharmacies were advised to clean their shelves of "ineffective" drugs or face the possibility of new legal attacks by consumers.

"More than 70 drugs—including many antibiotic combinations—have been judged 'ineffective' by the National Academy of Sciences, the government's scientific court of last resort," the American Patients Association said today. "Yet, the makers of these drugs have been allowed to leave them in the marketplace, adding to medical inflation but not to medical care."

Some drug products have been in this category for over a year.

"Their continued distribution and sale appear to be in violation of the Expressed and Implied Warranty sections of the Uniform Commercial Code found in state law," the A.P.A. said.

"Since the federal government—specifically the Food and Drug Administration—will not move against these useless drugs under federal law, the consumer must seek legal remedies at the state level. Under the terms of the Code," the A.P.A. said, "the obvious targets of consumer action are hospitals, nursing homes, extended and intermediate care facilities, and pharmacies, all of whom bill patients for drugs that are supposed to work."

At a press conference called on the eve of its first anniversary, the American Patients Association distributed the list of drugs and the pertinent sections of the Uniform Commercial Code. These and other materials will be mailed to A.P.A. members and subscribers to American Patient, the A.P.A.'s publication.

DRUGS FOUND TO BE "INEFFECTIVE" BY THE NATIONAL ACADEMY OF SCIENCES—
NATIONAL RESEARCH COUNCIL

Brand name, responsible company, supposed deadline for withdrawals
Tergemist: Abbott Labs.: August 1968.

Alevaire: Winthrop/Sterling Drug: August 1968.

Anergex: Mulford Colloid Labs.: October 1968.

Sulfonamets w/Topicaline: National Drug/Richardson-Merrell: October 1968.

Delfetased plus T Stedy Tabs: Eastern Research Labs.: October 1968.

Actilamide: Broemmel Pharmaceuticals: December 1968.

Sulfathiazole gum: White Labs.: December 1968.

Sulfel tablet: Vale Chemical: December 1968.

Curad Medicated Bandage: Kendall Co.: December 1968.

Ammozyl: High Chemical Co.: December 1968.

Albamycin: Upjohn Co.: January 1969.

Panalba: Upjohn Co.: January 1969.

Achromycin Nasal Suspension Spray: Lederle/American Cyanamid: January 1969.

Mysteclin "F": E. R. Squibb: January 1969.

Ilotycin Gluceptate: Eli Lilly: March 1969.

Terramycin (Dental): Chas. Pfizer: March 1969.

Koagamin: Chatham Pharmaceuticals: April 1969.

Frenquel: Wm. S. Merrell/Richardson-Merrell: May 1969.

Nicozol w/Reserpine: NYSCO Labs.: September 1969.

Geroniazol: Philips Roxane: September 1969.

Tamid: Chas. Pfizer: September 1969.

Esidrix-K: Ciba Pharmaceutical: September 1969.

Hydrodiuril-Ka: Merck & Co.: September 1969.
 Hyopres-Ka: Merck & Co.: September 1969.
 Di-Ademil-K: E. R. Squibb: October 1969.
 Naturetin-K: E. R. Squibb: October 1969.
 Rautrax: E. R. Squibb: October 1969.
 Rautrax Improved: E. R. Squibb: October 1969.
 Rautrax-N: E. R. Squibb: October 1969.
 Gantrisin Nasal Solution: Hoffman-LaRoche: October 1969.
 Gluco-Fedrin w/Sulfathiazole: Parke, Davis & Co.: October 1969.
 Paredrine Sulfathiazole: Smith, Kline & French: October 1969.
 Sulfedex Nasal Solution: Abbott Labs.: October 1969.
 Thizodrin: Eli Lilly: October 1969.
 Neo-Synerphrine Sulfathiazolate: Winthrop/Sterling Drug: October 1969.
 Rhinazine: Lederle/American Cyanamid: October 1969.
 Sulfathiazole w/Tuamine Sulfate: Eli Lilly: October 1969.
 Coco-Sulfonamides Triplex: Eli Lilly: October 1969.
 Sulfonamides Triplex: Eli Lilly: October 1969.
 Sulfathiazole: Eli Lilly: October 1969.
 Sulfathiazole: Bowman, Mell & Co.: October 1969.
 Sulfathiazole: Vale Chemical: October 1969.
 Mesulfin Tablets: Ayerst Labs.: October 1969.
 Pediatric Piptal w/Phenobarbital: Lakeside/Colgate-Palmolive: October 1969.
 Neuro-Centrine: Bristol/Bristol-Meyers: October 1969.
 Amril: Amfre-Grant: October 1969.
 Myospaz: North American Pharmacal: October 1969.
 Strexate: Armour Pharmaceutical: October 1969.
 Paraflex: McNeil Labs.: November 1969.
 Cepacol Throat Lozenges: Wm. S. Merrell/Richardson-Merrell: October 1969.
 Aclor Capsules: Cole Pharmacal: October 1969.
 Flanithin Capsules: Table Rock Labs.: October 1969.
 Ritonic Capsules: Ciba Pharmaceutical: October 1969.
 Am Plus Improved Capsules: Roerig/Chas. Pfizer: October 1969.
 Liquid Germicidal Detergent: Parke, Davis: October 1969.
 Phemerol: Parke, Davis: October 1969.
 Bileain: Cole Pharmacal: October 1969.
 Ethylene Disulphonate: Spicer-Gerhart: October 1969.
 Alertonic Elixir: Wm. S. Merrell/Richardson-Merrell: October 1969.

