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CONSUMER PRODUCTS GUARANTY ACT

HEARINGS

BEFORE THE

CONSUMER SUBCOMMITTEE

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-FIRST CONGRESS

SECOND SESSION

ON

S. 3074

TO PROVIDE MINIMUM STANDARDS FOR GUARANTIES COVERING CONSUMER PRODUCTS WHICH HAVE ELECTRICAL, MECHANICAL, OR THERMAL COMPONENTS, AND FOR OTHER PURPOSES

JANUARY 20, 21, 22, AND MARCH 10, 11, 1970

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CONSUMER PRODUCTS GUARANTY ACT

TUESDAY, JANUARY 20, 1970

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

The subcommittee met at 9:30 a.m. in room 5110, New Senate Office Building, Hon. Frank E. Moss (chairman of the subcommittee) presiding.

Present: Senators Moss, Hart, Cotton, and Pearson.

Senator Moss. The subcommittee will come to order.

OPENING STATEMENT BY THE CHAIRMAN

Senator Moss. We are pleased to be here today, the Consumer Subcommittee of the Senate Commerce Committee, to begin hearings on a comprehensive consumer products guarantee bill. The number of the bill before us is S. 3074.

Few, if any, issues plague the consumer more than the one we will discuss today. The artful words in minute print under the bold type declaration of "guarantee" or "warranty" confuse and bewilder even the sophisticated buyer. The so-called guarantee may prove to be a full coverage insurance policy against product failure during the guarantee period, but it is just as likely to be an empty promise and "insure" only the corporation making it—"insure" it, the corporation, of marketing advantages of the word "guarantee" and insure it against having to pay if the product fails to work.

And even when a "guarantee" actually promises by its terms to indemnify—to insure—product performance, there is no assurance that the maker of the guarantee will stand behind its promises. Some guarantors—those who make guaranties—do a great job of giving full protection guaranties which are fully honored; others may purport to offer full protection, but the weakness and shoddiness of their service capabilities prevent them from carrying through on their promises.

The guarantee problem is not a new one. As one industry representative acknowledged at an annual meeting of his association: "The warranty and guarantee problem has been with us for 10 years." In 1967, the chairman of the Senate Commerce Committee, Senator Warren G. Magnuson, introduced legislation designed to cure certain aspects of the warranty problem. This initial congressional action generated intense activity even though no hearings were held. The Federal Trade Commission went to work on the problem. Industry scrambled to put its own house in order. And Congress decided to let the administrative agencies and industry have some time to do just that.

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

In January of last year the President's Task Force on Appliance Warranties and Services submitted a comprehensive report. This had been preceded by the Federal Trade Commission's staff report on automobile warranties. And still Congress waited for legislative recommendations and/or curative voluntary industry action. None came.

Congress can wait no more. In late October of last year I joined with Chairman Magnuson in introducing the Consumer Products Guaranty Act which imposes minimum Federal standards on manufacturers, distributors, or retailers who decide to guarantee consumer products. As chairman of the Consumer Subcommittee, I welcome the opportunity to receive testimony on this bill, and I look forward to productive hearings that will point the way toward an intelligent legislative solution to many of the problems of guarantee disclosure and servicing.

The concept embodied in S. 3074 is simple. If a manufacturer or retailer decides to guarantee the performance of his product or any component thereof, he must do it in a prescribed manner which the consumer can understand. He must label it a "Perfomance Guarantee" and tell the consumer how long the guarantee runs and what maintenance is required. If the guaranteed product or component malfunctions, the guarantor is required to repair, or replace if repair is not possible or cannot be timely made, the malfunctioning component within a reasonable time and without charge. If the maker of the guarantee fails to perform his duties, the consumer has quick and effective means of making the corporation respond either through court action where his attorney's fees are paid for or through informal dispute settlement mechanisms.

No manufacturer is required to guarantee his product.

No manufacturer or retailer is prohibited from selling a service contract instead of giving a guarantee.

But a manufacturer is prohibited from disclaiming implied warranties of merchantability and fitness for a particular purpose when issuing an express guarantee.

In the Appliance Warranties and Services Task Force Report, the Secretary of Commerce noted that:

> In voicing complaints, consumers do sometimes observe that they would have been willing to pay more for an appliance initially in the interest of avoiding subsequent repair costs and inconveniences.

The Secretary went on to say:

> Every designer and manufacturer faces a complex balancing of initial cost and selling price on the one hand and long-term operating and maintenance expense on the other.

But that is true only if the designer or manufacturer has to pick up the long-term operating and maintenance expense. Under ther provisions of S. 3074 all manufacturers who guaranty their products will have to factor in operating and maintenance expense at least for the duration of the guarantee. They will not be able to evade most of the costs by giving an alleged guarantee that covers parts but not the biggest cost item—labor, although they may be able to give a parts warranty. Therefore, the consumer who wants full protection—insurance that a product will perform or will be quickly repaired to replaced without charge—can shop for the products which have performance guarantees—and those with the longest guarantees will offer the greatest protection.

Consumers who shop only for price or who want to buy separate insurance policies in the form of service contracts will still be able to do so. But for the first time the word "guarantee" will mean full protection and the consumer can shop and rely upon it without taking the guarantee to his lawyer for translation.

Chairman Magnuson and I look forward to constructive testimony that will give better architecture to our Consumer Products Guaranty Act. We are very anxious to transform this working paper into an effective and workable piece of legislation as quickly as we can.

By that I am trying to say, of course, the purpose of a public hearing, among other things, is to get information that will enable us to improve, if possible, on the language or structure of the bill. We are not ironclad in exactly what the bill will be. This is the point of beginning, the language that is before us; but that is what we will discuss in the hearings that we have today and to follow after this.

(The bill and agency comments follow:)

[S. 3074,, 91st Congress, first sess.]

A BILL To provide minimum standards for guaranties covering consumer products which have electrical, mechanical, or thermal components, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States assembled, That this Act may be cited as the "Consumer Products Guaranty Act".

DEFINITIONS

SEC. 2. For the purposes of this Act—

(1) A "consumer product" is one normally used for personal, family, or household purposes.

(2) An "electrical component" is one with an assemblage of parts which conducts a flow of electrons from one point to another in a predetermined manner in order to perform an intended function.

(3) A "mechanical component" is one with an assemblage of parts which transmits mechanical forces or energy from one point to another in a predetermined manner in order to perform an intended function.

(4) A "thermal component" is one with an assemblage of parts which conducts heat energy from one point to another in a predetermined manner in order to perform an intended function.

(5) A "malfunctioning component" is one in which the assemblage of parts is not properly transmitting mechanical, electrical, or thermal forces in a predetermined manner, and, therefore, not performing its intended function.

(6) The term "without charge" means that the guarantor(s) cannot assess the owner for any costs the guarantor or his representatives incur in connection with the required repair or replacement of guaranteed components. The term does not mean that the guarantor must compensate the owner for incidental expenses unless such expenses were incurred because the repair or replacement was not made within a reasonable time or because the guarantor imposed an unreasonable duty upon the owner as a condition of securing repair or replacement.

(7) "Reasonable and necessary maintenance" consists of those operations which the consumer reasonably can be expected to perform or have performed which are necessary to keep any thermal, mechanical, or electrical component operating in a predetermined manner and performing its intended function.

(8) The term "replacement" shall include the refunding of the purchase price of the product less reasonable depreciation based upon use prior to malfunctioning if the guarantor is unable to effect replacement, or if the owner is willing to accept such refund in lieu of replacement or repair.

(9) An "express guaranty" is one created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the consumer product or any of its components and becomes part of the basis of the bargain creates an express guaranty.

(b) Any description of the consumer product or any of its components which is made part of the bargain creates an express guaranty.

(c) Any sample or model which is made part of the basis of the bargain creates an express guaranty.

It is not necessary to the creation of an express guaranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a guaranty, 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 guaranty.

DUTIES OF GUARANTORS

SEC. 3. In the sale of consumer products which are distributed in or which affect interstate commerce and which have electrical, mechanical, or thermal components, any express guaranty related to the performance of such products imposes upon the maker or makers of such guaranty the duties—

(a) to repair, or replace if repair is not possible or cannot be timely made, are malfunctioning guaranteed components,

(b) within a reasonable time, and

(c) without charge.

In fulfilling the above duties the maker shall not impose any duty other than notification upon owners as a condition of securing repair or replacement of a malfunctioning guaranteed component unless the maker can show that such a duty is reasonable. In determination of whether or not the additional duty or duties are reasonable, the magnitude of the economic burden necessarily imposed upon the maker and purchaser shall be weighed against the magnitude of the trouble and annoyance caused owners of malfunctioning guaranteed products.

The above duties extend from the maker to the first purchaser and any subsequent owners for the duration of the guaranty period stated, or if no period is stated, for a reasonable time.

DEFENSES AVAILABLE TO GUARANTORS

SEC. 4. The duties enumerated in section 3 shall not be imposed upon the maker of any performance guaranty if the maker can show that damage or unreasonable use (including failure to provide reasonable and necessary maintenance) caused any guaranteed components to malfunction.

REQUIREMENTS OF WRITTEN GUARANTEES

SEC. 5. Whenever a guaranty described in section 3 is made in writing, the maker of the guaranty shall cause it to be labelled "performance guaranty" and shall cause the following information to be provided for the purchaser prior to the time of purchase:

(a) The duration of the guaranty period measured either by time, or where practical, by some measure of usage such as mileage.

(b) Any reasonable and necessary maintenance required as a condition of the guaranty.

(c) The cost of such maintenance if required to be performed by a designated representative of the maker.

The maker shall also provide the following information to the first purchaser:

(a) A recital of the makers duties to the purchaser or subsequent owners during the guaranty period.

(b) The step-by-step procedure which the owner should take in order to obtain repair or replacement of a malfunctioning guaranteed component.

(c) Any means available for quick informal settlement of any guaranty dispute.

(d) A recital that legal remedies are available to any owner if the guarantor has not fulfilled the terms of the performance guaranty.

(e) A recital that any consumer who successfully pursues his legal remedies may recover the reasonable costs incurred, including reasonable attorney's fees.

EXCLUSIVE USE OF THE WORD "GUARANTY"

SEC. 6. One year after the date of enactment of this Act, no guarantor shall characterize any promise or affirmation which relates to consumer products by the word "guaranty" unless such promise or affirmation relates to the performance of consumer products which have electrical, mechanical, or thermal components.

SEPARATE GUARANTY PERIODS

SEC. 7. Nothing in this Act shall prohibit the maker of a performance guaranty from assigning separate guaranty periods to separate components of a consumer product, provided that any varying coverages are clearly stated and reasonable in number.

PARTS WARRANTY

SEC. 8. Nothing in this Act shall prohibit the maker of a performance guaranty from warranting parts and not labor after the expiration of a performance guaranty period if that period is of reasonable duration.

SERVICE CONTRACTS

SEC. 9. Nothing in this Act shall be construed to prevent a manufacturer, distributor, or retailer who does not give a performance guaranty on consumer products which have mechanical, electrical, or thermal components from selling a service contract covering parts and labor to the first purchaser at the time of sale.

DESIGNATION OF REPRESENTATIVES

SEC. 10. Nothing in this Act shall be construed to prevent the maker of any performance guaranty from designating representatives to perform the duties required under this Act, but no such designation shall relieve the maker of his direct responsibilities to the consumer.

RELATION OF THIS ACT TO STATE LAW

SEC. 11. Except as provided by section 12, State law is not preempted by this Act.

SEC. 12. State law is modified to the extent that there may be no express disclaimer of implied warranties if any performance guaranty is given.

SEC. 13. Remedies for breach of implied warranties may be limited, liquidated, or contractually modified in accordance with applicable provisions of State law.

SEC. 14. Nothing in this Act shall be construed to limit implied warranties to durations coincidental with express performance guaranties.

FEDERAL TRADE COMMISSION

SEC. 15. (a) The Federal Trade Commission shall establish such trade regulation rules as it shall determine are necessary for implementing sections 2 through 10 of this Act.

(b) It shall be a violation of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)) for any person or corporation subject to the provisions of this Act to fail to comply with any requirement imposed on such person or corporation by or pursuant to this Act or to violate any prohibition contained in this Act.

(c) Nothing in this section shall be construed as impairing the rights of owners, to seek, individually or as a class, any remedy available for any breach of any duty imposed by law.

REMEDIES

SEC. 16. Congress hereby declares it to be its policy to encourage guarantors to establish procedures whereby consumer disputes related to performance guaranties are fairly and expeditiously settled through informal dispute settlement mechanisms: Such informal dispute settlement procedures should be created by guarantors in cooperation with independent and government entities and should be supervised by some governmental or public body.

SEC. 17. Any owner, individually or as a class, may sue in any United States, State, or District of Columbia court of competent jurisdiction for any breach of a performance guaranty.

SEC. 18. The guarantor shall be liable to the owner for any breach of a performance guaranty and shall be under a duty to perform as required under this Act and to compensate the owner for all reasonable expenses incurred by the owner because of the guarantor's initial failure to perform.

SEC. 19. If any owner shall finally prevail in any suit or proceeding involving a performance guaranty, he shall be allowed to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees) determined by the court to have been reasonably incurred by such owner for or in connection with the institution and prosecution of such suit or proceeding.

EFFECTIVE DATE

SEC. 20. This Act shall take effect six months after the date of its enactment.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., November 17, 1969.

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

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 3074, "To provide minimum standards for guaranties covering consumer products which have electrical, mechanical, or thermal components, and for other purposes."

The proposed legislation is designed to require a manufacturer or retailer to provide a meaningful assurance of performance when he purports to guaranty the performance of a consumer product. Specifically, it would require manufacturers or retailers of products having electrical, mechanical, or thermal components, who make any promise related to the performance of their products, to repair or replace any malfunctioning guaranteed component, within a reasonable time, and without charge. It would authorize the Federal Trade Commission to issue regulations to carry out the program.

Since the proposed legislation relates to matters not primarily within the jurisdiction of this Department, the Treasury has no comment to make on the bill.

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

Sincerely yours,

PAUL W. EGGERS.

Senator Moss. I am most pleased to have sitting with me the senior minority member of the Commerce Committee and also the senior minority member of this subcommittee. I will ask if either of these gentlemen have any remarks?

Senator COTTON. I will defer to Senator Pearson.

Senator PEARSON. I have no statement.

Senator Moss. Thank you, Senator Pearson and Senator Cotton.

We are expecting Senator Hart, who is vice chairman of this subcommittee, to be joining us at the hearing momentarily, and when he arrives I am sure he will have a few opening remarks that will help in our deliberations.

Senator Hart, as chairman of the Antitrust and Monopoly Subcommittee, has been thoroughly examining the problem of automobile servicing and repairs. In his hearings he has of necessity touched upon the problem of warranty service as it relates to automobiles, and this subcommittee will welcome his thoughts on the Consumer Products Guaranty Act.

We are pleased to have several very distinguished witnesses appearing before us this morning.

The first one who I will call upon is the Chairman of the Federal Trade Commission, Chairman Weinberger.

Mr. Weinberger, you have been before our committee recently. We welcome you back this morning, and look forward to your testimony here today.

STATEMENT OF HON. CASPAR W. WEINBERGER, CHAIRMAN, FEDERAL TRADE COMMISSION, WASHINGTON, D.C.

Mr. WEINBERGER. Thank you, Senator.

Mr. Chairman and Senators: It is a privilege to have the opportunity to appear before this very distinguished committee to express my views, and they are my views at this point, not the Commission's, with respect to the Consumer Products Guaranty Act, S. 3074.

The purpose of the bill, of course, is to provide minimum standards for guarantees covering consumer products which have electrical, mechanical, or thermal components, and for other purposes.

The bill is directed at one of the most serious consumer problems existent today—that of product reliability—consumers have a right to be assured that the product purchased today will continue to operate tomorrow. Consumers are properly concerned with the adequacy of guarantees and warranties on all of the goods they buy. We certainly must strive to promote product integrity and create a market environment in which the consumer can have confidence.

Such an environment will be of benefit not only to the consumer but to the businessman as well. Consumerism and the interests of business are certainly not separate or in opposition to one another. It is as important to one as to the other that business provide quality goods and services. I have never felt there is anything in any sense antibusiness about a good consumer protection program.

President Nixon in his consumer message of October 30, 1969, defined "consumerism" in the seventies as meaning that we have adopted the concept of "buyer's rights." He focused specific attention on warranties and guarantees and reactivated the Task Force on Appliance Warranties and Service and directed it to report on the need for legislation, as you know, with respect to warranties on household appliances and in other fields.

The task force, which consisted of the Secretaries of Commerce and Labor, the Chairman of the Federal Trade Commission, and the Special Assistant to the President for Consumer Affairs was originally created to:

> Encourage improvements in the quality of service and repairs.
>
> Assure that warranties and guarantees say what they mean and mean what they say.
>
> Let the consumer know how long he may expect the product to last if properly used.
>
> Determine whether Federal legislation is needed.

My precedessor, Chairman Dixon, served on this task force. I have not yet had that privilege.

On January 8 of last year, just about a year ago, the report of the Task Force on Appliance Warranties and Service was published. It concluded that the underlying and basic problem which must be solved is how to persuade or compel a manufacturer and the retailer to provide the purchaser of a major appliance with a meaningful guarantee which they will honor in both letter and spirit subsequent to the sale.

It recommended that the household appliance industry disclose more fully the terms of the warranties and improve warranty performance. At that time the members of the task force believed that if after 1 year it appeared that substantial progress was not being made toward

the implementation of its recommendations and the solution of the problems raised, then legislation necessary to achieve the desired results should be considered.

The progress report requested by the President has not as yet been published; however, it is apparent that there has been some effort by industry to improve warranties and service in the major appliance field. But, it is also clear that all problems associated with warranty performance have not been resolved, and it is unlikely that collective voluntary action will provide an effective solution to warranty abuses.

Certainly consumers have a right to be assured that they will receive complete and clear disclosure of the terms and conditions of any warranty on merchandise or service. The failure of the guarantee to set forth clearly and in understandable language the nature and extent of the guarantee is perhaps the most common complaint. Buyer confidence in the seller's integrity is not enhanced when the seller unfairly leads the buyer to believe he is getting more than he is. The consumer must be provided with information whereby he is able to make an intelligent, informed judgment.

As is demonstrated in the task force report, consumer problems with warranties are not confined solely to deceptive terminology. Consumers are concerned as well with the adequacy and fairness of the various warranties on goods that they buy. While it is important that warranties say what they mean, it is just as important that they afford some meaningful assurance of product reliability to the consumer. The very terms "guarantee" and "warranty" themselves lead a customer to believe that the guarantor stands behind his product.

Too often, however, the guarantee has not been used as a vehicle to provide customer assurance of product reliability. In some instances it has actually been used more as a device to limit the responsibility of the seller—often negating altogether the implied warranties of fitness and merchantability.

The consumer should also be assured that the warranty not only says what it means but also that it means what it says.

A warranty, no matter how clear it terms nor fair its coverage, can mean little or nothing unless the guarantor honors it. One of the basic causes of consumer dissatisfaction with service provided under a guarantee or warranty is the failure of some guarantors to fulfill the obligations actually set forth in the guarantee to the extent and in the manner expected by the consumer.

Automobile warranties were recently the subject of extensive public hearings before the Federal Trade Commission. While the Commission has not as yet reached final conclusions and recommendations based on these hearings, it is clear from the material produced at the hearings that warranties in the automotive industry, like those in the appliance industry, are too often deficient in form, substance, and performance.

Some warranties are deceptive and misleading. It is the sort of field where one such failure is too many. Often the warranty limits the car buyer to less than that to which he would have been entitled in the absence of the warranty.

Performance of whatever warranty promises are made is also in need of vast improvement.

The foregoing studies have thus identified consumer problems inherent in warranties and guarantees.

The challenge now lies in seeking out the most effective method of eliminating these consumer abuses.

S. 3074 embodies a comprehensive attack on warranty abuse. It is directed at form, substance, and performance of warranty obligations. The bill deals with the requirements of written guarantees and the information required to be supplied the purchaser.

It imposes certain minimum standards relating to product performance imposing upon the maker of express guarantees the duties to repair, or replace, all malfunctioning guaranteed components, within a reasonable time, without charge.

The Federal Trade Commission is directed to establish such trade regulation rules as it shall determine are necessary to implement the bill. This bill also provides that it shall be a violation of section 5 (a) (1) of the Federal Trade Commission Act (15 U.S.C. 45 (A)) to fail to comply with any requirements imposed, or to violate any prohibition contained in S. 3074.

Sections 16 through 19 concern remedies available under the bill. Section 16 declares it to be the policy of Congress to encourage guarantors to establish procedures whereby consumer disputes relating to performance guarantees are fairly and expeditiously settled through informal dispute settlement mechanisms, so, as you said, Mr. Chairman, to eliminate consulting an attorney or going to court.

Section 16 provides a cause of action for breach of a performance guaranty by any owner, individually or as a class, with provision for recovery of costs and expenses including attorneys' fees, in section 19.

I fully endorse the objectives of the bill as they are directed at providing needed protection to the public in the purchase of certain products. However, until I have had the opportunity to review the reports of the President's Task Force on Appliance Warranties and Service, as well as the Commission's staff report on its automobile warranty investigation, I respectfully defer specific comment on this bill's approach to this problem.

Other legislative solutions have also been suggested, and I would appreciate the opportunity to analyze these suggestions in relation to my review of the above-mentioned investigative reports.

One thing is certain with respect to warranties; the consumer needs protection and existing legislation does not seem adequate for this purpose. The Commission, under present law, has the authority to establish standards for the presentation, clarity, fairness, and full disclosure provided by the manufacturer's guarantee; however, it lacks adequate enforcement procedures to compel compliance in the event such standards are not followed.

The Commission also must have available to it better enforcement tools. The cease-and-desist order is woefully inadequate in these situations. It is too cumbersome and time consuming.

The Commission needs the authority, recommended by the President in his consumer message last year, to seek preliminary injunctions from the courts aimed at bringing to an immediate halt any unfair, fraudulent, or deceptive practice.

In conclusion, let me say again I do fully support the objectives of the bill. After I have had an opportunity to review adequately the reports of the President's Task Force on Appliance Warranties and Service, and the conclusions and recommendations that will be forthcoming from the Federal Trade Commission's automobile warranty hearings, I hope to be of more service to the committee because at that time more information directly relating to this problem will be available. And I will be glad to ge into detail on specific phases of the bill.

I am advised that recommendations for legislation will be forthcoming from our automobile warranty hearings that are now completed. They may be fully compatible with the provisions of S. 3074. Commission action on these recommendations should be completed shortly. I hope that will be about the first or second week in March, and I will be able to report the Commission's conclusions at that time.

In any event I think S. 3074 represents a good beginning, and I hope our later recommendations, based on our automobile warranty hearings, will take us further along this path. I will be happy to furnish this committee with a further report on the Commission's views after we have completed our deliberations on the automobile warranty problems, which I hope will be soon. I expect it will be in the first or second week in March because the staff report is just now beginning to be circulated to the Commission members.

I appreciate very much this opportunity to appear before the committee.

Senator Moss. Thank you, Chairman Weinberger, for your very fine statement and your forthright endorsement of the general principle and objective that we seek in this bill.

I can recognize that you need time to acquaint yourself with the warranty and guaranty issues that are being developed within the Commission and by the task force. I am happy to have you say you think that the Federal Trade Commission recommendations on the warranty will be released shortly.

You stated that you hoped the recommendations would be available by the first or second week of March. I would hope that maybe you could move it along to about the 1st of March, because we hope to have additional hearings on the 10th and 11th, and if we have a little staff time to analyze the recommendations we could probably have a more meaningful hearing.

Mr. WEINBERGER. I am sure that can be done, Senator. If we have a March 1 deadline, we can meet it.

Senator Moss. Thank you very much. I will appreciate it. I am sure we are all engaged in what you describe as a bipartisan effort here to find a solution to a plaguing problem that our consumers have.

Your discussion of the adoption of the concept of buyer's rights brings this to mind. In his consumer's message the President reiterated the rights that had been set forth previously by President Kennedy, and, truly, consumerism in the seventies appears to be bipartisan in nature and I hope it will always proceed in that way.

I take it from your testimony that you think some legislation seems necessary in order to eliminate the abuse of this warranty dodge that is used.

Mr. WEINBERGER. That would appear to be the case, yes, sir. Certainly with respect to the enforcement powers of the Federal Trade

Commission, to get something that would operate more rapidly than the cease and desist procedure, I think this would be essential.

Senator Moss. As to the additional enforcement power, would you think at this point—and again I recognize we are in somewhat preliminary stages because you are going to analyze the report—but on this enforcement power, is this the power to seek an immediate legal suspension rather than go through the practice of having an order and a cease and desist and the regular administrative procedure.

Mr. WEINBERGER. Substantially. This is the power that the President recommended last year, Senator. At the present time, as you know, if the Commission concludes the act has been violated, they can issue a cease and desist order which has the effect from the time it becomes effective of requiring that the challenged practice stop.

However, the challenged practice does not stop while the entire court procedures and Commission procedures are being gone through. Any reasonably competent attorney can delay the imposition of the order for 2, 3, sometimes 4 years.

The procedure that the President recommended doesn't give the Commission the power to stop the practice immediately. It gives the Commission the power to go to court and try to convince the court that there is a sufficiently strong case against the challenged practice so that the court would issue an injunction which would stop the practice until the full legal procedures have been gone through, in a sense reverse the existing procedure.

Senator Moss. So, it would be getting a preliminary injunction while the procedure then follows on of hearing the evidence and so on?

Mr. WEINBERGER. That is correct. The only way you would do that would be if you presented a sufficiently strong case to the court to convince the court that you should have the preliminary injunction.

Senator Moss. I appreciated in your testimony the point that you made about a consumer's need to make an intelligent informed judgment and your suggestion that the terms "warranty and guarantee" lead the customer to believe that the guarantor stands behind his product. Do you mean that the customer believes when he gets a warranty or guarantee that he is receiving a certain level of post-sales protection?

Mr. WEINBERGER. I think that many people have the impression from, as I said, the very use of the term guarantee or warranty that, for example, if something happens to an automobile tire after you have had it a few months and it is guaranteed we will say for 24 months that you are going to be given a new tire, and that nearly always is not the case.

I think that the bill by its provisions of certain minimums in the event a guarantee is given, and as I understand the bill, it doesn't compel a guarantee to be given, but if a guarantee is given, certain minimums are required to be carried out, such as replacement if it can't be repaired. This will, I think, do a considerable amount to underline and to make true the normal and reasonable expectations of a purchaser when he buys a product.

Senator Moss. In quite a number of instances this sort of protection is not available even though something called a guarantee or a warranty is displayed with the product or in advertising the product?

Mr. WEINBERGER. Yes, I think this is the case. Frequently, there is no deception in the legal sense because if the full proposed contract had been gone through carefully by the purchaser or his counsel, they would have learned precisely the limits of the protection that is offered. This is not practical and ordinarily is not done. With the term such as "guarantee," that conveys a certain set of rights to the average person; then, I think if that term is going to be used, it is essential, as I say, that the reasonable expectations of the purchaser be carried out.

Senator Moss. The normal purchaser sees that big word "guarantee" and he never stops to read the fine print?

Mr. WEINBERGER. That is too often the case.

Senator Moss. Senator Pearson, do you have any comments or questions?

Senator PEARSON. Thank you, Mr. Chairman.

Mr. Chairman, I guess the abuses in the warranties as you have outlined them in your statement consist, first of deceptive or misleading representations, second, the limitation which is contrary to the public recognition of such a statement, and third, just the absolute failure to perform.

Don't you have under the present act jurisdiction to remedy these abuses?

Mr. WEINBERGER. We have the jurisdiction to remedy——

Senator PEARSON. Aside from the enforcement?

Mr. WEINBERGER. Aside from the enforcement, I think that the Federal Trade Commission can certainly properly classify as a deceptive practice without any question the problems involved in the third situation you put, a complete failure to carry out a guarantee.

Senator PEARSON. That is under section 5 of the act?

Mr. WEINBERGER. Yes, sir. Under section 5. I think that they have the authority at the present time, to carry out a section 5 holding or holding of a section 5 violation, if something less than the existing rights are left to the consumer, after he is given the guarantee.

It is not infrequent that a guarantee contract will, in fact, on careful analysis, be shown to have given you something less than you are entitled to under the common law, under the warranties fitness for intended use and so on. I think that in itself might properly be described, though I don't know, I believe as a deceptive practice.

If the guarantee is exactly what it says it is, but it is quite limited and it is carefully defined as being limited, then, in the absence of small print or something of that kind, there would be no deceptive practice and no basis for holding under section 5.

Senator PEARSON. But you have jurisdiction on misleading and deceptive representations?

Mr. WEINBERGER. I think without any question, yes, sir.

Senator PEARSON. So, the limiting factor is the void in your power to act, in your judgment?

Mr. WEINBERGER. Yes, the enforcement powers and the long delays that ensue.

Senator PEARSON. Have you had occasion to give some attention to the administration's proposal previously communicated to the Congress?

Mr. WEINBERGER. This is the one with respect to increasing the enforcement powers of the Trade Commission?

Senator PEARSON. That is right.

Mr. WEINBERGER. Yes, sir, I have.

Senator PEARSON. I make reference to the Administration's Consumer Protection Act of 1969, which now is before the committee in the form of S. 3201. There is a section, Mr. Chairman, in that bill that says, and I cite it as 201–A–5, and I quote, "Representing that the consumer will obtain any rights, privileges, or remedies, knowing that the consumer will not, is an unfair and deceptive practice."

So that would cover two of the abuses that you have spoken about.

Mr. WEINBERGER. It would indeed. I think the adoption of the President's consumer program would go a very long way toward taking care of the bulk of the abuses that are in the marketplace today.

Senator PEARSON. Do you believe, if armed with the power to seek preliminary injunctions, plus the proposed act, you would have all the tools necessary to do the job in this field?

Mr. WEINBERGER. I am hampered only by the fact, that I haven't had the opportunity to study the other two reports that I referred to, the task force that has looked into this matter for a year, and the staff's study on automobile warranties. But with that limitation, it would certainly seem to me, the answer to your question would be "Yes."

Senator PEARSON. I don't argue the pros and cons, but would not in your opinion, the effect of this bill be to substitute a Federal warranty by statute in place of the warranty traditionally given by the manufacturer of the product even though no one is required to issue a warranty?

Mr. WEINBERGER. As I read the intent of the bill, Senator, it is designed to set a series of minimums in the event the term "guarantee" or "warranty" is used, and in the event that term is used, there would be some Federal minimums required.

I don't believe it would necessarily eliminate anyone going beyond that or it would necessarily standardize the guarantee. I would hope that the normal forces of competition would be such that some manufacturers would want to go beyond this and give a greater guarantee in the hope of making more sales than the normal and traditional way, but it would impose, as I read it, some certain minimum standards for guarantees in the event a manufacturer decided he wished to use that term.

Senator PEARSON. Thank you. Thank you, Mr. Chairman.

Senator Moss. Thank you, Senator Pearson. S. 3201 has some bearing on this matter, as the Senator pointed out, and there is also a bill pending before this subcommittee, S. 2246, and perhaps we would discuss those in this whole context when we have a full hearing.

Mr. Sutcliffe, our staff counsel here for the subcommittee, may have a question. Do you have any questions, Mr. Sutcliffe?

Mr. SUTCLIFFE. Just a couple, Mr. Chairman. In the task force report on appliance warranties and services, the Federal Trade Commission recommended that major appliance manufacturers should "recognize that the purchaser of their products is entitled to receive a product which is reasonably suitable for the purposes for which it is intended, and which will conform to any representations by the maker with respect to its fitness for particular purposes. This requires that the implied warranties of merchantability and fitness not be disclaimed."

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Now, are you in agreement with that recommendation?

Mr. WEINBERGER. Well, that recommendation was made in the report submitted a year ago, was it not?

Mr. SUTCLIFFE. That is correct.

Mr. WEINBERGER. It would seem to me that it is proper for the limitation on such a disclaimer to be included in a guarantee, because the guarantee should not deprive a person of the protections which he has under the common law, which are the two warranties that you have mentioned.

Mr. SUTCLIFFE. So, if a guarantee is given, then, a prohibition of that disclaimer would be in order?

Mr. WEINBERGER. If the term "guarantee" is used, it would seem to me, to be in order that the Federal minimums for such a guarantee include the fact, that the existing warranties that a purchaser has by common law not be diminished, yes.

Mr. SUTCLIFFE. Perhaps I could address one question related to the question posed by Senator Pearson. As I understand it, the Federal Trade Commission issued advertising outlines as early as 1960 for warranties and guarantees; is that correct?

Mr. WEINBERGER. I would not be able to answer that question, I am sorry.

Mr. SUTCLIFFE. Let me ask you whether or not to your knowledge any Federal Trade Commission action has ever been taken where, for example, a battery was advertised as having a 24- or 36-month guarantee and in fact had a normal life expectancy of 18 months? Have there been any situations where a guarantee was offered where the buyer in order to obtain rights under that guarantee mailed a heavy product back to the manufacturer, the manufacturer would replace the defective part but charge the customer for the labor coincident with the repair of that defective part? Has the Federal Trade Commission under its truth in advertising of guarantees ever been able to take action against a manufacturer issuing such a guarantee?

Mr. WEINBERGER. Really, Mr. Sutcliffe, I am sorry that I can't answer you as to the full previous experience of the Federal Trade Commission or what all their previous decisions would disclose. I am just not able to do that at this time. I don't know whether that experience you have cited is one that they have gone into or not.

Mr. SUTCLIFFE. Thank you.

Senator Moss. Thank you very much, Chairman Weinberger. The committee appreciates your endorsement of the objectives of the bill's approach, and we look forward to hearing from you when we hold hearings in March and after you have had an opportunity fully to digest the reports that are now available and you will be able to testify more fully.

We certainly hope that we are forging the tools that your Commission needs to carry out the objectives we are talking about.

Mr. WEINBERGER. Thank you, sir.

Senator Moss. We are now pleased to have Mrs. Virginia Knauer, the President's charming Special Assistant for Consumer Affairs. We are always delighted to have you come before our committee, Mrs. Knauer, and we look forward to your testimony.

STATEMENT OF VIRGINIA H. KNAUER, SPECIAL ASSISTANT TO THE PRESIDENT FOR CONSUMER AFFAIRS; ACCOMPANIED BY ROBERT MEADE, DIRECTOR FOR LEGISLATIVE AFFAIRS; AND FRANK McLAUGHLIN, DIRECTOR OF PRODUCER MARKETING DIVISION

Mrs. KNAUER. Senator, may I introduce the gentlemen with me, Mr. Robert Meade, who is Director of our Legal Section, and Mr. Frank McLaughlin, who has worked on both the President's and the first Warranty Task Force Report. Mr. McLaughlin is our Director of Producer Marketing Division.

Senator MOSS. We are indeed pleased to have you gentlemen come before us, too. We have worked closely with you also, and appreciate the fine services that you render.

You may proceed, Mrs. Knauer.

Mrs. KNAUER. Mr. Chairman and members of the committee:

I always appreciate the opportunity to appear before this committee because your consideration of an issue traditionally results in action that alleviates a consumer problem. I am pleased to appear before this distinguished committee today to consider the problem of how to bring the consumer fair guarantees that are performed fairly. You are to be commended, Mr. Chairman, for bringing this issue before the committee in hearings on S. 3074.

The problem has many thorny aspects, but the issue of partisan politics is not among them. President Nixon gave the problem special attention in his recent consumer message. It is of major concern of my office.

It is a problem on which this administration is acting. This administration is committed to insure for the consumer that the gilt-edged guarantee is, in effect, as good as gold. We believe consumers expect a guarantee to be just that—a guarantee—and not a word whose meaning is interchangeable with "gimmick."

Warranties and guarantees are among today's major and most persistent consumer problems. Certainly they regularly rank highest in the mail which my office receives. Consumers have four basic concerns with warranties and guarantees:

1. Fair representation in advertising prior to sale.
2. Clearness, completeness and accuracy of the terminology of the guarantee or warranty itself.
3. The adequacy and fairness of the guarantee.
4. The guarantor's actual performance in a reasonable manner the obligations stated in the warranty or guarantee.

In his October consumer message, President Nixon announced his reactivation of the Task Force on Appliance Warranties and Service established during the previous administration to investigate and report on guarantees and servicing problems for major home appliances. The initial task force report, dated January 8, 1969, had contained numerous recommendations for improvements in the presentation and content of guarantees, as well as recommendations for changes in marketing, manufacturing, service, and retailing major home appliances for the public. A copy of that report is submitted with this statement.

President Nixon directed the reactivated task force, of which I have been designated Chairman, to report on the progress made by the appliance industry, and to comment on the need for warranty and guarantee legislation in the household appliance industry and in other fields.

The reactivated task force has been delayed somewhat in arriving at specified conclusions on legislation by the decision to await the recommendations of the new Chairman of the Federal Trade Commission. Mr. Dixon, the outgoing Chairman, thought it the better course to defer a decision on this matter until Chairman Weinberger had the opportunity to participate in the decision.

Mr. Weinberger has indicated his decision to present the Commission's views on leglislative recommendations, rather than his sole views as a member of the task force, after the Commission has completed its deliberation on the automobile warranty problem. That is an understandable position and one which I am confident this committee will respect.

The task force will delay its recommendations on legislation until Chairman Weinberger has been fully briefed on the warranty report and has had the opportunity to develop a Commission position on legislation. Hopefully, this Senate committee will wish to consider the task force's forthcoming proposals before making its final legislative recommendations.

We endorse the general objectives of S. 3074, but I would respectfully defer detailed comments on S. 3074 at this time, believing it more appropriate to discuss it in connection with the specific legislative proposal which the task force will be making.

While I cannot yet speak as the chairman for the reactivated task force, my review of this subject has led me to a number of conclusions.

We have found that manufacturers of major have applicances have made some progress toward implementation of the recommendations made in the initial task force report, with principal progress in the area of the guarantee itself.

Guarantees have been shortened. They have been made clearer by dropping technical and legalistic language. They have been made less wordy, and in the aggregate more legible. They have been made more specific with respect to identification of the manufacturer, term and extent of coverage. Some, but not all newly modified guarantees have been broadened by dropping commonly used disclaimers of the implied guarantees of merchantability and fitness. In some instances, industry members have even broadened the scope of protection they offer by agreeing to pay, for example, labor and service charges during the period of the guarantee. Some of the revised guarantees still contain the kinds of disclaimers and other provisions which the initial task force report identified as unnecessary, unfair or otherwise objectionable.

On the whole, the revisions of guarantees accomplished by the manufacturers of "white goods" have been quite salutary and in the interest of consumers. The association responses to the task force also reflect industry agreement with the Federal Trade Commission's guides against deceptive advertising of guarantees.

Our progress study has shown that the affected industry has been generally slow in giving serious consideration to the methods and

procedures necessary to insure the performance of the obligations taken on by the manufacturer in providing the guarantee in the selling of his appliance.

We recognize that many warranties are not adequate to advise the consumer of what he is purchasing. We believe that these existing practices connected with the sale and performance of guarantees do not permit effective competition in the marketplace. We believe that this is the key to solving the warranty and guarantee problems exposed by our inquiry.

We conclude, however, that on the whole, the progress has been limited, and that practices and abuses that were identified by the task force are continued by other manufacturers. I believe that industries effected are interested in working out the solution. But there is evidence that industry self-regulation has not yet shown itself to be fully adequate to eliminate the problem. We are of the opinion that without enforcement and compliance procedures, industry efforts to grant sure relief to the consumer are severely restricted. We believe that these problems are not conducive to private solution. Some legislation seems necessary in order to insure the elimination of warranty abuses.

In finalizing legislation recommendations which will be both practical and effective, a number of factors and possible alternatives will be given consideration.

There must be fair representation of the guarantee in advertising. Deceptive advertising of guarantees should be halted. Warranties and guarantees should be clearly and simply written, spelling out fully and accurately what is covered, how it is covered, as well as what is not covered, so that the nature and extent of the obligations and benefits described are unmistakable.

Warranties and guarantees should include a meaningful assurance of performance. That procedure should not put undue burden on the consumer as a condition of securing repair or replacement such as a complicated claims procedure, or, for example, having to wrap, lug to the post office, and pay shipping costs for a heavy appliance to some distant repair center. It should not involve unreasonable delays in repair, replacement or refund. There is fairly general agreement that assuring performance of the guarantee, both in letter and spirit, is the greatest challenge in this whole issue.

I believe that under existing law there is lack of sanctions and effective enforcement procedures against a manufacturer who would refuse, or not satisfactorily live up to all obligations represented in his guarantee.

Promotion of the integrity of producer and retailer warranty and guarantee claims, assurance of the fulfillment of stated obligations, and creation of a marketplace in which the consumer can have confidence are beneficial not only to the consumer, but to the businessman—indeed to the insurance of a sound national economy.

Makers and retailers should recognize that the consumer-purchaser is entitled to receive a product reasonably suitable for the purpose for which intended and which will conform to any of the maker's or retailer's representations with respect to fitness for a particular purpose. Neither should warranties include unnecessary exclusions and disclaimers. The "fine print trick" can, in actuality, nullify the essence of a guarantee. As it has been said, "The bold print giveth, and the fine print taketh away."

In his October Consumer Message, President Nixon listed the "Buyers' Rights." Among those were the right to make an intelligent choice among products and services, and the right to accurate information on which to make his free choice. Certainly that includes full and accurate disclosure of the terms and conditions of any warranty or guarantee on merchandise or service. In an age of increasingly complex products and new materials which the consumer cannot evaluate on the basis of past experience and knowledge, the warranty and guarantee take an increased importance as a factor in a consumer's buying decision and in his ability to make an intelligent choice among products and services.

Warranties should not include provisions which purport to obligate third parties to perform any of the obligations stated in the warranty, and should not attempt to pass on to the consumer or retailer a part or all of the financial burden of replacing defective parts or correcting defects in design or manufacturer. We believe that retailer or servicing agencies responsible for performing any obligations stated in the guarantee should be provided with sufficient incentive and resources to encourage fulfillment promptly and conscientiously, and that remedial action should be taken in the case of failure to perform.

Because of the experience of the Federal Trade Commission under existing law and its already deep involvement in warranty problems, it seems the agency best suited to take on the principal responsibility in this area.

The FTC's power to administratively set standards of intelligibility, fairness, and accuracy in guarantees should be clarified. I believe industry would also welcome clarification. Further, it should be made clear that the deliberate failure of a guarantor to perform the promises set out in a guarantee constitutes a violation of section 5 of the FTC act.

Clearly, also, the FTC currently lacks effective tools to combat the problems currently existing in the area of warranties. In this respect, the administration has proposed legislation that would authorize FTC to seek restraining orders and injunctions in the Federal courts prior to the initiation of formal agency procedures. This procedure would give the FTC a powerful new weapon in its fight against existing warranty evils.

There should be an adequate remedy for violation of problems areas mentioned earlier—both public and private remedies. In this connection, we would point out that the administration has filed its Consumer Protection Act of 1969, now before this committee. This act makes certain unfair acts and practices illegal on a national scale, calls for public enforcement by the FTC and Justice Department and provides for private suits for aggrieved consumers.

In summation, I would reiterate that this administration is committed to action. As soon, then, as our task force has had opportunity to further work with Chairman Weinberger and formalize legislative proposals, I would welcome an opportunity to appear before this committee again.

Senator Moss. Thank you very much, Mrs. Knauer. You have an excellent statement. I think you have captured very well the problems which guarantees and warranties pose to the American consumer,

and I want to assure you that this committee, with S. 3074 as a guidepost, looks forward to the recommendations of your task force. We hope that those recommendations will be available by the first of March 1970.

You may have heard me suggest that date to Chairman Weinberger, because under our legislative responsibilities we want to move on to the further hearings to see if we can perfect the act that we are talking about, and have it enacted into law this year because of the urgency.

Do you think the March 1 guideline will be possible?

Mrs. KNAUER. I am sure we will be able to make that deadline, Mr. Chairman.

Senator Moss. I agree that the issue of warranty and guarantee improvement is not a partisan matter, and I want to assure you that we are all working in the same channel, and I think what we are trying to accomplish will be of value not only to the consumers themselves, but to the businessmen.

Mrs. KNAUER. That's right.

Senator Moss. It is sort of getting the ground rules back to where we can have competition and improved competition on the basis of reliability and desirability of the product rather than some of these gimmicks, as I think you have called them, that have been used by some of the unscrupulous to gain additional sales.

The point you made about the need to assure that the gilt-edge guarantee is as good as gold is a good phrase. I want to underline that.

On the basis of letters you received, do you believe that the consumers think they are getting a certain level of post-sale protection when they are given guarantees, and does he expect his guarantee to mean something significant when he says that on his product?

Mrs. KNAUER. Oh, I am sure the American consumer feels that a guarantee is going to take care of all of his problems if any arise, and he is sadly let down. We see his dissatisfaction with warranties in the great volume of mail we receive on the subject. Most people do not read guarantees or warranties until after they have trouble with the appliance or with the automobile, as the case may be. Then they find in many cases the guarantee or warranty limits the responsibility of the manufacturer, it is going to cost them money, and it may be for a limited time. They are unhappy about it.

Of course, this is when we hear about it.

There was an example recently of a man who owned a refrigerator. Apparently it spent more time in the shop being repaired—not very promptly, obviously—than it spent in his home. When the man came to pick it up, still under the warranty, the repairman said, "Oh, that is going to cost you money. Your warranty is over."

Well, of course he wrote to us and complained that he had only had use of that refrigerator a little more than half of the 3-year warranty.

So, we appealed directly—as you know we have been doing recently—to the president of the company. He felt this man had been unduly used, and thereby extended the warranty. So in effect, the man will have a warranty for another year and a half on that same appliance.

But this is an example of people who are unhappy about the performance under the warranties, the slowness in getting repairs, the difficulty of getting parts. It is all part of the picture.

Senator Moss. Isn't the frustration even deeper when it is a smaller appliance than, say a refrigerator, when people take back something like a hand hair drier or something, and then finds out that the labor isn't included and the postage isn't included and a lot of other things, so that finally in frustration they simply give up and say it is not worth the effort to try to get the service that they thought they were entitled to when they saw the guarantee on this?

Mrs. KNAUER. You are completely right, Mr. Chairman, that many women don't read the guarantee or the warranty until it is too late. They are utterly exasperated by having to mail the appliance to some distant point, as I mentioned in my testimony. This is a source of great frustration.

Senator Moss. So, if we could get a standardization of meaning that a buyer then knew what he could rely on when they put that label on there, guarantee or warranty, it could relieve a great deal of this frustration that our consumers are feeling now?

Mrs. KNAUER. Yes, I think it will relieve the frustration of consumers, give them satisfaction, and the knowledge that they need to make a wise choice.

I feel that business will latch on to the idea. They will give a good warranty since it is good business. It will aid them competitively.

Senator Moss. I am sure that is what your task force will consider carefully when it makes its recommendation. We certainly look forward to that.

I am going to ask Mr. Sutcliffe for some information in a minute, but I want to turn to Senator Pearson first to see if he has any questions or comments.

Senator PEARSON. Go ahead. I am trying to find out something.

Senator Moss. We will come back to you.

In your testimony you catalog nicely the needs of warranty and guarantee legislation; so, I would like to ask our counsel here to run through the list you have given this committee and comment on how S. 3074 would or would not meet these needs. I think this exercise would be helpful to the committee and to your task force.

Would you do that for us, Mr. Sutcliffe?

Mr. SUTCLIFFE. I will try, Senator.

As I note in the testimony, one of the first things is the need for fair representation in advertising. Under S. 3074, existing Federal Trade Commission authority is left intact and this committee is working on increasing that authority through S. 3201 and S. 2246.

In addition, any representation made by the advertiser can be found to constitute an "express" guarantee if it relates to performance and the other aspects related to the creation of "express" guaranty are fulfilled.

This means that if a person advertises a certain thing, it can become an "express" guarantee. So there is direct incentive for the person advertising to be very accurate and very careful about what he claims for his product; otherwise, he will end up actually having created an "express" guarantee with a reasonable duration attached to it.

So in the bill, enforcement for fair representation in advertising does not rest with the FTC alone. Each advertiser should be policing his own representations.

Under the clear and simple writing requirement, S. 3074 spells out the requirements that have to be given to the buyer prior to the time of sale, and that information which should be included in the package when he opens it up. By imposing minimum standards or putting a floor underneath the concept of guarantee, the task of communicating the rights and duties of the buyer and seller are thereby simplified under S. 3074.

S. 3074 attacks the assurance of performance and enforcement problems by spelling out the duties of the maker of a guarantee, be he manufacturer or retailer, by spelling out the duties required of him if he uses the word "guaranty." And it specifically says that no unreasonable burdens would be permitted but allows the Federal Trade Commission to set trade regulation rules defining and describing what constitutes unreasonable burden in a given situation or how the clothing on the framework of these duties would be shaped and fashioned.

There are some very strong economic incentives, something that the businessman understands, to cause him to perform, as you say, without unreasonable delays in repairing or replacing or refunding a consumer product that has failed to function. The incentive is created by the fact that if he does not perform within a reasonable time, he then becomes liable for the incidental expenses that the consumer incurs because of that failure to perform.

So, if you have to get a babysitter or something else to take care of that product, then he is going to be fairly liable for those kinds of expenses if he has breached his initial duty to the consumer.

So there is a very great built-in economic incentive for the manufacturer or retailer whenever he is to perform under the guarantee.

Also, there are mechanisms for enforcement in addition to the Federal Trade Commission powers either now in existence or those proposed in that, for the first time, the consumer is given a meaningful right for a lawsuit, because reasonable attorney's fees are awarded him if he is successful. We think this will provide incentive for the manufacturers to create informal dispute settlement mechanisms which would, as I believe President Nixon said, reduce the shouting between people and calm things down and take care of a lot of the complaints before they really become acute.

The need to preserve the warranty of merchantability and fitness for a particular purpose which you highlight is specifically set forth in the bill and prohibits anyone who uses the word "guarantee" from disclaiming rights which he would normally have in the buyer and seller relationship; namely, the warranty for merchantability and fitness for a particular purpose.

As to the problem of the "bold print giving and the fine print taking away," if the bold print giveth; namely, if the guarantee is used, no amount of fine printing is going to take it away because there are duties designated in this Federal law, and the bill prohibits passing on to the consumer any unreasonable financial burden connected with repairing or replacing a malfunctioning unit and allows the Federal Trade Commission to define those unreasonable burdens and what they may be by concentrating on the market situation.

The primacy of the Federal Trade Commission and its pivotal function in the guarantee area is recognized in S. 3074. It gives them spe-

cific authority to define by trade rule regulations the practices of manufacturers and, because of the economic burden that could be imposed if a manufacturer violates this law, it creates the incentive for businessmen to go to the Federal Trade Commission and ask for action in this area rather than standing back and fighting to prevent action.

It also has, as I mentioned before, specific standards and minimum power.

So this, briefly, is the way in which S. 3074—one way—attacks the problems which you have outlined in your testimony.

Senator PEARSON. Mrs. Knauer, I agree that there is a substantial and real impressive problem in this field. I want to pose to you this question. Do you believe in eliminating the abuses that you have referred to that this may best be done by perhaps extending the power of the Federal Trade Commission to make sure there is no deceptive or misleading representation either in the advertising or in the guarantees themselves, or warranties, and then couple that with adequate and quick enforcement powers, whether or not that procedure would be superior to a process of legislation which sets forth minimum standards for guarantees?

Minimums become maximums when they are written into law, always. I wonder in your view whether or not the first proposition of more flexibility would not be preferable to the legislation such as this?

Mrs. KNAUER. Senator Pearson, as I said in my testimony, we are waiting final resolution of just what our proposals will be after we have discussed this in greater depth and have shared the thinking of Chairman Weinberger in this.

There are several approaches which could be used.

Senator PEARSON. I am not opposed to this piece of legislation, but I would like to see something done with some flexibility in it. For instance, does your legal counsel have a copy of the bill before him?

Mrs. KNAUER. Yes.

Senator PEARSON. Would you look at the duties of the guarantors. Under this bill the minimum duties are first to repair it, if you can't repair it quickly, to replace it, that this be done within a reasonable time and it be done without charge, and that no other duty may be imposed other than notification except that which is reasonable.

Now, if you will notice it reads as follows:

> In a determination of whether or not the additional duty or duties are reasonable, the magnitude of the economic burden necessarily imposed upon the maker and the purchaser shall be weighed against the magnitude of the trouble and annoyance caused owners of malfunctioning guaranteed products.

Who decides that, in measuring the reasonableness of the magnitude of the economic burden against the magnitude of the annoyance?

Mr. MEADE. I assume the FTC. I think Mr. Sutcliffe can answer that, but I assume he meant the FTC would be the one to set the standard of reasonableness.

Senator PEARSON. It goes further, it covers not only the purchaser but all subsequent purchasers for the time of the warranty or the guarantee, and if no time is indicated, then, it is a reasonable time. Who makes that judgment?

Mr. MEADE. Again, I assume it would be up to the Federal Trade Commission. Am I correct?

Senator Moss. Does our counsel agree with that?

Mr. SUTCLIFFE. In order to maintain flexibility, it is impossible to prescribe the duties precisely. The word "reasonable" was chosen. Perhaps an explanation of this particular passage which you have commented upon is in order. The intent here was to set up a basic duty as suggested by Mrs. Knauer, not to cause them to do anything other than notify that the thing is not functioning—not have to cart a heavy refrigerator back to a service center which may be 40 or 50 miles away—unless, of course, that is spelled out in something other than guarantee, which would be possible, but not if they used the word "guarantee."

The notion here is to have flexibility with that, though. In those situations where it may cost everyone concerned a lot less money if the buyer did pick up the toaster and did take it to a service center that was 5 miles away, if a person had to bring his truck out there, repair and replace it, this would only raise the cost of the initial product and its guarantee to the consumer and would probably be wasteful in that respect.

So, this is the reason the language was written to give this kind of flexibility. The Federal Trade Commission would try to have Federal Trade regulations as far as reasonableness.

Senator PEARSON. I hope I am not nitpicking the bill because I am not opposed to it, but what I am now talking about is the proper approach, and, of course, you are going to have these task force studies.

Mrs. KNAUER. Senator, we are all in favor of flexibility. Would you suggest, then, the FTC in its rulemaking role take over this responsibility?

Senator PEARSON. I think that might be proper if it had the enforcement powers coupled with it. My concern is about writing in these minimum standards, as I said before, minimums become maximums or maximum requirements under the law. I hope that you can correct all these abuses. There is no dispute about that.

I am just concerned that we end up with the right approach. The Chairman of the FTC indicated that they may have present jurisdiction over the misleading and deceptive guarantees both as to advertising and as to the instrument itself, but that he doubted that a limitation of liability is deceptive.

So, that is a situation that needs to be cured. For instance, what is the approach of the administration bill?

Mrs. KNAUER. We are deferring that until after we have further conferred with Chairman Weinberger. Are you referring to the Consumer Protection Act of 1969?

Senator PEARSON. Yes.

Mrs. KNAUER. This, of course, calls for revitalization and more powers for the FTC, giving it the right to seek temporary restraining orders and injunctive relief. We certainly feel that this is absolutely necessary.

Senator PEARSON. Thank you, Mr. Chairman.

Senator Moss. There is one slight correction here to the magnitude of this problem which leads me to believe that you would have to have a regulation of some sort to govern it by the FTC.

The information here is there appears to be better than 70 million service calls per year on about 235 major appliances in some 60 million

households in the United States, and that gives some idea of the vastness of this problem.

Mrs. KNAUER. Yes.

Senator PEARSON. We do thank you, Mrs. Knauer. I didn't give you an opportunity to comment, if you wanted to, on any of the observations made by Mr. Sutcliffe. If you do, we will be glad to hear it.

Mrs. KNAUER. He summed them up quite beautifully, and I look forward to an invitation, Mr. Chairman, to come back after the warranty task force completes its deliberations.

Senator Moss. Thank you. You have the invitation, and we hope it will be maybe for the 10th and 11th of March, to again underline our deadline. Thank you very much.

Senator Hart, who is a member of this subcommittee and who was previously engaged, has now been able to join us. Senator Hart of Michigan is vice chairman of the Consumer Subcommittee. I think that he may have a few opening remarks. He is chairman also of the Antitrust and Monopoly Subcommittee. He has been thoroughly examining the problem of automobile servicing and repair.

In hearings he has of necessity touched on the problem of warranty service as it relates to automobiles, and this subcommittee will welcome his thoughts on the Consumer Products Guaranty Act. So, we are pleased to have you.

Your timing is very good, Senator.

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

Senator HART. Thank you very much, Mr. Chairman, and members of the committee. I am grateful that the timing did not throw off your schedule, because the hearings that the subcommittee under your leadership is undertaking today in this area I think will be marked as an important effort in the service of the consumers of this country as any the Congress this year could possibly undertake.

You are right, I do have some opening remarks, I would ask leave that they be printed in the record as though given in full. I will try and summarize them.

Senator Moss. All right, that will be granted without objection.

Senator HART. Nobody here in Congress—no Member of the Senate I am sure—has been immune from the plague of complaints from consumers about warranties that don't live up to promises and promises made in big type that are cut to pieces in the small print.

It showed up in those anti-trust subcommittee hearings to which you, Mr. Chairman, made reference. In connection with the automobile repair investigation we received about 8,000 letters of complaint. A significant percentage of that 8,000 total were complaints with respect to unsatisfactory warranty performance or problems in connection with warranties.

The file is relatively thick, I think, with photostats from consumers who began with a letter to the retailer after a visit to the retailer, then a document from and to the district office, and then to the regional office, and then to the home office, and then back to the regional office. That is sort of the saga of the consumer in pursuit of a warranty.

I suspect that because the consumer certainly doesn't understand the protection that is imposed in the warranty and probably the guarantor in a good many cases doesn't understand it either, that we have compounded an admittedly difficult problem even from the outset. That is one reason that I cheer the Consumer Products Guaranty Act which might well be subtitled "The Plain English Act," and I hope we will be able to persuade the committee and later the Congress to adopt it.

The one feature that I think might be improved—perhaps not improved, perhaps I should simply underscore the provision that the consumer when he is promised something by a guarantor be told clearly what the promises are, what the consumer must do to enjoy them and how to complain if things don't go well.

All of these things are reasonable. The thing I want to underscore is the reasonableness of extending the guarantee protection to subsequent owners. For example, a man who lays out $250 for a new transmission in his car loses a subtantial part of that investment if his guarantee is worthless to the next owner. I would like to comment specifically on section 16 of the bill, directing guarantors to use independent and governmental entities for informal dispute settlement. We know perfectly well the unsatisfactory road that a lawsuit is if what you are trying to get fixed is a garbage disposal or a deep freezer or anything else that has a total value of less than thousands of dollars; not only unsatisfactory and costly, but time consuming. The chairman of the subcommittee has joined me in introducing a bill to establish an independent consumer's council. And this compared with the warranty bill that we are considering today might really be a dramatic example of how on an informal basis with only quasi-governmental intrusion of the local independent consumer council we could, without the formalism of litigation, eliminate most of these trade practice product service complaints. This is an obvious plug for the Consumer's Council bill. I know it is not required in the case of the chairman of the subcommittee, but I welcome the opportunity of making clear that the guarantee law that you are considering this morning, coupled with the independent council, would be a great way to relieve much of the consumer frustration caused by not knowing which door to knock on.

The guarantors would have to spell out steps to be taken to have the warranty made good, and if any snags are encountered, the council, if we enact that bill, would be the visible helping hand in the community to turn to for leverage.

That kind of teamwork, perhaps, would cure in a couple of phone calls what today requires this procession of letters leading generally to a very unsatisfactory resolution. It is for this reason, Mr. Chairman, that I welcome the opportunity to voice support for the bill.

Senator Moss. Thank you very much, Senator Hart, for your statement on this bill, S. 3074. Because of the hearings that you held on automobile servicing and repair, you have had a chance to thoroughly study the warranty servicing problems in the automobile industry, and your constructive suggestions for improvements were welcomed by consumers and should be welcomed, I think, by manufacturers and dealers alike. I agree with you that S. 3074 is an important step toward eliminating automobiles in warranty service problems.

I, too, think the bill will stimulate the development of informal dispute settlement proceedings which the independent consumer council legislation would facilitate.

At this time, Senator, I think it might be appropriate to introduce for the record and discuss the correspondence surrounding an anonymous letter which was sent to both the Senate Commerce Committee and the Antitrust and Monopoly Subcommittee. Do you have a copy of that correspondence?

Senator HART. I do, Mr. Chairman.

Senator MOSS. Would you relate its contents? I think, having seen it before, it might be very important for this record.

Senator HART. Mr. Chairman, you and I and other members of the concerned committees in December were sent, as you say, anonymously, from a Chevrolet dealer, a letter to all Chevrolet dealers from the general sales manager of Chevrolet Motor Division of General Motors. The dealer in corresponding with you and with me and others called our attention to one instruction—there were six instructions in the Chevrolet directive—but he called our attention to one instruction, and it read, "Unless a safety defect is discovered, no warranty work is to be performed unless requested by the customer and needed." In short, if the car owner knows that he has got a defect and asks you to fix it, go ahead, but if he doesn't, then don't do anything unless it is safety related.

Now, I assume, Mr. Chairman, that you would want your copies or these copies of the correspondence to be made a part of the record because it reflects more fully the background and the reaction of the dealers and the companies.

This is something less than the guaranty which the American automobile buyer assumed he had been given in connection with the warranty commitments. The dealer made a number of very telling comments in criticism of this kind of policy.

I was absent from the city at the time our office received the letter, but our office sent the letter to the General Motors Corp. We advised the company that the Commerce Committee was in possession of a letter which had been addressed by the general sales manager of Chevrolet, dated December 5, to—"All Chevrolet Dealers."

The letter discusses the rising warranty costs and instructs dealers that—

unless a safety defect is discovered, no warranty work is to be performed unless requested by the customer and needed.

Mr. Jerry Kabel, writing from my office and for me, said:

This raises some serious questions about the Chevrolet warranty and the kind of protection the Chevrolet buyer might be expected to get from it.

One can readily conceive of a number of defects that a customer might not be able to readily detect if technicians are forbidden from pointing them out.

Senator Hart is out of town. But he will be present at the Commerce Committee's hearings on warranties.

I write to you of this because of our office's long-standing policy of not trading sensationalism for substance or preferring dramatic surprise to sound solution.

If the letter is Chevrolet's warranty policy as of this date, it is a matter likely to be discussed at the hearing. It is only fair that General Motors should be aware of this.

If the policy was changed previous to this date or rescinded, please let me know.

I think it should be made clear right now that when the attention of the very top management of General Motors was brought to this point, they did in fact, on January 16, issue a directive to all Chevrolet dealers modifying substantially the feature of the December 5 letter that the dealers complained to us about. They made clear that while the customer must sign a request that service under a warranty be done, any defect, whether safety related or not, that is subject to the warranty commitment shall be brought to his attention and opportunity given him to sign the document. So in this case one could say a correction has been made that insures against what could be a very real abuse of the customer.

While I think you would commend the corporation for that kind of prompt reaction, it makes very clear, I think, the desirability of the adoption of the bill S. 3074 which is before us.

Senator Moss. That is the point it seemed to me was important, the anonymous dealer letter that started this whole matter states, in part, and I would like to read just a part of it, he said—

> My mechanics and I know and accept our responsibility to the consumer and to the manufacturer for pre-delivery services. Dealers are anxious to correct discrepancies and meet the challenge of more complex automobiles.

Then he sets forth examples of defects of a warranty nature that do not relate to safety as such but which might escape you and I while being readily discernible by experienced mechanics in the dealer's office, and these examples are:

> 1. Defective parts or improper assembly of exhaust emission control system (how can a customer know if he is polluting the air?).
> 2. Any premature engine, transmission, or differential failure of such a nature that at that early stage could be diagnosed by a trained technician. This early diagnosis could prevent a subsequent failure at a time that could extremely inconvenience the owner.
> 3. Defective paint or body panels.
> 4. Major door and glass adjustments.
> 5. Brake pulsation caused by out-of-round drums or defective discs.
> 6. Minor brake fluid leaks.
> 7. Engine or transmisison fluid leaks.
> 8. Radiator, or heater leaks; air-conditioning malfunction during the winter.
> 9. Minor vibrations from drive-line.
> 10. Minor bearing noises indicating failure just prior to the end of the warranty.
> 11. Defective upholstery, having a very short warranty period before being considered normal wear and tear.

I suppose that list could be extended, but it does indicate that what this directive that has now been corrected was doing was to say these matters should never be brought to the attention of the customer and only should be required if he made complaint and asked for it under his warranty.

I think it is interesting to note that the manufacturer's response when the warranty costs alarmingly increased instead of going to the design engineers, the assembly line managers and asking them to produce a better, more reliable product to improve Chevrolet's competitive position, the general manager asked the dealer to cut back on his warranty work. I am glad to see that General Motors changed its mind, but I shudder to think what might have been but for one dealer's anonymous letter to Congress, and I hope all car manufacturers will

take heed and rescind any similar instructions that may have gone out to their dealers across the country.

Because this, I think, had such a great impact in the hearing we are having and because I knew it had been before your subcommittee as well as this one, I asked you to comment on it, Senator, knowing it had been sent there; and this is one that has a happy conclusion because that instruction was withdrawn.

Senator HART. I don't know how happy it is for the fellow who might have taken the car in in December or early January, but in any event it is now happy.

Senator Moss. It was a rather quick action. The anonymous letter is dated December 16. What did you say, it was the 16th of January that General Motors altered the instructions?

Senator HART. That is correct, Mr. Chairman.

Senator Moss. So, 30 days' time isn't bad.

Do you have any questions?

Senator PEARSON. No, I have no questions. I thank the Senator.

Senator Moss. We do thank you very much, Senator Hart, for your contribution and your work on this subcommittee. As I pointed out in the beginning, we recognize that we are moving in a field that is going to take a lot of attention and analysis. We are going to have fuller hearings as soon as the task force can complete its report and as soon as we can get the report from the Trade Commission. So, we will be having extended hearings probably in March to try to finish up on the legislation we started today.

In view of our discussion regarding the anonymous letter and subsequent correspondence, without objection they will be made a part of the record.

(The material under discussion follows:)

DECEMBER 16, 1969.

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

DEAR SENATOR HART: I am a Chevrolet Dealer in the West, writing anonymously for fear of reprisals. I want you to know *who* restricts the corrections of defects on new cars.

Enclosed is a letter to all Chevrolet Dealers from Robert D. Lund, General Sales Manager, Chevrolet Motor Division, General Motors Corporation. Even though all six points will have a detrimental effect on the customer, I only call your attention to instruction number one.

"1. UNLESS A SAFETY DEFECT IS DISCOVERED, NO WARRANTY WORK IS TO BE PERFORMED *UNLESS REQUESTED BY THE CUSTOMER* AND NEEDED."

This effectively means that if in the normal course of pre-delivery service or regular service, a trained mechanic or service manager discovers defective parts or workmanship (that does NOT relate to safety), we have been instructed by the manufacturers to disregard the defects unless we receive a customer complaint. The customer can't know of this manufacturer's policy and only assumes the Dealer or mechanic is indifferent. I don't believe your committee would approve of a manufacturer circumventing it's responsibilities.

Examples of defects of a warranty nature that do not relate to safety are:

1. Defective parts or improper assembly of the exhaust emission control system. (How can a customer know if he is polluting the air?)

2. Any premature engine, transmission, or differential failure of such a nature that at an early stage could be diagnosed by a trained technician. This early diagnosis could present a subsequent failure at a time that could extremely inconvenience the owner. (Or later become a safety hazard).

3. Defective paint or body panels.

4. Major door and glass adjustments.
5. Brake pulsation caused by out-of-round drums or defective discs.
6. Minor brake fluid leaks.
7. Engine or transmission fluid leaks.
8. Radiator, or heater leaks; air conditioning malfunction during winter.
9. Minor vibrations from drive-line.
10. Minor bearing noises indicating failure just prior to end of warranty.
11. Defective upholstery, having a very short warranty period before being considered normal wear and tear.

My mechanics and I know and accept our responsibilities to the consumer and to the manufacturer for pre-delivery service. Dealers are anxious to correct discrepancies and meet the challenge of more complex automobiles.

NOW WE ARE TOLD THAT IF WE DISCOVER A DEFECT ON A CUSTOMER'S CAR, (UNLESS IT IS RELATED TO SAFETY), WE MUST WAIT FOR THE CUSTOMER TO DISCOVER THIS DEFECT BEFORE WE CAN REPAIR IT OR REPLACE THE DEFECTIVE PART UNDER WARRANTY.

Let the facts be a matter of record!

CHEVROLET MOTOR DIVISION, GENERAL MOTORS CORP.
Detroit, Mich., December 5, 1969.

To All Chevrolet Dealers:

There has been an alarming increase in warranty costs during the past year. If such expense continues to rise, it could affect the competitive position of Chevrolet and that of the entire Chevrolet dealer organization. I believe this subject is of such importance that it should be brought to your personal attention.

Chevrolet has always paid and will continue to pay whatever expense is necessary to correct any discrepancy in the product resulting from a defect in material or workmanship. Chevrolet has spent many millions of dollars throughout the years protecting the Chevrolet product reputation and building confidence in the Chevrolet products. We certainly do not want you to do anything to jeopardize your and our position in these respects or which might adversely affect owner loyalty towards our products. We are asking you, however, to make certain that any warranty expense is being used for its intended purpose which is to benefit the customer by correcting items caused by a defect in material or workmanship.

Recent surveys indicate that an increase in the amount of warranty work is being claimed on useless work that customers did not ask for, did not need, and in a surprising number of cases, did not get. I am asking you for your wholehearted support to administer policy and warranty on a fair and equitable basis. It should be administered in such a manner that it is fair to Chevrolet, fair to you, the Chevrolet dealer, and most importantly, fair to your Chevrolet customer. I am further asking you to make it your personal responsibility to review this important matter with members of your entire organization. We have always enjoyed a fine businesslike relationship with each other and feel this matter can be brought directly to your attention for the necessary action.

I think you will agree that it is only good business practice to investigate any area of rapidly rising costs. Accordingly, Chevrolet will continue the practice of examining dealership records and reviewing warranty claims to assure proper administration of policy and warranty expense. We encourage you to do the same and to pay particular attention to the following points:

1. Unless a safety defect is discovered, no warranty work is to be performed unless requested by the customer and needed.
2. Technicians should not be allowed to determine what warranty work is required. This decision should be delegated to your service management group only. They are to prepare a warranty repair order that specifically details owner's request and provides appropriate instructions to technician for correction.
3. Customers should be required to sign all repair orders regardless of their category. Dealer personnel are not to sign any repair orders covering a warranty service.
4. Any items added to a warranty repair order after owner's signature must be initialed by your Service Manager. This is good management practice.
5. Flat rate operation members should be used whenever available, when performing repairs of a policy or warranty nature. This is in keeping with good business practice and will assure credit from Chevrolet in line with technician expense.

6. Time records are to be kept on all technicians and properly cross-referenced to individual repair orders or warranty claims. The amount of time for a technician to perform any specific work should be approved by your service management.

Historically, Chevrolet has always enjoyed a great advantage over other manufacturers by having the strongest and finest dealer organization in the industry. We have always felt we could come to you whenever it was necessary to freely review our mutual problems with you. With this in mind, we are soliciting your urgent, wholehearted support and cooperation in reviewing this important matter with members of your dealership and doing whatever must be done as a result of your investigations.

Thanks for your cooperation.

Very truly yours,

ROBERT D. LUND,
General Sales Manager.

JANUARY 13, 1970.

Mr. ERNEST BARCELLA,
Manager, Public Relations Operations,
General Motors Corp.,
Washington, D.C.

DEAR MR. BARCELLA: The Senate Commerce Committee is in possession of a letter addressed to "All Chevrolet Dealers," dated December 5, 1969, and signed by Robert D. Lund, general sales manager.

The letter discusses rising warranty costs and instructs dealers that "unless a safety defect is discovered, no warranty work is to be performed unless requested by the customer and needed."

Clearly, this raises some serious questions about the Chevrolet warranty and the kind of protection the Chevrolet buyer might be expected to get from it.

One can readily conceive of a number of defects that a customer might not be able to readily detect if technicians are forbidden to point them out.

Senator Hart, who got a copy of the Lund letter in the mail from a Chevrolet dealer, is out of town. But he will be present at the Commerce Committee's hearings on warranties on January 20, 21, and 22.

I write you of this because of our office's long standing policy of not trading sensationalism for substance or preferring the dramatic surprise to sound solution.

If the Lund letter is Chevrolet's warranty policy as of this date, it is a matter likely to be discussed in the hearings. It is only fair that General Motors should be aware of this. If the Lund policy was swiftly rescinded or changed previous to this date, please let me know.

With every best wish.

Yours,

JERRY KABEL, *Press Secretary.*

CHEVROLET MOTOR DIVISION, GENERAL MOTORS CORP.,
Detroit, Mich., January 16, 1970.

To All Chevrolet Dealers:

Since forwarding my letter of December 5, 1969 on the subject of proper administration of policy and warranty expense, question has arisen whether a service technician may recommend, and the proper manner for recommending the performance of warranty work, not requested by the customer or listed on the repair order when originally prepared by your service management.

In the interest of clarification and to assure a complete understanding, we are attaching a revised letter superseding our earlier letter.

We request your support and cooperation.

Very truly yours,

ROBERT D. LUND,
General Sales Manager.

CHEVROLET MOTOR DIVISION,
GENERAL MOTORS CORP.,
Detroit, Mich., December 5, 1969, Revised.

To All Chevrolet Dealers:

Chrevrolet has always paid and will continue to pay whatever expense is necessary to correct any discrepancy in the product resulting from a defect

in material or workmanship. Chevrolet has spent many millions of dollars throughout the years protecting the Chevrolet product reputation and building confidence in the Chevrolet products. We certainly do not want you to do anything to jeopardize your and our position in these respects or which might adversely affect owner loyalty towards our products. We are asking you, however, to make certain that any warranty expense is being used for its intended purpose which is to benefit the customer by correcting items caused by a defect in material or workmanship.

I am therefore asking you for your wholehearted support to administer policy and warranty on a fair and equitable basis. It should be administered in such a manner that it is fair to Chevrolet, fair to you, the Chevrolet dealer, and most importantly, fair to your Chevrolet customer. I am further asking you to make it your personal responsibility to review this important matter with members of your entire organization. We have always enjoyed a fine businesslike relationship with each other and feel this matter can be brought directly to your attention for the necessary action.

I think you will agree that it is only good business practice to investigate any area of rapidly rising costs. Accordingly, Chevrolet will continue the practice of examining dealership records and reviewing warranty claims to assure proper administration of policy and warranty expense. We encourage you to do the same and to pay particular attention, for example, to the following points:

Customers should be required to sign all repair orders after detailing thereon the work requested. Orders should not be signed in blank. Dealer personnel are *not* to sign any repair orders on behalf of the customer.

If technicians should determine that additional warranty work is required, approval should be obtained from your service management before proceeding with the work. Any items added to a warranty repair order after customer's signature must be initialed by your service manager. This is good management practice.

Flat rate operation numbers should be used whenever available, when performing repairs of a policy or warranty nature. This is in keeping with good business practice and will assure credit from Chevrolet in line with technician expense.

Time records are to be kept on all technicians and properly cross-referenced to individual repair orders or warranty claims. The amount of time for a technician to perform any specific work should be approved by your service management.

We have always felt we could come to our dealers whenever it was necessary to freely review our mutual problems with you. With this in mind, we are soliciting your urgent, wholehearted support and cooperation in reviewing this important matter with members of your dealership and doing whatever must be done as a result of your investigation.

Thanks for your cooperation.

Very truly yours,

ROBERT D. LUND,
General Sales Manager.

GENERAL MOTORS CORP.,
New York, N.Y., February 6, 1970.

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

DEAR SENATOR MOSS: I believe it would contribute to a better understanding on the part of your Consumer Subcommittee if I reviewed briefly with you the letter concerning warranty which was sent to all Chevrolet dealers on December 5, 1969, by Robert D. Lund, general sales manager of Chevrolet Motor Division, General Motors Corporation. As you will recall, that letter was a subject of discussion by your Subcommittee on January 20, 1970.

As I understand the situation from reports of the hearing before your Subcommittee, a Chevrolet dealer forwarded a copy of Mr. Lund's letter to the Senate Commerce Committee and also to the Senate Antitrust and Monopoly Subcommittee. He drew attention to one sentence—taken from the one and a half page letter—which stated: "Unless a safety defect is discovered, no warranty work is to be performed unless requested by the customer and needed." The

dealer interpreted this in his letter as an instruction that he and his service personnel, as well as other Chevrolet dealers, were to disregard any defect covered by warranty, discovered in performing pre-delivery service or regular service on a vehicle, unless the customer complained about the defect. This interpretation was apparently accepted by the Subcommittee and our revised letter of January 16, 1970, intended to clarify the matter, was apparently viewed as being a reversal of a policy established in the prior letter of December 5, 1969. I want to assure you that neither interpretation was in fact the case.

The basic position of Chevrolet regarding warranty was stated in Mr. Lund's original letter in these words:

"Chevrolet has spent many millions of dollars throughout the years protecting Chevrolet product reputation and building confidence in the Chevrolet products. We certainly do not want you to do anything to jeopardize your and our position in these respects or which might adversely affect owner loyalty towards our products."

This is the position of all our divisions.

Certainly it was not Chevrolet's intention in any way to imply that the performance of any proper warranty responsibility was to be avoided, nor has that ever been Chevrolet's approach. In fact, the intention was just the opposite, that is, to provide a more precise procedure to insure adequate delivery of warranty service to the customer.

As to the specific sentence in question, its sole purpose was to insure that all warranty work performed was both necessary and properly authorized. In particular, that sentence, when read in the context of the whole letter, was intended to insure that any necessary work not initially authorized by the customer in signing a repair order would be subsequently authorized either by the customer or by the management of the dealership. This is shown by the paragraph following the quoted sentence, which reads as follows:

"Technicians should not be allowed to determine what warranty work is required. This decision should be delegated to your service management group only. They are to prepare a warranty repair order that specifically details owner's request and provide appropriate instructions to technician for correction."

For example, if a dealership mechanic were to find a particular item of work (whether covered by warranty, or to be paid for by the customer) necessary but not requested by the customer on the repair order, the mechanic would be required to call the item to the attention of dealership service management and request the work be authorized. The need for such procedure was adverted to in Mr. Lund's original letter. As a matter of policy and practice, a General Motors dealership has—and always has had—authority to perform necessary warranty work, whether requested by the customer or not. This authority appears in the Dealer Selling Agreement.

As you will recall from the hearing, the dealer's reading of the letter was called to our attention on January 13 by a member of Senator Hart's staff. Senator Hart's aide asked to be informed whether GM intended to make any change in the letter. Naturally, we greatly appreciated the interest of Senator Hart and his staff in bringing this unfortunate misinterpretation to our attention.

Upon learning of the interpretation being placed on the December 5 letter, we reviewed it in detail.

In the light of the above background and our knowledge of the circumstances, we did not believe there should have been any misinterpretation of the intent of the entire letter by those familiar with the situation—that is, the Chevrolet dealers to whom it was addressed. In fact, only 11 of the 6,300 Chevrolet dealers wrote to Chevrolet to comment on the letter. Furthermore, only two wrote anything about that particular sentence. This is an indictation that the dealers are in agreement with the policy as set forth in that letter.

However, since a misunderstanding did arise—as demonstrated by the letter sent to your Subcommittee—we felt it advisable to issue a clarifying letter. This was done on January 16—only three days after we learned of the problem.

Thus, there never was any intent by Chevrolet to avoid its warranty obligation, and the only purpose of our revised letter was to clarify that this was the case. Let me state emphatically and unequivocally that General Motors will continue to stand behind its products. Further, GM will continue to take prompt and corrective action whenever we become aware of misunderstandings regarding our products or warranties.

I appreciate this opportunity to clarify this important matter. It would be appreciated if you would make this letter a part of the record.

I am also taking the liberty of sending copies to the other members of your Subcommittee as well as members of Senator Ribicoff's Subcommittee, since the same matter was mentioned in a hearing before it on January 22.

Sincerely,

J. M. ROCHE,
Chairman of the Board.

Senator Moss. Mr. James Lynn, the General Counsel for the Department of Commerce will be our next witness.

We are pleased to have you, Mr. Lynn, and your associates.

Would you identify them for the record?

STATEMENT OF JAMES LYNN, GENERAL COUNSEL, DEPARTMENT OF COMMERCE; ACCOMPANIED BY FRED PRINCE, STAFF ASSISTANT; AND CALVIN COLLIER, SPECIAL ASSISTANT TO GENERAL COUNSEL

Mr. LYNN. I certainly will. I have with me on my far right, Mr. Fred Prince, who is with the Business and Defense Service Administration of the Department of Commerce and who has been active with respect to the Department's work on the Task Force, and on my immediate right, Mr. Calvin Collier, who is my assistant.

Senator Moss. Thank you, gentlemen, you are welcome, and we are glad to have you.

Mr. LYNN. I appreciate the opportunity to appear today before this committee on behalf of the Department of Commerce to discuss the subjects of warranties on consumer products and S. 3074.

The Department of Commerce, recognizing the interdependence of consumer satisfaction and business health and growth, is deeply interested in any proposals for legislation that significantly affect both consumers and business. In our view, pending proposals concerning warranties and consumer products are in that category. The Department also has a special concern about warranties because of our participation as a member of the Task Force on Appliance Warranties and Service.

The task force, as you know, reported to the President on January 8, 1969. The report identified problems and abuses in warranties and servicing in the appliance industry, but specific legislation was not proposed. Rather, the task force felt that industry should have an opportunity to improve its own record of performance on a voluntary basis.

In order to cooperate with industry and monitor its efforts at voluntary action, the Department of Commerce formed an appliance industry advisory committee. In the initial report, the Department had enumerated several conditions that generated consumer dissatisfaction and frustration and that called for action. For example, there was no clear meaning of the term "authorized services," a fact that results in unnecessary consumer confusion in obtaining service; some appliances had model identification numbers inaccessibly located, thereby making servicing and repairing unnecessarily difficult; information did not exist to enable persons to obtain parts for older but serviceable appliances; and some manufacturers did not have adequate procedures to assure that customer complaints were promptly handled.

I can report that in many of these problem areas which the task force identified, the industry's voluntary progress has been significant. Thus, guidelines have been adopted as to the use of the term "authorized

service" in the Yellow Pages and other guides are in process that will restrict the use of the term by repair agencies. Employing voluntary standards-making procedures, industry has developed standards for displaying model identification information in an accessible way. Industry associations and parts distributors are now cooperating in an attempt to maintain current directories of parts sources for older models and discontinued brands. And the industry associations have established procedures for handling and following up on consumer complaints.

In the area of form and content of warranties themselves, some progress has also been made through voluntary action. Both major appliance industry associations have adopted guidelines for use by member firms in the presentation of warranties, and some of these firms have come forth with new and simple warranties. The content of some of these new warranties has even been expanded in scope: familiar disclaimers of merchantibility and fitness for purpose have been eliminated.

The retailing industry has also come forward with important programs to complement those initiated by appliance manufacturers. The most important of these programs is designed to educate both retailers and consumers. Retailers are a logical and important force in improving warranty practices since they too are consumers of a sort, and customer satisfaction—the backbone of a successful retail operation—is so closely tied to warranty performance. Most importantly, at least some retailers often have the economic muscle to insist on and obtain good, clear, meaningful warranties.

Based on our experience, we think that there is much room for voluntary industry action on many of these questions that relate to consumer satisfaction in general and warranties in particular. It is better for government, for business, and for the consumer to have these matters resolved by voluntary action than by law.

However, we realize the limitations of a purely voluntary approach. Some renegade businessmen may still find unscrupulous marketing and servicing practices to be profitable; and voluntary action programs by their nature may lack necessary enforcement features to deal with them. Especially with respect to warranty coverage and performance, voluntary action would appear to be of limited value. There are serious antitrust implications of concerted action with respect to matters like warranties that affect costs and prices.

We have concluded that some governmental action is needed. When we begin to discuss legislative treatment of those problems that require solution and will not or cannot be fully resolved by the industry voluntarily, I believe it is important to keep in mind certain fundamental and guiding principles. I think that Secretary Stans clearly stated what we feel are the basic rights of the consumer:

> First, the consumer certainly must have protection from fraud, deceit, and misrepresentation.
>
> Second, he must have access to adequate information to make an intelligent choice among products and services.
>
> Third, he must be able to rely on products working as represented.
>
> Fourth, he must have the right to expect that his health and safety will not be endangered by his purchases.
>
> Fifth, our marketing system must provide him with a wide range of choice to meet individual tastes and preferences.

We firmly believe that informative, accurate, clear and fairly written guarantees, backed up by guarantors who deliver what they promise are essential to our free market economy. Fair presentation of the guarantee prior to sale as well as full performance of obligations after sale are needed to facilitate value comparisons by consumers and promote competition in marketing and servicing. And it is our view that competition, if allowed to work, will cure existing problems connected with warranties.

However, the Department opposes legislative solutions that would dictate to the manufacturer and the consumer the kind of warranty or guarantee protection that must be sold. We oppose the imposition by the Government of compulsory warranties. We think that it is a basic commercial right—of both buyer and seller—to freely and knowingly allocate the economic risks relating to the quality of goods.

But to assure that all makers provide informative, accurate, clear and fairly written guarantees, backed up by performance of what they promise, we believe that some governmental action is called for. As has been frequently pointed out, consumers at present do not have the resources or incentive to insist on and independently obtain what Secretary Stans has so aptly termed their "basic rights."

Scanning the horizon, it would seem that the Federal Trade Commission, and to a lesser but important extent, the Justice Department are the logical governmental repositories of the powers needed to enforce these basic rights.

At the present time, the FTC has a broad mandate to prohibit "unfair or deceptive acts or practices in commerce." We believe that this mandate is broad enough to reach many problems relating to warranty and guarantee abuses in the marketplace. But at the present time, the FTC lacks the authority in the form of enforcement powers to do a satisfactory job. Some progress could perhaps be made if, for example, the FTC proceeded through a case-by-case approach to act with its present tools against manufacturers and retailers whose frustrated customers have generated valid consumer complaints.

But such an approach would only be a partial and inadequate answer under present law. The present cease and desist procedures that the FTC must resort to, without power to obtain interim injunctive relief, are inherently inadequate to deal with the problem of consumer protection.

It would likewise be a partial and incomplete answer to single out warranties for isolated legislative treatment. The warranty problems that were identified by the task force report are just one part of a larger problem. That problem is that the consumer, at the present time, can be the disappointed and frustrated victim of marketing tactics that mislead and misinform rather than instruct.

This misleading and misinforming may occur at several points in time: before sale, in advertising and the salesman's tactics; at the point of sale, in the way the warranty or guarantee is stated; or after sale, when repairs or servicing are required and not available. To correct the abuses legislative efforts must recognize this common denominator of justifiable consumer frustration. There must be—and consumers may rightfully demand—truth-in-advertising, truth-in-warranties, and truth-in-the-availability of warranty repairs and service.

The administration has clearly recognized the unity of the problems; and it has proposed solutions that will remedy the inadequacies

of existing governmental procedures aimed at enforcement. I commend to you the administration's Consumer Protection Act of 1969, S. 3201.

That act would cover the kinds or warranty abuses that were identified by the task force and that require a legislative solution. In addition, though, it would cover other related trouble areas, such as deceptive advertising and assuring complete performance of promises relating to repairs and servicing.

The Consumer Protection Act would also create three new and important enforcement weapons in the consumer's arsenal. Under the Consumer Protection Act, the FTC would have the power to obtain temporary injunctions to terminate in its incipiency the practice of unfair and deceptive marketing of goods through warranties. Also under the act, the Department of Justice could seek such relief; and upon the successful completion of a governmental prosecution, consumers could come into court armed with the Government's victory and seek their own damages.

To complete the picture, I further commend the administration's Consumer Product Testing Act. That legislation has the potential to provide the consumer with important information about the performance characteristics of many of the goods that he purchases. The Product Testing Act is, in many respects, the other side of the truth-in-warranty coin. It will encourage sellers to provide reliable information on performance to the consumer so that two elements, truth and disclosure—both of which are basic to the proper functioning of a free economy—may find their rightful place in the market.

This committee is considering another approach, S. 3074. As we understand that bill, it would inaugurate a partial regime of compulsory warranties for consumer products that have electrical, mechanical, or thermal components. Under the bill, a seller or other maker of a warranty would have three options; he could sell his product "as is," with no warranties at all; he could make an express warranty with the consequence that compulsory warranty coverage and numerous unrelated obligations would thereby be imposed as well; or he could restrict his postsale obligations by selling a separate "service contract."

Presumably, by combining the first and third alternatives, that is, "as is," plus a seller's separate service contract, the seller could go on doing what he has been doing except that he could not call his warranty or guarantee a "warranty" or "guarantee." Instead, there would be the "as is" sale coupled with a "service contract." Plainly, the difference appears to be one of semantics.

Perhaps, however, the semantics are significant. If it could be clearly demonstrated that consumers are deceived by the words "warranty" or "guarantee" into believing that they are receiving a certain level of postsale protection and if it could be further shown that a lesser protection is in fact given is in the particular case, it seems to me that there would be a basis for a finding of unlawful deception.

However, it is our view that this type of inquiry is most appropriate for the FTC whose staff has the expertise and resources to make the requisite findings as to the particular market situation.

I do not intend at this time to go into detail with respect to the technical problems that we feel are presented by S. 3074. Our views on these matters will be covered in our report. But I do want to express

our opinion that we disagree with the bill where and to the extent that it imposes, either as a matter of law or practical effect, a system of compulsory warranties. We note in this connection that under the commercial law of every State, the parties to a sales contract have the freedom to negate the existence of implied warranties for the purpose of allocating economic risks. We think that the economic and public policies underlying this universal legal rule are entirely sound and should not be repudiated.

In closing, I want to make it clear that we do not rule out the possibility that additional legislation—beyond that proposed thus far by the administration—might be needed. The task force, indeed, is inquiring into the desirability of further legislation at the present time. In this way the administration will be able to explore various proposals with the new FTC Chairman.

We look forward, as a member of the task force to receiving his views after he has had the opportunity to review the warranty and guarantee problem, the various legislative proposals and the role of the FTC in solving the problem. We would also like the opportunity to testify again after the task force has completed its review and made its recommendations. We anticipate that the task force report will be ready in a matter of weeks.

Let me add, Mr. Chairman, I heard Mrs. Knauer testify as to the March 1 deadline, and we certainly will do everything within our power to cooperate toward that deadline, too, and it would be my belief that it certainly can be met.