UNIFORM COMMERCIAL CODE

Section 2-313.—Express Warranties by Affirmation, Promise, Description, Sample.

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promises made by the seller to the buyer which relates to the goods and becomes a basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made a basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made a basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

Section 2-314. Implied warranty: merchantability; usage of trade.

(1) Unless excluded or modified (Section 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind or though not a merchant states generally that they are guaranteed. The serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must at least be such as

(a) pass without objection in the trade under the contract description;
and

(b) are of fair average quality in the trade and within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and
(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 2-316) other implied warranties may arise from course of dealing or usage of trade.

Section 2-315. Implied warranty: fitness for particular purpose.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

Section 2-316. Exclusion or modification of warranties.

(1) If the agreement creates an express warranty, words disclaiming it are inoperative.

(2) Exclusion or modification of the implied warranty of merchantability or of fitness for a particular purpose must be in specific language and if the inclusion of such language creates an ambiguity in the contract as a whole it shall be resolved against the seller; except that

(a) all implied warranties are excluded by expressions like "as is", "as they stand", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(3) Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (Sections 2-718 and 2-719).

Mr. CRON. Once again, I will speak of drugs and drug products. You may recall that Congress in 1962 enacted the Kefauver-Harris drug amendments, which were to insure that all drugs in the marketplace were both safe and effective. Those amendments stand as a tribute to the wisdom and tenacity of the late Senator Estes Kefauver and his colleagues, Senators Hart, the cosponsor with you of the bill under discussion today, Magnuson, Humphrey, and Neuberger, to name but a few. Since 1962 all new drugs have been presumably safe and effective; but in the marketplace at the same time were the drugs that were introduced between 1938 and 1962, drugs that had passed the test of safety alone.

Soon after Dr. James L. Goddard became Commissioner of Food and Drugs, he contracted with the National Academy of Sciences—National Research Council to have these 1938-1962 drugs evaluated for efficacy and to render those judgments to the FDA for final, legal action. The \$800,000 contract took 2 years to complete. In January 1968 the first report was published as a sample of what was to come. Then, in July 1968 the drug efficacy reports began to appear with a degree of regularity. The development and implementation of these reports to the public was one of my last tasks as the chief information officer for the FDA, prior to my resignation to enter private business in August.

Since July 1968 a variety of drugs—70 different combinations, including antibiotics, by our count—have been judged as “ineffective” for the claims made. These judgments were made by the National Academy of Sciences, the prestigious court-of-last-resort for the Government in matters of science.

Some of these drugs have been around for 10 and 20 years. In all that time, they have been promoted as equipped to do things they could not do. In all that time, the manufacturers could not pull together enough documentation or other kind of evidence to prove they were effective to a group of medical experts assembled in 1966 to render the final judgment. On the surface, you would have to say that the consumer was about to be nobly served. But that has not been the case.

For each drug on our list, the Commissioner of Food and Drugs published the general conclusion of the Academy in the Federal Register along with a proposal to withdraw the approval of that drug for marketing. The companies were given 30 days to respond and then the Commissioner could proceed to either hold a public hearing on the matter, if the complaints of the manufacturers seemed justified, or go ahead and pull the drug off the market. But what has happened?

All the proposals—with one exception—remain as they are, proposals. The exception is Panalba, produced by the Upjohn Co. This drug is not only “ineffective,” but in the opinion of the FDA presents “significant medical hazards.” When the FDA published its final order to revoke the certification of Panalba, the company went to court. And there the matter sits.

Since 1938 Panalba and the other drugs judged to be ineffective have been in the marketplace parading under false colors. Since 1962, their manufacturers have been on notice to stop making the false claims of effectiveness or get out of the market. Since 1966 the drugs have been under review. Since 1968 they have been publicly judged as useless. And still they are prescribed, sold, and used by an unsuspecting public. The Government, which should be the champion of the consumer in this vital area of health, has become passive, presenting its single brief before a court and waiting for the next move from industry.

The NAS-NRC panel on anti-infective drugs said of Panalba, “It does not seem rational to expose the patient to the potential hazards of two drugs when the beneficial effects are no greater than those resulting from the use of one.” That judgment was released in December 1968. As a result of court delay, in conjunction with administrative delay, we will arrive this December with Panalba still on the market, still representing about 12 percent of Upjohn’s sales, still bringing in to that company about \$30 million. At the same time, one of the finest medical establishments in the world, Bethesda Naval Hospital, where expert care is given to personnel wounded in Vietnam, at that renowned facility, Panalba is still carried in the pharmacy, may be prescribed, will be dispensed, and administered.