Senator Moss. Thank you very much, Mr. Lynn. We will want to hear from you when the task force has reported. So, you may count on an invitation to come to hearings in early March when we consider further this legislation. I appreciate your testimony. You use the word "compulsory" warranty in reference to this bill that is before us.

Why do you characterize the provisions of this act as requiring compulsory warranty?

Mr. Lynn. As I said, Mr. Chairman, as we analyzed the proposed bill, the seller has three options when it comes to the thermal, electrical, and mechanical component type of product. One, he can sell it "as is," which would mean to advertise in the marketplace. "here it is as is, take your chances." I think as a practical marketplace activity that approach would have restricted application.

He may at the opposite extreme say I sell it "as is," but I will also give you a service contract, which means that for a period of time I will agree to do thus and so with respect to the product.

As far as we can see, at least on the face of the bill, that service contract could provide for almost anything: Parts alone, parts and service, parts and service for a limited period, followed by parts alone—at least it is undefined and the FTC would be given, I believe, some powers with respect to the service contract aspect.

The third alternative for him is to try to stick as much as he can to the current format of selling goods, which is to give a warranty or guarantee with respect to the product.

The minute he warrants in any language, so long as it is within the broad warranty language of the UCC—because, as I understand it, at least if I recognize it correctly, the language used that would give rise to the requirement of a performance guarantee comes out in the UCC—he has to give certain minimum warranties. In other words,

whatever the words are that he uses, "warranty," "guarantee," or any other words that would be within the UCC, he picks up these minimums. I say that in practicality, this will force the manufacturer to either go to these minimum compulsory warranties, or to make attempts at a new approach through the service contract.

Senator PEARSON. Would the chairman yield?

Senator Moss. I have just one more question and I will yield.

There are certain implied warranties on any product sold—it is safe, it can be consumed and so on, unless there is some kind of language that relieves the seller of some of these implied warranties. Isn't what this bill attempts to do, to say when you can't give an "express" warranty, reducing your basic obligations of implied warranty?

To that extent, I don't see that it is compulsory. If he just sells it "as is," he still has some implied warranties as to safety. If it is something consumable, he at least warrants that it is safe for that purpose.

Mr. LYNN. I think on that one, Mr. Chairman, the law under the Uniform Commercial Code would not impose upon him any obligations with respect to fitness, or merchantability (defects in materials or workmanship), if he sells it "as is." I think there might very well be some liability under the laws of negligence with respect to a man putting out a product, that is inherently unsafe, but the magic of the words "as is" and other similar words is, that the man has no warranty responsibility whatsoever. That is the very reason why a reputable manufacturer under most circumstances would not sell a new product "as is," which would really bring him around to one of the other two alternatives: either coming in with a warranty representation in which event he is now fixed to a certain pattern of those provided in the bill; or, as I said, to try to test the meaning of the words "service contract" as used in the bill.

Senator Moss. What I was really getting to, I couldn't see how you identified this as compulsory. Senator Pearson?

Senator PEARSON. I wanted to suggest, just what Mr. Lynn has said, no reputable manufacturer after the passage of this bill, is going to really sell "as is." He is going to have to comply.

But further than that, don't you make the argument here almost that even stronger legislation is needed? The fly by night who makes a toaster and puts it in the shop—we have had a good deal of discussion here and other places about the consumer believing that there is a warranty, and believing that the warranty is an all-inclusive type thing. The housewife that goes in and picks up the toaster, I doubt very seriously if she looks around for the tag. I am quite sure she doesn't read it. I doubt if she even looks for it. Here is a situation where selling it "as is" is an open door.

In addition to that, there are ways to get around these requirements, selling it with a service contract. It may be, that if this legislation is good, it ought to be expanded to that type operation as well. The service contract will provide that there be a repair or if a repair isn't feasible, that there be a replacement and they all be done within a reasonable time and without cost.

I think you need a question to respond to that, so I will just put it to you: Isn't that argument an argument for even stronger legislation than this bill?

Mr. LYNN. No, I would strongly urge that we give pause to forcing manufacturers into adopting one of two courses: "as is," which

means the consumer takes whatever defects there are overall in the design of that particular product he is buying; or alternatively with certain minimum warranties attached to it.

Let me say that as I listened to the other testimony, it reconfirms my own view that there may be problems in particular industry lines—there may be—as to what a consumer's expectation is, when a particular word is used.

The word "free" is a pretty good example of that, I think. When you say to a consumer he is getting something free, he expects a particular thing to happen. It may be that there are consumers in fair number today—I don't know, and it would be interesting to see statistical studies on this done—who, when they hear the word "guarantee," immediately assume that they are getting a certain period of time in which all the problems of that product will be taken care of for them with minimum inconvenience to them.

Senator PEARSON. Insured.

Mr. LYNN. If that is the case, then, it seems to me, there are many ways of solving that problem rather than requiring the manufacturer to build into his product the cost necessary to insure, that he can pay for certain minimum warranty protection.

For example, suppose we were to find an area where the consumer generally believes, "guarantee," means insurance for a period of time. Then perhaps trade guides could be formulated by the FTC as an aid in this particular area, this particular product line. If you intend giving something less than that, you must use the word "limited" or "restricted" in front of the word "guarantee." In other words, a disclosure mechanism to trigger to that consumer, that he is not insured. I think it is a very valuable thing to keep as much flexibility as possible, consistent with not deceiving the purchaser.

This bill, for example, puts some fairly rigorous requirements on the person making the guarantee. I am not quite certain from the bill, who the guarantor is in all cases, whether it is the maker, the retailer, or both.

But there are some manufacturers that may very well be coming out with a new product line, who have resources that are small enough, that the only way that they can really market their product, is through the assistance of a large retailer, a sponsoring retailer, if you will.

It may also be a product where the novelty of it is such that the manufacturer really can't give an unrestricted warranty of fitness for a particular purpose. My feeling in those cases is that so long as it is clear to the consumer when he buys it that that is the case, that is what ought to be done; and we should not create a situation where it is impossible to allow that kind of flexibility.

I think it is very important as we look at this kind of legislation to break this problem into its various parts. How many of the consumers are complaining because the warranty is too narrow and how many of them complain because the manufacturer or the retailer or whoever they reasonably expect to look to isn't performing that warranty?

I have the feeling from reading much of what we see that a good number of the complaints are based upon failure to perform the warranties that are given.

And certainly, for example, in that area the Consumer Protection

Act proposed by the administration would afford not only public but private remedies as well if a renegade manufacturer decided to give a warranty knowing that he couldn't perform that warranty.

There are other warranty nonperformance problems that arise because a particular service outlet at that point in time doesn't have adequate staffing, doesn't have adequate help.

Many times that can be a result, perhaps, of his fault; sometimes it can be the result of inadequate surveillance by the manufacturer or the retailer. But many other times, too, it is a situation where two servicemen have quit within the last week and the fellow hasn't gotten the new one yet. These are caused by a variety of things. I think if you give the FTC the tool of preliminary injunction you will also bring about even quicker action on the part of the industry in remedying the problems of misleading warranties.

Good work has been done in this area. I think more good work will be done whether or not there is further legislation. But I think the knowledge of the new law to businessmen who are presently doubtful that the FTC does have the preliminary injunction right will help persuade those who might otherwise be reluctant.

This will also go for advertising. I am inclined to think that one of the problems is that the consumer is given too great expectations through general advertising, and when the product breaks down, his disappointment is extremely keen and made keener by that advertising.

To the extent that an advertiser, who has become committed to a large advertising budget on a particular advertising theme, knows that that money can go down the drain if the FTC obtains a temporary injunction, this, too, will help, I think, make advertising more meaningful and less deceptive.

The only thing I am urging is that before we go to something that takes the flexibility out of the system, we consider it very, very carefully.

Senator Moss. Senator Hart.

Senator HART. Thank you very much. No questions.

Senator Moss. Mr. Sutcliffe, did you have any questions?

Mr. SUTCLIFFE. Yes. As to your point about the way in which the preliminary injunction would serve as a very good enforcement tool of the Federal Trade Commission to stop deceptive practices, let me ask you a couple of questions about the preliminary injunction and its powers.

Number one, since the 1960 guidelines for advertising of guarantees have been issued, are you familiar with any cease and desist orders that have been issued by the Commission relative to unfair advertising practices of guarantees?

Mr. LYNN. No, I am not. I am not, at all aware that the FTC has attempted any of the same. And one of the things we are very hopeful about, particularly with the American Bar Association report that has come in, is that with the new tools that can be made available under the Consumer Protection Act we will see an aggressive course along that line.

Mr. SUTCLIFFE. How effective is the new tool of preliminary injunction? As a lawyer, could you go on behalf of the Federal Trade Commission tomorrow to a court and say I would like a preliminary injunction to prevent manufacturer A from advertising his product with a 36-month guarantee, when there is test information available that

says that product has a normal life expectancy of 18 months. How could you obtain a preliminary injunction to stop that practice while the Commission is considering final action in the case? Could you get a preliminary injunction in that situation?

Mr. LYNN. I think it would depend on more facts than that probably, Mr. Sutcliffe. I would think, taking your facts, however, of a 36-month guarantee, and let's assume there is nothing else in that advertising that would dispel the consumer from thinking that the reason they are giving a 36-month warranty is because they have got a 36-month product——

Mr. SUTCLIFFE. Let's say he disclaims the warranties of merchantability and fitness, would that have any meaning for the consumer?

Mr. LYNN. I think I would have to look at the whole advertising program. The point I am making is I can see circumstances of how the consumer would have been misled in the advertising of that 36-month warranty, without reference to the disclaimer of merchantability, and where the court may very well listen hard in the preliminary injunction. Don't forget that the uncertainty of what the court will do in that case is not an uncertainty that has to be taken into account only by the FTC. It is something that has to be taken into account by the manufacturer as well. Again, if you are going to commit a large amount of money to an advertising program or a promotion, the fact that at long last FTC might get prompt action will certainly make, I would think, the manufacturer and his lawyer more responsive.

I think also it will make industry even more interested with respect to advisory guidelines.

Mr. SUTCLIFFE. For the record, could you supply the committee with an example of an existing warranty practice that you feel the Commission could obtain a preliminary injunction and order a halt while the Commission was considering whether or not it was deceptive? I think this would be helpful for us.

Mr. LYNN. One of the reasons we want to confer with the new chairman of the FTC is because we would also like to have that kind of information in exploring this situation. I think what I would like to do, Mr. Sutcliffe, is explore that with the chairman and see whether or not it is possible to come up with an example of the kind that he, too, would feel would be within the injunctive power.

Mr. SUTCLIFFE. If I could focus upon your opening comments, you note that the industry's voluntary progress has been significant. Now, at the present time, has the industry taken any action to insure that repair parts for new lines of merchandise are available when products are marketed? This is particularly crucial in the warranty repair situation. There are guidelines for availability of parts of older products, but have any guidelines been issued as to the availability of parts at a time simultaneous with the introduction of a new product?

Mr. LYNN. We are referring at the moment to household appliances exclusively, aren't we? The things that the task force——

Mr. SUTCLIFFE. I think we should stay within the framework of this task force report.

Mr. LYNN. May Mr. Prince answer?

Mr. PRINCE. I understand that the major appliance industry association is in the process of developing guidelines for their members to insure that repair parts are available.

Mr. SUTCLIFFE. Are these repair parts for new appliances?

Mr. PRINCE. Yes, which are for the most part under warranty, of course. We have found during the past year that most of these consumer complaints involving unavailability of parts for warranty repairs can be resolved very quickly and fairly when the complaint is brought to the attention of the appropriate official of the firm involved.

Mr. SUTCLIFFE. If the part isn't in the distribution channels yet, how can the manufacturer even though he wants to remedy the situation?

Mr. PRINCE. We have had reasonably good results in accelerating the distribution of parts when the warranty problem concerned parts shortages. One of the problems has been that the consumers frequently do not know where to address their complaints. Once the first echelon, the dealer where they made the purchase, has told them that the part is on back order or not yet available, the consumer doesn't always know where to turn. This has been the case for some time.

Both the major appliance industry associations during the past year have established procedures whereby they will refer a consumer complaint received from a government agency or directly from a consumer to an appropriate official of the appliance manufacturer.

Mr. SUTCLIFFE. What do you plan to do with the renegade companies that you talk about?

Mr. PRINCE. To some extent——

Mr. LYNN. I would like to address myself to that. Again we come back to the Consumer Protection Act. To the extent that a promise is made that can't be performed and he knows it can't be performed, that is one of the enumerated items that gives rise to rights of action under this act.

Mr. SUTCLIFFE. So you would suggest that under the 11 categories listed you would have the Federal Trade Commission bring it to the attention of the Justice Department to bring suit and then if the Government action is successful, there is remedy available in private action by the consumer. Is that the way you would have it work?

Mr. LYNN. I think you are giving a historical way that it would work in a particular case where the Government went after the manufacturer; but I think the presence of that remedy will go a long way to having people who are not giving adequate parts for new products slow down their introduction of the product until they have the parts.

I think from what Mr. Prince is saying that this again is a story where there are a variety of practices among manufacturers. There are some that try very hard to have not only the parts available, but equally important, the service repairmen trained to give the repairs that are necessary. And then there are others who, to capitalize on quicker introduction, don't go as far in that connection. All I am saying is that when they know that these kinds of remedies are available——

Mr. SUTCLIFFE. How realistic is that remedy if in fact on the figures Senator Moss presented for the record about the size of the appliance repair problem, it means that one household has one visit every year by a repairman? If each of those people have a problem, how realistic is a remedy which does not provide an economic incentive on the manufacturer to perform without threat of action by the Federal Government?

In other words, should we predicate our voluntary compliance thing

merely upon a threat by the Federal Government to act, or should there be built in economic incentives for them to perform in a manner that everyone agrees is fair?

Mr. LYNN. I think to consider whether the legislation that we are proposing provides all that is necessary is very worthwhile to do. As I said, in my prepared remarks, we are giving consideration as to whether there is a need for further legislation in this connection. It may or may not be the case.

Mr. SUTCLIFFE. You mentioned that some firms have come forward with new warranties and have expanded their coverage, and you have mentioned the familiar disclaimers of merchantability and fitness for purpose have been eliminated.

Do I understand you to indicate that to be progress?

Mr. LYNN. I think every time a manufacturer feels, looking at the price at which he can sell his product, he can give more to the consumer, we have had progress. There may be product lines where the cost and the prices do not permit that fellow to go as far as the other fellow.

Mr. SUTCLIFFE. Then you would also think the expansion that you mentioned, of covering labor as well as parts, would be progress? Is that correct?

Mr. LYNN. I would ask on that one, at what cost? If the manufacturer decides to give labor as well as parts for a price that is not worth it in relation to the total dollar the consumer has to spend, it might not be progress.

On the other hand, if it comes about through good hard competition that one fellow says I can sell more of my products if I give a better warranty, and I am going to crow about the better warranty that I give, and if the others want to stay in business they give it too, I say that is progress.

Mr. SUTCLIFFE. I think for the record it would be appropriate at this time to introduce a press account of one manufacturer who expanded his warranty coverage to include labor—and this still being conducted on a pilot basis—without any increase in cost, and the account begins by saying: "Inboarded labor warranty test programs for T.V. have reduced complaint letters for RCA by 90 percent."

So I would agree with you that is progress, in that kind of extension.

Senator Moss. Without objection, that will go in the record at this point.

(The article follows:)

[From Home Furnishings Daily, Tuesday, July 29, 1969]

INBOARD WARRANTY TESTS SLASH RCA TV COMPLAINTS

WATERBURY, CONN.—Inboarded labor warranty test programs for TV have reduced complaint letters for RCA by 90 per cent.

This is what Robert J. O'Neill, vice-president of RCA Sales Corp., told members of the National Electronics Association, at a banquet to wrap up their fifth annual convention over the weekend.

The NEA represents about 1,500 servicemen and servicing dealers—about 83 per cent of the group is in this category—throughout the United States. The convention was attended by about 250 delegates from State organizations.

RCA is involved in the "test program" in Indianapolis and the entire West Coast from southern California to Seattle, O'Neill emphasized.

In the RCA tests the labor coverage is included in the cost of the set. If the independent serviceman has to make a call during the 90-day warranty period he then bills RCA "at the going rate" for labor charges. Parts are included under present across-the-board warranties.

He said that the TV industry was going through a period of evaluating inboarded labor coverage and added:

"I'm sure a new concept will evolve in handling warranty coverage due to so many manufacturer tests."

He said that RCA was being "cautious" on whether the program would be nationwide.

Many service people are concerned over this concept of the going rate and feel that sooner or later RCA may establish a fixed payment and the service industry will have to take it or leave it.

For instance David Krantz, president of the Pennsylvania Federation of Radio Television Service Association told Home Furnishings Daily that it was his feeling RCA is only "appraising" the payment of the going rate and eventually will establish the rate to the detriment of the service industry.

Earlier during the convention Krantz told a luncheon meeting that the TV Service Association of Delaware Valley, of which he is director, seriously was considering filing suit against three manufacturers in regard to their TV warranties. He would not comment on who they might be.

Another convention delegate, a servicing dealer, put it in these terms: "O'Neill's speech was the way most manufacturers talk but nothing ever happens."

The question of what is the going rate may vary from service shop to service shop. For instance, Miles L. Sterling of Electro-TV in southern California, said that for a basic service call (30 minutes) for color TV he charges $24.50. Other service operators may charge under $15, some even under $10.

This depends upon the area and the operator's cost of doing business, which from conversations at the convention some service people are not quite sure of.

A source close to RCA said it was the company's feeling that if a service operator was charging say $15 for a color call, and another operator $12.50 for the same quality of work, why should the manufacturer have to subsidize the operator who charges the higher fee.

He said many service operators, are not the "best businessmen" in the world and if they knew more about the cost of operating a business their rates would not be higher for the same quality of work.

Service operators on the other hand said there is sometimes more paper work involved in processing warranty work and they in turn have to get paid for this.

AN NEA COMMITTEE passed a resolution at the convention that stated the organization is "definitely against extended warranties, especially those that have come into effect in recent months."

An Eastern servicing dealer told HFD he had been approached by a Zenith distributor about a program for setting up 90-day inboarded labor coverage for TV.

He said that he now handles warranty work for one manufacturer and that because of paper work he has to charge them slightly more than he would the consumer who calls in for service.

At a meeting of the National Service Conference, held in conjunction with the NEA conference the feeling seemed to persist that the Federal Government will step in and establish warranty guidelines for the industry.

"THE LAW IS COMING on warranties so why not face it," a servicing dealer said.

Henry Olszewski, a spokesman for the NEA, said the organization statement on warranties also urge the manufacturers to describe their warranties in large print and "understandable language" so that consumers are not confused about the coverage.

The feeling is that when the consumer is not aware that he has to pay for labor and then he finds out from the serviceman it is he who takes the abuse and suffers a tarnished image.

Most attendees interviewed at the convention seemed to feel that the communications between manufacturers and service people is not as good as it could be.

Manufacturers reported were Sylvania, RCA, Philco-Ford, Panasonic. Also in attendance at the National Service Conference was an official of the Electronic Industries Association.

Mr. SUTCLIFFE. In discussing the progress of the retailing industry in improving warranties, you suggest some retailers often have the economic muscle to "insist on and obtain good, clear and meaningful warranties." Does this mean that the small retailer is being given less than good, clear, meaningful warranties?

Mr. LYNN. Not necessarily, but what it does mean is the leader in

bringing about the better warranties can very often be the large retailer. As a matter of fact, there are provisions in the anti-trust laws, the Robinson-Patman Act and the like, that are intended to protect the small retailer against just that kind of a problem.

What I meant was that the large retailer is the fellow that can be the force for good change.

Mr. SUTCLIFFE. You also discuss the limitations of the voluntary approach, and you mention that renegade businessmen may still find unscrupulous marketing and servicing practices to be profitable.

Could you describe for us who is the renegade in the present market situation, and what you consider are unscupulous marketing and servicing practices? So that we can focus on your understanding of renegade and unscrupulous marketing and servicing practices, let me give you briefly an account of a warranty that appeared in a paper several months ago.

The title in bold print in the advertisement was "Five Year Warranty." Then the warranty is actually spelled out in the advertising:

> The manufacturer warrants this ladder, under normal use and service, to be free from defects in workmanship and material five years from date of purchase. This warranty does not apply to any ladder that is subjected to an accident or that is misused or is used as a rental. Under this warranty, the manufacturer will repair or replace any defective part which the manufacturer determines became defective during the period of warranty. After written approval of the manufacturer, secured through your dealer, the ladder or defective part must be returned prepaid.

In other words, you have to mail the ladder back to the manufacturer. Now, do you consider this a renegade business practice, or a practice of a renegade in an unscrupulous marketing and servicing practice?

I think that is an unfair question, because it just so happens that a rather prominent retailer in the City of Washington, D.C. issued that warranty.

Mr. LYNN. I gathered as much, Mr. Sutcliffe. I would want to see the whole ad.

Let me add at this point, as I once said when I was back in the private practice of law, to many of my clients at that time, that many times they would put things in warranties which they never insisted on, but were some of the worst public relations things possible. And my guess would be that if someone had a problem with that ladder from that particular retailer in town, the ladder would get fixed, notwithstanding the fancy legal language that was in that statement.

Mr. SUTCLIFFE. So disclosure really is meaningless?

Mr. LYNN. No, what I am saying is they may have hurt a lot of ladder sales in putting their warranty in that form.

Mr. SUTCLIFFE. You go to the point, and I quote: "The basic commercial right of both buyer and seller to freely and knowingly allocate the economic risk relating to the quality of goods."

So that this committee can understand thoroughly what you mean by that, and how you would anticipate this would operate, could you pretend that you were going to purchase an item, and let's use a television set (which many of us have purchased) and allocate the economic risk. Related to the quality of the goods you were going to buy, how would you measure the economic risk? Would you rely on the guarantee given? If so, to what extent and how? And how would you know what your economic risks were today, if you went in to shop for a TV?

Mr. LYNN. I must admit as one individual consumer, and let me put

on record I am a consumer, too, I look at the period of time that the guarantee extends to—and perhaps it is because I am a lawyer, but I would hope it is also because, like other consumers, there may have been a time when it became important for me after the fact—I look to see whether it is parts only or whether it is broader than that. After looking at these terms, I tend to equate the time the fellow will stand behind it as to where the allocation is of the economic risk; and if he says his warranty is parts and service for 1 year, I say to myself, he's selling me an appliance for my purchase price that will work at least a year.

Then I further say to myself, who is the manufacturer, or who is the retailer, and decide whether that 1 year as a legal matter is enough for me.

Mr. SUTCLIFFE. The next point you make, you discuss "The Product Testing Act is in many respects the other side of the truth in warranty coin." I would like to examine for a moment both sides of that coin.

The appliance task force report urges that—

> The proper expectations of the consumer with regard to maintenance, cost of operation and product life be directly established at the time of purchase.

As I understand the Product Testing Act, the consumer would be provided with information as to such things as maintenance, cost of operation, product life, and the like. Is that correct?

Mr. LYNN. There is no requirement in the act itself that the consumer be supplied anything. The approach of the act is to give the appropriate Government agencies the assignment to check the accuracy of the information being given the consumer voluntarily by the manufacturer or the retailer. For example, if the manufacturer had had an outside laboratory test his product for certain performance characteristics, this would enable the assigned govenmental agency to investigate two things: Whether the characteristics of the product being tested for are indeed the important characteristics, on the one hand, and, second, whether the tests being used in testing those particular characteristics are fair tests. If they were fair tests, this would be a tool in the hands of the advertiser, the manufacturer, or whoever else it was to say that these tests and these characteristics are one indeed that the Government says are good tests, if he chooses to do so.

Again, no compulsion.

On the other side, if the Government agency finds that the characteristics being tested for, or the test methods being used, are not satisfactory, the Government agency could publish in the Federal Register the characteristics and tests which it thinks are the right ones.

Mr. SUTCLIFFE. Would that force manufacturers in effect, if not by law, to go to that kind of testing procedure?

Mr. LYNN. My hope would be, again allowing the force of competition to work, that there would be at least one manufacturer in the group that would say, "I will stand up and be counted; here is the way my product tests out with these tests," and that the others, in order to meet that competitive advantage, would do likewise.

Mr. SUTCLIFFE. Then, let me look at the other side of the coin, the guarantee coin—suppose that you have manufacturers who are and who are not complying with that particular test. Suppose that the manufacturer who is not advertising or providing the information, information which has been found to be essential, says, "I issue a 3-year guarantee," and in that guarantee he very clearly and carefully discloses that he disclaims warranties of merchantability and fitness for

a particular purpose; it is only for parts and not labor, that you have to mail—let's use a television again—it back to the manufacturer's place of business.

On the other side of the aisle would be the manufacturer who says, "I give a 1-year guarantee," and this 1-year guarantee just happens to correspond to the normal life expectancy that your tests have shown, and he happens to make a complete and total guarantee, without some kind of floor to the meaning of the word "guarantee." How can you expect the consumer to make a decision as to which product to buy? How can you expect him even to focus upon the objective information you are trying to give unless you build a floor under the meaning of "guarantee"? Don't you think in that situation, where you have a 3-year guarantee and a 1-year guarantee, that unless those words mean something similar, the consumer will be befuddled to figure out which product he should buy?

Mr. LYNN. You may well be right, Mr. Sutcliffe. The point is, however, that there are many other ways than making compulsory meaningful warranties for handling the problem. All I am saying is you may go to something like saying "limited guarantee," if it does appear from your factual studies that people will be confused in that case, or "restricted guarantee," or "parts guarantee," or some other ways to flag to that consumer that he is not getting what the other fellow is giving him. And to that extent that it is necessary to prevent unfairness, if you will, there is the word "unfair" used in section 5 of the Federal Trade Commission Act, to require that words of limitation be used or the like. This is certainly an area to be explored.

Mr. SUTCLIFFE. Would you allow a manufacturer to represent that his product uses 100 watts, one manufacturer say 100 watts and the other one say 100 limited watts and the other one say 100 huge watts and the other one say 100 jumbo watts? Would you permit that kind of labeling? And then a very clear disclosure of what the word "watt" was or some other standard of measure?

Mr. LYNN. I am sorry, I am a little lost on your analogy.

Mr. SUTCLIFFE. I am afraid it may not have come through. It seems to me if we use a word like "guarantee," that word conveys some information or minimal notion that the consumer is getting something. If we use the word "watt" and allow all sorts of flexibility within that word or qualifications of it, the consumer doesn't know what measure of power output he is getting.

Mr. LYNN. Now I understand you. The word "watt" has come to be known over many, many years as a standard for measurement with a scientific meaning to it.

Mr. SUTCLIFFE. What if we find out that the word "guarantee" has a particular connection to the consumer?

Mr. LYNN. If the studies were to disclose that there is general confusion as to what the word "guarantee" means, as to particular kinds of products or whatever it well may be, then certainly it is the kind of area where the FTC should consider guides with respect to it the same way they do with the word "free" or the word "preticketing" But it just seems to me that a legislative approach that goes across the board and hits all of the product lines that there are and then sets up minimums for them is something we have to think about pretty hard.

Senator MOSS. The truth-in-advertising, to interject here, is to prohibit the description of a quart as being a jumbo quart of some kind because there is a general acceptance of measuring what a quart

represents. I think what Mr. Sutcliffe is saying is that perhaps in the consumer's mind, the unsophisticated consumer, when you say "guarantee" he thinks that means he is going to have his product replaced if it is defective within the time frame set forth in the guarantee.

Mr. LYNN. The problem, Mr. Chairman, is that the bill goes much further than that. It isn't restricted to the use of the word "guarantee" or restricted to the use of the word "warranty." It isn't restricted to the words "warranty," "guarantee" or "representation" itself. Whereas "guaranteed 2 years," could very well mean to a layman that we will take care of it fully for 2 years, suppose what the fellow wanted to say in his headline was "guaranteed as to parts for 2 years"; the bill wouldn't allow that.

Mr. SUTCLIFFE. The bill would allow him to say "parts warranteed" for 2 years.

Mr. LYNN. You could say that under the bill?

Mr. SUTCLIFFE. That is correct, if you coupled it with a guarantee as such, it would require that the duration of the guarantee, of the actual insurance policy—be of reasonable duration. But the way the bill is presently written you could say "parts warranteed" if properly presented. That is clearly within the bill. The proscription of the use of the word "guarantee" goes only to the context of thermal, electric and mechanical products and where in fact it is an expressed guarantee related to performance, and by putting the warranty notion on it, you take it out of the "express guarantee related to performance" context unless there are other things that create in the consumer's mind confusion.

Mr. LYNN. Let me change my example to say I warrant performance for 30 days, but all I will furnish in connection with that after the first—I am using too short a period. I warrant performance for 1 year—

Mr. SUTCLIFFE. You mean guarantee performance?

Mr. LYNN. I guarantee performance for 1 year during the first 6 months of which I will furnish everything and during the last 6 months of which I will furnish parts only, and it is all in the same type at the top. Is that allowed by the bill?

Mr. SUTCLIFFE. The way the bill would require it to be stated is 6 months guarantee, parts only warranty for an additional 6 months. That would be the way you would have to designate it, so it would clarify to the consumer your intention. This is the intent. Perhaps we do need to go further.

Are you suggesting, Mr. Lynn, that the Federal Trade Commission determine which guarantees are really guarantees? In other words, if they are going to look at the deception and at the truth of it, you are asking them to determine which guarantees presently labeled in the marketplace are guarantees; is that correct?

Mr. LYNN. Yes. What I am saying is the FTC has as one of its functions, and I think a very important function, to examine, even at the present time, under its present authority, the question of the extent to which people are being or may be deceived in the marketplace due to the use of that word or warranty, both at the point of sale and in the advertising. I think they have recognized that this is one of their functions in having come out years ago with their guides with respect to the advertising of warranties. But I note that

they never have come out with a guide as to the warranties or the guaranties themselves.

Mr. SUTCLIFFE. If they were to do so and were to require certain things to be in the guarantee, to use that word, would this require, in order to police the marketplace, the preregistration and preclearance of every guarantee that a manufacturer wanted to give?

Mr. LYNN. Oh, no, I don't think so. We have many other laws and we have many other guides that have been issued where the enforcement has been largely by way of industry seeing them and abiding by them. I think the FTC would say that in large measure, in total volume of goods, their guides have had quite an effect in the marketplace.

Mr. SUTCLIFFE. One last point. You suggest that warranty problems be left to the FTC whose staff has the expertise and resources to make the requisite findings as to a particular market situation. This committee was under the impression that a great many decisions that would have to be based on market situations had been left to the FTC in S. 3074. For example, the definition of "within a reasonable time," what constitutes repair, replacement and a host of other things. The committee does recognize the important position of the Federal Trade Commission. This is why it is curious that you say in the last page of your testimony "We note that under the commercial law of every State, the parties to a sales contract have the freedom to negate the existence of implied warranties for the purpose of allocating economic risk. We think that the economic and public policies underlying this universal legal rule are entirely sound and should not be repudiated." That is your statement. Of course, S. 3074 does repudiate this rule if such negation comes in a guarantee or warranty.

It is interesting to note that the provision of S. 3074 corresponds to the Federal Trade Commission recommendation, the Commission you rely upon in the Appliance Task Force Report and was reaffirmed here today by Chairman Weinberg. The FTC whose judgment you have relied upon in one paragraph has recommended that which you in the next paragraph oppose. Do you have any comment on that?

Mr. LYNN. Would you please, if you will, repeat the task force recommendation of the FTC so we have that before us?

Mr. SUTCLIFFE. Yes, I will.

It appears on page 3 of the task force report and it says:

> To these ends I recommend the following:
> (A) (2) recognize that the purchaser of their products is entitled to receive a product which is reasonably suited for the purposes for which it is intended and which will conform to any representations by the maker with respect to its fitness for particular purposes. This requires that the implied warranties of merchantability and fitness not be disclaimed.

Mr. LYNN. As I heard you read it and as I look at it before me, it talks about conforming to the representations made by the maker. Now, the question comes up as to whether the representation is inconsistent with the disclaimer.

Let me before finishing my answer to the question make one other point in this connection. One of the problems with the implied warranty of fitness from the manufacturer's standpoint, at least in the days when I was practicing, was that it was indefinite as to time. There is a statute of limitations provision with respect to it, but they vary from State to State, and one of the reasons for the disclaimer was simply to disclaim it from a time standpoint.

The manufacturer of a dishwasher was saying, of course, it was fit to wash dishes. That is not the reason why the disclaimer was there. The disclaimer was there so as to get a time period into it, and also, frankly, there were other times it was disclaimed I do think perhaps out of excess of caution on the part of some.

To the extent that the former Chairman of the FTC was saying that he thinks that implied warranties of merchantability and fitness should not be disclaimed if they are inconsistent with the representations made with respect to fitness, certainly. On the other hand, as to whether or not if it is made perfectly clear to the customer in a nondeceptive way that he is not getting any, the manufacturer should be allowed to do that, I say he should. There aren't going to be many manufacturers who are going to rely on that disclaimer as to something that goes wrong the moment the product is bought. In other words, if a warranty says, "I will make all repairs or replacements—"

Mr. SUTCLIFFE. The point is: Without that disclaimer the law and the legal rights would be determined on the basis of the Uniform Commercial Code and its warranties of merchantability and fitness for a particular purpose. With that disclaimer in there you are suggesting that the rights of the buyer are limited, whether it be by time or any other way, no matter how the manufacturer decides to use that disclaimer.

I think without quarreling with you, the language that the Federal Trade Commission used is quite clear when it says "This requires that the implied warranties of merchantability and fitness not be disclaimed." They do not predicate that upon any other determination. When the question was posed of Chairman Weinberger today, it seemed that he was in agreement with that.

Mr. LYNN. I didn't quite understand Chairman Weinberger that way, but I would want to look at his testimony again before I said one way or the other.

As far as my own personal view is concerned, the point I was making in my prepared remarks was that the people doing the revision of the code in connection with the Uniform Commercial Code saw two things: One, the desirability of retaining the right to disclaim the implied warranty of merchantability and fitness; and two, that when it came to consumers the way that you did that had to be pretty darn strong.

I think what I am saying is that the key to this whole problem is making the purchaser know what he is getting in this regard. It is kind of a peculiar paradox that the Uniform Commercial Code revisers decided that you had to use the word "merchantability" in order to get rid of the implied warranty of fitness. I must admit that is not the best word in my judgment for advising the consumer as to something with regard to fitness. It may well be that in examining this kind of a problem of deception the FTC would want to give a hard look to whether just using the word "merchantability" is enough from the standpoint of letting the consumer actually know he is getting no warranty of fitness for any period of time.

Mr. SUTCLIFFE. That is all.

Senator Moss. Thank you, Mr. Lynn. This has been a very interesting colloquy that adds to your fine testimony. I was saying earlier that we are going to have further hearings, and you, too, will be invited back when the task force reports have been prepared and when

the Federal Trade Commission is prepared to come in and testify in full. I appreciate your contribution to the record. You have raised a lot of points that we are going to have to consider as we struggle with the language in this bill. I appreciate it very much. I appreciate having your associates here.

Mr. LYNN. I thank you, Mr. Chairman.

Senator MOSS. We have one final witness and we will finally get to the private sector. We have had only Government people talking about this so far.

Mr. Wallace Breuner, who is the chairman of the National Home Furnishings Association, Committee on Warranties and Guarantees, and a member of the National Home Furnishings Association's board of directors is here to testify.

We are very pleased to have you, Mr. Breuner. Will you introduce your associates, please.

STATEMENT OF WALLACE E. BREUNER, JR., CHAIRMAN OF THE NATIONAL HOME FURNISHINGS ASSOCIATION COMMITTEE ON WARRANTIES AND GUARANTEES AND MEMBER OF THE NATIONAL HOME FURNISHINGS ASSOCIATION'S BOARD OF DIRECTORS, WASHINGTON, D.C.; ACCOMPANIED BY SPENCER A. JOHNSON, VICE PRESIDENT, GOVERNMENT RELATIONS; AND RICHARD I. HERSH, ASSISTANT DIRECTOR, DIVISION OF GOVERNMENT RELATIONS

Mr. BREUNER. Yes. I am accompanied by Spencer A. Johnson, vice president of Government Relations and Richard I Hersh, assistant director for Government Relations for the National Home Furnishings Association. I am Wallace E. Breuner, Jr., of the John Breuner Co., which operates 10 furniture stores in central California.

I am a director of the National Home Furnishings Association, formerly known as the National Retail Furniture Association, and I am chairman of NFHA's Warranties and Guarantees Committee.

The National Home Furnishings Association is an organization of over 9,000 of the Nation's home furnishings retailers. As a member of the retail community, NHFA takes an active position on legislation and Government activity which affects the home furnishings industry.

NHFA is not new to the guarantee field. NHFA thoroughly studied the Report of the President's Task Force on Warranties in the Appliance Industry. Although the task force report deals only with the guarantees in the appliance industry, many of the problems encountered are adaptable to all retailing. Guarantees are more than an appliance problem. Any guarantee legislation established for appliances is likely to be broadened eventually to include a wide range of consumer products.

We agree that for a guarantee to have any meaning as a sales tool and as a consumer benefit, there must be an absolute minimum amount of disclaimers exemptions, and so-called "uneconomic" promises. A guaraantee which offers free replacement of a 25-cent part when the labor charge is $10 is certainly not a true guarantee.

The National Home Furnishings Association supports the concept of full disclosure to the customer of the terms and conditions of any guarantee offered. However, legislation requiring mandatory guaran-

tees should not be enacted by Congress. NHFA also supports the concept of voluntary guarantees. The manufacturer or the vendor should be left free to decide voluntarily whether or not a guarantee should be offered on his product. Mandatory guarantees would take an important choice away from the consumer: the choice of whether or not to purchase a less expensive item with no guarantee or to purchase the same item for a higher price but with a guarantee. Restrictive legislation could eliminate such things as reduced price "as is" sales of merchandise with no written guarantee. Many consumers prefer to buy discount and forego the fringe services.

If guarantees are voluntary, the retailer would also be better able to deal with competition. The right to adjust guarantees to deal with competition or to give no written guarantee at all is an important principle that should be maintained.

I'm not at all sure that this proposed product reliability legislation will cure customer problems on 2-year-old dishwashers, Cadillac vibrations, and color television tube repairs.

American technical know-how has steadily increased product quality and reliability, spurred constantly by competition in the marketplace, cars run 50,000 miles now without much more than new spark plugs—color television picture tubes are used for 2 or 3 and more years and getting better all the time. The American consumer is not getting gypped in any stretch of the imagination. As store manager, I answer more customer phone calls for color TV problems than all other problems put together because color television is by far the most complicated home appliance ever sold. A proficient TV technician has to have all the training of a doctor to solve color TV problems.

I really believe the marketplace weeds out bad products and bad service, and I know I can speak for the 9,000 other home furnishings retailers I represent.

The National Home Furnishings Association has closely followed the rise of consumerism in the last few years. Although consumerism has changed many practices in the retail industry, it certainly has not had a detrimental effect on the responsible retailer. To the retailer who has always held the concept of customer satisfaction as his goal, consumerism has not been a deterrent to business, but rather an aid. The consumer must be satisfied. Many of NHFA's members are from small towns and cities throughout the Nation. Without the concept of customer satisfaction, the small businessman would not be able to remain in business.

NHFA feels the best method to retain this close relationship between the consumer and the retailer is through voluntary industry action. The consumer would realize that any promises offered are so offered because of the guarantor's ability to live up to his own promises of performance rather than because of some arbitrary decision by groups outside the industry.

At the present time, there are voluntary industry programs attempting to change the face of the guarantee. Nearly every consumer-related industry has worked to simplify the wording of its warranties and guaranties. Retailing, as a group, made a high positive statement to the President's Task Force on Warranties in the Appliance Industry with proposals for industries other than appliances. Action has been taken, and there is a substantial question as to whether legislation is required.

In his consumer message, President Nixon called for the task force to reconvene and make a final report. In the original study, the task force indicated that it would review the problem at the conclusion of 1 year and determine whether industry action had progressed sufficiently to make legislation unnecessary. On the other hand, if the industry had been unresponsive to the problems turned up in the report, legislation—specific and definite—would be recommended. The National Home Furnishings Association firmly believes that the task force recommendations should be viewed carefully by the committee before deciding whether legislation is indeed the answer to the problem.

However, if it appears that legislation is the only means by which the problems of guaranties can be resolved and made truly meaningful, legislation along the lines of the Magnuson-Moss bill appears to be a realistic approach. While allowing the industry the opportunity to make a decision as to whether or not to offer a guarantee, the bill deals with only certain products which have been of major problem to the consumer. A bill such as S. 3074 would allow competition within the marketplace without resulting in anticompetitive problems throughout the retail industry.

There are aspects of the current legislation which the National Home Furnishings Association would like clarified or strengthened in the bill. We would like to identify them individually.

1. All guaranties should be voluntary. Although we have covered this aspect of the legislation previously in our testimony, NHFA feels that this is the key aspect of any legislative proposal. Without the guarantor being able to determine whether or not he wishes to offer a guarantee, serious problems are created both for the consumer and for the guarantor. The guarantor, be it the manufacturers or the retailer, no longer has the opportunity to make the kind of decisions which are currently available to her. The consumer must never be denied the opportunity to decide for herself if she wishes to pay the additional amount often added to the cost of a guaranteed product.

2. Legal remedies, which the bill required be listed, should be made available to the purchaser either after the sale or included with the presale material. If a proper explanation of the guarantee, maintenance procedures, and other aspects of the sale are explained to the purchaser, additional materials dealing with the penalties under the pending legislation could be provided to the customer either through an enclosure with the product or on a sheet of additional information handed to the customer after the sale. There is always the possibility of a salesman forgetting to inform the customer of her legal remedies. If the retailer has the option of either informing the customer before sale, or after sale through information included with the product, the consumer would be assured of complete, accurate information.

3. Complete refund of purchase price should be a total defense against the unreasonable customer. In the case that it becomes impossible to satisfy a customer, either through repair or replacement of a product, it should be the prerogative of the retailer or the manufacturer to refund the customer's purchase price. The refund could be either a total refund or a refund on a pro-rata basis if it is explained in the guarantee or in other written material provided to the customer.

4. Service contract section should be clarified. In order to properly serve the consumer, the problem of service contracts must be made more explicit. The service contract is a major consumer aid and should not

be taken away from the consumer. NHFA agrees that the consumer should be told at the time of the sale of the availability of a service contract, but this should not prohibit the retailer from later selling the service contract. This is important in order to properly serve the consumer who moves from one area to another. She should be afforded the privilige of purchasing a service contract from a retailer who did not originally offer the contract.

NHFA suggests that the availability and cost of the service contract be disclosed at the time of the original sale. Service contracts are very important to TV customers since service can be so expensive. The sale of service constracts should not be denied to any customer whether sold by the original retailer or by another retailer or service establishment. At all times, third parties should be permitted to sell service contracts.

5. Retailers should not be a legally responsible arm or agent of a manufacturer-guarantor. Legal responsibility within the realm of the bill should be clarified to indicate more firmly that only the actual guarantor is legally responsible for performance under the terms of the guarantee.

6. General offers of satisfaction should be permitted. Many retailers throughout the Nation use terminology similar to "satisfaction assured," "satisfaction guaranteed," or "we guarantee you will be satisfied when you purchase at our store." Such general offers should not be prohibited. Many of these statement have become the trademark of the store and to remove the opportunity to use such longtime statements would pose a serious disadvantage to the retailers. In many instances retailers, for the sake of customer good will, go far beyond any manufacturer guarantees making good their promises of satisfaction. This is, of course, a great benefit to the consumer.

The famous return policy of Rich's in Atlanta is the best example of liberal service policies building a successful business. Legislation could never accomplish this result. Only pressure within the marketplace.

7. Goods in commerce at the time the bill is passed should be exempted from coverage. In the home furnishings industry, it is often difficult for the home furnishings retailer to "turn over" his merchandise in 6 months, a year, or even longer. With this in mind, goods that are in stock, in delivery, or already manufactured should be exempted from coverage. Only products manufactured after the effective date of the bill should be covered.

8. "Reasonable" time guarantees should be determined by individual guarantors. In the proposed legislation the term reasonable is used to determine appropriate guarantee periods. The Federal Trade Commission is given the responsibility of writing appropriate trade practice rules for compliance with the law and it would seem inappropriate for the Commission to determine how long a product should last. The guarantors themselves should be given the opportunity to offer a guarantee of any "reasonable" duration.

In summary, the National Home Furnishings Association supports the concept of full disclosure of the terms and conditions of whatever guarantee is offered. If, after the committee reviews the President's Task Force Report on Warranties in the appliance industry, legislation is deemed necessary, we suggest that such legislation drawn along the lines of the Magnuson-Moss bill presently before this committee be amended to include the changes and clarifications discussed in our testimony.

Whatever is eventually done in the field of guarantees, it is important that certain basic principles be maintained. The guarantor, be he manufacturer or retailer, should continue to retain the right to voluntarily decide whether to offer a guaranty and to determine the scope and duration of his guarantee. The consumer must retain the right to make decisions as to whether she wishes to purchase a product with a guarantee or without a guarantee. The guarantee has become a major sales tool and a major aid for the consumer. To legislate the guarantee out of existence through too stringent requirements, or to require guarantees for all products, would not be in the best interests of either the guarantor or the consumer.

Thank you for inviting us to appear.

Senator Moss. Thank you, Mr. Breuner. That was a very fine statement.

I am pleased to know that you feel that the approach in the Magnuson-Moss bill is realistic, and if legislation in this field is required, that it represents a reasonable approach to the problem.

I appreciate the constructive suggestions that you made in your testimony, of things that you wanted to make sure were appropriately covered in any legislation that would become law.

I wonder, would you characterize the wording of S. 3074 as making guarantees compulsory? I gathered from your remarks you didn't think they were compulsory.

Mr. BREUNER. We disagree with that terminology. We discussed it.

Senator Moss. But don't you think the language makes it quite clear that no guarantee or warranty is required, but simply if one is given it has certain standard meanings? Isn't that——

Mr. BREUNER. We considered it voluntary.

Senator Moss. To what extent do the products that members of your association sell fall within the scope of this bill?

Mr. BREUNER. Quite substantial. In my own store, the television department is the largest single department in my store. Now, not all retailers carry television, because there are a lot of problems involved with it. But television and appliances, stereo, electronics, are a very large part of furniture retailing, and those are areas that are in this.

Senator Moss. Has your association already taken some voluntary steps in this warranty situation?

Mr. BREUNER. Yes; we have had meetings with manufacturers and we have done survey work. Maybe I would ask Mr. Spencer Johnson to elaborate on that. He is more familiar.

Senator Moss. Could you tell us, briefly, Mr. Johnson?

Mr. JOHNSON. Yes, sir. The association has developed for its members a report on warranties and guarantees as they are used in the retail home furnishings industry. The report, which has been supplied to your committee, identifies the three basic types of warranties used in the industry—the general warranty, the specific warranty, and the defensive warranty—and identifies for stores how they might go about developing "in-store" warranties of their own which would be warranties given in addition to manufacturers' warranties and, in most cases, go beyond what the manufacturer warranties to customers that buy their products.

Senator Moss. Thank you. Without objection, we will include that document as part of the record, so that the record will be clear as to what we're talking about.

(The document follows:)

NRFA Special Report

THE SQUEEZE FOR VOLUNTARY ACTION TO REFINE THE INDUSTRY'S WARRANTIES

Truth in Warranty legislation may be just around the corner if the home furnishings industry further delays taking some positive steps in devising its own set of warranties that clear up the incongruities now existing. It is strongly apparent that both segments of the industry — manufacturers and retailers — must now take a full look at their responsibilities to the consumer and get ready to either revise their present policies or to accept the impending legislation. Because of the urgency of the issue, the Washington office of National Retail Furniture Assn. has prepared this Special Report to alert members of the industry.

Today's consumer is interested not only in the product but in its durability, quality and repairability. No one expects a product to last indefinitely, but the life expectancy of a product is often the crucial test under which the item is purchased.

There was a time when the consumer was pleased to have a 30-day warranty on his automobile, even though the clock would definitely stop on the thirty-first day after purchase. Those days, however, have gone.

The warranty can be either a curse or a blessing to the retailer. Good service and quality repairs often can do far more for a retailer than any amount of advertising.

While no one can disagree with this, the challenge arises in the implementation of these principles. It is easy to say that a home furnishings retailer should stand behind the merchandise he sells, but who stands behind him? Is it the retailer's responsibility to back up all products sold with unconditional warranties and be simply left holding the bag?

No one is asking the retailer to give service beyond that which is economically possible, but the problems of the consumer have been brought to the forefront by Ralph Nader, his "Raiders" and members of Congress.

The "White House Report of the Task Force on Appliance Warranties and Service" served notice that legislation is just over the horizon unless something is voluntarily done. The January, 1969, report gave manufacturers and retailers one year to make "substantial progress" toward implementation of some of the recommendations in the report. That year is not even half over and federal legislation has been introduced with more to follow.

Warranties, however, do not have to be viewed as a necessary evil. Utilized properly, with a firm understanding of the store's individual business and customers, the warranty can be an effective sales tool. Federal legislation might spell out the general form of the service warranty with minor changes by retailers.

Industry-wide voluntary action to revise its own programs and adapt its own warranty policies could eliminate the need for legislation. While universal acceptance of one warranty is in opposition to the anti-trust laws, general recommendations regarding the basis of a good warranty is legal and advisable.

THE WARRANTY: WHAT IS IT?

There is little question with the actual definition of a warranty. **(Ed. note — Because of general acceptance, the words "warranty" and "guaranty" are used interchangeably in this Special Report.)** Problems arise when the consumer challenges the "extent" of the warranty.

The statement of a warranty is the consumer's only protection as to what degree the manufacturer or retailer will stand behind the product purchased. The Federal Trade Commission struggled with the problem of "extent" in its 1960 guidelines and in the material contained in the White House report of last January.

If it were possible to devise the perfect warranty, it might simply include the name of the product guaranteed and the length of the warranty in a short sentence. This, however, is often an impossibility. Because different types of materials perform according to where and how they are used, a uniform warranty is not always feasible.

Automobile manufacturers at the present time are trying to devise a warranty that will protect them and the consumer without the use of unnecessary disclaimers on the basis that consumers feel if one part on an automobile is warrantied for five years, the entire car should also be warrantied for that period. In the same light, those in the furniture industry obviously would be hard-pressed to warranty for the same period of

time a product which is in daily use and one which is used occasionally.

To put the problems of warranties in perspective, National Retail Furniture Assn. recently conducted a nationwide survey among member stores. According to approximately 100 replies, NRFA's study indicates that less than 27 percent of the retailers give any kind of warranty on fabric, while all respondents give either their own or a factory warranty on bedding.

This disparity is simple to explain in that virtually no furniture manufacturers reimburse retailers for problems with fabric. However, most bedding manufacturers warrantee their products even including mattress covers. It stands to reason that it is difficult for the retailer to offer the same warranty on upholstery fabrics as he does on mattresses.

The current FTC guidelines state that the nature and extent of the warranty, the manner in which the warrantor will perform and the identity of the warrantor — whether the manufacturer or the retailer — must be spelled out. These guidelines, however, are not sufficient according to the White House Report. The nature of a warranty must be more carefully detailed for both the consumer and the retailer.

NRFA's policy calls for full disclosure to the consumer in conjunction with these basic elements of a warranty:

1. It should clearly set forth:
   - 1.1 The name and address of the warrantor(s).
   - 1.2 To whom the warranty is extended.
   - 1.3 The product or parts thereof covered.
   - 1.4 The specific time for which the product or parts thereof are covered.
   - 1.5 In case of a claim under the warranty—
     - 1.5.1 Exactly what the warrantor will do and at whose expense.
     - 1.5.2 Exactly what the owner must do and at whose expense.
2. All language should be clear, concise, simple and avoid "legalese."
3. All exceptions or exclusions should be *fully* and *clearly* stated, with the same prominence as the affirmative statements.
4. The printing should be clear, well spaced and easy to read rapidly. "Small print" items should be avoided.
5. Any heading or title should be fully descriptive and accurate. (Headings such as "TEN YEAR WARRANTY" should be avoided if any coverage under the warranty is for a shorter period.)

The principles outlined in NRFA's policy fulfill the basic elements of a product warranty as set forth by both the FTC and the White House Report. The difficulty arises when they have to be applied to a specific geographic area and a specific store. NRFA has determined that it would violate the anti-trust laws for member stores to adopt an industry-wide warranty which might tend to eliminate competition.

RETAIL WARRANTIES CURRENTLY IN USE

In the survey of NRFA members, many respondents said they had no written or otherwise stated warranty. In each of these cases, the retailer explained either his own peculiar circumstances, or his general policy as explained to his sales people. The accompanying chart indicates how a sampling of NRFA members deal with the major purchases made in their stores.

NRFA WARRANTY SURVEY

	One Year	3-5 Years	Indefinite	Factory
Bedding	24%	5%	5%	66%
Case Goods				
Construction	68%	14%	18%	
Finish	76%	7%	18%	
Upholstered Furniture				
Frame	70%	16%	14%	
Fabric*	27%	—	—	
Sleep Sofa and Recliners	68%	12%	12%	8%

*73% of the responding stores give no warranty for fabric under any circumstances. Most of the retailers further explained that they get no response from factories on service requests for fabric so they are unable to warrantee the material on furniture.

In line with the survey taken, it is interesting to note that over one-third of the responding retailers have no warranty at all, other than what circumstances dictate. In these cases, as well as with those retailers giving a warranty, the usual determining factor is that of "normal wear." The primary aim most state, is making further sales to each customer and offering the best possible service, whether or not there is a stated or implied warranty.

Retailers issuing written warranties with their merchandise, for the most part, indicate two reasons for doing so: 1) this gains the customer's confidence and promotes trust in the store; 2) this protects the store against customers' unreasonable demands.

IS THERE REALLY A PROBLEM?

According to a recent survey conducted by the Better Business Bureau of Metropolitan New York, furniture ranks second to home improvement and maintenance in the top 10 requests for service. Home appliances rate third.

Over 25 per cent of the complaints received concerned non-delivery of goods. Other major complaints received by BBB were: unsatisfactory workmanship or installation; defective or damaged merchandise; misleading advertising; contract not as verbally stated; promised adjustments never fulfilled.

Beginning with Ralph Nader, the consumer has had a spokesman willing to buck the business community. Whether or not there will be a Department of Consumer Affairs is, at present, an academic subject. However, the fact remains that the consumer is demanding, and is able to demand, far more than ever before. This is not to say that the retail community has not done its job.

The responses received by NRFA indicate that retailers throughout the country are interested in improving their current warranties as well as improving their relationships with consumers.

In the mass of information that is written concerning merchandise, the retailer is often put in the role of the "man in the middle." It is his responsibility to take care of the consumer and at the same time maintain good relationships with the manufacturers.

Responses like the following from retailers around the country indicate that they need warranties as much as the consumer:

"After a 90-day period, we had to repossess a studio couch that could have been in most homes for 50 years and not have looked as worn."

"We interpret our warranty very liberally and use it primarily to protect ourselves against customers' unreasonable demands. We are constantly plagued with factory defects which seem to be on the increase and find that we are frequently caught between the consumer . . . and merchandise produced too rapidly on an assembly line."

"We are concerned with . . . obviously defective merchandise that never should have been shipped. Corrective measures, which are expensive, can only be reflected in factory costs of operation and are certainly one of the prime factors in the spiraling prices throughout the industry."

"Many times we are imposed upon, but we will lean over backwards to adjust complaints in order to keep a good image with the customer."

"There are many instances . . . to make our customers 'happy,' we sometimes do things that really are not justified."

"We would very much appreciate hearing about (other warranties) . . . partly in fairness to our customers and partly because people today expect furniture to last a lifetime with daily use, yet think nothing of trading $3,000 to $5,000 cars every two or three years."

The retailer cannot, logically, be expected to warrantee something that the manufacturer does not value enough to warrantee himself. Complaints of poor-quality merchandise being received from the factory and a lack of any fabric warranties make many items difficult to sell. The merchant, however, is "locked in" and must sell the product no matter what backing the factory provides.

The White House Report warns that the warranty must properly indicate the length of warranty and backing for such warranty. It is the responsibility of the retailer, on the other hand, to spell out to the public its stand on the same issues. The warranty should be prominently displayed and explained to the buyer. In this manner, the customer not only has an understanding of coverage under the auspices of the warranty, but also what it does not cover. Retailers who depend on word-of-mouth, or their "good service record" to carry their store policies are in danger of a misunderstanding on the part of the consumer. This is the essence of the proposed legislation: Get something down in writing to establish *UNIFORM* policies for all consumers no matter what they purchase.

Legislation is the implied threat of the January White House Report. The Report deals exclusively with the household appliance industry, but many of the recommendations made refer not only to the appliance industry, but to the entire retail community.

THE WHITE HOUSE AND THE CONSUMER

In February, 1968, President Johnson established the Task Force on Appliance Warranties and Service to determine if federal legislation is needed to:

encourage improvement in services and repairs;

establish standards for the warranty;

let the consumer know how long a product should last.

The final report was released over the signatures of the Secretary of Commerce, the Secretary of Labor, the Special Assistant to the President for Consumer Affairs and the FTC.

FOUR GOALS SET BY THE TASK FORCE:

- Recommendations requiring voluntary action by industry should be discussed with industry members and trade associations by the Task Force with the view of encouraging prompt and favorable action.
- Results of the Task Force's study of the problems associated with service, repair, and warranty of major appliances should be made public in all available media.
- Because of the complexity of the problems, officials designated by the President or their representatives should meet with the industry regularly to review progress and, if necessary, emphasize the problems that are the most difficult to resolve.
- At the end of one year, if it appears that substantial progress is not being made toward the implementation of these recommendations and the solution of the problems raised, members of the Task Force should consider the nature and scope of legislation necessary to achieve the desired results.

For its part, the FTC's main recommendation deals with the clarity of warranties to allay any possibility of misunderstanding. The commission proposes that manufacturers remove unnecessary disclaimers from their warranties and not attempt to pass on to the consumer or the retailer any part of the financial cost of replacement or repair.

FTC recommends that the retailer institute his own warranty in order to protect himself. The retailer should carefully inform the consumer at the time of sale of any special provisions of the warranty, according to FTC and, further should inform the customer of any obligations that must be met and exactly what the service shall include. The consumer should also be given explicit instructions on the maintenance, care and operation of any article purchased, advises FTC.

The Commission recognizes that it is increasingly difficult to pay servicemen wages that are compatible with union organized industry. In NRFA's survey, it is noted that many retailers would like to extend more service than they are giving if they were able to attract more servicemen.

Although the White House Report deals with the household appliance industry rather than the general retail industry, the recommendations made apply to all warranty grantors, and the imposed threat of federal legislation will fall not only on the appliance industry, but on all consumer fields.

LEGISLATION: HOW BROAD?

Legislation no longer may be viewed as a long-range possibility. The White House Report theoretically gave the retail industry one year to clean its own house but consumer pressure has led members of Congress to believe that the matter is more urgent than the report indicates. At this time, Senator Frank Moss (D-Utah) has announced that he will introduce a consumer protection bill this summer with hearings already scheduled for fall.

In the House, warranty legislation has already been introduced by Congressman John E. Moss (D.-Calif.) and James G. O'Hara (D.-Mich.). The comprehensive "Truth in Warranty" bill requires manufacturers to repair or replace faulty merchandise at no cost to the buyer. The legislation provides that manufacturers must unconditionally warrantee that merchandise is defect-free and suitable for use when delivered.

LEGISLATION ON WARRANTIES DEALING WITH CONSUMERS WILL COVER FOUR BASIC ISSUES:

- Requirements for proper warranty disclosure in advertisements and in warranties themselves;
- A requirement that warranties be supported by adequate servicing capabilities;
- Elimination of disclaimers of implied warranties within the body of the actual warranty;
- A requirement that disputes with consumers be subject to prompt settlement through arbitration or small claims court procedures.

Other provisions require that warranties must be for a minimum of one year, and service areas must be conveniently established by the manufacturer to provide free repair service to the consumer.

Two positions may be taken by retailers: act now to effect changes in the present FTC guidelines through recommendations and voluntary improvements in warranties; or sit back and wait for the uncertainty of federal legislation.

Pressure by consumer groups throughout the country is too strong to ignore, and the Congress must answer this group or face the possibility of severe losses in the 1970 elections. Federal legislation could be more binding and all-encompassing than regulatory changes. Legislation might even include the establishment of a minimum warranty length.

At the present time, it appears that revision of regulatory agency guides would be preferable to federal legislation. In order to avoid legislation, retailers and manufacturers must take prompt action.

If retail groups are able to present positive proposals implemented by industry action indicating success in the field of warranty changes, further government action would be useless. This is the suggestion of the White House Report, and lack of industry action, up to this time, is the cause of the pressure for legislation.

REVISE OR LEGISLATE?

"In my store, we have no written warranty. We have an implied warranty which is transmitted to the customers through our salespeople and we have very little trouble with any of our products. Besides, how would I know if my written warranty were fulfilling all the requirements of the FTC and the proposed legislation. What if it were unacceptable to the FTC?"

Inasmuch as a single industry-wide warranty is illegal, personal judgment must be the key to a good warranty. There are, however, certain policies which, if followed, would provide a positive warranty plan. If your warranty responds affirmatively to the following questions, there is little doubt that the warranty would satisfy the consumer and the FTC:

DOES YOUR WARRANTY PASS THIS TEST?

1 — Is the guarantor *named?*
2 — Does the guarantee say *what* and *how* products or parts are covered and for *how* long?
3 — Does it tell the *consumer* what he must do?
4 — Is warranty prominently displayed at point-of-sale?
5 — Do statements of your warranty match (certificates, advertised version, point-of-sale version)?
6 — *Is the guarantee as simple, clear and short as possible?*
7 — Is type size easy to read?
8 — Is it directed to most consumers rather than a few?
9 — Is it worded to protect the consumer, not the guarantor?
10 — Have all unnecessary disclaimers and those which FTC will consider unfair been eliminated?
11 — *Is it honest and straightforward?*
12 — If you were the consumer, would you like this warranty?

The final question may be the most valid test for a warranty. Everyone is a consumer. We all complain

about service received on automobiles, washing machines, permanent press shirts, watches and any number of other products. Treatment you receive when you have a complaint serves as a good guide to procedures for treatment of your customers.

WHAT NOT TO DO

In writing a warranty, the initial problems to alleviate are the "don'ts" as established by the FTC. There are certain phrases, statements, and vaguaries which should be avoided. If at all possible, terms such as "10-year warranty" and "unconditional" should be avoided if the warranty on any part of the merchandise is for a shorter period of time.

On "pro rata" warranties, the statement should *clearly* disclose the basis upon which the material will be prorated, and the manner in which the guarantor will perform. As an example, if a mattress is purchased for $80 when the list price on the mattress is $100 with a 10 year pro rata warranty, how much should the consumer pay if a structural defect occurs after 5 years?

If the list price of the bedding is used as the basis, the consumer would pay approximately $50. If, however, the selling price of the mattress is used, the customer would only pay $40. In a warranty of this type, it must be clearly indicated upon which price the pro rata warranty is made. Terms such as "Satisfaction or your money back," "satisfaction guaranteed," and "10-day free home trial" should be completely avoided unless the statement is absolutely true.

What is "satisfaction" and to whose satisfaction? These statements indicate the retailer will give a *FULL* refund of money upon request of the consumer.

"Lifetime warranty" is another term which is difficult to defend. If someone owns a dining room suite for 25 years, is this a lifetime? In the case of such warranties, the exact time must be clearly expressed.

"Guaranteed lowest prices in the city" is still another statement which could cause you to refund money if, indeed, your prices are not the lowest.

The above statements may be used, but with modification and with full disclosure of any exclusions in the implied warranty. In light of the problems with these all-encompassing statements, they are better avoided than used incorrectly.

THREE BASIC WARRANTY TYPES

A warranty must completely, explicitly and simply describe what you will do for your customer when, and if, a defect occurs in the purchased goods.

Warranties may be divided into three main categories:

Defensive warranties which protect the retailer more than the consumer;

Open end warranties which leave up to the discretion of the store how much service to give;

The specific warranty which explains exactly what the store will and will not do in a given situation.

The defensive warranty is usually short, to the point, and even abrupt in its delineation of policy. There can be little doubt in the mind of the consumer where the retailer stands with a warranty such as this. The implication is that any defect appearing after one year cannot have been in the merchandise and is therefore not covered under any circumstances.

DEFENSIVE WARRANTY

We warranty that our merchandise is free from defect of material and workmanship. Within one year, we will repair or replace at our discretion any such defect unless caused by customer damage or misuse. All costs will be paid by us other than any transportation costs. The warranty does not cover any claim on the wear or color durability of fabric.

Any other warranty either implied or written is superceded by this written statement.

Another possible defensive-type warranty might be the simple statement: "—— will repair or replace at our discretion any merchandise purchased at our store for a period of six months." The customer can be assured that for six months, or whatever period is decided upon, the merchandise will be repaired or replaced should defects occur.

Although explicit, these warranties are strict and definite, yet well within the current FTC guides.

". . . Guarantee certificate(s) are all too frequently fog shrouded halo(s) which effectively camouflage a lengthy list of disclaimers and limitations upon the seller's obligations . . . ."

White House Report

In NRFA's survey of retail furniture warranties, there were several stores which had open-ended unwritten warranties. These stores indicated that they "guarantee customer satisfaction under any circumstances." This is an all-inclusive warranty which, as stated, covers any eventuality.

A warranty of this type, however, leaves to the option of the retailer what service will be given to which customers. An old customer might receive better service than a new buyer in the area. This type of warranty also may lead to more repair work than ordinarily required.

OPEN ENDED WARRANTY

(Store) warranties customer satisfaction on all merchandise purchased in our store for a period of ..... year(s) with the exception of wear and fading of fabrics.

Most of the stores with the open ended type of warranty indicate they would not wish to put it into writing as it would cause "unnecessary" problems.

The third type of warranty is the so-called specific warranty (see example). This warranty, although careful to stipulate what will be covered and what will not be covered, is liberal enough so that it is not overly defensive to the point where it ignores the consumer.

SPECIFIC WARRANTY

1 — Defective merchandise caused by either faulty workmanship or material will be repaired to customer satisfaction at no cost to the customer for a period of ..... year(s). We reserve the right to remove merchandise from the home for repair if necessary. Such removal will be done at our cost for the warranty period.

2 — If customer does not wish merchandise repaired or is not satisfied with merchandise, it may be traded in at the list price less a usage charge which shall be ..... per cent per month. However, no exchanges will be made for bedding. Repair warranty applies to bedding.

3 — If merchandise is unrestorable through no fault of customer, exchange for like or similar merchandise will be made.

4 — There is no stated warranty on fabric. However, in the case of poor wear, fading or abnormal soiling, compensation will be attempted through factory. If nothing can be done, we will supply new fabric for a period of ..... year(s) with the customer paying for labor.

5 — In order for merchandise to be considered delivery damaged, it must be reported within ..... days of receipt.

6 — We will repair any defect within the above stated terms and above stated periods other than on obviously-mistreated merchandise. In this situation, however, the customer's word shall be the basis upon which mistreatment shall be defined.

7 — We shall not be influenced by extraneous matters on repair. Cash sales shall be repaired on the same basis as credit sales.

FTC guideline revisions would probably require a warranty of this type. The exclusions are kept to an absolute minimum and the customer has a clear idea of the service she may expect and for how long.

The "catch-all" terms are conspicuous by their absence and the burden or cost of repairs is taken off the retailer.

THE NEXT STEP?

NRFA, along with other retail associations, is now working to improve the warranty situation without the imposition of unpredictable federal legislation. NRFA feels a change in the FTC Guidelines would be better suited to meaningful consumer protection.

Industry established working guidelines would be a benefit, not only to the consumer but also to the retailer. If the retail industry is able to show the Task Force on Warranties that attempts are being made to aid the consumer through clear and concise warranties, the necessity of federal legislation will be negated.

COMPOSITE SPECIFIC WARRANTY
BASED ON NRFA SURVEY
(numerical averages rounded out)

1 — Defective merchandise will be repaired or replaced (at our option) for a period based on the following chart:

A — Bedding — manufacturer's warranty
B — Case Goods
Construction — 2 years
Finish — 1.3 years
C — Upholstered Furniture
Frame — 2 years
Fabric — 3 months
D — Sleep Sofas and Recliners — 2 years

2 — Customer's word is accepted in the case of mistreated materials and repair is subject to table.

3 — Manufacturer's warranty (if any) takes precedence over this written warranty unless it is for a lesser period of time, in which case both will be in effect.

4 — Merchandise not repairable in the home will be moved to our repair shop at our expense.

5 — There will be no difference of treatment of cash and installment credit customers.

It is obvious that action must be taken. If legislation is the only means by which the consumer can be helped, members of Congress already indicate they are prepared to institute such legislation. With the introduction of the Moss-O'Hara Truth in Warranties bill, retailers have been effectively served with a notice that legislation is no longer a threat, but a reality.

Through its Government Affairs Committee on Warranties and Guarantees headed by Wallace Breuner Jr., John Breuner Co., Oakland, Calif., NRFA has been working to aid both the retailer and the consumer through more complete information on the problems which beset the retail industry. To achieve this goal, each furniture retailer must take a part in clarifying his warranty through careful evaluation of the proposals outlined in this report. NRFA believes this kind of approach not only forestalls legislation, but offers a better chance of aiding the consumer than congressional action. Industry action can be more specific in dealing with the problems which affect individual customers.

The time to act is now, not after all alternatives have been closed. Virginia Knauer, the President's Special Assistant for Consumer Affairs, recently addressing a group of manufacturers and retailers said: "Business must realize the consumer revolution is too widespread to forget . . . and get away from old attitudes." □□□

Senator Moss. Mr. Breuner, in your closing remarks, you suggest that the manufacturer or retailer continue to determine the scope and duration of the guarantee. By scope, do you mean the aspects of the product which are covered? You would not object to standardization of duties imposed when a guarantee is given? Is that what you meant by scope? Do you mean the aspect of the products which are covered?

Mr. BREUNER. Yes, length of time, primarily. I would say that is the main area.

Senator Moss. Senator Hart, do you have a question?

Senator HART. Only to have your statement on the record, do you have any feeling that legislation along the Magnuson-Moss Bill's lines would give a large firm a competitive advantage over a smaller one?

Mr. BREUNER. No, I don't think that would be so, as long as it is a voluntary action. We have small retailers that rely on statements like "Satisfaction guaranteed," and they really beat out the big ones on the basis of service to a large extent at times. And then there is the opposite case also, where a small retailer might want to cut corners and out-merchandise the big one on the basis of price.

Yet, on the side of the larger ones, you have full service houses, and then you have discounters. You know how big discounting is. It is an established business, an established way of doing business, where the corners are cut also, and less services are offered.

Senator Moss. You don't see any advantage one way or the other, based on size?

Mr. BREUNER. I don't see any advantage one way or the other. In a way, the small retailer may be helped by this.

Senator HART. Thank you very much.

Senator Moss. Thank you, Mr. Breuner, and gentlemen. We appreciate your testimony. It has been very helpful to our subcommittee.

We are going to continue these hearings tomorrow and the next day, and then we will have some full hearings in March, and as the testimony develops, we may wish to call you and ask you if you want to add to yours in any way.

I hope you would be free to do that if it would seem to appeal to you.

Mr. BREUNER. We will be available.

Senator Moss. This hearing, then, will be in recess until 9:30 tomorrow morning.

(Whereupon, at 1:40 p.m., the committee was adjourned, to reconvene at 9:30 a.m., Wednesday, January 21, 1970.)

CONSUMER PRODUCTS GUARANTY ACT

WEDNESDAY, JANUARY 21, 1970

U.S. SENATE,
CONSUMER SUBCOMMITTEE,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room 5110, New Senate Office Building, Hon. Frank E. Moss (chairman of the subcommittee) presiding.

Present: Senator Moss.

Senator Moss. The subcommittee will come to order.

We continue our hearings today on S. 3074, the Consumer Products Guaranty Act.

Yesterday we had some very interesting testimony and got our hearing off to a good start. Today at the outset, I would like to reiterate certain points that I made yesterday.

First, S. 3074 does not require the manufacturer or retailer to guarantee any product.

Second, a seller may market his product without a guarantee, he may sell it with a service contract, or he may sell it with a warranty that does not relate to performance, or he can sell it with an express guarantee related to performance.

Third, any consumer who wants full protection, that is, insurance that his product will perform or will be quickly repaired, or replaced without charge, can shop for the product sold with a performance guarantee.

Fourth, because of S. 3074, any product sold with a performance guarantee will offer significant protection to the consumer. If the product malfunctions during the guarantee period, the maker of the guarantee, be he the manufacturer or the retailer, is obliged to stand behind the product and repair it or replace it within a reasonable time and without charge.

This bill does not impinge upon the freedom of the marketplace. It defines the rules of the warranty game and creates a performance guarantee which lets the consumer know that there is an insurance policy with the product and that the claim service on that policy is probably acceptable.

I thought it important to restate these thrusts of the bill, because of some misunderstandings that began to creep through, I thought, in the latter part of the testimony yesterday.

Our first witness this morning will be Mr. George P. Lamb, who is the general counsel of the Association of Home Appliance Manufacturers.

Mr. Lamb, we are pleased to have you with us here this morning. You have an associate. If you would introduce him when you begin, we would appreciate it.

STATEMENT OF GEORGE P. LAMB, GENERAL COUNSEL, ASSOCIATION OF HOME APPLIANCE MANUFACTURERS; ACCOMPANIED BY GUENTHER BAUMGART, PRESIDENT OF THE ASSOCIATION OF HOME APPLIANCE MANUFACTURERS

Mr. LAMB. Mr. Chairman, I have with me Mr. Guenther Baumgart, president of the Association of Home Appliance Manufacturers. I brought him along in case there would be some technical question that would be in his knowledge, that you might want answered.

Senator MOSS. You are welcome, Mr. Baumgart. We are glad to have you here.

Before you begin, I would like to make a rather general announcement. Senator Pearson, who is the ranking minority Member, is ill this morning and it may not be possible to have a member of the minority party here at the hearing today. Because of that, I would like to announce that should any questions occur that any of those Senators would like to pose to the witnesses that they be sent in writing, identifying from whom the question came, and I would ask that the response be made in writing so it could be put in the record.

Mr. LAMB. We would be pleased to do that, Senator.

Senator MOSS. Thank you. You may proceed, sir.

Mr. LAMB. I am George P. Lamb, general counsel of the Association of Home Appliance Manufacturers. I have specialized in antitrust and trade regulations for the past 35 years. I have been counsel to the predecessor organization, the American Home Laundry Manufacturers Association, and have been intimately acquainted with the problems in the appliance industry.

Our present association grew out of the American Home Laundry Association, the Consumer Products Division of the National Electrical Manufacturers Association. It was organized some 3 years ago. It represents about $7 billion worth of products.

There are included in those products washing machines, dryers, ranges, refrigerators, and a whole host of portable appliances such as toasters, electric knives, hair dryers, hair curlers and so on.

There are about 75 million portable appliances manufactured annually; about 25 million heavy appliances manufactured annually. There are over 1 billion appliances in the 60 million American homes throughout the United States.

The Association of Home Appliance Manufacturers has a keen interest in the warranty and guarantee situation and has had this interest over a long period of years. We have been even more keenly aware in the last 3 or 4 years when the interest in the Congress and consumer groups has been directed toward warranty-guarantee legislation and the performance of manufacturers in connection with their warranties and guarantees.

I have filed with the committee a formal statement which I am going to try to summarize in brief to stay within the time the Senator has allotted me. I would like, however, to have my formal statement made a part of the record.

Also, I would like to have the exhibits that are attached thereto made a part of the record.

Senator MOSS. That will be done, Mr. Lamb. The statement in full will appear in the record after your oral testimony and you may com-

ment or summarize on it as you care to do. We appreciate your effort to try to move it along. We are always cramped for time.

Mr. LAMB. As I indicated earlier, the appliance industry has been very much interested in eliminating from the marketplace all deception. In this connection the Home Laundry Association in 1960 published recommended advertising practices for the home appliance industry. In that publication, which is exhibit B for the record, on page 13, you will see a reprinting of the guide against deceptive advertising guarantees which were adopted by the Federal Trade Commission on April 26, 1960.

Subsequent to this time, the appliance industry through its various divisions, namely, refrigerator, freezer, range, et cetera, and on an overall basis has adopted recommended advertising practices which include provisions concerning warranties and guarantees.

Exhibit C, AHAM's recommended advertising practices for the household refrigerator industry, on page 9, shows the provisions under which the industry, the refrigerator-freezer industry is presently operating.

When Senator Magnuson introduced the first significant guarantee-warranty bill into legislation, S. 2706, we felt that some of the requirements of title I of that bill were very well stated and as a result, the Association of Home Appliance Manufacturers in cooperation with the Gas Appliance Manufacturers and the American Retail Federation and the National Retail Merchants Association, attempted on a voluntary basis to set forth what we thought a guarantee or a warranty should contain.

I have placed in the record exhibit D, which covers such things that a warranty or a guarantee should clearly set forth the name and address of the warrantor or other identification adequate to locate the warrantor, to whom the warranty is extended, the parts covered et cetera.

This program went into effect with the unanimous agreement on the part of the manufacturers in the home appliance industry and each of those manufacturers immediately—those who hadn't already started—reviewed their guarantees and warranties in an effort to eliminate the so-called fine print, to make them in even more simple English so that almost anyone could understand what was being set forth in the warranty.

The before and after warranties have been sent to those who requested them. The Federal Trade Commission has them and Mrs. Knauer's office has those that we have been able to collect.

The Association of Home Appliance Manufacturers have gone even further in this regard. We instituted a complaint exchange. It was first instituted back in 1960 in the home laundry industry and later it was expanded by AHAM. This voluntary complaint exchange was designed for the purpose of answering the complaints of the consumer.

We have read in the press and we have heard speeches made by important people in the Government that there are thousands of complaints, tens of thousands of complaints. In instituting this exchange, we asked the consumer through the Federal Trade Commission, through Mrs. Knauer's office, through Congressmen and Senators' offices, to report to us any complaint that may be made by a consumer to give us an opportunity to work out the answer to it.

Now, this complaint exchange is today in operation in the Association of Home Appliance Manufacturers. Of course, in the last 2 years we have had less than a thousand of these complaints and 700 of them have been completed to the full and complete satisfaction of the consumer.

I have filed with the committee some sample letters which were sent to the Association of Home Appliance Manufacturers, complimenting the association on its effort to solve these complaints through this complaint procedure.

Now there is one other important development which is in the making in the Association of Home Appliance Manufacturers which we call the Major Appliance Consumer Complaint Council. We are going to have in operation in the very near future, an organization made up of outstanding people in the consumer protection field. I wish I were free to tell you the names of them today, but I am not because we are in the process of putting this into effect, but I think you are going to be very much interested when it is finally announced to the press. These are people who are outside the industry, they are not manufacturers, not dealers, not distributors. They are people who are vitally interested in consumer affairs as such.

This group is going to audit the procedures that are used by the Association of Home Appliance Manufacturers in this complaint exchange to make sure that every one of these complaints is finally resolved to the complete satisfaction of the consumer.

We felt that this additional step was necessary in order to show that our efforts in this direction were to be completely in the public interest.

Senator, I have gone through the bill section by section, and I have made some comments, but at this time, with the remaining time that I have left, I want to make two important comments, and I do this not only in my capacity as General Counsel for the Association of Home Appliance Manufacturers, but in my capacity as an active practicing lawyer in the trade regulation field.

First, I think the warranty-guarantee problem has been blown all out of proportion. I think that we have available today at the Federal Trade Commission sufficient jurisdiction over this matter to eliminate deception, fraud and deception from any of the advertisements or from the warranties themselves.

I think the Federal Trade Commission's guides should cover not only advertising as they do now, but they should be updated and cover the warranties themselves. For the Federal Trade Commission to operate in the marketplace in order to eradicate such deception as exists, we would favor sufficient appropriations to the Commission to enable it to enhance its staff to deal specifically with this question and to eliminate all known deception from the advertising and from warranties themselves.

Now, the second point, I was very much impressed with the document that came out from the Federal Trade Commission within the last 2 weeks entitled "Recent Developments in the Federal Trade Commission's Consumer Protection Program, January 1970."

If this is not already in your record, I would like to offer it as an exhibit, and I will be glad to leave it with the Committee, if Mr. Sutcliffe doesn't have a copy of it. It is a very significant study and it

emphasizes the point that we think—I personally feel—is the most important.

The real difficulty is in the fraud that is practiced in the marketplace where the poor, the aged and the ignorant reside. We believe that this is at a local level and we believe that it should be dealt with at a local level.

We subscribe to the conclusion that the Federal Trade Commission reached in this study when education, prosecution and coordination marked the FTC's approach. We think this is long overdue, and we believe that the study that the Federal Trade Commission made here in the District of Columbia in 1968 on installment selling and later when it started to implement its consumer protection program in the District, it made one of the most significant steps toward the solution of this problem. We think that if the fraud that is practiced by the fringe unscrupulous dealer and by the crooked repairman, if that is eradicated, we think you would go a long way toward eliminating the cancer. We do not think that warranty legislation will eliminate that cancer.

We do think that all educational means known and all cooperation that you can get through the Office of Economic Opportunity, through the legal aid agencies, through local consumer groups—that this should be done at the local level.

We think the small claims courts should be further implemented so that the processing of losses sustained by fraud on the part of the consumer can be redressed rapidly.

Those two points, Senator, are the two that I think are of great significance. On the whole and in conclusion, we oppose the warranty legislation as presently drafted, and we take the position that it is unnecesary at this time and we believe that the committee should await the next report of the Presidential task force which was reported on yesterday by General Counsel Lynn and Mrs. Knauer. We are working with that group and we are trying to furnish them with any information they need to make a proper recommendation to your committee as to whether or not there is any need for legislation

Senator Moss. Thank you very much, Mr. Lamb, for your testimony. We appreciate it, and we are happy to have you put it in the record before the committee. And we are happy to have before the committee the steps that have been taken in this field by the association which you represent. Apparently we are in full agreement that there are problems that have to be remedied, and you have taken some steps to meet them, and your recommendation that we await the report of the task force—we have already indicated that we will do that before we finish working on the bill.

And we have asked Mrs. Knauer and the Chairman of the Federal Trade Commission if they could complete their work by the first of March because we are anxious to move along and we are going to have some additional hearings in March.

But with your concern and the steps that you have taken already to try to meet these problems I am a little puzzled at your reaction to S. 3074. In the first place, of course, it is not a completed piece of legislation.

Any bill that comes before us has to be stated and then we have to examine it. That is the reason we have public hearings. So, it may not be in final language. It would be surprising if it were.

In looking through your prepared testimony, I see that you say that the bill would deprive a warrantor of the right to determine the terms of the warranty he would give. I do not read the bill this way. I wonder why you do that?

Mr. LAMB. Senator, I feel that if the bill were limited to written warranties I wouldn't have so much difficulty with it, but it covers oral warranties, and what I am concerned about is that a written warranty can be changed by a salesman on the floor.

If someone comes in and buys a refrigerator and he says to the salesman how long will that refrigerator last, and he says I am sure it will last 10 years, and let's say the warranty is for a period of 1 year for certain parts and 3 years for others, and that at the end of the 6th year the refrigerator for some reason or other breaks down, this oral statement by the salesman under this bill could extend the warranty to a 10-year period.

Senator MOSS. In the face of a written warranty——

Mr. LAMB. The oral warranty would vary it as I read this bill. I think if this bill is to be corrected you ought to make sure that all these warranties are written and not oral.

Senator MOSS. I don't read it that way at all. I will ask my staff counsel if the bill has that kind of a provision.

Mr. SUTCLIFFE. The bill does not have the provision of overriding the manufacturer's guarantee if there is an oral statement by a sales representative. What the bill does say is any maker creates an express guarantee of performance, and that may be oral or written.

The manufacturer's guarantee is still in existence. The retailer's guarantee arises through his agent, the salesman, is created when he makes the promise of performance.

Mr. LAMB. But that is oral.

Mr. SUTCLIFFE. That is oral, but it does not override the manufacturer's obligations. The way the bill is written is says "the maker," and the word "maker" refers to the maker of the guarantee—the guarantor, if you would. The retailer, through his agent, the salesman, then becomes responsible for that particular guarantee that the salesman gave the individual. That is not in lieu of but in addition to whatever written guarantee is also made by the manufacturer if the guarantee came from the manufacturer.

Mr. LAMB. And we are opposed to that. We think that that extends it way beyond where it should be.

Senator MOSS. This has relationship to what I think you pointed out as one of the great problems we have; as you say, it is fraud in the marketplace taking advantage of the poor and the ignorant and the disadvantaged people, and it should be eradicated, although you said by education and by prosecution under the fraud statutes.

Basically, what the bill is aimed at is requiring a guarantor if he wants to sell his product by inducing people to buy it by saying it has some kind of a guarantee on it to then stand behind that. He doesn't have to give a guarantee.

Mr. LAMB. We don't disagree with the idea, Senator, that if a manufacturer chooses to have a guarantee or a warranty and he has it in writing that that is his guarantee or warranty, and he should do this or not do it as he chooses. But we do not go along with the idea that it should extend to oral statements.

Senator Moss. What about the next step in the sales organization, the seller, suppose he wants to establish a guarantee of some kind. He is the maker of that guarantee. Shouldn't he stand behind it?

Mr. LAMB. If the retailer wishes to have a written guarantee, yes, he should.

Senator Moss. What you worry about is whether an oral guarantee could be freely breached?

Mr. LAMB. That's right. I do. I am greatly concerned about that.

Senator Moss. That is probably where we have the great area of fraud. That is one place we are trying to find some way to give the consumer protection from the over-zealous high-powered or dishonest salesman who induces the consumer to buy with a lot of promises and then doesn't back them up.

Mr. LAMB. I don't think there is any difference of opinion between you and myself on this, but I do think that the main point is that I feel it is not warranty legislation that is going to cure that, the cure is going to come from education and prosecution at the local level.

Of course, the deception can be handled under section 5 of the Federal Trade Commission Act.

Senator Moss. I am as strong as you are for education and for prosecution under the statutes that we have in existence. Perhaps where we differ in our point of view is whether this is also needed as a tool. Did you have a question you wanted to ask?

Mr. SUTCLIFFE. Yes. How would you respond to the conclusion of the American Bar Assocation's study that the Federal Trade Commission is not equipped and should not be equipped to root out fraud in every marketplace in the Nation?

Mr. LAMB. Well, I am a member of the American Bar Association, I have been for many years, and I have served on some of its committees. But I did not serve on that committee, and frankly I don't agree with all that report.

I think that report in some respects does not go along with my history as a practitioner before the Federal Trade Commission over many, many years. I have had a lot of cases down there. I frankly think that the consumer protection program was started in 1914 under the FTC Act, and I think the FTC ought to be strengthened. I think it should be given the appropriations it needs and if there are some things wrong over there, you have got a new Chairman now, and I assume he is going to take a look at the American Bar Association's report and also Mr. Nader's report. And he will probably effect some reforms. But those reforms will take time.

But I do think that section 5 of the Federal Trade Commission Act, unfair methods of competition and unfair deceptive acts or practices, that jurisdictional prerequisite is sufficient to cover this.

Senator Moss. I might say as an aside that I agree we ought to give the FTC and other Federal agencies further staffing appropriations in order to do its enforcement work. We have a matter trembling in the balance now as to whether we are going to get some funds vetoed that we have fought for to improve the Fair Packaging and Labeling Act.

But I agree, I think the FTC needs a good staff, and I would hope that we could give them a better staff. I don't think they are going to be able to police, though, all the marketplaces of the country. It is an almost incredible job. I think you said there were a billion appli-

ances now in the homes of America and that they were worth about $7 billion in value which gives some idea of the magnitude.

Mr. LAMB. That is how much it is per year, sales. You know, surprisingly, to have a billion appliances and to have the small number of complaints we have and the repeat purchases by the consumer is a very good indication to us that things are pretty good.

Senator MOSS. I would be interested in having the number of complaints. You have told me there are not very many. My experience is a little bit the other way from where I sit. I hear complaints loud and clear from far and near.

Mr. LAMB. Senator, if you have those, we want them. I can tell you since March 1968 we have received 1,086 complaints; 923 of them are products involved with the Association of Home Appliance Manufacturers, and 676 were closed satisfactorily, 25 unsatisfactorily, and there are still 222 pending. This is a very active program. This is not one dragging its feet at all, because we realize these complaints have to be satisfied.

Senator MOSS. I am delighted to have those numbers.

Mr. LAMB. They are not tens of thousands.

Senator MOSS. No, they are not. And they come, of course, to your association. And you try to deal with them. And I congratulate you for doing that. I think, perhaps, the ones we hear are people who either don't know where to go or they are frustrated by this intervening situation that we talked about or perhaps some other reason that they have not got their complaint in. However, there are a lot of dissatisfied people; otherwise, there wouldn't be the great pressures there are.

Mr. LAMB. Senator, I would like to have you put in the record the name of Mr. Guenther Baumgart, president, Association of Home Appliance Manufacturers, 20 North Wacker Drive, Chicago, Ill., 60606. We would be glad to process any of these complaints that you receive.

Senator MOSS. Thank you, I appreciate that very much. In conferring with the staff, we do have quite a number of complaints on hand now, and we would be glad to send them along and ask that they be processed and see if they can be satisfied.

In fact, I am a little disturbed they are starting to send things to me, that is, articles, saying look I can't get anything done on this particular item or they want to show me how it broke or something of the sort.

Mr. LAMB. We are equipped to handle it, and we would be very glad to cooperate with you.

Senator MOSS. One other point I noticed in your testimony, Mr. Lamb, was your fear that having this act go into effect would raise the price of products, that it would cost more, but I would like to quote to you from the task force report on warranties in service in which they say the following:

> In voicing complaints consumers do sometimes observe that they would have been willing to pay more for an appliance initially in the interest of avoiding subsequent repair costs and inconveniences.

Would you care to comment on that?

Mr. LAMB. I assume—I don't have any opposition to that statement, but my point was in my presentation that if we are going to be forced

to pay certain labor charges, obviously, that is going to have to be built into the price of the product.

Senator Moss. That is the point I tried to make in the beginning. There is no requirement, of course, for the giving of the guarantee.

Mr. LAMB. That is right.

Senator Moss. So, a producer may sell his product without it. But if he chooses to give it, then, this bill says he has to mean what he says. If he gives it, he has to stand behind it and replace it.

Mr. LAMB. And if he does give a guarantee and he says he is going to pay for all the defective components for the duration of the warranty and if he is going to pay the labor charges, in a private enterprise system that manufacturer is going to have to build that into his price, and it obviously will increase the cost.

Senator Moss. That is why I was quoting this language. The number of consumers who said they would be willing to pay an additional price if they could be assured that the guarantee meant what it said.