The same panel on anti-infective drugs suggested that Mysteclin-F is ineffective as well for antimicrobial therapy and antimonilial prophylaxis. You can find this E. R. Squibb & Sons product in Bethesda Naval, also.

The panel on drugs used on correction of fluid and electrolyte balance recommended "that all fixed combinations of diuretic and enteric-coated potassium be removed from the market." But Squibb's Rautrax, Rautrax-N, and Rautrax Improved, which fall into this category of condemnation, are also still at Bethesda Naval.

In September 1956 Alevaire first came on the market for use in the respiratory system. It has been used for attacks of asthma, for treating the pulmonary tract, and by anesthesiologists as a carrier of other chemicals. In July 1968 the FDA published the judgment of the Academy: "The clinical impression of the panel is that this product is no more effective than water." The manufacturers of Alevaire, the Winthrop Products Division of Sterling Drug, have not been impressed; the FDA has done nothing more than propose that the drug be withdrawn. Mr. Chairman, if you should have the misfortune to be confined to Walter Reed Hospital, the U.S. Army's excellent medical facility here in the District, you would find that Alevaire, for 13 years a useless drug, is still carried by the pharmacy there.

What we have discussed this morning, Mr. Chairman, is the fact that our Government does not see health from the consumer's point of view. It does not see health from the taxpayer's point of view. If the National Academy—for \$800,000—judged that 70 drugs and their analogs are no good, then why are they still bought and stocked by the Government's own medical facilities? If the Food and Drug Administration, which paid the \$800,000 and then invested as much as a quarter of a million dollars more in its own administration of the program, knows that the drugs are useless, why does it continue to delay in either holding a public hearing or simply following through and wiping the "ineffectives" out of the marketplace?

These are legitimate questions for consumers to ask, on this and other matters, but they are difficult to grasp with the strength and alacrity the public needs to keep up with the pace of industry pressure and the dodges of government. Our association asks what we feel are the more pertinent questions in the health field. Our publication, the American Patient, first published the fact that the Department of Health, Education, and Welfare was going to phase out the Framingham heart study. We asked the Secretary for control of the study, and in so doing raised the far-reaching questions of priorities in national health planning. On the 23d of October we raised the question of appearance and reality: The FDA appeared to have done something with the "ineffective" drugs, but in reality it had done practically nothing. But the resources of any single consumer organization are limited. Our programs are not coordinated in any way; there is no "clearinghouse" of consumer action. Our limited resources are, therefore, spread very thin and used with less than maximum effect.

The proposed legislation would seem to provide some machinery for coordinating the efforts of groups such as the American Patients Association. I do not believe the Independent Consumer Council could ever supplant the special-interest consumer groups, such as the APA. In fact, I would anticipate that if such a council were in existence, its effectiveness would depend to a great degree on the knowledge and interest that percolates within such groups as ours.

We can raise the questions, but it is difficult to demand and receive the answers from industry or government. The "consumer movement"

is deceptive; it is underfinanced, undermanned, and still very much underplayed. The competition for public attention is very difficult—particularly in those media which rely for their revenue upon the good feelings of those a consumer group may see as adversaries. The need for good legal counsel, the development of appropriate strategies for approaching government or industry, the construction of new alliances—these and other needs could well be satisfied by such a council as conceived in this proposal.

I said before that the “consumer movement” is deceptive. I am not sure we have an actual movement yet, a dynamic, vigorous, growing community of interest among the general public. But I do know that within the body politic there is an uneasiness that demands our direct attention. In the health field I can recall reviewing the letters from consumers that came into the FDA. They arrived at the rate of 2,000 pieces of mail a month. When I would scan them, I was frequently surprised to find so many letters—as many as 20 percent—concerned with matters that were far beyond the purview of the FDA. People were troubled about the quality of medical care they were receiving. They were suspicious of their doctors, critical of their hospitals, wary of their emergency services. The FDA had no jurisdiction over any of these affairs. But it soon became clear to me that no one in or out of Government had the power or the interest to care. It seemed to offer the kind of challenge that, when answered, provided its own reward of fulfilling a public trust. Therefore, soon after leaving the Federal service I founded the American Patients Association, with the good advice and counsel of some of the most able consumer advocates in this city. As consumer issues arise and loom large in our society—the issues of environmental quality, or housing, of highway safety, and health—new organizations will appear or older organizations will expand to embrace the new issues. What is still required—and what this subcommittee is concerned about—is developing within government, or tangential to government, a mechanism for giving substance and support to consumers who see society changing and hope for progress, who see the economy grow and hope for equity, who see the new issues rise and hope for peaceful resolution.

One comment, if I may, Mr. Chairman, concerning the bill and its handling here in the Senate. As you and Senator Hart well know, truth in packaging is a basic consumer concept. In this particular proposal, S. 2959, there is a great deal said about consumer advocates at the State and local levels. I wonder if the Senate is really ready to support such an idea. I recall the recent passage by this body of the so-called Murphy amendment to S. 3016, the Senate’s authorization bill for the Office of Economic Opportunity. That amendment would wipe out the most creative and most consumer-oriented legal activities the Federal Government has performed in recent memory. We congratulate you, Senator Moss, and your colleague, Senator Hart, for being among the 40 Senators voting “Nay.” But 45 Senators voted “Aye” to carry that amendment through. If consumer education and consumer advocacy is to begin anywhere with vision and strength, we believe the Senate itself could be the place chosen.

Once again, Mr. Chairman, thank you for the opportunity to appear today.

Senator Moss. Thank you very much, Mr. Cron, for your very good testimony.

I appreciate your calling attention to the Murphy amendment that did indeed pass the Senate. As you point out, it was a great step backward. So we have much to do in the Senate itself, getting acceptance of this idea of defending the consumer.

I also want to congratulate you on your creation of the American Patients' Association as an organization to begin to focus on many of these problems.

I was, of course, very much impressed and a bit appalled by your recital of the failure to control drugs that have been found to be ineffective. By ineffective, you mean the consumer is just wasting his money entirely when he buys these drugs that have been found to be ineffective?

Mr. CRON. Yes, Senator. He is doing it in this sense, he is buying a hope that is just not going to be fulfilled. The consumers do that in two ways: in his personal judgment when he goes to the drugstore and buys an over-the-counter drug or a nonprescription drug on his own, and he does it when he relies on the good judgment of his doctor, which turns out poor in many instances. The consumer also pays as a taxpayer when his own representatives at the Federal level, the State level, and the municipal level, are throwing his money away on these drugs. The amount of money that is being thrown away has been going up considerably.

For instance, the last issue of *Drug Topics* did a survey showing that the expenses for prescription drugs rose 12 percent in 1968 over 1967. The prescription drug market is now at a \$4.4 billion level according to that survey.

Nonprescription drugs went up 2 percent. We have a large amount of money being transferred in the marketplace. Within that bundle are dollars that are being spent for drugs that are not going to do the job.

Senator Moss. Besides the great waste of money, do not these ineffective drugs, in some ways, impair his health in that he relies on them rather than seeking something that would be effective for whatever his problems may be?

Mr. CRON. That is true. He does put off the day when he is going to get adequate care for his illness.

There is another element, too, Senator, which I think we can't overlook. The development of the American drug supplies is one of the miracles of our industrial revolution; there is no question about that. A good drug extends the ability of the physician to take care of his patient without the patient constantly returning to his office, and without the patient showing up at clinics.

A good drug can relieve the impact on the physician's office and the outpatient clinic. If the drug is not working, then the relief that the medical community has bought for itself is really false relief.

We know, for example, that in virtually every income category, individuals earning less than \$3,000, that is below the poverty line, or whether they are individuals who are earning more than \$7,000, well above the poverty line, we know there is as little as half the number of office visits paid to physicians by nonwhites as by white.

One of the reasons we are cutting down on office visits is that we are relying on drugs instead. When the drugs do not perform, a couple of things are going wrong. One, the disease is not being cured. Secondly, our hopes for relieving the impact on physicians' time and relieving the impact on hospital facilities are not being fulfilled.

Those are two very serious hopes not being fulfilled.

Senator Moss. Does the FDA concern itself with the price of drugs, the expense of drugs, or is it concerned solely with measuring their efficacy and danger?

Mr. CRON. The jurisdiction of the FDA is solely in the area of safety and efficacy, and it is precluded from getting involved in economic matters. However, the FDA cannot move really without rejudging the marketplace in almost every area. In addition, the FDA is the Department of HEW's "Court of Last Resort" for the Public Health Service, for the Social Rehabilitation Service, for the Social Security Administration.

These agencies look to the FDA for advice and counsel when they spend public funds. If the FDA's judgments are incorrect, if they administer with less than the zeal we need at this time, then those other agencies which do have an economic impact will not perform adequately.

Senator Moss. I suppose that one of the excuses offered by FDA is its manpower is all tied up in a court battle over Panalba and that it can't move on the other cases until that one is resolved.

Is there something that FDA could be doing while awaiting its resolution?

Mr. CRON. Yes. I would like to say, first, Congress has not acted kindly with the Food and Drug Administration over the years in terms of budget and personnel. Nevertheless, I think if the agency does express a will to move, there are many directions which it can go with the manpower it has.

We certainly, in the last several years, were not overloaded with personnel either. We tried to get the job done. We tried to alert the consuming community as well as the medical community as to what was at stake.

I noted in my testimony, that the Department of Defense obviously has not received a very important message from the National Academy of Sciences. The Department of Defense is still buying and stocking drugs for which a sister agency in the Government has rendered a decision of ineffectiveness.

I think the Food and Drug Administration could better make that known to DOD physicians and indicate to them what the Academy has judged. I think they can go to the States. There is a great deal said about revenue sharing. Well, there has to be information sharing. There has to be the sharing of commitment.

This can be done without tremendous expansion of personnel, and this can be done without tremendous expansion of budget. You can share your information, you can share your knowledge and your commitment with directors of State hospital systems, with municipal welfare agencies and indicate to them what the Academy has said about this body of chemistry which really is no good.

Senator Moss. Is there any other group besides yours working in this field, urging the FDA to get drugs off the market that are ineffective?