Mr. LAMB. I think the consumers do that right now. They have a choice on the marketplace. Some products that are sold by a retailer who has an adequate service organization and the same products are sold by a discount house that doesn't have the service organization, they pay more to the dealer who has the service organization than they do to the discounters, because they know they are going to get the service.

Senator Moss. Isn't this one of the places where our point of view diverges? You have pointed out the discount houses sell at a lesser price and are not willing to pay the labor charges and so on, but the uninformed, unsophisticated buyer who is trying to stretch his dollar as far as he can and who shops around for an article, an appliance, let's say, he sees it some place and it has some language that to him at least makes it appear that this has a guarantee or a warranty on it; and then he isn't able to get the kind of service. He is the fellow who is disadvantaged, and what we are trying to do basically here is get some ground rules. I think we could acknowledge that a great many, maybe most of the appliance dealers and manufacturers have a good record in this regard, but there is always that fringe where they don't. And it is sort of akin to most any regulatory law we get, you have to have that for the few who won't play by the rules—gentlemen's rules of the game. You have to enforce those rules, and this I think is one more step into that area that we are trying to develop here.

Mr. LAMB. I recognize the existence of that, but I differ on the way of correcting it or curing it.

Senator Moss. I see. All right, we are glad to have your point of view. And we, as I say, we will be having further hearings on this later in the year as we go along. And as you study this bill and the transcript that will come out of the hearings, we will be very glad to have any additional comments. We want to make this the best possible piece of legislation we can, and certainly we don't want to do anything that is unnecessary or unrequired.

We want to do what is necessary to achieve the purposes that we have. Do you have any comments, Mr. Sutcliffe, before we move on?

Mr. SUTCLIFFE. For the record in your prepared statement you discuss the bill conferring class action rights. For clarification of the record, the existing language does not confer any class action rights

that do not presently exist. There is no substantive class action rights given by this legislation. This will be taken up by the committee in other legislative efforts. It is only a reference to existing possibilities for class action.

Mr. LAMB. I am glad to get that clarification. We do feel that warranties and guarantees are a contract and stand on their own facts and that class action really wouldn't apply.

Mr. SUTCLIFFE. I have several other questions. You mention that this bill would discourage the giving of warranties and would probably encourage the practice of service contracts.

Mr. LAMB. Yes, I believe that.

Mr. SUTCLIFFE. Are you opposed to the giving of service contracts?

Mr. LAMB. No, I am not.

Mr. SUTCLIFFE. Then, why do you feel this is an improper thrust if, in fact, that would be the situation?

Mr. LAMB. I think in the marketplace it is going to really give a preference to the multimillion dollar company over the smaller company. Both of them are going to try to give the same quality. I think there could be that discrimination taking place.

Mr. SUTCLIFFE. Why would it give that preference?

Mr. LAMB. I think there is a little bit of an economic advantage there.

Mr. SUTCLIFFE. An economic advantage registered by what?

Mr. LAMB. Over the smaller company in its ability to have service contracts and service them. You see, there are all kinds of service organizations.

Mr. SUTCLIFFE. But what you are suggesting has some rather broad implications because what you are suggesting is this: if one manufacturer or retailer, whoever is giving the guarantee, can use the language "guarantee" and not really perform in the same way as some other manufacturer who also gives a guarantee and fully performs, then one is going to be at a competitive disadvantage. But the basis at least of the free market system is that the person who provides the best service—who provides the best product—should be rewarded by consumer preference and consumer choice.

Mr. LAMB. I don't disagree with that at all.

Mr. SUTCLIFFE. How can the consumer at the present time under the present warranty practices choose the firm that has the best service and the best product?

Mr. LAMB. Well, I think they do. First of all, in the electric range field there is a wide choice of manufacturers, in the gas range field——

Mr. SUTCLIFFE. Do their choices at the present time give preference to the larger retailer or manufacturing outlet?

Mr. LAMB. I can't really answer that question, Mr. Sutcliffe. I think the facts probably would be that the sales of companies like General Electric are far greater than the sales of some small unknown company in the range field, for example.

I think the experience that people have with their appliances and the service they get, the satisfaction they get out of the use of the product dictates whether or not they will buy that same product again when it is worn out, and it could be a fairly unknown brand product, and it could be a very nationally known brand product.

Mr. SUTCLIFFE. What is the life of some of these appliances we are talking about? In other words, is 20 years of unsatisfactory operation for one appliance, if that is a life, kind of long?

Mr. LAMB. We don't know of any such thing. As a matter of fact, one of the great difficulties is our products are made so good they last too long. A refrigerator, for example, when you buy a new refrigerator, he puts his old one in the basement, because it still runs.

Mr. SUTCLIFFE. So, you are opposed to the service contract notion because you feel that that will give a competitive advantage to those people——

Mr. LAMB. I am not opposed to the service contract at all. I would say that if this guarantee bill—if this bill is enacted into law, the chances are that it would be in that direction. I am not opposed to service contracts. I am not opposed to written guarantee. I am opposed to the bill because of what it will do to it.

Mr. SUTCLIFFE. Let me for the record clarify part of your statement. You say, "Enactment of this section could encourage sellers who have facilities for providing service under such contracts to dispense with giving warranties or guarantees, and to promote the purchase of service contracts. Would this be beneficial to the consumer? We think not."

Mr. LAMB. That is correct.

Mr. SUTCLIFFE. You are not opposed to service contracts, but you don't think the service contracts will be beneficial to the consumer?

Mr. LAMB. I think service contracts would be beneficial to the consumer. I am only pointing out what I think this bill would do. It would cause people not to give written guarantees or warranties because of the application of the stringent provisions of this bill and what would happen to them.

We think the choice probably would be made to give a service contract rather than have a written warranty or guarantee.

Mr. SUTCLIFFE. Don't you have members of your association at the present time whose present warranties comply with the provisions of S. 3074?

Mr. LAMB. I think the written provisions, yes; I think our warranties—I have examined a great many of them, and I think most of them do comply with the bill. And there isn't any doubt in my mind about their compliance with the AHAM's recommended guidelines on warranties content which was taken from the Magnuson bill.

Mr. SUTCLIFFE. The question was whether or not you have member companies right now giving warranties and guarantees in compliance with the provisions of S. 3074?

Mr. LAMB. I would say yes.

Mr. SUTCLIFFE. Then, why would that cause them to retreat from those provisions to go to service contracts unless, of course, they are not fulfilling the duties that they say they are going to perform under the present guarantee contract?

Mr. LAMB. Well, my feeling is, the total of it, in my prepared statement, going down through the bill, as you realize, the point we are talking about now is only one point.

I have several other points in addition to this question of oral warranties or guarantees. I am quite concerned about the fact that there is no clear position of preemption of State laws.

I am concerned about the fact that there are many phrases in this legislation that would have to be defined, such as "within a reasonable time."

Mr. SUTCLIFFE. Let me stop you there, if I may. You have asked the Federal Trade Commission to police the marketplace in the warranty-guarantee area.

Mr. LAMB. Right.

Mr. SUTCLIFFE. Wouldn't an analysis of whether or not the warranty is being complied with by the Federal Trade Commission require the Commission to make those very same determinations of whether or not repair was within a reasonable time, whether or not there was undue burden, or whether or not the promises of the manufacturer had been fulfilled.

Mr. LAMB. I don't think that has any relevance at all.

Mr. SUTCLIFFE. How would the Federal Trade Commission's action in this area serve to solve the problems that this committee feels are inherent in the warranty situation?

Mr. LAMB. It would do away with deception; so that it would make it clear that the fine print was not deceiving the purchaser. It could eliminate any false or deceptive statements made in advertising. That is the part that can be cleaned up under present jurisdiction of the Commission. I think this will just complicate it.

Mr. SUTCLIFFE. You said that the Commission should go beyond the advertising practice and include the examination of the warranty itself.

Mr. LAMB. That is right.

Mr. SUTCLIFFE. Would you then favor prohibition by the Federal Trade Commission against disclaimer of warranties of merchantability and fitness for a particular purpose.

Mr. LAMB. I am not going to comment on that. I am not a manufacturer, and I think there is a difference of opinion among the manufacturers as to whether or not that disclaimer is necessary.

Most of our companies manufacture their products for the purpose for which they are intended, and if a product, a 10-pound capacity washing machine is overloaded with 16 pounds, if that same 10-pound washing machine is in a family of 12 as distinguished from a family of one, the wear and tear on the machine is entirely different.

Mr. SUTCLIFFE. Why don't the manufacturers then measure their warranty periods by usage measurement rather than by time measurements which are not as precise?

Mr. LAMB. For the very reason I just outlined, because the variables in the home are so great. What happens in a family of two children as against eight or 12, what happens when you run a washing machine 7 days a week against running it 1 day a week——

Mr. SUTCLIFFE. So, why isn't the manufacturer creating a measurement of warranty related to the use of the product rather than the time? In other words, why don't they design something to measure the revolutions of the machine or the number of operating hours so that they can be very precise and differentiate between one customer who uses it for an "X" amount of cycling and another for another? We do this in military guaranties, in development of a lot of our sophisticated products. Why doesn't the consumer have the benefit of this type of measurement and product engineering?

Mr. BAUMGART. There has been some effort to study that sort of measurement on the usage. There are practical problems for mass ap-

plication, such as the millions we are talking about, that have not been totally overcome.

Also, appliances that remain idle have certain deterioration characteristics so that lack of use is a factor, and the whole is not yet solved to the point where manufacturers have elected to come on to the market with such a guarantee or warranty.

That would be in my judgment also an independent company decision, competitive decision which would give a consumer an additional choice.

But to require it would restrict the choice by the consumer.

Mr. SUTCLIFFE. The bill itself allows you that choice. In fact, there is a provision in the bill specifically saying duration measured by usage or by time. And the purpose of that is to encourage the development of guaranties related to the product reliability of the product that is being guaranteed.

Mr. BAUMGART. I understand.

Senator MOSS. Thank you very much, gentlemen, for your response.

It may be that we will want to ask some more questions which we may submit to you in writing, if you would respond to them.

We are trying to examine this carefully and in depth, and you have given us a point of view that we are glad to have and we will weigh along with all the other information we can get about the bill.

Mr. LAMB. Thank you very much, Senator.

(The statement follows:)

STATEMENT OF GEORGE P. LAMB, GENERAL COUNSEL, ASSOCIATION OF HOME APPLIANCE MANUFACTURERS

I am George P. Lamb, General Counsel of the Association of Home Appliance Manufacturers (AHAM). The association's members manufacture such major home appliances as refrigerators, home laundry equipment, air conditioners, humidifiers, dehumidifiers, and automatic dishwashers; and such portable appliances as toasters, coffeemakers, hair dryers, irons, waffle irons, and so on. A list of the members and of the products with which the association is concerned is attached to this statement as Exhibit A.

APPLIANCE INDUSTRY'S INTEREST IN SOUND WARRANTIES

I am happy to have the opportunity of appearing before the Consumer Subcommittee to discuss S. 3074 and the important subject of warranties and guarantees. The home appliance industry's interest in the subject is a very real one. Were there a significant degree of dissatisfaction with warranty terms or performance under the warranties it would be reflected in the sales of the industry's products. Yet there are more than one billion major and portable appliances in use in the nation's homes today; and more than 25 million major appliances and 75 million portables are sold annually. We believe these products add immeasurably to the comfort and well being of the American people. We would regret to see any legislation enacted that could, by imposing unacceptable burdens, diminish the service the appliance industry is providing the American public, or increase unnecessarily the cost of our products.

No manufacturer and no industry can claim that its warranties have never been misunderstood or that there has been 100 per cent satisfaction with performance under the warranties. Problems arise, of course. Disclaimers, fine print, and customer misunderstanding have aroused criticism. We think it is significant, however, that no formal complaint has been issued by the Federal Trade Commission against an appliance manufacturer to challenge a warranty or guarantee as misleading or deceptive. Some ten warranties given by appliance manufacturers have been questioned informally by the Commission throughout its history. Changes were voluntarily made by the warrantors to eliminate features to which the Commission objected. Nevertheless the industry has been the subject of criticism—by the press, governmental agencies, and individuals. We

have not been insensitive to the criticism. On the contrary we have vigorously tackled any complaints that have been brought to our attention— whether broad criticism against the industry as a whole or complaints by individuals who feel they have not been dealt with fairly under a warranty given by an appliance manufacturer.

PRESIDENTIAL TASK FORCE'S ANALYSIS OF APPLIANCE WARRANTIES

AHAM endorses the approach initiated by former President Johnson and affirmed by President Nixon to problems that may exist under warranties and guarantees given by appliance manufacturers. Former President Johnson, in January 1968, appointed a Task Force to study the entire area. The Task Force was composed of the Secretaries of Commerce and Labor, the Chairman of the Federal Trade Commission, and the Special Assistant to the President for Consumer Affairs.

AHAM worked closely with the Task Force during 1968, chiefly in providing information and in circulating a questionnaire among appliance manufacturers at the request of the Chairman of the Federal Trade Commission.

The Task Force's Report, made public in January 1969, contain recommendations for action in four areas: the advertising and content of warranties, the availability of parts, the availability of service facilities, and the education of consumers on warranty terms and on the use of appliances. The report asked for action by both manufacturers and retailers, to be supplemented as necessary by the federal government. The report recognized that manufacturers, through their trade associations, were already taking action along the lines of many of the recommendations. It was suggested that another examination be made at the end of a year—January 1970—to determine whether substantial progress had or had not been made to implement the Task Force's recommendation, and whether or not legislation was necessary.

As soon as the report was available, a committee was appointed by AHAM for each of the three principal areas covered by the report. These were committees on Warranties, Service and Repair (to cover availability of parts and service facilities), and Consumer Information. The committees began their work and progress reports were made to the Task Force on May 14, 1969 and on October 10, 1969. We are now awaiting an appraisal of our work during the past year by the Task Force, as reactivated by President Nixon. Meanwhile we are continuing to work toward the Task Force's objective—clear warranties, properly administered for the benefit of consumers.

AHAM'S ACTIVITY IN WARRANTY FIELD

AHAM and its members stand foursquare for warranties and guarantees that are clearly written, make no false promises, and will be honored according to their terms. We are not newcomers to this area. Ten years ago one of the AHAM's predecessor associations, the American Home Laundry Manufacturers Association, included in its "Recommended Advertising Practices for the Home Laundry Appliance Industry" a reprint of the Federal Trade Commission's Guides Against Deceptive Advertising of Guarantees. The Commission's Guides are being reprinted in similar "Recommended Advertising Practices" being developed for the various product lines represented in the present association. (A copy of the Recommended Advertising Practices for the Home Laundry Industry and a copy of those for the Refrigerator-Freezer Industry are attached as Exhibits B and C.)

In January 1969, AHAM's Board of Directors approved Recommended Guidelines on Warranties Content, a copy of which is attached as Exhibit D. The guidelines recommended that a warranty clearly state the name and address of the warrantor; the person to whom the warranty is extended; the product or parts covered; the time for which the product or parts are covered; exactly what the warrantor will do, and at whose expense; and exactly what the owner must do, and at whose expense. The guidelines also recommend that the warranty be expressed in understandable language, that exceptions be stated in the same degree of prominence as are all other warranty terms, and that care be taken to assure that no heading or title is misleading. The information recommended by these guidelines parallels the information that would have been required by S. 2706, introduced by Senator Magnuson in the 90th Congress.

Since the approval of these recommended guides, AHAM's members have reviewed their warranties and guarantees. They have made changes thought nec-

essary to implement the recommendations. Language has been simplified, and print enlarged. The word "promise" has often been substituted for "warranty" or "guarantee."

Perhaps the association's most important action in helping to resolve complaints that arise under warranties or guarantees given by appliance manufacturers is the conduct of a Complaint Exchange. This exchange was initiated informally by the American Home Laundry Manufacturers Association. It has been given greater stress by AHAM. It is soon to be given an even greater boost with the establishment of a Major Appliance Complaint Council.

The Complaint Exchange works in this way. Complaints about any aspect of appliance performance, not warranties alone, may be sent to us by consumers, by the Special Assistant to the President for Consumer Affairs, by Congressmen, or by whomever. Each complaint is transmitted to the manufacturer whose product is the subject of the complaint. The manufacturer is asked to let AHAM know how the complaint was resolved. If we do not hear from the manufacturer, we write to the complainant to ask whether satisfaction has been achieved. If the answer is "No," we follow through until the customer is satisfied or we are convinced a complaint is without foundation.

The availability of this service has been publicized in the press, by word of mouth, by governmental agencies, and by any means at hand. The additional boost to be given this exchange is the establishment of a Major Appliance Complaint Council. AHAM and the Gas Appliance Manufacturers Association (GAMA) are cooperating in this venture. The Council is to be composed of nine persons nationally recognized for their interest in consumer affairs. The Council will review the handling of complaints by AHAM and GAMA, and confirm its effectiveness or recommend improvements. I hope an announcement of the establishment of the Council and its membership can be made soon.

THREE WARRANTY PROBLEMS

Three problems may arise in connection with warranties or guarantees. The warranty itself may be false or misleading. The warrantor or guarantor may not fulfill the terms of the warranty. Competent servicemen may not be available at the time and place service is needed under a warranty.

Adequate means are at hand to eradicate either of the first two problems when it exists. The Federal Trade Commission has ample authority to move against deceptive warranties, as do several states that have enacted statutes similar to the Federal Trade Commission Act. Recourse is available to a consumer in state and local courts, such as small claims courts, when a warrantor or guarantor fails or refuses to fulfill the terms of a warranty. Warranty legislation will do nothing to solve the third problem—the lack of competent servicemen—where it exists. Manufacturers, the Department of Labor, and local agencies are tackling this problem through vocational training programs.

AHAM'S REACTION TO S. 3074

AHAM is opposed to S. 3074 because it would deprive a warrantor of the right to determine the terms of the warranties he would give. Indeed it would impose warranty terms on a seller through the oral statements of salesmen. It would subject warrantors to constant dispute over the meaning of such phrases as "within a reasonable time," and "duties [that] are reasonable." It would require that a warrantor, in determining whether or not duties are "reasonable," continuously weigh "the magnitude" of his "economic burden" against "the magnitude of the trouble and annoyance" caused the consumer.

We are convinced the bill you are considering would be detrimental to the consumer. It would discourage the giving of warranties, and it would discourage voluntary procedures for settling disputes that may arise under warranties. Furthermore, prices consumers pay for goods would be increased by the substantial additional costs of fulfilling the requirements the bill would impose, and by the costs of litigation the bill would encourage.

Turning to the specific provisions of S. 3074, an immediate question arises as to whether or not it covers oral as well as written warranties. Senator Magnuson, when he introduced the bill indicated clearly that the intention was that the measure cover only written warranties. (Congressional Record, Oct. 27, 1969, p. S. 13228.) The bill itself, however, covers oral representations by salesmen.

Appliance manufacturers carefully plan their warranty terms and programs. They state the terms in writing. They are increasingly attempting to write their warranties simply and in language that is easily understood. To allow these written terms to be varied by oral statements of sales personnel would put to naught the care that goes into trying to tell a purchaser exactly what a warranty means. It would create an intolerable situation in which understanding between warrantor and purchaser could never be attained.

The duties imposed on a seller by Section 3 of S. 3074 are to repair a product, or to replace it "if repair is not possible or cannot be timely made . . . within a reasonable time . . . and without charge." The seller cannot "impose any duty other than notification" as a condition of repair or replacement unless "such duty is reasonable." The reasonableness of the duty is to be determined by weighing "the magnitude of the economic burden necessarily imposed upon the maker and purchaser . . . against the magnitude of the trouble and annoyance caused owners of malfunctioning guaranteed products."

These terms as used in this section of S. 3074, and elsewhere in the bill, are simply too imprecise to be made a part of any warranty a warrantor must involuntarily assume. Under Section 15 of the bill, the Federal Trade Commission would be authorized to establish trade practice rules to implement other sections of the bill. Presumably, this would include establishing standards or guides for determining reasonableness, timeliness, and necessity. Conditions under which warranties may be fulfilled vary so greatly from product to product, from industry to industry, and from locality to locality, however, that a veritable encyclopedia would be needed to define the terms. In the last analysis a warrantor, moving with all possible speed and in all possible good faith to fulfill his warranty, would risk an adverse determination by a jury on any one of the three terms, two or three years after the event.

We submit that appliance sellers, whether manufacturers or retailers, attempt to see that repair or replacement, whichever is necessary, is made under their guarantees, within a reasonable time. We submit that they do not impose unreasonable duties on the purchaser. When a duty, such as delivery of a product to the manufacturer or to a service center, is required, the requirement is usually made to avoid having to send a serviceman to a home to repair some small item that can be mailed or delivered to a central place inexpensively.

The phrase "without charge" as used in Section 3 can be misleading. Some manufacturers and dealers offer parts and labor "without charge" for specified periods under their warranties. This means that no charge is made at the time service is required. In determining their selling prices, however, warrantors include estimates of the costs of fulfilling the warranties according to their terms. In this sense a charge is made, and will have to continue to be made.

Section 5 of S. 3074 would prescribe the content of written warranties, and require that each such warranty be labelled a "performance guaranty." Describing a warranty as a "performance" warranty is new to the appliance industry; and the industry questions the wisdom of describing warranties as "performance" warranties. The word suggests that a seller is guaranteeing that a product will perform to the personal satisfaction of every user, whatever his or her needs or whatever the circumstances under which the product is used. In essence what an appliance manufacturer warrants is that a product has been manufactured according to specifications, and will provide the general service for which it was designed. If it fails to provide this service because of defects in materials or workmanship, the warranty terms may be invoked by the user.

Section 5 would also require that the following information be included in every written warranty—

(1) Its duration, in time or a measure of usage,

(2) Any reasonable maintenance required as a condition of the warranty,

(3) The cost of such maintenance, if required to be performedby a designated representative of the maker,

(4) A recital of the maker's duties,

(5) The procedure the purchaser must follow to obtain repair or replacement, and

(6) A recital of informal and judicial means of settling disputes that may arise under a warranty.

The first, second, fourth, and fifth points are normally included in a warranty. The third, the cost of maintenance, would be impossible to estimate because of the great differences between labor costs in different geographic areas. In addi-

tion, any attempt by a manufacturer to prescribe this cost could raise antitrust implications.

Section 6 would prescribe the conditions under which the word "guaranty" could be used in connection with what are now called guarantees and warranties. The word "guaranty" is usually confined to surety transactions, and does not identify the promise a seller gives with respect to the quality of goods. We see no need for a prescription by Congress of conditions under which a common word in the English language may be used, or a prohibition against the use of the words with established meaning. The words guarantee and warranty have been used from time immemorial to denominate the kind of contractual obligation with which S. 3074 deals. We see no reason for disturbing this use by substituting a word that has a more definite meaning in another field.

A few other sections of S. 3074 may be commented on.

The terms "reasonable in number" and "reasonable duration" in Sections 7 and 8, like the similar terms in Section 3, are imprecise and invite litigation.

Section 9 purports to exempt service contracts from the terms of S. 3074, and to permit their use in lieu of a guarantee or warranty. Enactment of this section could encourage sellers who have facilities for providing service under such contracts to dispense with giving warranties or guarantees, and to promote the purchase of service contracts. Would this be beneficial to the consumer? We think not.

Section 10 purports not to interfere with the designation of a representative to perform the duties imposed on a seller by the bill. In stating that "no such designation shall relieve the maker of his direct responsibilities to the consumer," Section 10 withdraws that which it has given and becomes a nullity. It could encourage manufacturers able to do so to establish their own sales and service facilities, to the detriment of independent dealers and repair shops—a result we believe the subcommittee would deplore.

Some manufacturers prefer to leave part of the responsibility for fulfilling a warranty, particularly that of furnishing labor, with their independent dealers or distributors. This they do because they believe it gives the dealer an economic stake in seeing that the installation and necessary initial adjustments or repairs are well done in the first instance. Sloppy installation or unsatisfactory adjustment cuts back on the dealer's or distributor's profit and, just as importantly, on his reputation. If all costs of poor installation or inefficient installation can be passed back to a manufacturer, the dealer or distributor may lose his incentive to perform effectively and efficiently. He will not be concerned with the over-all package—selling, installation, when necessary, and repair—that constitutes consumer satisfaction for any product.

Section 11 would provide that state laws applicable to warranties would not be preempted by the federal statute. If there is to be federal legislation to fix the terms of warranties or to impose warranty obligations on manufacturers or retailers, the legislation must preempt state laws, or uniformity in state and federal legislation must be achieved in some other way. Otherwise, sellers could be burdened with an excessive number of requirements that could very well conflict with one another.

Section 16 purports to encourage the establishment of voluntary procedures for settling consumer complaints "in cooperation with independent and governmental entities." The section would vest authority in "some governmental or public body" to supervise these procedures. We believe the injection of governmental agencies in the establishment and supervision of voluntary complaint-settlement procedures would deter their establishment and operation. Government supervision of voluntary efforts is a contradiction in terms. Procedures supervised by government are not voluntary.

AHAM and other trade associations have repeatedly demonstrated their willingness to cooperate with governmental agencies to advance the consumer's interest. They have demonstrated their willingness to assist in seeing that consumer complaints are answered satisfactorily. To require governmental supervision of our effort, and the efforts of all independent organizations that undertake to provide procedures for arbitrating consumer claims would delay and inhibit their work. What governmental agency could undertake to carry out with dispatch the supervision of voluntary procedures that might be established by the industries that now supply the consumer goods with which S. 3074 is concerned? We think none.

Section 17 would provide class suits for breach of warranty. Class actions are not appropriate remedies for breach of warranty. Each such breach is an in-

dependent breach of contract, and legal redress would depend upon the facts in each particular situation.

Section 20 would set the effective date of S. 3074 as six months after enactment. If there is to be legislation on warranty terms under which the Federal Trade Commission is authorized to issue interpretive trade regulation rules, the effective date should be a stated time after the issuance of the rules. Otherwise, for an indeterminate period of time manufacturers and retailers could not know whether what they were doing with respect to warranties would conflict with regulations to be issued later by the Commission.

S. 3074 is based on the premise, an erroneous premise it seems to us, that Congress can devise one piece of legislation to cover one kind of commercial transaction in widely divergent industries, and under widely divergent circumstances. Sales transactions and the giving of guarantees and warranties are common to the entire range of consumer goods that have electrical, mechanical, and thermal components. In the appliance industry alone, the kind of guarantee or warranty given with a $3.00 travel iron is entirely different from that given with a $300 room air conditioner, or a $30 hair dryer. Yet S. 3074 would treat them the same. The kind but not the quality of warranty service that can be supplied by the multi-million-dollar corporation is quite different from that which can be supplied by the smaller competitor. Yet S. 3074 would treat the two sellers the same. The obligations a manufacturer can undertake in making its products and warranty service available for customers who live in sparsely populated regions differ from those the manufacturer can undertake for customers in metropolitan areas. S. 3074 would treat the customers the same, though the manufacturer may be able in different ways to satisfy both.

S. 3074 is based on a second premise we believe to be erroneous. That is that consumer satisfaction can be assured by creating new legal actions for aggrieved consumers. Legal processes are available where they are needed, but legal processes and additional legislation are not the key to consumer satisfaction. In the appliance industry, that key lies in the manufacture of consumer products designed to perform a particular household task, and made available to the public through reliable dealers.

Warranties are a traditional part of this transfer of product from manufacturer through dealer to consumer; but both manufacturer and dealer must continue to be free to give warranties or not to give them, and to adapt the warranties they give to the products they make or sell and to the systems of distribution they select. To attempt to force warranties of all manufacturers and sellers of a broad range of products into one mold will not serve the interests of either the consumer or the economy.

The real problem of consumer satisfaction or the lack of it is seldom the warranty or guaranty given by a reputable manufacturer or by a reputable retailer. The real problem is more often the unscrupulous dealer, who practices fraud and deception in selling to the poor, the aged, or the ignorant. This was clearly shown by the Federal Trade Commission's Economic Report on Installment Credit and Retail Sales Practices of District of Columbia Retailers, published in March 1968, and its Report on the District of Columbia Consumer Protection Program, published in June 1968. This problem can be solved only at the local level—through consumer education, through neighborhood volunteer services, and through the courts when necessary. Federal assistance to strengthen the neighborhood services would accomplish much more for the consumer than would the enactment of S. 3074. The Federal Trade Commission is demonstrating concretely how this can be done through its continuing program in the District of Columbia. This program is described in a brochure entitled "Recent Developments in the Federal Trade Commission's Consumer Protection Program," published earlier this month. I personally consider this the most significant work the Commission has done in the 35 years I have been practicing law.

In conclusion, we reiterate our fundamental contention that today's warranties do not justify federal legislation, and that such legislation would not be in the best interest of the consumer. We also reiterate our dedication to eliminating from appliance warranties any words, phrases, or terms that may be misleading. We further reiterate our dedication to assisting the consumer to attain satisfaction under warranties given by appliance manufacturers.

Thank you for your attention.

(The following questions were submitted by Senator Pearson to Mr. Lamb.)

Question: In speaking of "unacceptable burdens" being imposed by the bill, are you referring to the requirement of a full service guaranty or none at all or are you referring to the fact that under the bill as drawn it is possible that oral representations of retail salesmen will be found to have imposed guaranty obligations on the manufacturer in addition to those under his written guaranty or warranty?

Answer: In speaking of the "unacceptable burdens" I feel S. 3074 would impose on appliance manufacturers, I was characterizing the appliance industry's reaction to the effects the entire bill could have on the industry. Consequently, I had in mind both those features of the bill that would require a manufacturer to give either a full service guarantee or none at all; and those provisions that appear to make it possible for oral representations of a retail salesman to impose guarantee obligations on a manufacturer, in addition to and in contradiction with the manufacturer's written guarantee.

Question: As a practical matter, what control, if any, does a manufacturer have over the making of such representations?

Answer: As a practical matter, a manufacturer has no control over the statements made by salesmen for independent retail outlets that sell the manufacturer's product.

Question: What steps, if any, could a manufacturer take to protect himself from liability which would be imposed under this bill resulting from an overly zealous salesman's representations as to the extent of his guaranty?

Answer: Manufacturers may now attempt to protect themselves from liability that may be created by representations made by overly zealous salesmen when they say in their written warranties that the written instrument contains the full terms of the warranty. The only other way by which manufacturers could protect themselves would be to put large disclaimers in sales areas of retail stores. Such a practice would certainly be objectionable to retailers, and it would be incompatible with any concept of honest selling. To have posters and signs on the walls of retail stores saying, in effect, "Beware of your salesman, he may overstate the truth" would create an almost insurmountable barrier between the salesman and his potential customer.

Question: Under these circumstances, is it not imperative that the obligations of manufacturer and retailer be clearly defined and that obligations not be imposed upon a manufacturer as the result of representations by a retailer over which the manufacturer has no control?

Answer: I concur wholeheartedly that it is imperative that the obligations of manufacturer and retailer be clearly defined, and that obligations not be imposed upon a manufacturer as the result of representations by a retailer over which the manufacturer has no control.

Question: Upon questioning by staff counsel, you indicated that many manufactuers in your Association who are presently using warranties which do comply with the provision of S. 3074 might decide, should this legislation be enacted, to change to service contracts rather than the warranties that are presently given. Would you indicate why you think this will occur?

Answer: In spite of the fact that many appliance manufacturers give warranties that substantially comply with the disclosure requirements of S. 3074 and that some, at least, give "parts and labor" warranties for stated periods, I believe the legislation could encourage the giving of service contracts, rather than warranties as they are presently given, for the following reasons:

(*a*) because of the possibility that oral representations of retail salesmen, or even the representations of a manufacturer's own salesman, might vary the terms of the written warranties;

(*b*) because the giving of service contracts would permit the manufacturer to control the labor costs of fulfilling the contracts more readily than he can control these costs under a warranty, especially when he relies on a distributor or retailer to furnish the labor;

(*c*) because the annual fees for service contracts can be adjusted to conform to the experience of the contractor, whereas the anticipated costs of fulfilling a warranty must be included in the original selling price of a product—and anticipating the costs of fulfilling the "full service guarantee" would be difficult;

(*d*) because the terms of service contracts could be varied and adapted to a manufacturer's distributive system and to his economic resources, as the terms of warranties can now be varied; and

(e) because the giving of service contracts would not subject a manufacturer to eventual judicial determination of the meaning of "reasonable time," "duties [that] are reasonable," "magnitude of economic burden" and so on.

Senator Moss. Our next witness is Mrs. Pauline Dunckel, director of governmental services for the Gas Appliance Manufacturers' Association. We are pleased to have you, Mrs. Dunckel, and we look forward to hearing your testimony.

STATEMENT OF MRS. PAULINE DUNCKEL, DIRECTOR OF GOVERNMENTAL SERVICES, GAS APPLIANCE MANUFACTURERS ASSOCIATION, INC.; ACCOMPANIED BY THOMAS NICHOL, JR., GENERAL COUNSEL OF GAS APPLIANCE MANUFACTURERS ASSOCIATION, INC.

Mrs. DUNCKEL. Thank you, Senator.

Senator Moss, may I introduce the general counsel of the Gas Appliance Manufacturers Association, Mr. Thomas Nichol, Jr.

Senator Moss. We are very glad to have you, Mr. Nichol.

Mrs. DUNCKEL. Mr. Chairman, as always, I appreciate an opportunity to appear before your committee to discuss the problems of commerce and industry.

My name is Pauline Dunckel, and I am director of governmental services for the Gas Appliance Manufacturers Association. We have at the present time 628 members who produce in excess of 90 percent of the gas appliances and equipment made in the United States.

I shall send to Mr. Sutcliffe for the record a membership directory for your reference.[1]

We operate in a somewhat parallel way to the Association of Home Appliance Manufacturers, except that our coverage is solely of the gas appliance industry. We have been cooperating with the Presidential task force and reporting jointly with AHAM in matters of warranties, complaints, and so on. We are parties to the Major Appliance Consumer Complaint Council which is currently in the embryonic stage. I think the council will do a great deal to open the channels of communication between dissatisfied customers and manufacturers.

Let me emphasize that we wholeheartedly believe that a guarantor must live up to his guarantee. I know that is the purpose which you have in mind in writing this bill, and we have absolutely no objection to that purpose. We cannot and do not condone failure on the part of a manufacturer or a seller to live up to the promises they make to induce the sale. We cannot object to sanctions which compel them to do this.

We are aware that there are many complaints about guarantees. I personally handle the complaint service for GAMA. We started it in a formal way on July 15, so it is just completing its sixth month. In that period I have only handled 136 cases. A large percentage, perhaps 85—I haven't counted them—are closed satisfactorily. Many of them are on products far out of warranty.

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[1] The directory is in the committee files.

I have to tell you a story about one that was made by a company which stopped making the particular product in 1951, so that the complaints are not all on products still "in warranty." We have to go much beyond that.

One of the most serious complaints about warranties is with regard to clarity, and many of these criticisms are amply justified. We have always worked on this matter of warranty clarity, but for the past year, we have been concentrating on this in connection with the task force. I have worked with more than 100 companies, the larger ones in our industry, who have said that they will review their warranties in the light of the task force's recommendation, and they are clarifying them.

I think good progress is being made. We haven't completely eliminated all of the problems, but Rome wasn't built in a day. We will keep working on it, and as we go along, I think your objectives can be accomplished largely voluntarily, and without new legislation.

We regret that customers of our industry have received inadequate servicing of their appliances or equipment, or unsympathetic treatment by sellers or manufacturers.

Reading the letters I get from complainants, I think a great deal of our difficulty arises because service people don't have the same sense of pride in their jobs that they used to have. This is something we are trying to work at. We are trying to recruit and hire a better type of person, and do a better job of training, than we have before. You may have had the experience of a man coming into your house to repair your television who says, "Why did you buy that junk?" You reply in kind. An argument can be made for courtesy as well as good service.

You have my assurance that our industry is hard at work on this. We strongly believe that a seller and a buyer should be wholly free to arrive at their own bargains in the marketplace. We believe that they should arrive at agreements openly, and that they should back up whatever agreements they make with regard to the articles sold.

We look with concern upon a law which would, however, attempt, by legislative fiat, to create something which should be the result of free negotiation in the marketplace. The statute would say to the seller and to the buyer that no matter what deal they may mutually find satisfactory and wish to accept, this law will preempt certain aspects and impose its own terms upon their bargain. We do not believe that this is wise lawmaking or healthful for the economy. Perhaps more important in the long run, it doesn't bring about the desired balance of equities between buyers and sellers, which you are seeking through this bill.

If you are going to change this freedom of negotiation, there must be very ample justification, and I am not sure it exists at present.

This statute would restrict this freedom of bargaining to a degree. It says, for instance, that the guarantor must bear the full cost of making the repair or replacement, even though the buyer might be ready to buy the product without such provision. Let's remember that many appliance warranties today have a provision that the manufacturer will furnish the part, but not the labor. The labor cost is a matter of negotiation between the dealer and his customers, and there is good reason for this. It means that the customer has a choice as to which he wants to take—the full guarantee as you call it, or a limited warranty. The more extensive a warranty's coverage, the more it becomes a factor

of price. If products under a warranty, excluding labor, can be sold at a lower price than those under a guarantee, including labor costs, this price factor will logically influence the decision of a good many customers.

I think what I am saying, in another way, is there isn't any such thing as a guarantee "without charge." The charge is in the price. It is either concealed in the price at the time of purchase, or you pay for it in the form of a service contract. Perhaps it would be fairer to set this out as a separate charge in the service contract.

We view seriously any proposed legislation which would limit free bargaining—particularly when the reasons for these limitations have nothing to do with health or safety or deception. An agreement between the parties as to what the terms of a warranty should be can hardly be viewed as so unfair, or so shocking to the public conscience, that it should be prohibited.

If the consumer were unwilling to accept a warranty less broad that the guarantee this bill describes, the limited warranty simply would not survive. Warranties are competitive, as much as prices are competitive, and we do much in this country to preserve competition.

Some years ago an automobile manufacturer shocked his competitors by offering a much longer warranty than any of them offered. Despite this, the competitors' business in the year that followed did not drop sharply, because some people preferred the competitors' models to the guaranteed model with the 5 years and 50,000-mile warranty.

In various industries, and for a good many years, the manufacturers have given "prorated" or "percentage" guarantees, whereby the expense of replacement to be borne by the manufacturer and the owner depended on the year in the guarantee period in which the failure occurred. This would mean that in the 6th year the manufacturer might pay 40 percent of the cost, and in the 7th year, 30 percent, and so on. Obviously, he would pay less than 100 percent. It appears that this type of guarantee might be outlawed by the bill before us. Perhaps you will comment on that point. One wonders if this practice is so inherently evil and so unfair that it has to be abolished.

The possible impact of this proposed legislation on the middle-size and smaller companies could bring economic hardship, and even force some smaller units out of the marketplace, I believe. I know this is relatively hard to prove and I know the different points of view on it, but these sellers do not and cannot, these smaller ones, have nationwide retailing and service facilities, as do a number of the larger producers in our industry. If they have been giving warranties for parts but without labor—as is most probable—they know the cost of furnishing and shipping those parts, because they have some idea of the recurrence in the number of claims, and they can establish their prices accordingly.

Under the proposed law, these companies would have to scramble around to find service facilities wherever their products may come to rest. Thus, a smaller manufacturer in Bangor, Maine—and we have one there—must now be prepared to find servicing people and guess at the costs of service in Fargo, N. Dak., San Diego, and Mr. Nichols says, even in Guam.

But these companies must raise their prices, of course; obviously. And how serious these increases will be in connection with the smaller companies' ability to compete, and the inflationary spiral in general, must both be considered.

Turning to the actual text of the proposed statute, I would like to call attention just briefly to two or three points:

Section 6, it seems to me, would invade our hard-working, everyday English language to place a wholly artificial limitation on the terms "guarantee" and "warranty." You may have noticed in this paper I have used them interchangeably, because to me they are completely interchangeable. I think the Federal Trade Commission tried for about 20 years to make this distinction, and then finally came to the conclusion that they are popularly interchangeable, especially in respect to a seller's representations about his product. We wonder what hope of success the Government has in legislating these words into a straitjacket for use in the marketplace.

This example was given me, and I think it is a particularly good one, although it is a little silly. It would be all right for a seller to use the word "guarantee" in connection with an electric fan, but he would be prohibited from saying that a fish tank is guaranteed not to leak for 1 year, because the tank doesn't have any movable components. What happens to the seller who sinfully uses the wrong word, "guarantee."

One can imagine the man who says to his friend, "Did you get a warranty with your new car?" And the friend says, "No, but they did give me a guarantee." I think the confusion created by section 6 would be spectacular.

I have the same problem that Mr. Lamb expressed about the words "express guarantee." In section 2–313 of the Uniform Commercial Code at subparagraph (b), there is this wording:

"Any description of the goods which is made part of the bargain creates an express warranty that the goods shall conform to the description." I have underlined "that the goods shall conform to the description." But the similar section in your bill says: "And description of the consumer product or any of its components which is made part of the bargain creates an express warranty."

The omission in S. 3074 of the words, "that the goods shall conform to the description" suggests that any description of a product creates an obligation to repair, replace, et cetera, unless this obligation is specifically negated.

What is "express guarantee?" How is it made? When is it made? Apparently it can arise from any description of a consumer product which becomes part of the bargain.

Let's consider an extreme example, where a seller says to a customer, "This is a 100-watt light bulb," and the customer buys it. I think that is a performance guarantee that this bulb will yield 100 watts of light. Under the Commercial Code the seller only has to deliver a light bulb that will produce 100 watts, and then his obligation is ended, because it was merchantable.

Under this, is it possible that these innocuous words have also created an express guarantee, and the obligation to repair or replace that light bulb for a reasonable period of time at the seller's expense?

After all, what the seller said was certainly a description of the product and certainly became part of the bargain.

I use that only as an example that we do need to sharpen the fuzzy words in the bill, and you have said that many times in the course of this hearing.

We urge strongly that the circumstances of the creation of an express guaranty be more clearly set forth, so that the seller can have what he is certainly entitled to—a clear understanding of the effect of his words.

Along the same line, we believe that the bill should more clearly show that a sale may be made without a guarantee and how. We worked on this for quite a while, and read it one way and said you couldn't sell the product "as is." And we came around to deciding that perhaps we could, when we read Senator Magnuson's statement when the bill was introduced in the record. It isn't really clear from the text that you can sell the product "as is."

The Uniform Commercial Code is quite clear on how this may be done. We suggest that a seller of consumer products is entitled to provisions no less clear than those in the code, particularly in view of the uncertainties suggested by section 2(9), as mentioned.

Under section 3, the duties of the guarantor are "to repair, or replace if repair is not possible. . . ." I obviously have omitted some words. This seems unreasonably strict, since repair might actually and physically be possible, but extremely difficult, very expensive, and highly uncertain. We believe the word "practicable" should be substituted for the word "possible."

Under section 2(8), the seller, instead of replacing, may refund "the purchase price of the product less reasonable depreciation based upon use." It is probably the intent of the legislation that the "purchase price" is the price paid by the consumer to the seller from whom he purchased the product. If the manufacturer is the guarantor and he is required to make the refund, that price would contain mark-ups for both the distributor and the dealer, and could presumably force the manufacturer to refund in dollars a substantially larger amount than that which he originally sold the product for.

The provisions of section 5(c), requiring the seller to tell the buyer what the cost of the maintenance will be, if performed by a designated representative of the seller, come close to being impossible to meet. There is no way in which the seller can be certain what the cost will be, because he cannot be sure whether the buyer will be using the product one block from a service representative of the seller, or 3 hours by automobile from such representative. Even more important are the fluctuations in the service labor rates and believe me, they fluctuate as much as 200 percent between such locations as New York City, Peoria, Ill., and Great Falls, Mont.

Section 8 says:

> Nothing in this Act shall prohibit the maker of a performance guaranty from warranting parts and not labor after the expiration of a performance guaranty period if that period is of reasonable duration.

This suggests that the "reasonableness" of the performance guarantee period, and we are not quite sure who decides what is reasonable, may control whether the guarantor is allowed to give voluntarily an extended parts warranty which he is not obligated to give. For example,

on some of the products in my industry, we have a specific warranty, and then we warrant certain types of burners for a longer period. Unless we knew that our specific warranty period was considered reasonable, the manufacturers might hestitate to give this longer guarantee which has an advantage to the consumers.

In conclusion, may I reemphasize what I said earlier. We think the guarantor must live up to his guarantee, and we do not condone any misrepresentation of either the product or the warranty. However, there are many kinds of products and many sizes and types of manufacturers, who sell to varying distribution channels. We do not believe that legislation, which forces all of these interests into the same mold, will be fair to consumers, to sellers, or to manufacturers.

Thank you very much.

Senator Moss. Thank you Mrs. Dunckel, for a very fine statement. Obviously, we have some differences in point of view on this legislation, and we are glad to have your point of view.

It would seem to me in your testimony you interchangeably use warranty and guarantee and you think other people do. It is really an argument for having these terms defined, so we know precisely what they mean, and what a buyer may depend upon, and if that becomes standard throughout all selling in the industry, then, we won't have this problem of interchangeability.

You pointed out the difficulty of a manufacturer guaranteeing that he will repair or replace the product and that would indicate that you, therefore, would not think he would chose to do that—that he would rather go to the warranty, where he would say, I will replace the part, but the labor is yours.

That is exactly the problem, you see. In selling the product, either the manufacturer or the seller uses terminology that the consumer thinks means that he is going to get his product repaired and replaced if it goes bad. As it turns out, maybe what he gets is a part, and he has to hire some fellow at $10 an hour or something, to come and replace the part and put it in.