Mr. CRON. Well, there is an interesting issue underlying that. I would have to say "No." But that would be unfair, an unfair judgment on many able consumer groups.

Right now the resources of the National Consumer League, the Co-operative League of the U.S.A., and the Consumer Federation of America is spread quite thin. They are concerned with the issues raised by Senator Hartke, who preceded me this morning, on transportation; they are concerned with truth in lending; they are concerned with truth in packaging; and, these are all important issues.

No single group such as the American Patients' Association, however, is concerned solely with the consumer in health. So, to answer your question directly, that is true, we are the only ones. We look for assistance from others, but we know they are very busy in a number of consumer areas.

Senator Moss. I think you mentioned that you thought the Independent Consumer Council might be useful in coordinating the activities of these various groups.

Is that filling out what you have been saying, that your group concentrates in the health field, and others in transportation and others in safety of toys, and so on, but if there were a consumer council that knew what was going on in all of these groups, it could coordinate and focus the representation?

Mr. CRON. Yes.

That is why we are supporting the idea of an Independent Consumers Council. Whether it comes out the way it has been drafted, is another matter. Certainly, the concept for our purposes, we would certainly support it. We need to husband the resources of consumers. When we are speaking of consumers, we are talking about people in middle income brackets, generally, and they have a limited amount of money to invest in advocates. Mostly it is personal advocate cases.

We need, somehow, at this time, a mechanism that will coordinate the limited people, the limited funds, and the limited attention that are being given to issues that are scattershot by a number of organizations in this city and around the country.

Senator Moss. I certainly appreciate your testimony, Mr. Cron. You are to be commended for your vigilant efforts on behalf of the American consumers of drugs and medical services.

To my mind, the situation that you described, is in many respects deplorable. People in this country are spending their money for useless medication, and thereby endangering both their physical as well as their financial well-being.

Producers of these drugs continue to market their products after the National Academy of Science has found them ineffective. The Food and Drug Administration seems unwilling or unable to move against the drug manufacturers who are exploiting the American consumers. And the Federal Government is aiding and abetting this exploitation by continuing to purchase for its own use, ineffective drugs.

So I am going, today, to ask the Food and Drug Administration to furnish us with a complete explanation of the situation you describe, and I particularly want to know why the FDA has been so slow to act. The FDA response will be made part of this hearing record.

If I discover that the procedures for removal of these drugs are so administratively burdensome as to, in effect, prevent or forestall FDA action, I will move to change the procedures through corrective legislation. The present situation certainly cries for correction. The physical and economic health of the citizenry must be adequately protected, and I intend to fight for this protection.

I am grateful to have you come forward to set out in the record, in the open, the situation that exists and enable us to follow on from here, to see if we can move now immediately to correct at least this situation that you have exposed to us this morning.

I thank you very much.

Mr. CRON. Thank you, also, for that statement, and the move you are making this moment. I am sure the patients and medical community both will benefit from this kind of action and request of the FDA and possibly the FDA will benefit as well.

Thank you.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
PUBLIC HEALTH SERVICE,
Washington, D.C., November 17, 1969.

Hon. FRANK E. MOSS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MOSS: This is in response to your letter of November 3, 1969, concerning testimony given by Mr. Theodore Cron to your Subcommittee for Consumers regarding ineffective drugs.

We share your concern in this matter and wish to assure you and your Subcommittee that the Food and Drug Administration is most anxious to remove from the market any drug that is not safe and effective. We have taken steps to effect the removal of drugs found ineffective by the National Academy of Sciences-National Research Council.

Since January 1968, the Food and Drug Administration has initiated actions to remove from the market about 200 of these drugs. Actual removal actions on nearly half of these have been held up because our actions are being contested in the Courts. Twenty-five other drugs have been recalled from the market voluntarily by their manufacturers. Administrative hearings have been requested by the manufacturers of another 18 drugs. Announcements by FDA on nearly 50 drugs were published during September 1969 in the *Federal Register* and the comments received from the manufacturers of these drugs are still under review.

The Food and Drug Administration has also carried out an educational and informational campaign aimed at the health community. We have made the findings of the NAS-NRC available to the Surgeons General of the Army and the Navy and to the directors of government hospitals and programs. The Defense Personnel Supply Center in Philadelphia advises that they do not stock, store, or dispense any of the drugs found to be ineffective. We understand that the DOD does permit the individual hospitals and physicians to exercise some local options in the stocking and use of drugs. The Food and Drug Administration has no control over this.

The translation of the NAS-NRC recommendations into action is a complicated procedure. A prime example is presented by the antibiotic combination preparations which includes "Panalba" and "Mysteclin-F" discussed by Mr. Cron.

In April 1969, we announced our intention to end the marketing of 78 antibiotic drugs classified as ineffective as fixed combinations. Most of these drugs were combinations of penicillin and sulfonamides (32) and penicillin and streptomycin (16). Their manufacturers were allowed 30 days to supply additional medical data to substantiate their claims that the drugs were effective. Three firms responded and the data they submitted were found to be inadequate. An order was entered calling for withdrawal of the drugs from the market by July 23, 1969.