Mrs. Dunckel. The manufacturers in our industry feel, there are really two parties to this sale to the consumer. The manufacturer makes his profit in producing and selling the goods to the distributor. He think that the dealer also has a profit motive in this, and that he will do a better job, perhaps, in servicing the product if the responsibility for the service labor is his.

Now, the seller has an option, if he wants to absorb that labor cost. There are also many instances where that cost is billed back to the manufacturer. But in the gas appliance industry, there are very few guarantees in the sense that you define them in this bill. We do warrant parts, and we do not pay the service labor. There are exceptions, but they are minor exceptions.

Senator Moss. But the thrust of this bill is, first of all, the manufacturer and the seller are not required to give any guarantee or warranty or offer a service contract, they can go clear down to "as is;" sold "as is."

However, if they choose to rely on one of those, whatever it is, then, there is a requirement not only that it be clearly stated, but that they must fulfill that obligation.

Of course, as you say, and I agree, your objective of eliminating deception and getting to the consumer what he is entitled to get is the same as ours.

Mrs. DUNCKEL. That's right.

Senator Moss. What we differ on are those who have in the past, and some still are perhaps, taking advantage of this confusion or this misunderstanding and the resulting feeling of frustration and resentment that builds up in the consumers' feeling that they have been bilked.

Mrs. DUNCKEL. I think that is true.

We have the same objectives, and we know we are going to have to go through a period of change here. If it had already been accomplished that a guarantee meant one thing and a warranty meant something else, we would have been far down the road.

Whether this bill will accomplish that objective, we are not quite sure.

Senator Moss. I can't say we are sure either. That is what we are trying to probe and find what we can do to accomplish this.

Mrs. DUNCKEL. Mr. Chairman, may I also add for the record, I may have mentioned this but I don't think I did, the recommendation we have made to our industry of the basic elements of a product warranty. It goes somewhat farther than the AHAM recommendation does, and I would like to make it a part of the record.

Senator Moss. We would be very happy to have that made a part of the record.

(The recommendation follows:)

BASIC ELEMENTS OF A PRODUCT WARRANTY

1. It should clearly set forth:
(*a*) The name and address of the warrantor.
(*b*) To whom the warranty is extended.
(*c*) Geographical limitations, if any.
(*d*) The product or specific parts thereof covered and against what.
(*e*) The specific time (not longer than the reasonable expected service life) for which the product (or parts thereof) are covered and when this time starts.
(*f*) In case of a claim under the warranty:
(i) Exactly what the warrantor and/or seller will do, where and at whose expense.
(ii) Exactly what the owner must do, where and at whose expense.
2. All language should be clear, concise, simple and avoid "legalese."
3. Exceptions, disclaimers or exclusions should be imited to those the warrantor considers actually necessary and should be *fully* and *clearly* stated, with the same prominence as the affirmative statements.
4. The printing should be clear, well-spaced, and easy to read rapidly. "Small print" items should be avoided.
5. Any heading or title should be fully descriptive and accurate. (Headings such as "TEN YEAR WARRANTY" should be avoided if any coverage under the warranty is for a shorter period. Also, where the manufacturer agrees to replace defective parts but without payment of incidental labor or service charges, the warranty should be designated as a "Limited" or "Parts" warranty.)

Senator Moss. Let me ask my counsel if he has any question or comment, and then we will move on.

Mr. SUTCLIFFE. You asked whether or not a pro rata warranty would be permitted under this bill.

Let me see if I can clarify for the record the requirements by which a pro rata warranty would be allowed.

A pro rata warranty would not comply with the terms of the performance guarantee set forth in the record. Therefore, if a person

were going to give a pro rata warranty, the warranty would have to be given in such a way as not to invoke the language of S. 3074 related to express guarantee related to performance.

Now, in your discussion in your written statement there are two aspects of the creation of a performance guarantee. One is that it is an express guarantee as defined in the act and for the most part it picks up the Uniform Commercial Code. No. 2, that that be related to performance.

I think that a very good legal draftsman, and I am sure there are many in the industry, could construct a pro rata warranty so that it made no promises about the performance but only told the person what to do in the case of a failure during the warranty period and what kind of remedies or what kind of costs the customer could be expected to absorb.

So I think with careful legal drafting, pro rata warranty would still be possible; but guarantors would have to avoid the notion of an express guarantee related to performance.

That brings to mind your comment about the words related to performance. The words are picked up because of our previous legislative endeavors in defining performance standards which really go toward those things, as the introductory statement of Senator Magnuson suggested, which work or don't work. If it conveys to the consumer—and this would be the inquiry and this is why it has to stay within the scope of the Uniform Commercial Code notion—if it goes to the notion of how this thing will perform over a given period of time, then, in fact, it becomes an express guarantee related to performance. We are concerned about things that work or don't work.

Mrs. DUNCKEL. Talking about a water heater, for which the water heater has a full guarantee for a certain period. After that when the product would be normally deteriorating, then it gets a pro rata warranty.

Mr. SUTCLIFFE. That would be allowed if in fact you gave a performance guarantee, as you apparently give for a certain length of time, and the draftsman very clearly set forth the fact that this is no assurance that the water heater will continue to last for that length of time.

In other words, as long as you are clear not to conjure up and confuse the consumer to think that he has 20 years coverage rather than 1-year coverage you can give a parts warranty. That is the thrust of the bill and that is the way it is written. So it puts a premium on legal drafting where perhaps there hasn't been one before. The premium is legal drafting to avoid the incidents of the bill rather than legal drafting designed to put your manufacturer or retailer in the best possible position, vis-a-vis the consumer whose product has stopped functioning.

Mr. NICHOLS. I would be glad to comment on that.

It seems to me that one of the objections that has been raised to warranties or guarantees over the past some years is that they are too complicated and they are full of legalized language which the consumer has trouble perhaps understanding, and to which I am sympathetic.

You point out that this bill would require particularly skillful legal drafting in the example which you cite. I would say to you, sir, I don't

think this is a commendation of the legislation. I think the simpler the drafting, the more useful it is going to be to everybody.

Mr. SUTCLIFFE. Perhaps you have hit upon a point, that we have been too flexible in the approach in this legislation. What we have attempted to do is to tell the consumer if you have the words "performance guarantee" you have an insurance policy that that product will perform during the duration stated; if it fails to perform you are going to get some quick settlement and adjustments to put that product back in operation.

If you are suggesting that allowance of additional things, such as the word "warranty" will confuse the consumer—and these are determinations I think that the Federal Trade Commission would have to make as to what the expectations of the postsale expectations of the consumer are with the use of these words—then, in fact, this committee may have to reconsider whether or not the flexibility in those areas is proper.

If, in fact, the legal draftsman cannot create what he wants to create without confusing the consumer, then, perhaps we should not allow him to confuse. But what I am suggesting is there may be a way to characterize in the bold face and in spelling out in very plain and simple language what that pro rata warranty will do without conjuring up the fact that the consumer is getting protection for a period, full insurance protection for a period longer than what he is really getting.

Mr. NICHOLS. I feel compelled, sir, to make this comment, that it seems to me that what the consumer gets under the promises of the manufacturer is much more important than what tag is put on the promises, what label or what name is applied to them. Perhaps if this legislation went through——

Mr. SUTCLIFFE. I would agree with you. The substance is certainly much more important than form, but unless form and substance are related so that the consumer can understand by the tag what he is getting, then, we have not accomplished the thrust of competition in the sale of guarantees.

Mr. NICHOLS. I would say, sir——

Mr. SUTCLIFFE. In other words, how can the consumer make the choice that this is the best quality guarantee unless you have before him the information to make that determination?

Mr. NICHOLS. I think it is in the document or in the promise.

Mr. SUTCLIFFE. How can he understand that?

Mr. NICHOLS. Because he thinks these words are interchangeable, Mr. Sutcliffe. I really believe this, sir.

Mr. SUTCLIFFE. We will introduce for the record marketing studies that show the word "guarantee"—and this is why we have chosen to make the differentiation—the word "guarantee" is a much stronger word. If those marketing studies are incorrect, all I am saying to you is we will have to strengthen the bill and eliminate the use of the word "warranty" as well, except in a defined situation.

Mr. NICHOLS. If the Congress would like to legislate the meaning of these two words, my only comment would be that perhaps you will see the results, but I don't think I will live that long.

Senator Moss. We appreciate your point of view.

Maybe what it comes down to is the words have been prostituted, they have been used in differing senses by different manufacturers and different sellers to the point where the consumer is fully confused, and that is exactly what we are trying to get away from.

If you are going to have a marketplace where a consumer can shop, then, for price and quality make his decision, he has to know what certain terms mean and he has to be able to rely on them. If he thinks they mean one thing, and they turn out to mean something else, then he is a frustrated and dissatisfied consumer.

Mrs. DUNCKEL. I agree completely that the words have to be clear enough so the consumer cannot be deceived.

You probably know one of the largest companies in the industry, trying to comply with the task force, published its guarantee and calls it a promise. There is not the words "guarantee" or "warranty" in the whole thing. That one point has probably gotten more publicity than any other.

Senator Moss. It is sort of a refreshing departure. I am glad to have you mention that.

I appreciate very much having your testimony Mrs. Dunckel and Mr. Nichols. We appreciate your coming here.

We are going to be considering this matter for some time. We will welcome at any time, any comments that you care to make to us.

Mrs. DUNCKEL. We will be at your service.

(The following questions were submitted by Senator Pearson to Mrs. Dunckel:)

Question: You have referred at some length to the problems this bill would pose for the small manufacturer. Am I correct in the assumption that the Gas Appliance Manufacturers Association includes a number of small manufacturers?

Do you believe that in all cases small manufacturers could comply with the minimum requirements for a guaranty proposed in this bill simply by raising their prices, or would there be instances in which it would simply be impossible for a small manufacturer to meet the proposed minimum guaranty requirements?

Answer: Yes, Senator, the membership of the Gas Appliance Manufacturers Association includes a substantial number of small manufacturers. I do not think in every case that a small manufacturer could comply with the minimum requirements of S. 3074 merely by raising his prices. I say this because it would be virtually impossible for a small company to estimate labor costs to install replacement parts in all sections of the United States. We have long felt that dealers should bear a part of the responsibility for keeping products in repair. It is likely that a dealer makes as much on the sale of an appliance as the manufacturer does and should, therefore, be willing to assume the service labor responsibilities.

Question: Would a fair summary of your position be that you don't believe additional legislation in the area of warranties and guaranties is necessary, but that if some additional legislation were found to be necessary you would favor an approach which would simply require that the terms of any warranty or guaranty which a manufacturer may choose to give be clearly stated and that the manufacturer live up to the letter of such guaranty?

Answer: Yes. Enforcement powers are already vested in the Federal Trade Commission and, if the Senate feels that further powers are needed, legislation is pending which would give FTC the right to seek temporary injunctions in cases where the violation appears to warrant such action.

Senator Moss. Our next witness is Mr. Eugene Keeney, who is president of the American Retail Federation.

Mr. Keeney, we are glad to have you here.

STATEMENT OF EUGENE A. KEENEY, PRESIDENT, AMERICAN RETAIL FEDERATION; ACCOMPANIED BY WILLIAM K. McGRATH, MANAGER, GOVERNMENT AFFAIRS DIVISION; AND JAMES M. GOLDBERG, VICE PRESIDENT, GOVERNMENT AFFAIRS DIVISION, WASHINGTON, D.C.

Mr. KEENEY. Mr. Chairman, my name is Eugene Keeney. I am president of the American Retail Federation. And I have with me this morning Mr. James M. Goldberg, vice president of our government affairs division, and Mr. William K. McGrath, manager of our government affairs division.

Senator Moss. We welcome you gentlemen, too, this morning.

Mr. KEENEY. On behalf of the federation, I wish to thank the chairman and the committee for the opportunity to testify today.

The American Retail Federation is a national organization which, through its 50 State and 28 national retail trade association affiliates, represents more than 800,000 retail establishments of all types across the country.

As to the federation's position regarding guarantees, the federation has long advocated clear and meaningful guarantees offered on products sold to the consumer.

While guarantees are primarily the creation of the manufacturer, the federation is cognizant of the opportunity for retailers to work with manufacturers to voluntarily develop programs directed toward the improvement of guarantee practices.

For quite some time now, Mr. Chairman, retailing has engaged in comprehensive and constructive voluntary efforts along this line.

One of our major affiliates is the National Retail Merchants Association, which is a national trade association composed of almost 2,000 corporate members, operating some 16,000 retail department store and specialty store outlets throughout the country, and accounting for some $23 billion in annual sales. Many of its members are small, local specialty shops and department stores, but its membership varies from the smallest shop to the largest, multiunit national chain.

NRMA has adopted what is proving to be an effective voluntary action project consisting of education and guidance for its members and other retailers as to the legal requirements for guarantees and the most effective use of guarantees in the interest of retailers and consumer alike. The program envisions continuing coordination with manufacturers and applicable Government agencies. We have been working very closely with AHAM and GAMA who have testified today.

Although the President's Task Force on Guarantees was limited in its study to appliances, NRMA's plan is storewide in composition.

The action program contemplates as its basic features the wide circulation of a "Retailers' Guide to Guarantees" and "Retailers' Guide to Buying Appliances," which carry forward the basic concepts of the action program, which are:

1. Publicizing and explaining the requirements of the FTC Guides to Guarantees, and the manner in which industry—including retailers—can comply.
2. Suggesting the use of simplified, clear, concise and effective guarantees which protect the consumer, rather than the guarantor, and can be used as merchandising tools;

3. Recommending the elimination of unnecessary disclaimers and exceptions in guarantees, particularly legal rights that the consumer would have in the absence of disclaimer;

4. Urging retailers to investigate the reputation of manufacturers and distributors of appliances to ascertain whether they properly meet consumer servicing needs and complaints;

5. Urging retailers to be satisfied that their appliance suppliers are providing the consumer with adequate and accurate point-of-sale information and user's manuals;

6. Recommending that retailers should be certain that their sales representatives are thoroughly educated about the appliances they sell, and that their suppliers offer them necessary training programs in this connection; and

7. Suggesting that retailers investigate their supplier's repair parts facilities and availability, as well as their service networks as a preliminary to buying from them.

NRMA's two guides for retailers covering these essential features of the President's task force report have been widely circulated to thousands of retail outlets, legislators, consumer groups and consumer agencies, as well as to manufacturers and distributors.

In addition, NRMA has prepared a consumer pamphlet explaining the five basic points required by the Federal Trade Commission to appear in guarantees, the importance of reading a guarantee befor a product is purchased and the importance of recognizing guarantee limitations and disclaimers and ascertaining their meanings.

Another of our outstanding national retail affiliates, the Variety Stores Association, has been advocating clear and meaningful guarantees. Its consumer committee decided that a simple, printed guide on how to clarify guarantees would be useful, especially to smaller supplier companies.

This committee adopted the "FTC Guides Against Deceptive Advertising of Guarantees" and prepared a folder, which was reviewed prior to publication of FTC staff. This was made available to those buyers of member companies who handled appropriate lines of merchandise. Thousands of copies of the folder were given out by and in the name of retail companies, rather than the more impersonal association name.

Of course, the folder did not eliminate the problem. However, it helped to focus attention on the need for voluntary, constructive action by those who were responsible—the manufacturers. It has stimulated progress.

This is an example of how smaller store retailers selling nationally branded merchandise which do not have direct responsibility for guarantee, repair service or preparing product information can encourage improvement by vendors.

Another national retail association affiliate of the Federation, the National Home Furnishings Association, which testified yesterday, has published a six-page instructive article in its trade association magazine explaining and clarifying guarantees for its members. This information has made furniture retailers more knowledgeable in their buying in relation to guarantees—the ultimate beneficiary is the consumer who receives the meaningful guarantee.

We have been hearing of the substantial strides which industry is making in these voluntary efforts. Just last month, for instance, Secretary of Commerce Stans referred to the President's Task Force

on Guarantees and the guidance it has been giving toward voluntary improvements in guarantees and service.

The Secretary emphasized:

> Frankly, it has been complex and difficult going. But we do see significant progress. Their warranties and guarantees are now simpler, easier to read and understand. Agreements have been reached on parts availability, the meaning of "authorized" and "factory trained" service, and the location of model numbers where purchasers can read them without undue efforts.

Acordingly, in our judgment, because of the voluntary efforts of the retail industry, coupled with those efforts engaged in by manufacturers, the Federation does not feel at this time that legislation is proper or indeed required to remedy present problems in guarantees offered on goods sold to the consumer.

We concede there is much to be done, but sincere efforts, accompanied by significant progress, have been made by the manufacturing retailing industries in developing clear and conspicuous disclosure.

Senator Moss, on behalf of the American Retail Federation, we congratulate you and other members of this subcommittee, on your deep concern for the consumer. Substantively, we would like to submit our comments regarding the legislation which you have proposed, the Consumer Products Guaranty Act, S. 3074.

With respect to our critique of S. 3074, retailers have favored proper and adequate disclosure of all aspects of a guarantee given with the sale of the consumer goods. The standards as outlined in sections 3, 8, and 9 of the proposed bill would limit the use of the word guarantee to products having electrical, thermal, or mechanical components and further solely to those situations where free parts and labor are provided for a reasonable period of time.

The alternative is not to offer any guarantee at all. There is a third situation that has not been provided for in this proposal—the middle ground—that is, a guarantee as to parts only. There are many small- and medium-sized manufacturers and retailers who are willing to replace parts but because of their limited size and scope of operations could not provide the service required in this proposed legislation. Shouldn't the consumer have the choice or option to receive a parts only guarantee?

Now, with respect to the word "guarantee," for many, many years, many retailers have used the term "satisfaction guaranteed or your money back," which have become words of company policy rather than guarantees. In our interpretation of section 6 of the proposed bill, we believe it would limit the use of such expressions to products having electrical, thermal, or mechanical components.

Furthermore, the word "guarantee" has such a wide use in the marketplace that its exclusion as to soft goods, food products, and other nonelectrical, nonthermal, or nonmechanical products would cause varying degrees of consumer confusion and dissatisfaction.

The word "guarantee" may lead to confusion only where the terms of the guarantee are not clearly and conspicuously disclosed. The same is true of the word "warranty." The problem with guarantees involves disclosure of what is covered by the guarantee—not the word itself. The solution to the problem will not be found in redefining words.

With respect to consumer remedies, as expressed in sections 15 through 17 of S. 3074, they are the subject of separate legislation before

this committee, and, in our judgment, such considerations are not appropriate at this time.

Other problems that we see in S. 3074 can be detailed as follows:

1. Price competition will be limited. Whether or not to guarantee a product, and if so, the manner in which to do so, and the duration of the guarantee, and all elements of price competition. Requiring uniform guarantees will reduce competition in this important element of the price of products.

2. Smaller manufacturers and distributors could be driven from the marketplace. Many smaller manufacturers, and most importers, cannot afford on a national basis the absolute guarantee required by S. 3074. They often do not have the necessary service facilities or trained servicemen to provide both parts and labor for all their products. Thus, they could be forced to drop those guarantees which they now can provide for their products—which are often lower priced products. Thus, they will be unable to compete with the larger, more well-endowed manufacturers capable of meeting the restrictive requirements of S. 3074.

3. Similarly, smaller private brand and importing retailers who are unable to provide the necessary parts or labor required under S. 3074 will be placed at a great competitive disadvantage in relation to those few competitors, having full or more adequate service capabilities.

4. As a result, consumers will be deprived of the present broad selection of products available to them at varying prices which often relate to the scope of the guarantees provided by a wide variety of manufacturers.

Our recommendations, Mr. Chairman, are to the effect that great progress has been made in improving guarantees, the facts and information concerning this progress have been submitted to the President's Task Force on Guarantees.

President Nixon, in his October consumer message, requested that the task force reconvene to review the year's progress in this important consumer interest. It would be untimely in our judgment to support any legislation in this area until the final report of the task force has been released. Upon release of this report and an opportunity to review it, the federation would like to submit further comments and recommendations concerning the need for guarantee legislation.

Senator Moss. Thank you, Mr. Keeney. You may be sure that any additional comments you wish to make on this legislation will be gladly received by the committee after the task force has reported or at any time while the legislation remains before us and while we are considering the various provisions of the legislation.

We would hope there would be another opportunity for you to testify. We appreciate getting this statement that you have given us this morning. I am a little in doubt about some of your criticisms.

For one thing, you feel that price competition would be limited because of the guarantee-warranty situation, whereas the thrust of the bill is to create one more element of price competition.

If the manufacturer, the seller, wants to give the performance guarantee and thereby induce a sale, he has to stand behind it in certain ways. If he wants to give a parts warranty and stand behind replacement of parts and thereby induce a sale, he has another obligation. If he doesn't want to do that, if he wants to sell a service policy and thereby induce a sale, he can do that. If he wants to go to the lowest element and just sell "as is" and consequently, I suppose, be able to reduce the price and induce the sale by the lowest possible price, he can do that.

But he can compete in any way he wants, and there will be more ways of competing than exist now when we have this confusion as to

just what is involved and often times misleading inducement as to what certain things mean and failure to stand behind the inducement offer.

Mr. KEENEY. I wish I could agree with you, Mr. Chairman, but basically the proposed legislation sets Federal standards along this line and only those larger manufacturers and large retailers who have the service capabilities would have the advantage with respect to price. In our judgment, in the long run we would be squeezing the smaller manufacturers as well as the smaller retailers.

I am sure you would agree with us that we do want to protect the marketplace and have a balance as far as competition is concerned.

Senator Moss. We had the representatives of the small retailers before us, and they didn't seem to think that they were going to be at any disadvantage. I can see some substance to the argument that a large manufacturer can maintain a service repair staff and utilize its time more fully. I guess on a per-unit basis there might be some disadvantage to a very small one who could not maintain a full-scale staff if he were giving a service repair contract. This might require some sort of a cooperative arrangement among some of the smaller ones, if they needed to compete in this area of service repair contracts. But I do not see how the smaller manufacturer would be at a disadvantage on the performance guarantee. If the product didn't work, he would replace it and it would perform as he guaranteed it would perform, and on the warranty if he makes it clear what he warrants.

Mr. KEENEY. I think it boils down to the simple fact, and again I am repeating myself, but this is why we are so concerned about the bill, it seems to give such a tremendous advantage to the "bigs" and it creates an imbalance as far as the free competitive market that our country enjoys.

We feel that it will give more and more advantage to those who have these facilities and who do have the capabilities.

I would say you have introduced this legislation, Mr. Chairman, for one basic reason: More and more problems with respect to service and repair than anything else with respect to appliances.

We are going to see more of this for the simple reason that training of personnel is more difficult. So, your legislation, as you propose it and as it is presently drafted, would give so much more of a competitive advantage to those manufacturers and retailers who do have this service capability, and it would create an imbalance as far as competition is concerned.

Senator Moss. I was simply going to say this, talking about the competitive advantage of the big manufacturer, I don't see that this bill sharpens it any more, and I wonder if your argument doesn't come down to saying that the smaller one who cannot do these things can nevertheless cover up the fact that he is not going to be able to do it and sell it to the consumer who is the loser when he does not get the kind of guarantee or service that you are talking about.

Mr. KEENEY. You see, section 3 of your proposed legislation basically requires free parts and labor for a reasonable time. It doesn't say anything with respect to parts only, which is what many of the smaller manufacturers or retailers would like to offer. It excludes this. This is where they would be hurt in our judgment.

Senator Moss. First of all, the performance guarantor who chooses to give that has to guarantee "to repair, or replace if repair is not possible and cannot be timely made, all malfunctioning guaranteed components within a reasonable time without charge."

If any manufacturer doesn't care to give a guarantee of that sort, he doesn't have to abide by these standards, but if he wants to give a guarantee and thereby enhance his sales appeal, of course, he has to meet these standards.

Mr. KEENEY. You see, but he doesn't have the option of just, say, a parts-only guarantee. That is not provided in section 3. This is excluded, and this is where the smaller manufacturer-retailer can really compete. This excludes this.

Senator Moss. What about section 8? The point I am trying to make is that the bill, at least in its drafting, tries to cover all of these different options, whichever one he wants to elect, and he isn't required to give a guarantee if he doesn't want to do that.

Mr. KEENEY. Section 8 is only one sentence. I think that clarifies it further, "Nothing in this act shall prohibit the maker of a performance guarantee from warranting parts and not labor, but after the expiration of a performance guarantee period," but he has to guarantee parts and labor first.

Senator Moss. If he is a guarantor, he can continue on with the warranty. That is right, that does not state the full section there.

Mr. SUTCLIFFE. For the record, once again to clarify the way in which the bill operates, the only restriction on giving a parts warranty is you cannot invoke the "express guarantee related to performance" triggering device in the bill.

If you give a parts only warranty without invoking the express guarantee related to performance clause in the bill, then section 3 duties are not imposed.

Mr. KEENEY. Mr. Sutcliffe, you are underlining my very point. He does not have the right to give just the parts-only guarantee unless he gives the full——

Mr. SUTCLIFFE. You misunderstand. He can give a parts warranty, he has to just make very clear that this has no promise or affirmations related to the performance of that goods for the warranty period. That is all he has to do.

He can give a parts warranty. Otherwise, if you don't read the bill that way, then section 8 becomes ludicrous, because section 8 recognizes the ability to give a parts warranty after the performance guarantee. If you couldn't give a parts warranty only, you would be saying you can give after a performance guarantee a parts guarantee, but that, in turn, is a performance guarantee.

Mr. GOLDBERG. Mr. Sutcliffe, I think the point that Mr. Keeney is trying to make is, at the time of the sale, the guarantor does not have the option of giving a parts-only guarantee or warranty or whatever you want to call it.

An example: I got in the mail yesterday an advertisement for a nationally known typewriter and it was guaranteed for a period of 5 years as to parts only. The guarantee was very clear, that if there were any labor costs involved during the period of the guarantee they would have to be borne by me, the consumer.

Now, as we read S. 3074, this manufacturer would not be able to make that guarantee. He would have no options.

Mr. SUTCLIFFE. He would not be able to to make the guarantee, but he would be able to make the warranty. That is the way in which section 8 operates, that is the triggering device to tell the consumer you are in a different ball game.

Mr. KEENEY. I am afraid we interpret it differently and this is why we are concerned about the bill.

Mr. SUTCLIFFE. I think Senator Moss is suggesting there is a great deal of confusion about the way this bill is written, and that is probably the fault of the drafting. But the way in which it does operate, if you trace it very carefully through the Uniform Commercial Code, the express guarantee provisions of the bill, and then section 3, which says "express guarantee related to performance," not just express guarantee, then you can carve out a parts warranty. You cannot call it a guarantee because of section 8, a parts guarantee and do what you are suggesting the small manufacturer should be able to do.

Mr. KEENEY. From the marketplace situation we feel that competition will be lessened, and this is something I am sure you would not want.

Mr. SUTCLIFFE. Let me, if I may, address my remarks to that question. That is based upon the assumption, is it not, that at the present time, there is no possible way to reduce service costs? If the small manufacturer wants to compete, the very simple way for him to compete is to build a product reliably so that if he holds himself out fully, his exposure is minimal and he can arrange for servicing by some other party if he doesn't have his own servicing outlets, or the small manufacturer can do this.

Or the small manufacturer can do this. The small manufacturer can go to a large retailer who has his own servicing operations and say, "Mr. Retailer, I have a product that won't break down for 2 years. You can market that product at a competitive price, and not have to use your service capability and have the expense of that. Therefore, why don't you buy your products from me and sell them at a competitive price and continue to give your unconditional—not unconditional but what under this bill would be a performance guarantee?"

In other words, it does eliminate competition as to competition not related to quality. But it can be a very strong stimulous to competition related to quality.

Mr. KEENEY. The basic nub of our concern is the service end, and section 3——

Mr. SUTCLIFFE. If a product doesn't break down during the warranty period, the manufacturer never has to worry about service, isn't that correct?

Mr. KEENEY. There is no question about that.

Senator Moss. Is the National Appliance and Radio-TV Dealers Association an affiliate of your organization?

Mr. KEENEY. Yes.

Senator Moss. We have here a copy of a letter from Mr. Jules Steinberg, the executive vice president, in which he seems to argue very strongly for the requirement of a full guarantee wording.

It seems to me that this letter pointing out the virtues of the bill is a rather strong endorsement of it. I will read just one paragraph.

"We firmly believe that the best interests of the consumers of this Nation can be served by compelling all of those who offer guarantees, to make such an offer in a simple, declarative statement. We propose that these guarantees be worded somewhat along the following lines: 'If within (days, months, years) a part or parts of this item should fail to function properly, we guarantee to either repair or replace them at no charge.' "

Then he goes on to say, "The heart of our argument lies in the fact that whether it is the supplier's fault or the consumer's indifference, most people do not thoroughly read these guaranties, and their attention naturally falls on the part of the guarantee which has the longest period to run.

"Apparently, they fail to note the shorter all-inclusive period, and then get quite disturbed when they discover that the entire guarantee is not for that period."

I think that what Mr. Steinberg has put in this letter indicates the problem that we have been trying to direct our attention to, in this legislation before us. I will insert this in the record at this point, so it clarifies what we are talking about.

(The document referred to follows.)

NATIONAL APPLIANCE & RADIO–TV DEALERS ASSOCIATION,
Chicago, Ill., November 12, 1969.

(Thank you for the analysis of S. 3074).

Mr. WILLIAM K. MCGRATH,
Manager, Government Affairs Division, American Retail Federation, Washington, D.C.

DEAR MR. MCGRATH: Our Association is keenly interested in the progress of this legislation which was introduced by Senators Magnuson and Moss. However, our position on the subject of warranties and guarantees remains exactly the same as it was four years ago when we first started to explain this view to your Organization, The Federal Trade Commission and other government agencies.

We firmly believe that the best interests of the consumers of this nation can be served by compelling all of those who offer guarantees to make such an offer in a simple, declarative statement. We propose that these guarantees be worded somewhat along the following lines: "If within (days, months, years) a part or parts of this item should fail to function properly, we guarantee to either repair or replace them at no charge".

Exceptions to that last, such as an extended warranty on parts only and not including labor, could be added following that first statement.

The heart of our argument lies in the fact that whether it is the supplier's fault or the consumer's indifference most people do not thoroughly read these guarantees, and their attention naturally falls on that part of the guarantee which has the longest period to run. Apparently, they fail to note the shorter all-inclusive period, and then get quite disturbed when they discover that the entire guarantee is not for that period. Of course, their reading ability is not helped one bit by the fact that suppliers promote the longer period in large type and reserve smaller type for the shorter periods or exclusions to the guarantee.

We feel that, should Congress compel all guarantees to begin with our proposed declarative sentence, much of this misunderstanding can be avoided. We also believe that, no matter how reputable the manufacturer of the product, the consumer holds the retailer responsible for the fulfillment of the guarantee, and so his voice should carry greater weight in formulating any guarantee policy.

It strikes us, largely because we have never heard a rational reason as to why our proposal will not work, that what we are suggesting is not dramatic enough to be adopted by the policymakers. In short: We have come to the conclusion that if it doesn't make headlines it won't be adopted.

Nevertheless, I did want you to know how we felt about the matter.

Sincerely,

JULES STEINBERG,
Executive Vice President.

Senator Moss. I certainly appreciate your testimony, Mr. Keeney, and I hope that you will indeed continue to be in touch with us and give us the benefit of your advice and comment as we consider this legislation.

Some of your members must already be offering guarantees comparable to S. 3074's performance guarantee and others must be offering full protection, but not providing it because of servicing problems.

So, this bill will try to separate the wheat from the chaff, and we hope it does; and I imagine there are some strong forces supporting this bill, such as the one I quoted from.

We are glad you brought Mr. Goldberg and Mr. McGrath with you today, and thank you very much.

Mr. KEENEY. It was our pleasure being with you.

(The following questions were submitted by Senator Pearson to Mr. Keeney:)

Question. Mr. Keeney, it is your view that the retailer must bear considerable responsibility for assuring consumer satisfaction with the products which he, the retailer, and not the manufacturer sells directly to the consumer?

Answer. The retailer must of course bear considerable responsibility for assuring customer satisfaction for the products which he sells because the customer looks first to the retailer. Whether the product is a nationally-advertised one, or bears the retailer's private label, when something happens affecting its performance or utility, the customer returns first to the retailer. Where a product guarantee is involved, this customer dependence on retailer performance often puts the retailer in the position where, to maintain customer satisfaction, he must repair or replace a defective part even though it is not covered by the guarantee, or the guarantee coverage is unclear. This is why the Federation supports the principle that all terms and conditions of guarantees be clearly and simply disclosed.

Question. Have a substantial number of your members made efforts to induce manufacturers whose products they sell to improve or clarify the terms of the warranties offered with such products?

Answer. Many Federation members have made efforts to induce manufacturers to improve or clarify the terms of their guarantees. The efforts of three national retail trade associations affiliated with the Federation—the National Home Furnishings Association the National Retail Merchants Association and the Variety Stores Association—are detailed in our prepared testimony.

Question. You have spoken at length concerning the efforts made by your Association to educate your members and members of the consuming public concerning the FTC's guidelines for warranties. Is it your view that these guidelines if vigorously enforced by an FTC armed with preliminary injunctive powers would be sufficient to cope with the warranty abuses at which this bill is directed?

Answer. The home appliance industry has been living with the FTC's Guides Against Deceptive Advertising of Guarantees for nearly a decade. It is our belief that these guides form the basis for coping with the guarantee problem; that is, they set the ground rules for clear and complete disclosure of the terms and conditions of guarantees. If guarantees are not clearly and accurately disclosed, then the FTC, armed with authority to seek preliminary injunctions in court, should move to halt these practices. We support legislation giving the FTC authority to seek injunctions, along the lines of S. 3065 passed in 1968 by the Senate.

Senator Moss. We will hear from Mr. J. Edward Day, special counsel for the Electronics Industries Association. We are pleased to have you before us.

STATEMENT OF J. EDWARD DAY, SPECIAL COUNSEL, CONSUMER PRODUCTS DIVISION, ELECTRONIC INDUSTRIES ASSOCIATION; ACCOMPANIED BY JACK WAYMAN, STAFF VICE PRESIDENT, CONSUMER PRODUCTS DIVISION, ELECTRONIC INDUSTRIES ASSOCIATION

Mr. DAY. I have with me, Mr. Chairman, Mr. Jack Wayman, who is the staff vice president of the Consumer Products Division of the Electronics Industries Association.

Senator MOSS. You are welcome Mr. Wayman. We are glad you are here.

Mr. DAY. My name is J. Edward Day. I am special counsel for the consumer products division. We are here representing the great majority of manufacturers of consumer electronic products consisting of television, radios, phonographs, and tape equipment.

We, of course, ask that our statement be included in full in the record. I will say, Mr. Chairman, that at the time we prepared our statement we did not have the benefit of the explanations of the bill which have come out yesterday and today. Perhaps some of the comments in our prepared statement are related to interpretations of the bill which we had which it turns out are not the intention of yourself and of the staff; so, to the extent those comments may be outdated, we will withdraw from those.

We do, of course, realize that once a pattern of legislation begins on a new subject like this, it is unpredictable, regardless of what the originating sponsors and subcommittee say, as to what will eventually happen.

I think many people thought they knew what was going to be in the tax reform bill a year ago and were rather surprised where it finally ended up on some big points. When a bill gets over into the other body or into floor amendments, some things might turn out to be much different.

I will summarize very briefly some of our main points.

Senator MOSS. Your full statement will be in the record after your oral testimony and you may go ahead and summarize the points you would like to emphasize.

Mr. DAY. As we read the bill, the main thrust is to change the field of product warranties by taking away from the manufacturer some of his discretion.

We had thought that the bill as written took away a tremendous amount of his discretion as to where he strikes the balance between liberality of warranty-guarantee provisions on the one hand and maintaining a low price on the other.

Instead of leaving at least the major part of these decisions in the hands of each separate manufacturer, there would be a Federal Government imposed decision—and we do believe we are correct in this interpretation—that whenever a guarantee is given, even indirectly or by implication, it must be for an unspecified but long period of time, and it must include labor. We mention that "long period of time" in there—and that is a major area of concern with us about the bill—because in an earlier draft that was discussed of this legislation there was a reference to 2 years, and that matter of how long that period of time would be is a matter of intense concern.

Warranty legislation has traditionally been a State responsibility. It is not a hodgepodge on the State level. The Uniform Commercial Code has been adopted in all but one of the 50 States, and we suggest that if any change is required in the extent of warranty protection, it can better be handled by amending the Uniform Commercial Code which is up to date, which is modern, which does reflect current developments.

That code provides the general rules for commercial transactions, including the standards for express and implied warranties, and the matter could best be handled there.

In the industry which we are speaking for, Mr. Chairman, warranty provisions vary, and different companies are continually and currently offering various warranty provisions. This is because the warranty is a major competitive aspect of this business. Often, for example, a warranty for a television set as a whole is a parts warranty lasting for a period of 90 days up to 1 year. Often there is a separate warranty for the picture tube which may run for as long as 2 or 3 years.

Contrary to what was read from Mr. Steinberg's letter, we feel that the distinction between those lengths of time, which is a common pattern in television warranties, is made clear in the warranty document. It isn't surprising that some people may not read it, but it is stated clearly that the warranty for the tube is for a different period than the warranty for the parts as a whole.

Many consumer electronic companies do offer labor in their warranties, but this is almost always limited to 90 days in the case of television receivers. I don't know of any company at the present time that is going longer than that on labor furnished by the manufacturer.

There is experimentation going on. There are different companies trying different things, and some companies are trying something in one part of the country to see if it will work for the country as a whole.

We have touched in our statement, Mr. Chairman, on the point that has been discussed here by some of the witnesses and by yourself and Mr. Sutcliffe, as to the possible impact of certain types of provisions in the bill on guarantees as they effect small versus large companies, and as it might affect independent operators in the repair field as against operators who are working for company controlled service organizations.

It has to be borne in mind in connection with this proposal that if a lengthy period of labor should be provided and to the extent companies decide to adopt such a provision, they will very likely be motivated to set up their own service organizations where they can afford to do so. This would be done, we believe, in an effort to control the repair costs, because one can see the obvious problem of agreeing to paying a substantial amount of labor costs and leaving it wide open as to what is charged by the particular independent repairman who goes out to perform those services.

An effort to provide that kind of control will motivate companies to set up their own service organizations, and we believe that would be more feasible for the larger companies, we think it will be more feasible for the manufacturers who are selling in a national market, and in this business we do have some manufacturers who sell largely on a regional basis.

The matter of warranty protection as has been discussed here, particularly if it involved labor for an extended period of time, is bound to be a major factor in the costs of the manufacturer, and the price of the product to the consumer.

So we have tried to cover in our statement what we think would probably happen if this bill did become law as we had seen it and as we interpreted it at the time without the benefit of the interpretations that would come out here.

We do feel many manufacturers would decide to take steps to avoid anything in the way of what is described here as a performance guarantee—to avoid anything that would involve them in providing labor. We feel that would not only cut down on the experimentation and the efforts that are going on to provide service, but that it would also result in the customer many times being told less about the set when he buys it. There would be a temptation to confine statements about the set to meaningless generalizations.

We, of course, have the existing problems in this industry of tight money, inflation, and competition for the discretionary dollar of the consumer, and we feel anything that tends to increase the price is going to be a serious problem for the industry because of the fact that no one has to buy this type of a product, it is competing with all other things that are trying to get the discretionary dollar, and we want to be able to keep up our end in that race.

We have outlined in our statement, certain places where we feel that the burdens on the manufacturer under the language of the bill are unfairly onerous in the burdens of proof that are imposed, such as stating that in fulfilling his duties the guarantor may impose no duty on the consumer except the duty of notification "unless the maker can show that such a duty is reasonable."

Then we have commented on the language about failure to provide reasonable and unnecessary maintenance. We have commented on the point that in the event of a lawsuit as referred to in the bill, if the consumer prevails he can get his attorney fees, but if the case is completely frivolous and the warrantor prevails, he must pay his own expenses.

We don't as a practice at the present time use the words "performance guaranty" in the consumer electronics industry. Instead there are warranties that relate to defects in materials or in workmanship and if such a defect is present, the warranty provisions can be invoked. Through this bill a new concept would come in to our industry as far as the practice and the terminology on warranties is concerned.

We are, of course, concerned with what has been touched on here earlier, and that is that if the choices that a manufacturer may wish to preserve have to be spelled out with new and with carefully legalistic language, it only adds to the problem that Mr. Steinberg's letter referred to, of people looking at a warranty provision at a glance, and getting a false impression as to what it does provide even though the words are clear. We think there should be an effort to stay away from requirements that require longer and more complicated warranties because even though they are clearer to the understanding reader, there are many people that simply do not read that kind of language and do not analyze it to get a clear meaning.

So we hope these options can be preserved without the necessity for this type of legalistic language.

In the area of small business, we feel that to the extent there is a setting up of more private service organizations by the manufacturers, of their own affiliated or owned service organizations, that this tends to handicap the independent local repair shop who may be a small business operating on his own.

So we feel that is another place where you may have the conflict between the small and the big.

We will have further comments, Mr. Chairman, which we hope you will wish to receive from us when this part of the hearing is over and when we have had further opportunity to study the explanations of the bill which have been brought out here, and I would hope that if it is feasible that the hearings of these three days will be available in print before you complete the rest of your hearings, so that we can have the benefit of your comments and those of others as we develop our further thoughts and suggestions.

Thank you.

Senator Moss. Thank you, Mr. Day. We will welcome your further comments on this bill as we have further hearings on it and after we have had the task force report. I hope we can have our testimony of this first series of hearings printed up, because I recognize that it should be studied by all who are affected by this bill, and that is nearly everybody, I guess. We are all consumers. But those who deal with consumers and who have the immediate practical problem of conforming to a new statute, should it be passed, certainly would want to examine it very carefully.

The problem we have is one that your organization is certainly aware of, and many others, and that is, that competition in the marketplace has been obscured and fuzzed as it were by this problem of warranties and guarantees and other promises made which when unfulfilled, whether in absolute compliance with the language or whether from misconception of the consumer, has caused a great deal of disappointment and sometimes a very serious problem of misinformation.

What we would hope to do by the bill is really to sharpen the competition in areas of true produce reliability so that then the free market would function as it should with first reliability and quality of product and price. For the consumer, fully informed, to make his choice without misconception and in making the choice would tend to choose the better product. Of course, that is the way we get the good free enterprise market.

In getting this, we can't build the thicket more dense than it is now for the consumer, and we are hoping to lessen the misconception that exists and make it very apparent what the consumer can get for his consumer dollar.

So, the question of a performance guarantee, whether that is a new term and whether that can be established, is really basic with these other options open and available. I think all of that is inherent in the legislation.

I don't know that I have specific questions. Maybe my counsel, Mr. Sutcliffe, might have a question or two, though.

Mr. Sutcliffe. I only wanted to comment, again for clarification of the record, on the comment where you say "an unspecified long period

of time" is imposed by this bill. I think that understanding probably arises because of section 8 of the bill which says:

> Nothing shall prohibit the maker of a performance guarantee from warranting parts and not labor after the expiration of a performance guarantee period if that period is of reasonable duration.

That is the only place in the bill that imposes any time limits at all on the duration of the performance guarantee. That is only to prevent the 1-day performance guarantee and the 5-year parts only warranty that may confuse the consumer. Any other regulation of the performance guarantee would have to be left to the discretion of the Federal Trade Commission as to what was reasonable and what was not reasonable. But the bill itself, when you trigger the performance guarantee mechanism, only requires that you state the duration of the guarantee, and this gives the manufacturer all the flexibility in the world to factor in his service cost and parts replacement cost and determine what length of time he is willing to insure the product. By insuring it he is therefore saying: "I don't think it will break down; if it does, the incidence is such percentage, and I can handle that within the framework of the cost that I am attaching to my product."

That is the way the bill is intended to function.

Mr. DAY. That is great reassurance and a major correction of what my impression was that this might mean.

As I say, one of our big concerns was whether there might be a rather long period required for guarantees which would include labor.

Mr. SUTCLIFFE. I would like to introduce for the record something that was discussed yesterday but would probably be something you would like to comment upon. It is the results of combining the labor with the parts protection for the 90-day period. One company in a testing experience reported to us, and we would like confirmation if we could, said that an inboarded labor warranty test reduced complaint letters by 90 percent. This is not to say that the committee necessarily feels that inboarded warranties are what will reduce consumer complaints or relieve the marketplace. I think this is something that the free-market system will have to determine, whether service contracts or whether the inboarded situation is the most appropriate route, but at least I think this is an indication of the way in which the apparent expectations of the consumers were met when guarantees included the labor cost during a 90-day period which is certainly not the most lengthy period of time we have in some of our warranties.

Would you care to comment on that?

Mr. DAY. I do know that that test is going on principally on the west coast and also in one location in the Midwest, and it is part of this pattern I described of experimentation and variety of approaches, and that company is still not at the point of deciding whether the result of that experiment indicates that it ought to be extended nationally. I don't know what the figure would be on fewer complaints. Part of that would depend on how many of those dealers that happen to be involved were already giving service as a dealer choice. Some of them might in the way things work have been providing the service for the 90 days with the dealer paying it out of his markup. If quite a few of the dealers were already doing it, this 90-percent

figure would seem rather high, but on the other hand, it may be a completely valid estimate.

Also, that company has an affiliated service organization of its own. They are in this category that I spoke of. So they are somewhat different than some of the other companies.

Senator Moss. We appreciate your coming, Mr. Day, and Mr. Wayman. If we have additional questions, I'm sure we could submit them to you in writing and you would be glad to respond, and we might make them part of the record.

As we read it, there may be things that occur to us that we would like to get your point of view on.

Thank you very much.

(The full statement follows:)

STATEMENT OF J. EDWARD DAY, SPECIAL COUNSEL, CONSUMER PRODUCTS DIVISION, ELECTRONIC INDUSTRIES ASSOCIATION, REPRESENTING CONSUMER ELECTRONIC MANUFACTURERS

Mr. Chairman, members of the Subcommittee, and staff.

My name is J. Edward Day. I am special counsel for the Consumer Products Division of the Electronic Industries Association and I appear here representing the great majority of manufacturers of consumer electronic products consisting of television, radios, phonograph and tape equipment.

We appreciate the desire of the Subcommittee to lend its assistance to grappling with some of the problems in the area of product warranties.

While we feel that our record on warranties is good, we favor without reservation guidelines designed to assure that warranties are in clear language, that they are not too involved and legalistic, and that they are carried out fully and fairly. The Federal Trade Commission already has a considerable amount of authority in this area, and to the extent they do this obviates the need for duplicating legislation. Also, we are now awaiting the report of the reactivated Task Force on Appliances Warranties and Service. The Task Force made several recommendations in their report on January 8, 1969. One proposal was that progress in the warranty field be reviewed one year after the report was completed. In his October 30, 1969 message on consumerism, President Nixon stated that he was reactivating the Task Force to determine whether or not legislation is necessary. We believe that the Task Force will find that industry has made substantial progress and that legislation is not necessary.

For these reasons, and because of the factors I will discuss in the rest of my testimony, we strongly oppose passage of S. 3074.

As we read S. 3074, the main thrust of the bill is to revolutionize the whole field of product warranties by taking away from the manufacturer his present right to make his own decision on where to strike the balance between liberality of warranty provisions, on the one hand, and maintaining a low price for the product, on the other. Instead of placing this decision in the hands of each separate manufacturer there would be a federal government imposed decision that whenever a guaranty is given, even indirectly or by implication, it must be for an unspecified but long period of time and it must include labor. Warranty legislation has traditionally been a state responsibility. The Uniform Commercial Code has been adopted in all but one of the 50 states. If any change is required in the extent of warranty protection it should be handled by amending the Uniform Commercial Code. The UCC provides the general rules for commercial transactions, including the standards for express and implied warranties, and it would be appropriate to make legislative changes in this fashion.

Warranty provisions vary in our industry and different companies are continually offering new warranty provisions. This is because the warranty is a major competitive aspect of this business. Often, for example, a warranty for a television set as a whole is a parts warranty lasting for a period from ninety days up to one year. Often there is a separate warranty for the picture tube which may run for as long as two or three years. Many consumer electronic companies offer labor in their warranties but this is almost always limited on television receivers to ninety days.

We submit that the increase in warranty protection will hit some industries and companies much harder than others. Small businesses may find it more difficult to provide the extensive repair services that the proposed legislation would require. Some businesses have well organized repair facilities run by the manufacturer while other companies may depend upon their distributors or retailers for repair services. In some industries there are relatively few dealers that sell the product while in other industries there are many thousands of dealers. The bill makes no allowance for the variety of situations under which products are sold and repairs are made and, yet, the bill covers many thousands of different types of products.

The main goal in our industry is to produce a safe and well made product, available at a price which will be attractive to the customer.

Providing an overly liberal warranty shoots up the price and makes the product less competitive in the contest for the consumer dollar. Providing warranty protection is a major expense for a manufacturer. One of the major automobile makers recently announced it was sharply curtailing its warranty protection on 1970 cars. It was estimated that the curtailment might save this company $50 in the long run per car. Any legislation which forces manufacturers to increase their warranty protection and to provide labor without charge is bound to increase the costs of the manufacturer. The end result will be substantial increases in the price that the consumer pays for the product. If, under the bill, the manufacturer can avoid giving a performance guaranty by not making any express guaranties, he will be tempted to do so. This might very well leave the consumer in a worse position than he would be without this legislation.

You may ask, what do we think would happen in the consumer electronics industry if this bill became law. We speculate that some manufacturers might decide to take steps to avoid offering any warranties at all. Many might conclude that this would be the only practical out since long-term warranties, including the cost of labor, would add far too much to the price of the product. Particularly in the current posture of this industry, where sales are down, it simply would not be feasible to make across-the-board price increases to pay for these radically expanded warranties. No one has to buy this kind of product. The consumer electronics manufacturers are scrambling in competition with many other industries for the consumer's hard pressed discretionary dollar. Even those consumers who would keep buying if the prices go up will be motivated to buy the smaller, less expensive models.

Not only will this bill, as we see it working in this industry, hurt the consumer by the efforts which might be made to avoid warranty protection entirely, but in addition, such efforts to avoid creating a warranty will inevitably result in the customer being told less about the set when he buys it. Many manufacturers would, as we see it, be confined to stating meaningless generalizations.

You may ask—why not offer everyone a service contract But how is the customer better off as a result of a government decision to bring that about? Service contracts can be and sometimes are offered today. It is a proper and valuable competitive decision area.

However, every time you reduce the choices and the variations and the chance for trying to offer something different, you tend to squeeze out the small operators, the less heavily financed operators, the less known operators, not only among manufacturers but among retailers. Many retailers in a competitive field such as this are able to stay in business by offering less service and appealing to those customers who prefer to buy on that basis at a lower price.

Tight money and inflation and all the rest are doing enough already to put a damper on business. Our companies do not have a large amount of unused money somewhere that will make it possible for them to offer a lot more service without having it cost the customers an equivalent amount.

I would now like to move from the objections we have to the general concepts expressed in the bill to our concerns about the specific provisions.

A number of manufacturers have concluded that the consumer is better off if the responsibility for fulfilling the warranty requirements is left with the dealer. This is particularly true with regard to providing labor. If the local dealer can simply transmit all his labor costs for warranty work back to the manufacturer, he has no incentive to do a good job at the time the set is installed or repaired.

If the dealer is responsible for fulfilling the warranty requirements and he improperly installs or repairs the set, the cost will come out of his own pocket.

Under these circumstances, the dealer is motivated to improve his performance very quickly. The consumer benefits by having a better operating product at a lower cost.

Another side of this same problem is that if the dealer can transmit the warranty costs back to the manufacturer, he might "push" sales and give less consideration to service. If the dealer is responsible for the costs, he will place a much stronger emphasis on service. The consumer, the dealer and the manufacturer all benefit by such a policy.

As I mentioned earlier, S. 3074 would cover a wide variety of warrantors and products. Many indefinite phrases in the bill, such as "unreasonable duty upon the owner," "magnitude of the economic burden," "magnitude of the trouble and annoyance," "for a reasonable time," would have to be applied to an unpredictable cross-section of products and circumstances. Neither the manufacturer nor the consumer could have a proper degree of certainty as to what his responsibilities and/or rights would be under the bill.

Even the Federal Trade Commission, acting under authority outlined in Section 15, would be of little practical help. The Commission would be faced with a monumental task when it tried to establish the required trade regulation rules for a wide variety of products and distribution patterns. Ultimately, definitions would have to be arrived at by the courts.

The burdens of proof imposed by the bill are, we submit, unfairly onerous. For example, Section 3 states that in fulfilling his duties the warrantor may impose no duty on the consumer except the duty of notification "unless the *maker can show* that such a duty is reasonable." The criteria to be followed in determining whether or not an additional duty is reasonable are imprecise, and there is no clear indication as to how the burden of proof could be met, as a practical matter, by the manufacturer.

The same consideration applies to Section 4. How could the warrantor show that a malfunction was caused by the consumer's "failure to provide reasonable and necessary maintenance" when he does not know whether the consumer fulfilled his maintenance requirements?

A third example of an unrealistic burden imposed on the warrantor is found in Section 19. A consumer, if he prevails in his lawsuit, may recover his costs and expenses, including attorneys' fees. On the other hand, if the warrantor prevails he must pay his own expenses—even if the consumer's suit is frivolous.

These burdens are doubly unjustified when we realize that the manufacturers of consumer electronics products have been striving to further improve their warranties. Warranties have been worded more clearly. Warranty periods have frequently been lengthened. More and more warranties, as a part of the competitive process, have been including the cost of labor for a limited period.

This brings us back to the subject of costs. Section 3 of the bill runs the risk of possibly misleading the consumer in that this Section provides that repairs or replacement are to be accomplished "without charge" to the consumer. But someone must pay for the warranty work. If the consumer does not pay for it at the time the work is performed, he certainly must pay an amount to cover it as part of the price of the set.

The terminology used in the bill will ultimately result in a great deal of confusion. I touched on this subject earlier when I discussed how difficult it will be to define some terms. Sections 5 and 6 provide a different definitional problem.

Section 5 establishes a "performance guaranty." Does this mean that if the salesman says that the alarm on the clock radio will ring loudly he has created an express warranty? If so, how loud must the ring be in order to meet the "performance guaranty." What I am suggesting is that "performance guaranty" is a highly uncertain term. It is not currently used in the consumer electronics industry. Instead, warranties relate to defects in materials or in workmanship. If such a defect is present, warranty provisions apply and can be invoked.

As you have no doubt observed, I have been making extensive use of the term "warranty." S. 3074 refers to "guaranties." In fact, Section 6 states that one year after passage of the bill the term "guaranty" shall not be used with regard to consumer products" unless such promise or affirmation relates to the performance of consumer products which have electrical, mechanical, or thermal components." We in the consumer electronics field have used the term "warranty" for many years. Now we are being told to change our practice for no clear reason. At the same time, a manufacturer who may "guarantee" his carpet against wear would be violating the law. While I am certain that Section 6 was intended to simplify matters for the consumer, its ultimate effect would be increased confusion and uncertainty.

One of the major concerns about the wording of some warranties offered today is that it is overly lengthy and difficult to understand. The longer and more legalistic a warranty provision is the less likely the consumer is to read it. Section 5 of the bill would seem to provide no relief on this point since it outlines eight types of information which must be included in the warranty.

Also, the third item of information—the cost of required maintenance when it must be performed by a designated representative of the warrantor—is impossible to provide in precise terms. One factor is geographic location. Prices vary markedly in different parts of the country. If a consumer buys a product somewhere in Appalachia and then moves to New York City, he will probably find that the cost of such maintenance has greatly increased. The passage of time could also make obsolete a maintenance cost stated in the warranty. This would be particularly true with regard to longer term warranties. The manufacturer would have to cover himself in the price for these variable and unpredictable cost increase items.

Section 9 indicates that a manufacturer, distributor, or retailer is not required to give a warranty. They may give a service contract instead. They may give neither. As I stated earlier, some may decide, as a result of this bill, not to make a warranty. Some of these companies may provide a service contract, while others may provide neither a warranty nor a service contract. In either of these latter two situations the consumer is worse off than he is under warranties which are currently being offered or which might be offered in the future.

Another problem exists for those manufacturers who offer a parts warranty for a period of time, and then, when it expires, offer a service contract. The wording of Section 9 raises the question as to whether this practice could be continued.

During recent years many people, including Members of Congress, have expressed concern about how the large companies get still larger while the small business has an increasingly tough battle for survival. Section 10 of the bill would seem to encourage this trend. It permits a warrantor to designate a representative to perform his warranty obligations, but it continues to hold the warrantor liable. The ultimate result of this is that many manufacturers of consumer electronics products who could, as a practical matter, do so, would establish their own repair facilities. The owners of the local independent repair shops will suffer as a result.

In spite of the fact that Section 11 says that State law is not preempted by this bill, we hardly see how this can be true. Warranties are treated with extensively in the Uniform Commercial Code. Now S. 3074 would provide a new set of rules. If this bill does not preempt the state law, we will be in for a period of confusion while warrantors tried to comply with both sets of laws. S. 3074 would, in fact, preempt state law. We will be replacing a known and accepted body of law for something which is uncertain and untried.

Section 17 permits a class action in the event there is a breach of warranty. The various provisions of S. 3074 would seem to preclude practical use of such actions. It would be difficult, if not impossible, to assemble a "class." Each situation would require an independent determination as to whether or not there was a breach and whether or not the consumer provided the reasonable and necessary maintenance.

Section 17 also provides that an owner of a product or a class of owners may sue "for any breach of a performance guaranty." Section 18 states that the guarantor shall be liable to the owner for "all reasonable expenses" incurred by the owner as a result of any breach of a performance guaranty. Under Section 19, if any owner prevails in a lawsuit, he can also collect costs and expenses, including attorneys' fees. These provisions apparently create a federal cause of action for all kinds of product liability cases, including suits for personal injuries.

These far-reaching provisions are wholly unnecessary if state law is not preempted by this bill. The Uniform Commercial Code presently provides liberal remedies for breach of warranty. Under Section 2–715 of the Uniform Commercial Code, the purchaser of a product may recover incidental or consequential damages resulting from any breach of warranty. Section 1–106(a) of the Uniform Commercial Code states that the remedies provided "shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed . . ." Thus, as I have stated before, there is no need for federal legislation to supplant the effective remedies for breach of warranty provided by the Uniform Commercial Code.

In summary, the manufacturers of consumer electronics products are opposed to passage of the bill. There are both state and federal procedures available to deal with any problem which may exist. Meanwhile, the consumer electronics manufacturers have been working hard to improve their warranties and will continue these efforts in the future.

(The following questions were submitted by Senator Pearson to Mr. Day:)

Question. I take your view to be that a manufacturer should be free to offer the type of guaranty which he chooses and which is appropriate to his particular circumstances, so long as the terms of such guaranty are clearly and fairly stated.

Would you prefer legislation incorporating such a requirement to one which limits the manufacturer's prerogatives, as does the present bill, even though such legislation would of necessity place the burden upon a manufacturer whose guaranty was challenged of justifying it under those general standards?

Isn't this essentially the situation which prevails today under Section 5 of the Federal Trade Commission Act and the guidelines with respect to the advertising of guaranties established by that Commission?

Answer. Yes. Senator, we urge that the manufacturer be able to retain his present choices as to the actual terms of warranties and guaranties, provided that he states clearly and without too much complicated language just exactly what he is promising. We do not think legislation is needed to carry this out because, as you say, the Federal Trade Commission already has guidelines and authority to regulate as to the fairness of advertising of guaranties. We would expect the manufacturer to have the responsibility of showing that his warranty-guaranty language was clear and not deceptive.

Question. To the extent that the proposed minimum requirements for a performance guaranty under this bill might be set so high as to force a small manufacturer to resort to sale of his product "as is", would not the result be detrimental both to competition within the industry and to the consumer whose range of selection would be thereby limited?

Answer. We do indeed feel that onerous requirements as to the actual terms of a warranty-guaranty could well force manufacturers—and particularly small manufacturers—to avoid giving any warranties or guaranties at all. As we read the bill, if any warranty or guaranty is given it must include labor and we are concerned that this provision for labor might be intended to be for an extended period such as one or two years. If such a mandatory requirement came about, we can see the larger manufacturers being motivated to set up their own servicing departments or affiliates, since it is important, if labor is to be included, that the manufacturer not give a blank check to repairmen who are not under his control, but that he have some way to keep repair costs within bounds. We can see this hurting small business in two ways: (1) it will be difficult for small manufacturers or for regional manufacturers to set up their own service departments or affiliates; (2) the setting up of manufacturer controlled service departments or affiliates could well provide damaging competition with the small independent service and repair companies and operators.

Subsequent to the beginning of the hearings, we have heard it said that the bill is not intended to prevent a manufacturer from giving a "parts warranty" only, with no agreement to furnish labor. We have not so read the bill, but are glad to hear that there is no intention from the sponsors and draftsmen to require that whenever a warranty of any description is given it must include labor for an extended period of time. However, even if parts warranties alone are to be permitted, we feel that manufacturers should continue, as they do now, to have the option to provide labor but without being under mandatory requirements as to the length of time for which labor is to be included. A requirement that labor, if it is furnished, must be provided for a "reasonable" period of time, creates uncertainty and could well motivate manufacturers to stay away from providing labor for any period at all. At the present time, some television manufacturers, and many dealers in that field, are providing labor for 90 days, in some instances on a regional experimental basis, and we think the continuation of this variety of approaches is highly constructive in this competitive business.

Senator Moss. Our concluding witness will be Mr. Thomas A. Rothwell, special consultant to the National Small Business Association, New York City. I'm glad to have you, Mr. Rothwell.

STATEMENT OF THOMAS A. ROTHWELL, SPECIAL CONSULTANT TO THE NATIONAL SMALL BUSINESS ASSOCIATION; ACCOMPANIED BY JOHN LEWIS, EXECUTIVE VICE PRESIDENT OF THE NATIONAL SMALL BUSINESS ASSOCIATION, NEW YORK, N.Y.

Mr. ROTHWELL. May I introduce my colleague, Mr. John Lewis, who is the executive vice president of the National Small Business Association.

Senator MOSS. Glad to have you, Mr. Lewis.

Mr. ROTHWELL. Mr. Chairman, my name is Thomas A. Rothwell. I am a lawyer practicing in New York City. I am appearing here today on behalf of the National Small Business Association, a national organization with some 35,000 members and over 500 different industry segments.

I want to express my sincere appreciation at the honor of being permitted to appear and testify before this committee. Initially, we would also like to confirm and restate something that was said to the committee yesterday by Mrs. Virginia Knauer, with the intent of full endorsement and approval.

In Mrs. Knauer's statement submitted for the record there appears the following:

> There is fairly general agreement that assuring performance of the guaranty, both in letter and spirit, is the greatest challenge in this whole issue.

We concur heartily in that statement of position and say amen thereto.

Incidentally, we have submitted a brief statement of position on this measure, and I would ask the chairman for permission to include that statement in the record.

Senator MOSS. It will be included in full, together with the appendix thereto, from the Wall Street Journal, at the end of your testimony.

Mr. ROTHWELL. I would like to just briefly summarize the testimony in a very few moments, trying to emphasize some of the points that have not been covered by prior witnesses.

One of the points is that the scope and coverage of this measure, Senator, seems to us to be rather incongruous, that it relates to and covers products with thermal, electrical, and mechanical components.

Now, I think we can all fairly perceive the intent here, that consumer complaints with reference to guaranties and the performance thereunder focus pretty largely on the appliance industry in its broadest sense. There are similar and collateral problems relating to the transportation industry, to automobiles.

From the point of view of theoretical reasoning, I suppose the categories of thermal, electrical and mechanical make good internal sense, sort of from an armchair logic point of view. But when we look at the marketplace, we find this leads to rather odd results.

For example, this morning sitting here it occurs to me that that door to the right of the chairman contains hinges which would come under the measure, it contains a door knob which would come under the measure, because they are both mechanical products. But, gentlemen, the door would not.

So, the maker of that piece of equipment, he could guarantee the hinges or he could guarantee the door knob, but he couldn't guarantee the door in the sense the panels from splitting or the door from shattering when being closed, or any of its various features.

Another example that comes to mind close at home, and this is also coincidentally incorporated in the statement, is that automobiles are

covered. They are certainly products that have mechanical performance features, they operate on a thermal principle, and they have many associated electrical components. So that under any measure, automobiles are included.

To my left I see a case containing a variety of models. In my family we call them toys, because my boy plays with things like this. I buy them for him, and they are obviously wound up with springs or run by batteries.

Gentlemen, those would be covered by this measure. I suggest—I don't mean the word critically at all—this is an incongruous product classification, and rather than resting on the mere criticism, I believe that the appearance before this committee, where industry groups are announcing their interest, views and analyses of the problem, and pose solutions, that this suggests a ready and present existing set of categories to which the legislation might be directed. It would require a different approach from the point of view of the legislative draftsman, but I am persuaded that that skill is readily available to the committee.

My second point that has not been raised and emphasized in prior testimony, is that the whole subject matter of guaranties as it has come to the fore, as an element for discussion and public controversy, if you will, and as part and parcel of the consumer movement of the sixties, might be best viewed by the committee as being the result of certain ecological processes that have been existing in the economy for some years, and I think that it would add to the wisdom and prudent action of the legislative body to take into consideration the how and the why we have arrived at the position that exists today.

It is altogether unrealistic to take the position that there is no problem; therefore, we do not take the position that legislation is not necessary. My apologies for the double negative.

I would underscore and emphasize the second point pertaining to ecological processes, and I commend the committee for turning its attention to a vital issue, one that badly needs legislative attention.

It is true that product quality has deteriorated, perhaps in the last decade, or perhaps in the last generation, and I hope I don't sound too much like an old timer when I say it is obvious to all that in many categories of products they are not making things the way they did formerly.

But we ask why? I suggest to the committee that there have been two influences present, from Capitol Hill as well as from the marketplace, that have been operating continuously, silently, to some extent invidiously and implacably, to compel the producer, if he would survive, to market on the basis of more and cheaper, rather than on the basis of more and better.

Now, those influences, gentlemen, I think, can be categorized into two main file baskets, if you will. No. 1 are the business circumstances, and I refer most specifically to the so-called retailing revolution that commenced in the late fifties, the emergence of the mass merchandisers and the discount houses, the phenomenon of the outlying shopping center, surrounded by an enormous parking lot and the prodigious exposure to customers that such a commercial development involved.

Now, please understand, we are not taking a position either for or against this. We are merely pointing out that this has contributed to the position that we are in today. With that "for instance" we leave the first category, and move to the second, which, in my opinion, is an even more important one. And that is our national policy as it relates to trade regulation, the whole fabric of the antitrust laws.

I am an antitrust lawyer. I have spent my entire legal career practicing antitrust from just about every dimension possible. And I must state that the whole philosophy underlying the administrative interpretation, and the judicial evolution of our national antitrust policy has been to deprive producers, deprive the manufacturer of the normal means of marketing control and discipline that were thoroughly accepted at the common law. Formerly, the more traditional methodologies of marketing, dating back not only to the last century, but to many centuries before, served to stimulate, prop up, and support the philosophy that the maker is responsible for the value, the serviceability, the quality and the guarantee of his product.

It was a little more than 2 years ago, Senator, when the Supreme Court, in an opinion that has been characterized many times as a disaster—I'm talking about the case of *United States* v. *Arnold Schwinn & Co.*—said once a producer has sold a product, he loses all further right to control its use or disposition, the places where it will be sold or the people to whom it will be sold.

Surely, once again, we are confronted with a nice, symmetrical, easily understood idea, and principle, articulated by highly intelligent people.

The only difficulty with that rule is, as it has worked in the marketplace, the producer now is confronted with a committee in Congress that is asking him to assume some additional responsibilities, and discharge some additional functions in the marketplace whereas the whole thrust of the antitrust rubric and fabric has been inimical and hostile to this kind of producer performance.

So, Senator, what I am suggesting is that we are confronted here with a sort of economic ecology. Ecology, in the natural science sense means, of course, if you do one thing to, say for example, a lake in Minnesota to eliminate the mosquitoes, certain unexpected consequences occur with reference to the surrounding environment.

I think we are all familiar with the general subject of pollution of the environment, and the importance of ecological changes. But I am suggesting here, Senator, for your earnest consideration and that of your distinguished committee, that it would be appropriate for this committee to explore ecological relationships in commerce if you will, between recent business evolution and present antitrust attitudes on the part of the antitrust enforcement agencies, the universities, and most particularly, the Federal judiciary, to explore the significance that these developments have had upon the emergence of this problem, which, in the first month of the 1970's we recognize we are confronted with.

In conclusion, I want to, at the risk of restating, perhaps, or overemphasizing some of the points that were made, and suggestions by the prior witnesses that I have heard this morning, and certain witnesses whose testimony was received yesterday, that it is indisputable that this bill, as presently written, would be adverse to the interests of the

small producer, in that it would put him in a disadvantageous position, vis-a-vis the marketing of his products.

Senator, I have heard you this morning engage in a dialog with the witnesses and describe the options available to the small producer. He could sell the product "as is," he could sell it with a parts warranty, he could sell with an outboarded labor service contract, or he could sell it pursuant to the performance guarantee as comprehended within S. 3074, which, in effect, is an inboarded policy including labor and parts built into the price of the commodity.

Two things are very clear. No. 1, only the large can afford the luxury of S. 3074. The second thing of equal import that must be considered together with that is that the inability to have access to the luxuries of S. 3074 constitutes a marketing disadvantage visited on the small.

That, I think, Senator, is a sufficient summation of the statement, and I have expended to a very slight extent beyond the submitted version. But in substance, that is it, sir.

Thank you very much.

Senator Moss. Thank you, Mr. Rothwell; a very eloquent and interesting statement.

I was glad to have you philosophize a bit about the changed market conditions that have come about in the last two decades, perhaps, the effect of the Supreme Court's holding, and the general climate in which we operate now.

I think those are good contributions to our record, and the committee will be aware of them as we try to find our way through this problem that we have.

I was happy to have you underline that we all recognize there is a problem and we want to address ourselves to it, but do so in a way that will be beneficial and certainly not add to the problem as might possibly be done if we didn't move in the right direction.

I was interested in your opening statement, about our confining this to the thermal, mechanical and electrical. I suppose the only way to explain that is in talking about a performance guarantee, you are talking about things that work or don't work. That is about as simple as you could put it.

So, when you include the door for an illustration, you might have a performance guarantee on the hinges that are the working part, and just a parts warranty on the panel of the door. You warrant what the seller says it is, and it, therefore, will have certain characteristics.

I don't know how else to make the distinction, but that is a good point for us to think about, and it indicates there are a lot of things that we have to delve more deeply into.

I am a little bit disturbed about your position, one, taken by many other witnesses, that this bill is really inimical to the small producer. And I think you have set forth some of the reasons, and they have some validity. I am not sure that they are all valid, and the thing that I would hope that we could do is design it so it certainly wouldn't have any built-in advantage in size to any kind of a producer.

What we are trying to do is encourage one who produces the reliable product to have the advantage of selling the performance guarantee on it, which gives him a marketing advantage; and he is not burdened

with the great expense of replacement and labor and so on; and therefore, we get better products.

We are going to have to examine that very carefully to make sure we haven't handicapped the small producer and the small retailer, and I'm sure all of the committee feels that very strongly.

We are going to be considering this bill for some length of time. We are awaiting the task force report. We are going to read all of this testimony very carefully.

We would like to continue to be in touch with you, and your association to get from you additional comment, to be able to submit written questions to you if they come up in the interim before we have another public hearing, so that we can add to our record.

I surely appreciate your coming here to testify for us this morning, and I will read in detail your statement.

Mr. Sutcliffe, do you have any questions you would like to address to the witnesses now?

Mr. SUTCLIFFE. Yes. A couple of questions.

In your prepared statement you mention a jurist's remarks that it is important to ask the question before you give the answer. In doing so you pose two questions that I think may be instructive for the purpose of this committee.

You say "Why is there such uneven performance on the part of the producer relating to guarantee policy?" Another form of the same question you say is "What has caused the noticeable deterioration in product quality?"

By saying that these are two forms of the same question you suggest that there is an important nexus between performance on guarantee policy and product quality, and this is something that I think the bill recognizes and attempts to deal with. But I would like, if you could, to describe for a moment that nexus between guarantee policies, the performance of them, and product quality, because it is the thrust of S. 3074 to make it absolutely necessary for manufacturers to fulfill promises of performance. Otherwise the economic conditions will be too grave for them, and this is the way in which S. 3074 hopes to stimulate product quality.

Now, given that framework, I think it might be instructive for the committee with your recognition of that nexus to discuss for a moment that point.

Mr. ROTHWELL. I am extremely flattered and gratified that you read it with that close attention and did recognize the thrust and import of what was being expressed in that part of the statement. You will note that I used that as a rather truncated lead into the discussion, and a very brief discussion it was, of course, of the ecological factors attendant upon the emergence of this problem and the associated problem of quality.

At the superficial level it would be utterly foolish to say that a guarantee has no relevance to product quality because, of course, the higher the quality the less import, the less importance, the less recourse a consumer would have with the guarantee.

It is the opposite of that that becomes dynamic here in the sense that this is why we are here this morning. The product quality has declined.

Mr. Morris Kaplan of the Consumers' Union, certainly a qualified witness from the point of view of the consumer interest, has discussed this in his Wall Street Journal article, and I think in most candid and honorable terms.

So with the decline of product quality has come an increasing level of disappointment to the consumer and increasing flow of claims to the manufacturer at the same time that 1960 merchandising and advertising techniques have increased the consumer's expectations.

So, the relationship between quality of product and guarantee at a superficial level at least would seem to be reasonable obviously.

However, in my statement I tried to suggest, and really by categories of subject matter, because this would certainly take a rather profound study by some people with the resources and the time to devote to it, and that is what is the relationship between deteriorating product quality and the resulting problem with guarantees?

Mr. SUTCLIFFE. The question then becomes since there is that nexus whether product quality has declined leading to problems with service——

Mr. ROTHWELL. That is exactly the point.

Mr. SUTCLIFFE (continued). Or whether service promises can be hedged, therefore, under a competitive situation its thrust is to cause decline in quality.

Mr. ROTHWELL. I think the cause and effect relationship is as you have initially stated it, sir, that the decline in product quality plus the rising level of consumer expectation has led to these growing and burgeoning problems of the guarantee and the repair and so forth.

Mr. SUTCLIFFE. Let us examine that. You say it is the first premise. But if the manufacturer's decision is made in such a way as to factor in the cost of repair through a certain period of time, is it not true—and this is an assumption that this committee has made and that you have not made, and I thing it is an important one to concentrate on—is it not true that it is less expensive for a producer of goods to manufacture the product reliability into the product rather than to come along with the curative servicing of that product? In other words, the old adage, "an ounce of prevention is worth a pound of cure." Is that true in the present marketing situation?

Mr. ROTHWELL. No, Mr. Sutcliffe. If that is the thrust and the import of this legislation, for a legislative body to try by a rather Draconian approach of warranty to induce the producer to build back the quality into his product, if I understand and follow you, that summary of your argument chain——

Mr. SUTCLIFFE. That is certainly one thrust.

Mr. ROTHWELL. That, I would say, would be foredoomed to failure. The ecological factors that I have identified would still make it imperative for the marketer to sell his product within the framework provided by the business culture and the law.

Mr. SUTCLIFFE. But if the law is changed so that the consumer now identifies which products have the performance insured, are you not in a new frame of reference for the business community?

Mr. ROTHWELL. Mr. Sutcliffe, I am referring to the general trade regulation law, not this measure, that the general laws of trade regulation has mandated that each producer should be a lone wolf.

Mr. SUTCLIFFE. How can you have voluntary action on that basis?

Mr. ROTHWELL. That would be a point for your committee report, sir. This mandate or invitation to voluntary industry action flies directly in the teeth of national antitrust policy, and furthermore how is a producer going to make a product to sell in the discount community? The discount community must give the consumer the illusion of a bargain. They must do that.

Mr. SUTCLIFFE. But if the bill restricts that——

Mr. ROTHWELL. Hear me out. The producer must make a good product that can move through discount channels giving the consumer the illusion of a bargain and at the same time giving the discounter a profit. Isn't that completely contrary to the ideal of optimum quality? This is the problem that the committee has, sir, not the problem of framing an appropriate measure. The problem of understanding, I think, why it is that we are where we are today. This was the point of my written presentation, the major point.

But I think that an attempt to reverse a process by saying in effect that we are going to up the penalties for inferior guarantee performance so that you must build the quality back into your product, Mr. Producer, well, let me suggest that if an egg rolls off this table and breaks, I don't unbreak it by tossing it in the air. I am sorry for the analogy, but it seems to me this is not a reversible equation. This has happened. These forces—probably we can't change them; we can modify them a little, but we can recognize them, and we can adjust accordingly.

Now, the measure that we have—and I agree wholeheartedly with the witnesses who have stated that it strikes a balance in favor of the inboarded warranty, I agree also that there is a consumer preference in favor of an inboarded warranty, but I suggest that that in itself favors the large, and I am very gratified at the Senators' and your obvious concern at the analysis that if this is going to be the result of the legislation, I think we could all agree that there should be no legislation.

Mr. SUTCLIFFE. Let me go to that point, then. You argue about the market entry barrier to the small manufacturer in the context of a situation that may be created by S. 3074.

Mr. ROTHWELL. Yes, Mr. Sutcliffe.

Mr. SUTCLIFFE. I agree that there are market entry problems, but the market entry problems relate to marketing in the present context, not marketing in a different context. Let me give you an example and see if it makes any sense at all to you. Suppose you have a very small manufacturing concern; suppose he has no service facilities. He can't give a service contract. He can't at the present time, therefore, offer a performance guarantee, but what he can do, I would suggest, and ask you to comment upon, is sell his products to someone who already has those capabilities of servicing, who could stand behind it for those situations where, in fact, the normal expectancy of the product does not take place.

He could do this by showing that person that his particular product will last for the 2-year warranty and have a very, very small percentage of failure rate, whereas other manufacturers of that product, large manufacturers of that product, could not give that same national retailer the guarantee.

Now, that would enable the small manufacturer to have an entry point, and what the bill would have done would have forced quality product development upon the small man who wanted to survive.

If that is at all feasible, then, I don't see how that is terribly detrimental to either the small businessman or the consumer, but perhaps there are errors in the assumptions made developing that.

Mr. ROTHWELL. I think the major point of not disagreeing but of discussion between us, sir, would be that the very marketing control that you are presupposing as the remedy for the small manufacturer is the very thing that is affirmatively illegal under the antitrust laws.

Mr. SUTCLIFFE. The marketing control here——

Mr. ROTHWELL. May I give you an example from my experience last summer?

Mr. SUTCLIFFE. If you could in that experience bring out for the record why the manufacturer could not be a supplier to a major retailer-distributor of those products in violation of antitrust laws.

Mr. ROTHWELL. I am presently defending against civil antitrust charges in a district court throughout these United States a manufacturer whose products are covered by this legislation, and his policy has been that his product should be sold through franchised dealers only, because they can provide the service; they can provide the advice; they are people that we have examined and are thoroughly responsible and they will be in business tomorrow, and their livelihood depends upon selling his product. This has been their policy.

They are presently engaged in a life or death struggle with their government to sustain this policy.

Now, their product is such that without the control of distribution, the only other rational choice for them is to say you pay your money and you take your chances.

May I give you another example, sir. Last summer I had a maker of a humidifier call me from Texas. It seems that he had sold a small unit, although reasonably expensive, to a family—the retailer had sold it to the family. The family moved to New York, one of these frequent corporate transfers. The unit malfunctioned.

My manufacturer has no service people in New York. He called, on me, and we settled by restoring the purchase price to the consumer and having the man keep the humidifier, because it would be too expensive to ship.

But, Mr. Sutcliffe, you speak of market entry barriers; I also speak in those terms. What I mean by that is if I am making a refrigerator, I want to compete with GE because I want to have marketability in my product. GE gives a performance guarantee. I can't sell my product as long as the salesman says "Why that thing that Rothwell makes has no performance guarantee." Then I am out of business. So it is a matter of survival.

Mr. SUTCLIFFE. What if your price was much lower, then?

Mr. ROTHWELL. The salesman would say: "But it has no performance guarantee, and you know the problems. You have been reading about these Senate committee hearings and Mr. Sutcliffe's public statements about this; haven't you? Where am I as a small manufacturer going to find a ready, willing, and able cadre of service people, even if I have the money to pay them?

As Senator Moss brought out, an excellent point, that the large volume producer, the General Electrics, can use the economies of scale and keep a service department scheduled and relatively busy. Thus, from the point of view of a market entrant, how many mechanics should he hire from the trade schools. This becomes an unknowable cost and hazard of doing business, and when he is confronted with Federal legislation, which says in effect, you do it at your own peril, you make the wrong guess at your peril, I think his recourse is going to be, to avoid this area of guarantee and warranty.

Certainly the sales manager is going to be unhappy, and certainly it is going to have diminished his opportunity for success, but that is what we will have achieved, fewer warranties, rather than more, advantages to the large, and disadvantages to the small.

I am sorry to have to say, I do not think the present measure solves the problems to which it is directed.

Senator Moss. Thank you, Mr. Rothwell. You have given us some very good testimony. You certainly defend your position very well, and your background indicates, that we had better give some heed to what you have said here, and I am sure that this has contributed greatly to the record that we have made.

We appreciate your having Mr. Lewis with you here today to testify. As I have said earlier, the record is going to be open for sometime, as we continue this inquiry, so we may want to be in touch with you at a later time and perhaps you can give us further comment as this whole thing develops.

Mr. ROTHWELL. Thank you, Senator.

Senator Moss. Thank you very much.

(The full statement and article follows:)

STATEMENT OF NATIONAL SMALL BUSINESS ASSOCIATION

My name is Thomas A. Rothwell of New York City. I am a special consultant to the National Small Business Association. I wish to thank the Committee for the opportunity to appear on the subject of warranty and guarantee regulation.

The National Small Business Association is gratified and reassured that serious legislative attention is being directed to this area of warranty-guarantee regulation as embodied in the Consumer Products Guarantee Act, S. 3074. There can be no dispute but that the problem to which this bill addresses itself is both real and significant and that abuses do exist. As to the structuring and publication of guarantees, and as to manufacturer performance thereunder, the subject matter is unfortunately complex and it will require a full measure of legislative wisdom and resourcefulness to enact a measure that will be both fair and effective.

The problems of deteriorating quality and the consumer's frustrations in seeking a remedy were set out in a brief but comprehensive article appearing in the Wall Street Journal of June 26, 1969, under the title "Caveat Emptor: Many People Complain the Quality of Products Is Deteriorating Rapidly." A copy of this article is annexed to this statement for easy reference.

One of the distinguished jurists on the Supreme Court pointed out some years ago that, "It makes a difference whether you start with a question, or with an answer." If one approaches this problem of performance guarantees with the prejudice and conviction that producers are at best a greedy lot, seeking to palm off inferior and shoddy products on an unsuspecting public for outrageously high prices, then broad gauge and punitive legislation would seem to be in order. Perhaps this always has been and must be the popular view, attributing a selfish if not sinister character to the producing class generally. Serious students as well as the objective observer must of necessity view this approach as unrealistic, superficial and, most importantly, unworkable. The producers of goods are no different as a class than any other economic group. They respond to the same motivational prods, and are subject to identical social and economic in-

fluences. Thus we suggest as an assumption that no one or no class is at fault, and that this Bill, S. 3074, is not an attempt to fix fault on any element in the economic community, but instead is an attempt to define and provide a remedy for a specific problem. Add to this assumption the truism that an effective remedy results only from a proper diagnosis—until the doctor knows what's wrong with the patient and why, his prescriptions are guesses.

Thus the most pertinent inquiry is, "Why is there such uneven performance on the part of the producer relating to guarantee policies?" Another form of the same question would be, "What has caused the noticeable deterioration in product quality?"

The technical director of Consumers' Union, Mr. Morris Kaplan, is quoted in the Wall Street Journal article already described, as pointing out that, "Makers try to reduce quality as much as possible to reduce price." Tough price competition provides part of the answer for the downgrading of quality, according to Mr. Kaplan. It seems that this provides both a clue and an insight into the basic causative factors involved in the problem of product quality and the associated problems of product guarantees. The overall thrust of both economic regulation and business evolution since the 1920's has been "more and cheaper," rather than "more and better."

As to the business evolution aspect of the matter, the widely acclaimed retail revolution, of which the emergence of mass merchandisers has been the most significant aspect, has created something akin to a business "ecology," similar to the ecological cause and effect processes in the natural science of which we have heard so much about of late.

In substance, the retail revolution, accompanied by the phenomenal growth of discounters and mass merchandisers, has sponsored and encouraged a situation where the producer is favored who makes a product cheaper, more superficially stylish, and who engages in the most massive or flamboyant advertising endeavors. Business prizes of success in the marketing complex that has evolved in the last twenty years have not gone to those that build for quality and long-lasting durability, generally speaking.

Let us make no mistake about it. The critical factor from the producer's point of view is marketing. Production, financing, physical distribution, administration, employee relations, and other aspects of the business processes are important, of course. But the critical life-or-death difference in our time is marketing, and the producer does *not create* or *shape* marketing values so much as he *responds* to them.

A well known business columnist wrote last week about the Houseware Show in Chicago, that the number of new products offered was overwhelmnig and staggering and that there would be no room on the shelves or floors of retailers for a very large proportion of these new products of 20th Century technology. Obviously, if the maker of any product, new or old, cannot have adequate access to the market through the stores that sell the majority of consumer goods, such a producer cannot succeed; and producers find that the large-scale retailers are interested primarily in number of turns, consumer appeal from the point of view of high styling, and profitability—most of all, profitability. The major thrust of the consumer advertising of the large-scale retailer to the consumer is that, "You can buy it cheaper at my store; we sell at rock-bottom prices." Thus the producer, marketing through large-scale retailers, must strive always to make a product at a price that will permit the retailer to give the consumer the illusion of a bargain and at the same time permit the retailer to make a profit. Does such a retailer stand behind or in any way guarantee consumer satisfaction? The prevalent answer is, "No, this is the manufacturer's responsibility."

In reviewing the substance of S. 3074, it is clear that this measure confirms the "unsatisfactory performance is not our responsibility" attitude of the large-scale retailer. Among other things, S. 3074 has the effect of removing the responsibility from the retail level, freeing retailers from the most minimal responsibilites to the consumer, even a consumer who has been improperly advised by the retailer concerning product performance.

Of even more importance to an understanding of the "whys" of the problem, is the matter of economic regulation, and more specificaly, anti-trust policy. The producer has been systematically deprived of any means of control, or the option to give any direction to the marketing of his products. In the last fifteen years, a philosophy has emerged that postulates that, "Once a producer has sold a product he loses all further right to control its use or disposition." This applies as to price, channels in which it is sold, territories or classes of

customers to be served by various elements in the distribution system. The law has gone even further in that fifteen-year period, by making it mandatory, in effect, for a given maker's product to *compete with itself*, especially on a price basis.

There is a great body of economic thought and common law that recognizes that for a product to be compelled to compete with itself is destructive and perverse, a morbid form of competition that is not in the public interest. This point of view has not prevailed in recent years; price-cutting, diversion of products, territorial raiding has been encouraged and protected by law. In short, anarchy in distribution has been the ideal of the anti-trust authorities, enforced by ever more severe judicial restrictions. In this process the discounters and mass merchandisers, whose business methodology is generally inimical and hostile to the maintenance of product quality, have been lionized and made heroes by the government agencies, consumer groups, and large segments of the press.

Having thus loaded the dice, both from the viewpoint of business evolution and affirmative anti-trust policy, in favor of the cheap, gaudy, hit-and-run elements in our business complex, it is understandable that the opposite values of quality, dependability, and durability have become downgraded by a hostile environment.

To the extent that this measure S. 3074 is an attempt to legislate quality and minimum warranty protection for consumer products, it will be foredoomed to failure unless the underlying conditions that have encouraged and rewarded cheapness and superficial fashion appeals are also changed. In substance, the legislative situation is the familiar one of King Canute ordering the waves to retreat from his domain.

We would like to make the following specific points about S. 3074 in the hopes that the Committee in its wisdom can devise appropriate legislation that has some degree of relationship to the causes of the current situation as it relates both to product quality and guarantee performance standards.

1. Let us recognize that this measure would give legislative approval to the irresponsible retailer who characteristically meets consumer complaints with a shrug of the shoulders and vague advice to "complain to the manufacturer." This, despite the fact that the sales clerk may have recommended and sold an inappropriate product for the purpose intended.

2. It is urged that self interest is superior motivation in an economic sense to the fear of punishment. Section 16 of the proposed measure, although incomplete in form, does represent such a beginning. Congress should encourage the promulgation and enforcement by industry of industry-wide standards relating to product quality as well as guarantee performances. Producers adhering to the industry standards could be rewarded by being permitted to use a symbol indicating their compliance with an adherence to such industry standards. Such a symbol might be the letter "W" in a circle. This by analogy to the Lanham Trademark Registration Act, wherein the symbol "R" in a circle is reserved to those trademarks that are registered under federal statutes.

Such an appeal to the self interest of producers would require a re-definition of prevailing antitrust standards.

3. It is recommended that the Committee initiate a study and investigation as to the relationship of producer control of marketing patterns to the preservation of product quality, and a formulation of sound public policy in respect thereto. Among other things this would require a modification of some judicially developed absolutes that have been appended to our anti-trust laws.

4. In reference to certain products, such as television, warranty policies today are described as inboarded when they are included in the sales price, and outboarded when a service contract is offered at an extra charge as an ancillary aspect of the purchase and sale transaction. This legislation pre-empts the field in favor of inboarded warranties.

Perhaps this is an appropriate decision, or it may be otherwise. Do consumers get better service and better quality products with inboarded warranties rather than outboarded warranties? This requires a factual determination. In theory, a rather strong case can be made for the encouragement of outboarded warranties, as embodied in a continuing service contract.

The definition of express guarantee under Section 2, sub-section 9, is sufficiently comprehensive so that any product advertised for sale in an effective manner would be accompanied by an express guarantee, even though the words were not used and there was no intent to extend a guarantee. Although Section 9 seems to preserve the "outboarded" guarantee, why should anyone purchase a service contract in the light of the present scope of Section 3?

5. This legislation in its present form seems adverse to the interests of small-scale enterprise for several reasons:

(*a*) The duties imposed by Section 3 raise additional barriers to market entry as they build in an additional cost of doing business. In the case of a regional producer, whose products may be distributed nationally, the potential exposure to the absolute liability provisions of Section 3 may constitute an insuperable burden.

(*b*) Section 3 obliges a producer to underwrite labor costs. This presumes the existence of a large number of skilled mechanics and service people available on a standby basis. The plain fact is that, as a result of our overall cultural environment, there is no such pool of service people available for a producer to call upon to discharge his obligations under this bill.