Some of the firms, Abbott Laboratories, E. R. Squibb and Sons, Inc., Parke-Davis and Company, and Pfizer Laboratories told us they would withdraw their products, but Wyeth Laboratories, a division of American Home Products, filed suit in Wilmington, Delaware. The case is still in litigation. An almost parallel

chain of events took place with Upjohn Company, manufacturers of Panalba. The Upjohn case has reached the U.S. Court of Appeals in Cincinnati, Ohio.

To expedite the withdrawal of ineffective drugs, FDA also developed a policy regulation describing the scientific content of adequate and well-controlled clinical studies. We ruled that we would not grant any request for a public hearing on an order withdrawing drug approval unless the objections demonstrated affirmatively, by medical documentation, that there was a reasonable likelihood the objecting Company could present at the hearing the type of adequate and well-controlled scientific evidence called for by laws and described in detail in the September policy statement.

The purpose was to avoid the protracted delays in removing ineffective drugs from the market that would occur if hearing requests were granted without substantial reasons for doing so.

The Pharmaceutical Manufacturers Association on November 4, 1969, filed a suit challenging this policy. The Association also seeks a ruling that its companies are entitled as a right to hearings before any drug may be withdrawn.

Once these court cases have been resolved, we feel confident that many of the other actions we have taken against drugs judged to be ineffective will be expedited.

If we can be of further assistance, please let us know.

Sincerely yours,

GLENN W. KILPATRICK,

Acting Director, Legislative and Governmental Services.

Senator Moss. Our final witness this morning will be Mr. Don Elberson, who is the executive director of the Consumer Assembly of Greater New York.

We appreciate the fine work that the Consumer Assembly is doing in New York City under the direction of Mr. Elberson, and he can tell us a great deal, I am sure, about the problems that they confront there, and perhaps give us some good guidance on this question of whether or not an independent consumers' council would be desirable and useful thing nationally, and in the various communities around and throughout our country.

Thank you for coming, Mr. Elberson.

We look forward to hearing your testimony.

STATEMENT OF DON ELBERSON, EXECUTIVE DIRECTOR, CONSUMER ASSEMBLY OF GREATER NEW YORK

Mr. ELBERSON. Thank you very much, Mr. Chairman.

We are very happy to be here. The Consumer Assembly of Greater New York is pleased to be asked to express its views on S. 2959 before this subcommittee. The assembly is an association of organizations—trade unions, cooperatives, nonprofit medical care groups, fraternal associations, general membership organizations and neighborhood groups—all joined together for the purpose of giving the consumer greater influence in the legislative halls, before government agencies, and in the marketplace.

Mayor John V. Lindsay issued his first consumer message at our first large conference on January 13, 1967. We have participated in the development of this program as it evolved and the present New York City Department of Consumer Affairs as established by the New York City Council. Our president, Mr. Seymour W. Klanfer, is a member of the consumers' advisory council of the department. I am a member of the advisory board of the Nassau County Department of Consumer Affairs in the executive department of the State government at public hearings being held by the Joint Legis-

lative Committee on Consumer Protection. The Consumer Assembly of Greater New York is an active member of the Consumer Federation of America. Our six delegates to the annual meeting of the federation held this year in Denver, Colo., on August 23 and 24, voted support for the legislation being considered here.

Though we have exerted strong efforts for governmental action in this field, there are major weaknesses which legislation of the type being considered here would go a long ways toward correcting. A former head of a consumer protection agency once told us that the independent advocacy of the consumer interest was needed to "put steel in the back of the administrators of consumer protection programs." People in this position are under severe pressure from the business community to rule in their favor and very little pressure to rule in favor of consumers. In addition, there are political considerations in any administration of which a Department of Consumer Affairs is a part and considerations of the relations of such a department to others in the administration which place severe limitations on consumer advocacy. It is for this reason that we are convinced that an independent voice coupled with adequate research and expert testimony is badly needed to enable the consumer protection agencies to operate in the way they were intended to operate. You will find, in the hearings conducted by the New York State Joint Legislative Committee on Consumer Protection, a deep concern among legislative leaders about how independent consumer advocacy could be assured in a government agency. For those in Government who would like to do much for the consumer—and we believe Mrs. Virginia H. Knauer, the President's Assistant for Consumer Affairs, is such a person—the creation of an independent consumer advocacy group would be of inestimable value. We feel that there would be considerably less effort within the administration to water down the program she has been espousing if an Independent Consumer Council were in existence and giving her support.

It is little understood that one of the major roles that can be played by an organization of the type envisioned in this legislation is that of increasing the visibility of consumer problems. It is our feeling that one of the major needs at this time is the creation of an all-pervasive climate, through every conceivable means of communication of concern for consumer problems, so that all sections of our society know we have a national imperative. It has been our observation that the growing publicity about the inadequate treatment consumers are receiving both by Government and business is having a strong impact on both these sections of our economy, and that it is extremely important to make this impact stronger and more insistent. By heightening this kind of constant concern for the legitimate complaints of consumers, an independent consumers council can be of great value.

The highlighting of significant consumer issues and providing a mechanism by which they are constantly brought to the public's attention is then, an important contribution the Independent Consumer Council can make. We were proud to identify ourselves with the meat boycotters on Long Island through our representation on the Advisory Board of the Nassau County Department of Consumer Affairs. The high visibility the boycotters were able to attain is an example of what

can be done. But the history of such activities indicates that, without continuing and viable organization, much of the effectiveness of such efforts is lost. The organizational framework envisioned in this legislation could be the basis for translating the energy and enthusiasm of groups like this into a continuing and dynamic force for good.

Inflation today is the most insistent consumer problem we have. The Bureau of Labor Statistics is the source for the information that the costs of medical care and housing are the areas of greatest inflationary impact in the average family's budget. This is particularly true in the New York City area. These facts have led our organization to place a high priority on these matters in our conferences and our plans for action. Though the State of New York has one of the most progressive and effective housing programs for low- and moderate-income people in the United States, increasing costs have put additional housing beyond the reach of the families it was designed to serve.

One of our member organizations, the United Housing Foundation, is so concerned about the administration's high interest rate policy and the extent to which it feeds the fires of inflation—particularly in the housing field—that it has made major statements of its concern through its executive vice president, Harold Ostroff to the emergency meeting on the high interest crisis, in Washington, D.C., on August 5, 1969, and to the Committee on Banking and Currency of the U.S. Senate on October 1, 1969. The assembly is currently supporting the position of its member organization, the United Housing Foundation. This raises the question about the extent to which consumers, through Government, can get a unified policy on inflation and related questions like housing through a central department of consumer affairs. In our view, the Independent Consumer Council would be ideally situated to highlight such problems.

Thirty years ago, this Nation electrified its rural areas through an imaginative program of low-interest loans to electric cooperatives for the supplying of electrical energy to the farm families of this Nation. This was a magnificently designed and implemented program. The important question: If this Nation can develop such a program for its farm families, why cannot it do so for its people in the cities, in the fields of housing and medical care by using similar techniques? We submit that the Independent Consumer Council has an important role to play in pressing for programs of this type.

On October 23, 1969, our organization testified before the New York City Council Codes Committee on the Consumer Protection Act of 1969 which would greatly strengthen the powers of the Department of Consumer Affairs and make possible the institution of "class actions" by groups of consumers. We are pleased to note the authority given the Independent Consumers Council under section 14(c) in this matter. It would seem particularly appropriate at this time, in view of the rather limited concept of class actions as proposed in the President's Consumer Message of October 30, 1969.

As we have participated in public hearings over the past 2 years for the establishment of Department of Consumer Affairs, whether on a local or State basis, we have always recommended the establishment of advisory councils to such agencies made up of representatives of

consumer organizations, but without representation from the business community. It is an old cliché that all segments of our economy have their lobbies, but the consumer has none of his own. It is our view that the board of directors of the Independent Consumers Council should be chosen on a basis that gives it total, rather than partial, consumer representation if the philosophy of the legislation is to be adequately implemented.

We also wonder whether the language of section 13 needs strengthening to make sure that the council has the right to initiate action and not just the authority to intervene in pending action.

Mr. Chairman, it has been a great honor to appear before you and present our views on the legislation being considered here. For that, we wish to thank you. We particularly want to thank you, Mr. Chairman and Senator Hart for showing such great sensitivity to the needs of consumers and the willingness to lead out in this area. We sincerely hope that your efforts will be successful.

Thank you.

Senator Moss. Thank you, Mr. Elbersson, for your testimony.

We are pleased indeed to have you come down because you speak from a position of experience and on-going effort being made in the New York area, and we observe the work that you are doing with great satisfaction.

We appreciate your specific comment on the legislation, and I agree with you we should look at that language to make sure that an Independent Consumer Council would have the power to initiate action, not to simply intervene when some other organization or person has already instituted the action.

I was very interested in your testimony, and it touched many points on which I have considerable concern.

I agree with you in your estimate of Mrs. Virginia Knauer, that she is a person very dedicated to consumer interest. But I noted you felt that if she was strengthened, as it were, by having an Independent Consumers Council voicing its position that she could then more fully and adequately press for the interest of the consumer.

I wondered if you had any specific instance in mind where you felt that she was not as fully free to move as she should be in this position that she now occupies.

Mr. ELBERSON. Well, in the *New York Times* this morning there is a reference to the statements of certain consumer spokesmen, including an old friend of mine, Robert Smith of Consumers Union, in which he makes reference to a speech that Mrs. Knauer made at the Consumer Federation of America Annual Meeting in Denver, which I have already referred to. I heard that speech, as many of the rest of us did, and we were delighted and elated about the effort that was going to go into the class action program. However, as it has come out, and as Mr. Smith refers to it this morning in the *Times'* article, it is considerably less. Not only will it have to go through the Department of Justice first, but the number of cases are spelled out; it is not the broad type of program that we thought it originally was.

Senator Moss. I wondered about that. Mrs. Knauer testified before us on the Clean Fish bill—you know we have been through meat and poultry and finally we were on fish and part of the legislation required continuous inspection when fish and fish products were being

prepared for market. We felt in our consultations with Mrs. Knauer and from some of her previous speeches, that she was strongly on the side of the continuous inspection. When she came before the committee to testify, she took the administration's position of intermittent inspection, and we felt—I for one felt—that maybe this was an indication of where she was not entirely free, being part of an administration that had made a decision that seemed to be at variance with her own independent position at an earlier time.

Mr. ELBERSON. I would like to make it clear that my remarks are not really directed at Mrs. Knauer, but at the nature of the Government in this field, and that is the thing which impels us toward the idea of an independent consumer's council.

Senator Moss. I thank you for that comment, because I would not wish to be misunderstood either in reflecting on Mrs. Knauer. I believe she is a great advocate for the consumer, and she certainly does an excellent job, but just in the nature of things, if her office is encompassed within the administrative procedures of Government, she has certain limitations upon her. Therefore, the argument for an Independent Consumers Council becomes more clear.

You indicated in your testimony that the two areas of greatest impact of inflation on the consumers were the medical and the housing.

Do you have any indication of people not receiving adequate medical attention because of the great increase in cost of medicine in the last few years?

Mr. ELBERSON. I would like to say that Prof. Harry Becker, of Einstein College of Medicine, who is in my view, one of the leading students of medical care—in testimony before the insurance department in New York on the Blue Cross request for rates and also before the hearings of the Joint Legislative Committee on Medical Care—has indicated that the constant increases are washing out, or throwing into a lower area of medical care, perhaps 20 or 30 percent of the people who are now in this, I guess we would call it an insurance system. We think that that is very, very much the case. That is one of the reasons I was very happy to see Mr. Cron's statements here, because in our organization medical care is one of our major concerns. We have had many, many conferences on it, and we think at his time that the drive for some form of universal health insurance is to be considered, positively, and we said so at the joint legislative hearings.

Senator Moss. Thank you very much.

In this field of housing, is there one income group that is more severely penalized by the high interest costs than another? I was just wondering how this breaks among the higher income group and the middle and the lower? Where does the greatest impact come?

Mr. ELBERSON. I don't think in terms of the figures either one or the other. They are both affected by it because public housing is certainly affected by the interest rate and the bonds that can be sold on the market.

As the case in New York, even though we have a great program of State financing and so forth, eventually it must meet the problem of the interest rate for which the State bonds are sold. I just want to quote from Mr. Ostroff's statement here very briefly. He said:

In 1965 we estimated the cost of financing for Co-op City, a 15,372 unit cooperative development being built in New York City. Mr. Chairman, in four

years the carrying and financing charges for this cooperative have increased from \$16,700,000 to \$32,900,000, a 200 percent increase. The costs of construction have increased from \$267 million to \$307 million, a 15 percent increase. In four years the monthly carrying charges per room will have to be increased by 16 percent.

That is what I mean when I say that this disaster of a hard money policy is just shoving these people right out of the market. These kinds of figures indicate an income for a person going into one of these cooperatives of around \$13,000. It is ridiculous.

Senator Moss. The cooperative isn't for the poverty level at all, is it? It is so high now that even people of what we would consider good average middle income have problems qualifying?

Mr. ELBERSON. The United Housing function built Rocksdale Village on the old Jamaica racetrack 5 years ago at rentals of \$21 per room.

Now, if you take a family and say they should pay 1 week's salary for a monthly rental, that would be just about right, \$21 a room.

Senator Moss. Thank you very much, Mr. Elbersen. We do appreciate your coming and you have contributed a great deal to our record. We appreciate the fine work you do.

I think this completes the number of witnesses who are coming to testify this morning.

Today's witnesses have demonstrated a further need for a consumer advocate—an advocate who will tenaciously argue for the consumer interest before executive, legislative, and administrative tribunals.

Senator Hartke has indicated how consumer representation before the ICC can be effective. By simply intervening, one consumer group has caused carriers and shippers to marshal evidence which spells out the consumer interest as well as their own. This can only help that agency judiciously decide the issues before it.

Mr. Cron has disclosed a disturbing situation which threatens the American pocketbook, and more importantly, the very health of the American consumer. I cannot help but feel that an Independent Consumer Council could assist Mr. Cron in his battle to protect consumers of drugs and medical services. And Mr. Elbersen has described a host of problems which effective consumer advocacy could help solve.

Daily I receive mail from consumers who complain bitterly of rising prices or quality cutbacks. It is patently clear that in Government's search for antidotes to inflation the consumer is the forgotten entity. Oftentimes Government decisions seem to assist rather than impede inflation. And certainly Government's failure to act allows manufacturers of ineffective products to continue to drain the resources of each and every one of us. Perhaps a strong and vigilant consumer advocate within an Independent Consumer Council could reverse these presently disheartening trends. This subcommittee will continue to explore that possibility in future hearings. But for now, this hearing will be in recess, subject to call of the Chair to have further hearings on the subject before us. We are in recess.

(Whereupon, at 1:35 p.m., the hearing was recessed, subject to the call of the Chair.)