It is indisputable that service people are difficult to obtain, train and keep. If the maintenance of a service staff becomes a condition precedent to a promise of product quality, only large-scale enterprise, and perhaps even well-established enterprise, can successfully undertake such an investment in people.

(*c*) A single class action, prosecuted successfully, could put a smaller economic unit out of business. This is unlikely in the case of large-scale enterprise.

6. The coverage of the measure seems extraordinarily broad being extended to any product that has thermal, electrical, or mechanical components. This would include automobiles and trucks as well as wind-up toys such as the midget racer frequently purchased for children. It would extend to utility components such as oil burners, water heaters, and pumps, to doorbells and even to old-fashioned spring operated alarm clocks.

These seem to be strange and incongruous categories for consumer goods. It is suggested that the composition of trade associations already provide a rational and working set of categories, and the legislation would be much improved if it were directed to these pre-existing functional categories.

7. Conversely, although the measure seems to have astonishing breadth on the one hand, on the other hand there is no means provided to cover foreign manufacturers that utilize an independent importer for their products.

8. Section 6 of the measure would remove the word "guarantee" from general usage. Pursuant to Section 6 the maker of a refrigerator may (and perhaps must) guarantee the motor and compressor. Can such maker also guarantee the porcelain finish? More importantly, the maker of shirts will no longer be able to "guarantee" against shrinkage. If the committee should respond favorably to the suggestion made pertaining to the employment of industry standards for warranties and performance thereunder, accompanied by the exclusive right to use an arbitrary symbol as suggested, Section 6 would then be unnecessary.

9. This measure as presently written may have the effect of compelling the producers, especially the small-scale producers, to make an affirmative disclaimer of express guarantees or performance guarantees. This, despite the fact that such a course could sharply limit the producers' opportunities to market their products. The net result in such case would be to diminish the availability of product guarantees to consumers as well as opportunity for small-scale enterprise. If such occurs, surely the legislation will have missed its mark.

10. S. 3074 will increase prices for many categories of consumer products.

[The Wall Street Journal, June 26, 1969]

Caveat Emptor—Many People Complain the Quality of Products Is Deteriorating Rapidly

Frequent changes in design, price rivalry are factors; kites, shoes, TV's criticized

People Expect Too Much

Roofs leak. Shirts shrink. Toys maim. Toasters don't toast. Mowers don't mow. Kites don't fly. Radios emit no sounds, and television sets and cameras yield no pictures.

Isn't *anything* well made these days?

Yes, some things are. A man at Consumers Union, the publisher of Consumer Reports magazine, says that refrigerators are better than ever, for instance, and that wringer washing machines are becoming much safer. But he agrees that shoddy goods abound, and Wall Street Journal reporters' talks with Americans from coast to coast indicate that quality of merchandise is worse than ever.

Price is no factor. Expensive goods fall apart or fail to work or have missing parts with the same regularity as cheap goods, buyers say. What's more, they complain that it's often a long, hard fight—sometimes a long, hard, costly fight—to get the merchandise repaired or replaced. They say salesmen and factory representatives have become masters of doubletalk and artists of the runaround.

For their part, sellers and manufacturers see things differently. Most companies contacted say their complaints are actually declining (though most Better Business Bureaus report the opposite), and they say that many of the complaints they do get are due to stupid customers. "Customer knowledge isn't as good as it should be. People don't read instructions. They just try to plug things in and make them work," maintains L. G. Borgeson, a vice president of RCA Service Co.

A BUZZ, A BLUR AND A HISS

But Mr. and Mrs. Howard C. Tillman of Memphis aren't dumb, and they say it isn't their fault that their Magnavox television set hasn't worked right since they bought it three years ago. They paid $1,200 for their console, but Mrs. Tillman says the world of color hasn't been so wonderful for them.

"The longest we've gone without a service man is three months," she says. The problem: "When you turned the set on, it sounded like a buzzer at a basketball game. You could see the picture, but it was like the times in a movie when the picture just flips up and down. We had to keep it unplugged, because it hissed whenever it was plugged in, even if it was off."

The people at Scott Appliances Inc., where the Tillmans bought the set, refused to replace it, Mrs. Tillman says, and so finally the Tillmans hired a lawyer this spring. No suit was filed, but the lawyer did get some action. Three weeks ago Magnavox replaced everything in the set except the speakers. Mrs. Tillman isn't completely happy—she says the speakers were a major problem—but so far she has no more complaints. "So far, it's been working fine," she says. "But I haven't really played it much. We've been out of town."

A spokesman at Scott Appliances won't comment on Mrs. Tillman's case, except to say that Scott stands behind its products even though "it's a headache and a cost to us." A spokesman at Magnavox in Skokie, Ill., says he is aware of the Tillman case. He doesn't explain the Tillman's long wait for replacement parts, but he says, "We try to show interest in a customer's inquiry."

WHY ARE THINGS SO SHODDY?

It isn't difficult to find people like the Tillmans who have complaints. Not so long ago, eight employes in a small Chicago office of CNA Financial Corp. were comparing notes on new purchases they had recently made. The most common thread: Six of them had bought defective goods. The Consumer Reports man to the contrary, the finish on a $425 GE refrigerator was peeling. A $400 Admiral color TV set required a two-week factory overhaul. A $20 pair of women's shoes ripped at the seam during the first wearing. The chain fell off a $32 training bike. A Roper dishwasher was installed incorrectly and had a defective timer. And a Roper gas range had a defective pilot light.

Why does this happen? Morris Kaplan, technical director of Consumers Union, says there are a couple of reasons for quality deterioration. First of all, he says, there is simply less quality control at many factories. He blames this in part on "the annual model change" in appliances and other goods. "The drive to get the new model out will frequently make it impossible for the manufacturer to do anything in the way of quality control," he says.

A second reason for poor quality is tough price competition, Mr. Kaplan says. "Makers try to reduce quality as much as possible to reduce price," he says. As an example, he cites black-and-white television sets, which recently have come down in price but "precious few" of which now have horizontal control knobs or knobs to adjust brightness levels.

Mr. Kaplan, a 58-year-old man who has been at Consumers Union for 23 years says it is very difficult to generalize and say that products are shoddier now than in the past. In some areas, quality has improved, he asserts. But he maintains that those products that are bad seem worse than ever, and he says that among bad products a greater percentage of the output is faulty now than in the past.

"A NEW PHENOMENON"

He says, for instance, that Consumers Union bought 25 or so instant-load, automatic-exposure cameras not so long ago. They cost $30 to $70, he says, and they included brands made by 15 to 20 manufacturers. "One half of them as received were not operable or became inoperable shortly after we got them," he says. Similarly, he says, the organization recently bought 15 or so hi-fi tape recorders costing several hundred dollars each, and discovered that one third of them were faulty.

"This is a new phenomenon, so many bad items," says Mr. Kaplan.

Mr. Kaplan will reel off a list of products that he says are better than ever. Clothes washers have improved, he says, and he maintains that the durable press innovation has made clothing better. But he also will list what he considers bad products. "Frozen fish has been lousy for a long time and is still lousy," he says. "the quality is abominable."

Mrs. Michael J. Espok of Irwin, Pa., isn't too concerned about frozen fish, but you won't find her singing the praises of GE irons or K-Mart discount stores. Last Feb. 13, Mr. Espok bought his wife a GE steam iron, which K-Mart had marked down to $8.97 from its regular price of $11.97. After a week of use, says Mrs. Espok, "all the water ran out the bottom and spotted my clothes."

She called a local GE service center, where a "very nice" man told her to take it back to K-Mart. She did. But K-Mart refused to take it back, since it had been sold more than 10 days before. "He told us to take it back to GE," says Mrs. Espok. Mrs. Espok finally did mail it to GE, and four weeks later she received a replacement, which she says is working fine. But she still isn't happy. She was without an iron for a month, and she had to make a special trip to the K-Mart.

The manager of the K-Mart store nows says the store should have taken back the iron. "There was a slight misunderstanding," he says. "If she had come to me, we would have exchanged it. GE probably should have taken it, too." Mrs. Espok says the man she talked to at K-Mart had a bad attitude. "My husband never swears," she says, "but he said, 'We'll never buy another God-damned thing at K-Mart again.' "

Though General Electric replaced the iron, a GE service representative can't get too excited about Mrs. Espok's complaint. "It's a cheap iron. People expect too much from them," he says.

ONE IN A MILLION? OR 74 OF 100?

But expensive things aren't faultless. A Boston salesman says his Brooks Brothers suit began to deteriorate two weeks after he bought it. The store took it back and gave him credit. Similarly a woman says that she bought a shirt at posh I. Magnin in Los Angeles and that after two hours it became completely wrinkled. "It looked like I'd slept in it. The belt became completely shriveled," she said. The store returned her money.

Another Los Angeles store, when asked about a customer's complaint about a bedspread, confirms the problem but says "this kind of thing is really one in a million." Perhaps, but other statistics indicate the ratio is a bit different. In the May issue of Consumer Reports, for example, the magazine discloses results of a survey of 90,000 owners of color TV sets. Seventy-four per cent of the color sets reported on "had required repairs of some sort," the magazine says. Most of the sets were three years old or less. The article also says that 6% of the sets bought in 1968 had to have their picture tubes replaced before the year was out.

If the magazine "had a dime for every complaint we've received about color TV . . . well, we could afford another color set. But we wouldn't be anxious to take on the headaches that seem to come with color," the article states.

TV sets have lots of parts, and it's possible to understand how they can break down. You'd think kites would be different, but William Ryder of Findlay, Ohio, says that isn't the case. He plunked down a dollar not so long ago for a plastic kite shaped like a bat. The first time he and his five-year-old son tried the kite, the keel, to which the string is attached, tore off and the kite plummeted earthward.

Back to the toy store, where he got another one free. Another try, another torn-off keel, and another kite crash. Back to the toy store for a third one, which he tried in gentler breezes. When the keel began to tear away, he patched it with plastic tape—and it's been flying great ever since.

A spokesman for the kite maker, Gayla Industries of Houston, says Mr. Ryder probably didn't read the directions, which admonish users not to fly the kite in high winds or cold weather, both common to Ohio. And he adds, "You expect kites to break up sometimes." He says, however, that complaints have declined while sales have quadrupled.

PROBLEMS WITH A PACEMAKER

A much more serious complaint comes from some doctors who implant pacemakers in patients to regulate their heartbeats. For a while, some pacemakers made by the Electrodyne subsidiary of Becton, Dickinson & Co. were inferior, some doctors allege.

"The problem was that the pacemaker, which was supposed to operate for 18 to 24 months, would stop in three or four months," says a Texas doctor. "The patient would then have to undergo surgery for us to replace the defective instrument, and sometimes the new one we put in would stop after two or three days." The new operation would cost the patient $3,000 to $4,000, this doctor says, not to mention the pain and suffering.

An official of Electrodyne concedes the company had trouble with its pacemakers, but he says that that is "ancient history" now and that it's been "well over a year" since the company received complaints about the instruments. The Texas doctor says he and his colleagues complained repeatedly before anything was done. The Electrodyne official replies: "If something is wrong with a piece of equipment, that does not mean we can immediately correct it. We took immediate action to find what was causing the problem. We found it and corrected it."

There was little the heart patients could do, of course, but submit to a new operation. In other areas, though, consumers have found ways to get back at the manufacturers or sellers. Many, like Mr. Espok, the dissatisfied K-Mart shopper, simply refuse to shop any more at the store where they bought the faulty merchandise. Many complain to Consumers Union or to Better Business Bureaus in hopes of giving the offender a bad name. And many just start word-of-mouth campaigns against the stores or products.

An Iowa grandfather, for instance, who has been arguing for years with Sears-Roebuck about what he says is a leaky roof the retailer put on his house, signs all of his frequent letters to his children this way:

"Love, and don't buy anything at Sears."

Senator Moss. The hearing will be in recess until tomorrow morning at 9:30.

(Whereupon, at 12:30 p.m., the subcommittee was recessed, to reconvene at 9:30, Thursday, January 22, 1969.)

CONSUMER PRODUCTS GUARANTY ACT

THURSDAY, JANUARY 22, 1970

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

The subcommittee met at 9:30 a.m. in room 5110, New Senate Office Building, Hon. William B. Spong, presiding.

Present: Senator Spong.

Senator SPONG. The hearings will be in order. Is Mr. Pickett here?

Mr. PICKETT. Yes, sir.

Senator SPONG. We would be pleased to hear from you and anyone who is accompanying you.

I might say at the outset of these hearings that we are somewhat short of Senators at this time. We will go along as we can this morning with these hearings. Senator Moss has had to go to Utah to attend a funeral.

STATEMENT OF WINSTON H. PICKETT, ASSOCIATE COUNSEL, GENERAL ELECTRIC CO., CHAIRMAN OF THE LEGISLATION AND POLICY SUBCOMMITTEE OF THE CONSUMER ISSUES COMMITTEE OF THE U.S. CHAMBER OF COMMERCE; ACCOMPANIED BY CHARLES S. MACK, COMMITTEE EXECUTIVE OF THE CONSUMER ISSUES COMMITTEE OF THE U.S. CHAMBER OF COMMERCE

Mr. PICKETT. Thank you, Mr. Chairman. My name is Winston H. Pickett, and I am associate general counsel for the General Electric Co. and chairman of the Legislation and Policy Subcommittee of the Consumer Issues Committee of the Chamber of Commerce of the United States.

It is in this latter capacity that I am here this morning since Mr. Aaron Yohalem, the chairman of our consumer issues committee is necessarily out of the country.

It is Mr. Yohalem's statement which you have before you and which I request be incorporated as part of the record of the hearing.

Senator SPONG. The statement will be received in its entirety and made a part of the record after you have highlighted it.

Mr. PICKETT. With me today is Mr. Charles S. Mack, committee executive of the Chamber's Consumer Issues Committee. In deference to the committee's time pressures and with your approval, Mr. Chairman, I will not read Mr. Yohalem's statement but rather briefly summarize the points in it. I will then try to answer any questions the committee may care to ask.

In essence, the statement submitted on behalf of the national chamber makes three broad points: Point one is that this legislation is untimely. For one thing, the results and conclusions of pending studies, and investigations have not yet been made available for comment and analysis. For another, there has been significant progress over the past years, and particularly during the period since President Johnson's task force report in January 1969.

This progress has been significant in the modernization, and the simplification of product warranties as well as the performance under their terms.

The 1 year since that task force report is by no means too long to allow for voluntary action, and yet the progress that has occurred has been substantial. We believe that the Congress should not enact legislation that would divert business from these continuing voluntary efforts.

Point two is that as a hostage to our belief that the industry's response to warranty problems will continue and be adequate to the need, we would be prepared to recommend that the chamber support promulgation of appropriate trade practice rules by the Federal Trade Commission to prescribe the content of warranties consistent with the guidelines contained in our February 1969 statement on warranties.

If the chairman please, we are supplying copies of the chamber's February 1969 statement to Mr. Sutcliffe. I ask that this statement which you have before you may also be part of our submission.

Senator SPONG. Without objection it will be included behind the other statement.

Mr. PICKETT. The Federal Trade Commission we believe now has authority to issue such rules. Moreover, under other proposed legislation before this committee the Commission's jurisdiction may well be broadened to include matters affecting commerce as well as providing the Commission with injunctive powers to secure redress of unfair or receptive acts or practices.

The third point in the chamber's statement is that we must oppose the legislation despite our awareness of the very thoughtful and conscientious efforts given to its preparation and the extensive circulation given earlier drafts.

Our opposition is based upon significant defects of substance, such as those outlined on pages 4 through 6 of the submitted statement.

Briefly, they are: One, the use of the word "guarantee" should not be exclusively granted to sellers of consumer products containing electrical, mechanical, or thermal components. Two: The bill is unduly vague in word and concept. For example, under section 3 how does one determine when "repair is not possible or cannot be timely made" as a condition of securing the repair or replacement of the guaranteed component?

How does one weigh the "magnitude of the economic burden" of sellers against "the magnitude of the trouble and annoyance" of owners?

Section 15 apparently recognizes the vagueness of the criteria in the bill by asking the FTC to define what they may mean.

Point three. Consumers who successfully sue for breach of a performance guaranty are entitled to recover attorney's fees and other costs, but successful defendants are without such remedy, even though

the suit may pit a powerful consumer group against a small manufacturer.

Point four. Sellers would be additionally bound by the oral comments of sales employees even though wholly contradicted by the written warranty, or even if such oral statements were expressly forbidden and not within the actual scope of the agency.

Five. When the literal provisions of this bill are applied to customary selling techniques, the option to sell a product with a guaranty or without one, becomes more illusory than real.

Under the bill "any affirmation of fact or promise made by the seller to the buyer which relates to the product or any of its components" and becomes part of the basis of the bargain, creates an express guaranty.

As a commercial fact of life it is virtually impossible to sell any consumer product without some "affirmation of fact or promise" about the product or at least one of its components. But once this affirmation or promise is made by the seller, section 3, governing the express guaranty, comes into play with the mandatory repair or replacement within a reasonable time and without charge.

If this "express guaranty" is written and relates even to a single component, section 5 additionally requires that the component guaranty be labeled a "performance guaranty" and the purchaser be provided with the eight specified items of information with respect to that component's guaranty.

In the event there are several such components so guarantied but not the whole product itself, the confusion would be evident as would the potential for misleading the buyer.

Thus, the seller's option is not whether or not to extend a warranty but whether or not the product can ever be marketed without saying or writing anything that would constitute a promise or an affirmation of fact.

The sixth and the last point made in the statement, is simply that this bill assumes that all the covered products and all the manufacturers within its scope can be treated alike. Yet, how can the guaranty of a $9.95 toaster which may cost more to repair than the original purchase price be realistically compared with the defect potential and the repair requirements of a $30,000 Rolls Royce? And how can a small manufacturer of a single product be required statutorily to assume the same burdens as a giant corporation with its own service organization or its established and extensive dealer relationships?

These, then, Mr. Chairman, are briefly the points of summary from the statement, and I would be happy to entertain any questions that you may have.

Senator SPONG. Thank you. Do you have any additional statement, Mr. Mack?

Mr. MACK. No, Senator.

Mr. SUTCLIFFE. Mr. Pickett, let me see if we can discuss the points that you made in your oral statement and then have some reference to the points in the written statement.

Your first point was that the legislation was untimely because of present investigations underway. Do you know when the President's Consumer Message was made?

Mr. PICKETT. October 30.

Mr. SUTCLIFFE. Do you know when Senator Magnuson's and Senator Moss' guarantee bill was introduced?

Mr. PICKETT. The date on it I believe was October 27, 1969.

Mr. SUTCLIFFE. So, in other words, the Magnuson-Moss warrantee bill was introduced prior to the establishment of the continuing operation of the Appliance Task Force?

Mr. PICKETT. That is chronologically absolutely correct.

Mr. SUTCLIFFE. So that the sponsor of that measure had no way of knowing that the President would reinstate the Task Force and ask for further information and further additional investigations; is that correct?

Mr. PICKETT. I would assume that is correct, Mr. Sutcliffe.

Mr. SUTCLIFFE. So, there has to be some qualifications on the notions that the legislation was untimely because of the failure to complete investigation?

Mr. PICKETT. Well, we personally understood—and the reason perhaps that point was made—that both the Department of Commerce and Mrs. Knauer's office had not yet fully evaluated the industry response data, as I believe Mr. Lamb testified yesterday, that had been continuously supplied to that office to show what progress had been made, and we had been assured that they were going to make up their mind and let us know in the appliance field how well they felt that progress had been.

Mr. SUTCLIFFE. But from the point of the introduction of the legislation to the beginning of these hearings, was there any additional industry action in the warranty and guaranty area that you were aware of?

Mr. PICKETT. A great deal. For example, I was aware of the fact that the American Retail Federation had done a significant job in distributing warranty guides to all their membership.

The Chamber itself, as our statement indicated——

Mr. SUTCLIFFE. Was this after October 27?

Mr. PICKETT. As I understand it, that booklet was—I don't know the date, but it was sometime in October that the A.R.F. was printing it and distributing it.

Mr. SUTCLIFFE. Do you feel that the legislation was a stimulus to this increased activity in any way?

Mr. PICKETT. I think the legislation that had been pending even prior to this bill, for example, there were bills on the House side that had been introduced, there was the fact, of course, that Senator Magnuson had introduced in the 90th Congress his warranty-guaranty legislation, and the probability of intense and proper concern by Congress with this whole problem was a continuing stimulus.

Mr. MACK. Mr. Sutcliffe, just on that point, the statement which the Chamber adopted on February 21, 1969, was recommended to the Chamber by our Consumer Issues Committee on January 23, a date at which I believe no warranty legislation had been introduced into this Congress, and in fact had been in preparation even long before publication of the Appliance Task Force Report.

Mr. SUTCLIFFE. Were there any activities of the chamber in establishing statements such as these, prior to the task force report or prior to the introduction of Senator Magnuson's initial legislation in 1966.

Mr. MACK. No, there were not.

Mr. SUTCLIFFE. You mentioned the voluntary action of the Association of Home Appliance Manufacturers and Mr. Lamb's statements yesterday. How do you react to an excerpt from a speech that he made before his association's annual meeting where he said, "The warranty-guaranty problem is something that we have been confronted with now, for at least 10 years.

"The Chairman of the FTC, Mr. Dixon, says that it is a merchandising gimmick. We have been impeded to a certain extent because of the anti-trust laws. We cannot sit down and agree upon uniform warranties. We would be violating section 1 of the Sherman Act if we did."

How does an association carry forth voluntary activity in the warranties area in light of these kinds of proscriptions, and how is voluntary action going to solve the problem if, in fact, as Mr. Lamb has suggested, the problem has been with his particular association at least for 10 years and your opening statement acknowledges the continuing existence of a problem?

Mr. PICKETT. I think your real question is, first, what are the problems to which we feel the major concerns of the consumers really are directed. For example, I think associations can do excellent work in trying to simplify, suggest, urge, educate, and secure a common response by their members in making warranties simple, disclosing all the elements of them, much along the same principles that the Federal Trade Commission enunciated in its famous guides on advertising of warranties. I think that is quite a proper and effective way that they work, and certainly I believe that Mr. Lamb gave some illustrations of that yesterday.

Mr. SUTCLIFFE. Are you aware of any Federal Trade Commission action against an advertiser, in violation of the FTC guidelines of 1960?

Mr. PICKETT. Do you mean any specific suit of which I am aware?

Mr. SUTCLIFFE. Any complaint. Has any complaint ever been issued or has everything been settled in a consent order?

Mr. PICKETT. I frankly have not made an investigation of that. I am sorry.

Mr. SUTCLIFFE. Let me pursue——

Mr. PICKETT. But I would make one other observation, because I will freely concede, I think anyone else will, that as far as giving the members of an association specific instructions as to the content of their warranties, telling them what the content should be, and then trying to take action against deviations. I think we would both agree that that would be wholly impermissible under the antitrust laws.

Mr. SUTCLIFFE. All right, fine. Your suggestion to carry forth and improve the present problems as they exist, whatever those problems are as you envision them, would be to urge continuing voluntary action on the part of the industry.

Now, in several statements, and in fact in the Association of Home Appliance Manufacturers' response to the Appliance Task Force Report, there was a suggestion that the rights that would ordinarily be available to the consumer, should not be taken away in the issuance of an express guarantee.

Do you understand that that was their statement? Are you familiar with that?

Mr. PICKETT. I was not familiar with that. I am sorry, to be sure I understand it, would you repeat what the gist of that was?

Mr. SUTCLIFFE. Yes. Let me refer to the specific wording so that we have it before us here.

While I am looking for the specific language in the report, the gist of it was, that it was not to deny the consumer any rights that he would have without the warranty or without the guarantee.

Mr. PICKETT. Is this the point that was made that was reported widely, to exclude the implied warranties of merchantability and fitness for purpose was a disservice to the consumer, because they had that protection under the normal commercial sales act consequences and that to take away those implied rights was therefore undesirable?

Mr. SUTCLIFFE. That was the implication of the statement which they made, yes.

Mr. PICKETT. Yes.

Mr. SUTCLIFFE. At the present time, I understand that there is quite a disagreement as to whether or not the industry should or should not be able to waive the implied warranties of merchantability and fitness for a particular purpose.

Mr. PICKETT. I think, if I may be permitted this observation, that the matter only is relevant in the light of certain distribution techniques. For example, if the manufacturer has no real sales transaction with the consumer, the exclusion of the implied warranty really has no effect. For example, if the manufacturer sells to a wholesale distributor, who, in turn, sells to a retailer who, in turn, sells to the consumer, the actual sales transaction is between the retailer and the consumer, and there is no implied warranty of merchantability or fitness for purpose between the manufacturer and the consumer removed that far in the distribution chain.

Mr. SUTCLIFFE. Is there an implied warranty for merchantability and fitness for a particular purpose between the retailer and the person who has purchased the item?

Mr. PICKETT. I would certainly say so under the Uniform Commercial Code.

Mr. SUTCLIFFE. Is the language of disclaimer in the guarantee susceptible of causing the consumer to believe that he has no rights, even against the retailer, since he may not be sophisticated enough to know of the privity notions that you have just described?

Mr. PICKETT. That, of course, was the specific charge that the Federal Trade Commission made in the task force report.

Mr. SUTCLIFFE. How does the chamber stand on that issue? I noticed in your guidelines you do not mention your warranties of merchantability and fitness for a particular purpose directly; you do not take a position. Could you at this point take a position?

Mr. PICKETT. I think it would be very difficult to do so, because of the different methods of sale. For example, it may be quite relevant if a manufacturer was selling a very complicated piece of machinery to an industrial customer as distinguished from a consumer, that might be quite an important thing. If you are selling a jet engine, the whole question of excluding the implied warranties of merchantability——

Mr. SUTCLIFFE. In other words, if the notion of the ability to waive as presently established in the Uniform Commercial Code were maintained for products that are not related to the consumer, where the con-

sumer would not be misled, where both sides were represented by counsel, then it would make sense?

Mr. PICKETT. Precisely.

Mr. SUTCLIFFE. So, under the provisions of S. 3074 where the change in the Uniform Commercial Code prohibiting waiver of the warranties of merchantability and fitness for a particular purpose only relates to consumer products when an express guarantee of performance is given, would it be subscribed to by you?

Mr. PICKETT. I would say the best answer to that is if you look at some of the current automobile warranties, if you look at the current major appliance warranties, exclusions all but disappeared when that criticism was made known. They are not in the major appliance warranties or the ones in the automobile field.

Mr. SUTCLIFFE. Do I understand you to suggest that in the automobile field they have given up the disclaimer for warranty of merchantability and fitness for a particular purpose?

Mr. PICKETT. As I read in the Wall Street Journal, when the new 1970 warranties came out, some manufacturers excluded them. I personally plead only that is what I read because I haven't had the privilege of buying a new car recently. They made a great deal of a point on that and ran some ads: This is our new warranty, and they were excluded.

Mr. SUTCLIFFE. I think for the record we will submit copies of the automobile warranties as presently issued.

(The warranty follows:)

[From the Washington Star, Sept. 19, 1969]

YOU CAN CHOOSE: A SPECIAL 5-YEAR/50,000-MILE POWER TRAIN WARRANTY FOR A NOMINAL CHARGE OF $100* EXCEPT MAVERICK*

THE FIRST YEAR—FORD AND DEALER BASIC WARRANTY AND LIMITATION OF LIABILITY: 1970 MODEL PASSENGER CARS (EXCEPT MAVERICK) AND LIGHT TRUCKS

Ford* and its Selling Dealer warrant, with respect to each 1970 model passenger car (except Maverick) or light truck† built by Ford, that the Selling Dealer will repair or replace, at his place of business, any part (except tires and tubes which are warranted separately by their manufacturers) that is found to be defective in factory materials or workmanship in normal use in the United States, Canada, Puerto Rico or the U.S. Virgin Islands within 12 months from the date of original retail delivery or original use by Ford or any of its dealers, whichever is earlier.

Under this warranty, repairs or replacements will be made free of charge for both parts and labor, and the Dealer will use Ford parts or Ford Authorized Remanufactured parts.

In addition, during the first 90 days of the warranty period (Break-In Period), the Dealer will provide the following adjustments and services, if needed, without charge unless the need for them is clearly the result of accident, fire or other casualty, misuse or racing: • Wheel Balancing • Wheel Alignment • Headlight Alignment • Adjustments to: Carburetor, Distributor, Valves, Belts, Transmission, Clutch, and Brake System • Cleaning of: Fuel, Cooling, and Brake Systems • Addition of: Engine Coolants, Power Steering, Brake, and Air Conditioning Fluids • Tightening of: Nuts, Bolts, and Fittings.

After the 90-day Break-In Period, such adjustments and services will be considered normal maintenance resulting from use; the owner will be charged unless the need for them is clearly the result of a defect in factory materials or workmanship.

*"Ford" is Ford Motor Company except in Canada where it is Ford Motor Company of Canada, Limited.

This warranty does not cover: damage from accidents, fire or other casualty, misuse or racing; failures caused by modifications of any part of the vehicle; normal replacement of service parts such as spark plugs, ignition points and condenser, filters or wiper blades; addition of oil or other lubricants; periodic maintenance services listed in the Owners Manual.

If the owner is traveling or has moved a long distance from the Selling Dealer or needs emergency repairs, or if the Selling Dealer is no longer in business, any authorized Ford or Lincoln-Mercury dealer will perform necessary repairs, replacements, adjustments and services hereunder.

Ford and the Selling Dealer assume no responsibility hereunder for loss of use of the vehicle, loss of time, inconvenience, commercial loss or consequential damage. Except for responsibility for personal injuries shown to have resulted from a defect, this warranty is expressly IN LIEU of any other express or implied warranty, condition or guarantee with respect to the vehicle or any part thereof, including any implied WARRANTY OF MERCHANTABILITY OR FITNESS.

THE NEXT 4 YEARS—FORD AND DEALER OPTIONAL EXTENDED POWER TRAIN WARRANTY AND LIMITATION OF LIABILITY: 1970 MODEL PASSENGER CARS (EXCEPT MAVERICKS AND CERTAIN ENGINES) AND TWO-WHEEL DRIVE LIGHT TRUCKS

Ford* and the Selling Dealer, if the first or second retail owner so elects and pays the appropriate fee, will also warrant with respect to each 1970 model passenger car (except Maverick and units equipped with Cobra Jet, CJ or Boss engines) or two-wheel drive light truck† built by Ford, that the Selling Dealer will repair or replace at his place of business, any part of the engine block, head, internal engine parts, water pump, intake manifold, transmission case, internal transmission parts, torque converter, drive shaft, universal joints, rear axle or differential that is found to be defective in factory materials or workmanship in normal use in the United States, Canada, Puerto Rico, or the U.S. Virgin Islands within five years from the date of original retail delivery or original use by Ford or any of its dealers, or 50,000 miles of operation, whichever is earlier. Under this warranty, repairs or replacements will be made free of charge for both parts and labor, except that, after the expiration of the Basic Warranty, a second owner will pay the first $25 on each warranty repair visit, and the Dealer will use Ford parts or Ford Authorized Remanufactured parts.

Conditions of optional warranty—1. Owner election and fee. The first retail owner's election of optional coverage, together with a fee of $15, must be made directly to Ford, within 90 days after his purchase of the vehicle. Second retail owner's election of remaining optional coverage, together with a fee of $25, must be made to Ford through an authorized dealer of Ford, within 30 days or 1,000 miles, whichever is earlier, after his purchase of the vehicle, and the dealer must be satisfied that the vehicle has received required maintenance. 2. WARRANTY CARD. Ford will furnish each owner validly electing optional coverage a personalized 5/50 Powertrain Warranty Card which must be presented to obtain optional warranty service. 3. USAGE. The optional warranty does not cover damage from accident, fire, or other casualty, misuse or racing, or failures caused by modifications of any part of the vehicle. 4. ODOMETER. The optional warranty will not apply to any vehicle on which the odometer has been altered so that the actual mileage of the vehicle cannot be determined. 5. REQUIRED MAINTENANCE. The optional warranty will not apply to the repair or replacement of any part caused by failure to perform the following required maintenance services: • Change engine oil and oil filter and clean oil filler cap every 6 months or 6,000 miles, whichever is earlier. • Replace air cleaner filter every 24 months or 24,000 miles, whichever is earlier (12 months or 12,000 miles on six-cylinder engines). • Clean emission control systems every 12 months or 12,000 miles, whichever is earlier, replacing parts where needed. Replace emission control valve(s) every 12 months or 12,000 miles, whichever is earlier. • Inspect cooling system hoses every 12 months or 12,000 miles, whichever is earlier, and replace as required; change coolant every two years. • Check transmission and rear axle fluid levels every 6 months or 6,000 miles, whichever is earlier, and replenish fluid as required. • Adjust automatic transmission bands one time at 12 months or 12,000 miles, whichever is earlier, for normal usage. (For police, taxi and units engaged in severe service, adjust at 6,000, 18,000, and 36,000 miles.) Typically, these services and replacements are

*"Ford" is Ford Motor Cohpany except in Canada where it is Ford Motor Company of Canada, Limited.

† Ranchero, Econoline, and two-wheel drive F–100, F–250, F–350, P–350, P–400.

required because of normal wear and use and their costs are not covered by the warranty. 6. OWNER RESPONSIBILITY. During the extended period covered by the optional warranty, it may become necessary for the owner to: • Replace spark plugs, ignition points and condensers, hoses, moulded rubber or rubber-like items or filters. • Adjust carburetor, ignition, transmission bands, belts or clutch system. • Clean fuel or coolant systems or remove sludge or carbon deposits. • Add oil, coolant, fluids or lubricants. Typically, these services and replacements are required by normal wear and use, and are the owner's responsibility. Their costs will not be covered by the warranty, unless the original part is found to be defective in factory materials or workmanship.

If the owner is traveling or has moved a long distance from the Selling Dealer or needs emergency repairs, or if the Selling Dealer is no longer in business, any authorized dealer of Ford will perform necessary repairs or replacements hereunder.

Ford and the Selling Dealer assume no responsibility hereunder for loss of use of the vehicle, loss of time, inconvenience, commercial loss or consequential damage. Except for responsibility for personal injuries shown to have resulted from a defect, this warranty is expressly IN LIEU OF any other express or implied warranty, condition or guarantee with respect to the vehicle or any part thereof including any implied WARRANTY OF MERCHANTABILITY OR FITNESS.

Mr. PICKETT. I am sure that, and I will speak for positively about, for example, if I may lapse into a personal reference with General Electric, our major appliance warranties have excised that for fear that it might be misunderstood, and it is no longer in them.

Mr. SUTCLIFFE. In the chamber's statement on warranties, you urge the Federal Trade Commission to enforce them if voluntary action doesn't seem to bring everything into play; is that correct?

Mr. PICKETT. What we have urged there is, A, that the Federal Trade Commission exercise its power to issue trade practice rules, and it may be appropriate to issue different ones for different types of industries that would remove in their opinion these misleading references that their expertise or their investigations have shown are undesirable for the consumers.

Mr. SUTCLIFFE. But you subscribe to FTC action only to the extent that the chamber has gone in prescribing guidelines; you would not go further?

Mr. PICKETT. Well, specifically, I think that the disclosure aspects to avoid misleading, confusion or even potential deception to the consumer is something within their province and that I understand the chamber supports.

Mr. SUTCLIFFE. Do the chamber's own guidelines go far enough in preventing that kind of deception in your opinion?

Mr. PICKETT. You recall at the time of those guides what we tried to urge was disclosure, we were trying to incorporate in the chamber's statement what we thought was then the most representative approach such as the elements contained in Senator Magnuson's first bill.

Mr. SUTCLIFFE. Is disclosure with the title "Guarantee" enough to convey to the consumer what he is or is not getting?

Mr. PICKETT. Of course, I think it is. We have a very healthy respect for the consumers, we think they do understand it if you remove some of the obfuscating language or some of the more tortured phraseology that we are all familiar with.

If it is simple and clear and you say it to him specifically without a lot of legalese, he understands and will rely upon it. We have difficulty thinking that complete disclosure doesn't go far in answering many of the questions on understanding.

Mr. SUTCLIFFE. For the record, I would like to present and read to you the basic elements that you have set forth in your chamber guarantee and then a guarantee written hopefully in compliance with it.

Let me read that guarantee to you and see if it makes any sense to you, and then maybe we can discuss whether or not there is complete disclosure. The first element that the chamber sets forth is clear identification of the name and address of the warranty and to comply with that there is the word "guarantee" at the top in bold print as is normal under a warranty. "This warranty is given by the XYZ Co., 1615 H Street, Northwest, Washington, D.C."

For the record, that is not a fictitious address. It happens to be the address of the chamber of commerce, so, we are not pinpointing any particular company.

Mr. PICKETT. I recognize the address.

Mr. SUTCLIFFE. Identity of the party to whom the warranty is extended. "The guarantee is extended to the first purchaser. Proof of the purchase will be the sales receipt or registration of the guarantee." Is that understandable?

Mr. PICKETT. I think so.

Mr. SUTCLIFFE. Product parts covered. This is rather broad language. It says, "The entire product is guaranteed against defects of material and workmanship."

A statement of what the warrantor will do, at whose expense, and for what period of time is point 4 in the chamber's basic elements, and point 5 is the statement of what the owner must do and at whose expense. The draft guarantee attempts to comply with these requirements by these words:

> For a period of 1 year from the date of purchase, XYZ Corp. will repair or replace any guaranteed product if the purchaser returns the product postage paid to XYZ Co., 1615 H Street, Northwest, Washington, D.C. 20006.
>
> The XYZ Co. is only responsible for replacing parts which are defective. Labor costs for such repairs will be charged to the first purchaser. There will be no charge for parts replacement providing the manufacturer finds that the product was defective in material and workmanship.

Exceptions or exclusions of the warranty is point 6. There are no exceptions or exclusions except the following statement:

> This guarantee is in lieu of all other express or implied warranties, including the warranty of merchantability and fitness for a particular purpose.

That is the attempt to comply with the disclosure provisions without going too far in violating the practices that are presently exising in the marketplace.

My question to you is, With the word "guarantee" at the top and the word "guarantee" appearing in each of the different sections outlining the procedures, on the assumption that this is all in type that is easily legible, does this heading "Guarantee" mislead the consumer?

Mr. PICKETT. I have just one question to ask. You are not talking here about this being a range or a refrigerator that the fellow has to mail back?

Mr. SUTCLIFFE. Your guidelines do not specify.

Mr. PICKETT. I am asking you to assume that that is not a problem because I think it can be handled in another way.

Mr. SUTCLIFFE. How can that be handled?

Mr. PICKETT. I think that that is an illusory guarantee. You cannot mail back an installed range to fulfill that warranty, and I think the Federal Trade Commission could quite properly file a complaint against a manufacturer whose guarantee did that. It is an illusory warranty.

Mr. SUTCLIFFE. At the present time what can the consumer do if he has that kind of warranty or guarantee?

Mr. PICKETT. You mean as a matter of individual contractual right or do you mean could he complain?

Mr. SUTCLIFFE. Yes, under the contract law, you have already admitted that this complies with your outlines and guidelines.

Mr. PICKETT. Let me ask a second question: Does that warranty that is given there have any contractual basis with the consumer or are you talking about a distribution plan where the manufacturer makes that nice statement and says "guarantee" but has no contractual relations with the purchaser.

Mr. SUTCLIFFE. Again your guidelines don't suggest that there is any differentiation. Your guidelines simply say what he should or shouldn't do, and my question to you is, Is this in any way, shape, or form solving the problems that we are trying to solve, all of us, in the warranty or guarantee area?

Mr. PICKETT. Given the good faith and sincerity of the manufacturer with a product where this could be operable, let's say it is a Zippo lighter, it could be mailed back, I would certainly say that that could solve a great many of the problems and in fact has.

That type of warranty was traditional with manufacturers in the small appliance business where you had a small item that could be easily packaged and sent back.

Mr. SUTCLIFFE. So, anyone who would require the shipment of a range or a piano or something of this sort back would be really treating the consumer rather——

Mr. PICKETT. Shabbily to say the least.

Mr. SUTCLIFFE. Shabbily to say the least?

Mr. PICKETT. And I would say that could be reached. I think that would be a very serious matter of concern, where they profess to do something and they don't.

Mr. SUTCLIFFE. By the FTC? Would they be the proper organ for reaching it?

Mr. PICKETT. Precisely, or perhaps under local statutes that might be applicable. I don't profess to be an expert on that.

Mr. SUTCLIFFE. Of course, the disclosure is complete.

Mr. PICKETT. The disclosure is complete, but in fact it is frustrated by a series of physical facts that make it meaningless and therefore it is misleading.

Mr. SUTCLIFFE. I would agree with you completely, and I think this is why the committee is so concerned about just having disclosure, about just having these kinds of guidelines without any motion of the substance. This is why the wording in the present bill before the committee, S. 3074, relates reasonable consumer burden to the magnitude of the economic burden on both the manufacturer and the consumer. In other words, in the case of the small appliance it may be reasonable to mail it back, a very small appliance, because if the manufacturer were required to come and pick it up, the cost would

be out of order. And, of course, the manufacturer would pass that cost on to the consumer.

But that is only a guidepost for weighing the economic burden. It seems to make the very kind of decision that in our exchange we tried to make as to what would be reasonable and what would be not reasonable, and it sets up guideposts for manufacturers to know the kinds of considerations they should be making prior to the time of issuing a warranty or guarantee.

Let me for the record introduce a warranty that has been given by someone who is not considered, as one person characterized them yesterday, a renegade. Let me describe to you just exactly what it does and suggest that it fulfills completely the terms of the chamber's basic elements of warranties and ask you to respond as to whether or not it is misleading.

The warranty reads at the top "Five Year Warranty." It does not comply with the chamber's identification of the warrantor as to name and address. It does not do that. But it says:

> The manufacturer warrants this ladder under normal use and service to be free from defects of workmanship and material.

The point that is apparently often made, defects of workmanship are the key words often used in warranties.

> To be free from defects of workmanship and material for 5 years from date of sale. This warranty does not apply to any ladder that is subjected to an accident, that is misused or is used as a rental.
>
> Under this warranty the manufacturer will repair or replace any defective part which the manufacturer determines becomes defective during the period of warranty. After written approval by the manufacturer secured through your dealer, the ladder or defective part must be returned prepaid.

There is no disclaimer here as to merchantability for fitness for a particular purpose.

Mr. PICKETT. Does it say where it should be returned?

Mr. SUTCLIFFE. It does not, so, the two elements that have not been complied with under the statement of the chamber of commerce are clear identification of the name and address of the warrantor and the clear identification as to where that should be returned. They are both interrelated.

How does a correction of those two points improve the guarantee or the warranty given, and is this a warranty that does not mislead the consumer?

Mr. PICKETT. For example, suppose it said take it back to your dealer, and all this would be accomplished, I would think that would give him redress for the defect in material and workmanship.

Mr. SUTCLIFFE. That is not what this warranty says. At the top in bold print it says, "Five Year Warranty." I think you probably read the "Five Year Warranty" from here. Then it has the statement as to what the obligations of the different parties are.

Mr. PICKETT. For 5 years?

Mr. SUTCLIFFE. It says for 5 years. It says:

> After written approval of the manufacturer secured through the dealer, the ladder or defective part must be returned prepaid.

In other words, the cost of mailing that ladder or sending it or shipping it to be repaired is borne by the consumer. That is all under the title of "Five Year Warranty." Is that misleading?

Mr. PICKETT. I think that the misleading part of it is it doesn't tell you where to send it. I don't know whether it is a small ladder, a big ladder or what. I think it is misleading as you have given it to me, but it is also possible that it would be specific enough so that the normal, average consumer says to himself, well, that offers me no security or offers me no inducement to buy it at all.

Mr. SUTCLIFFE. Then, the question becomes would the average, normal consumer go beyond the statement at the top which says, "Five Year Guaranty?"

Mr. PICKETT. I think that is a fair question.

Mr. SUTCLIFFE. If——

Mr. PICKETT. I do not think that is explicit in its present version that you have given me, but I am saying that if all those elements were there, the question of whether the consumer could understand it or not would be a fair question.

Mr. SUTCLIFFE. So really, that is the centrality of the problem we are talking about, the understanding by the consumer and the communication to the consumer of what he is getting.

Mr. PICKETT. I think that is right.

Mr. SUTCLIFFE. Our notion of misleading must relate in some way or another to the fact that guarantee raises some kind of post-sale protection ideas in the mind of the consumer; is that correct?

Mr. PICKETT. I have a very good respect for the consumer's perception. I think you can say a guarantee, is the word which attracts his attention and if specifically explained, will enable him to make his own judgment between your guarantee and mine.

Mr. SUTCLIFFE. Will that be at the time of sale or will that be if in fact the thing malfunctions?

Mr. PICKETT. You raise a very difficult question. How do you get across contents of a guarantee prior to the time of sale?

Mr. SUTCLIFFE. S. 3074 has provisions for making sure that the consumer is aware of the guarantee prior to the time of sale.

Mr. PICKETT. I think that is a very difficult problem to assure any consumer. For example, I don't know how you can guarantee at the retail level that every product that has a guarantee is read to the consumer prior to the time he buys it. That is a very troublesome administrative thing.

Ideally, it would be wholly desirable, and that is why manufacturers try to hang them on the products that are displayed, that is why they run their guarantees in ads and the like. But bear in mind again, the point you have made that he has certain rights against the retailer quite apart from what the manufacturer's guarantee may be, under the ordinary law of the Uniform Commercial Code.

Mr. SUTCLIFFE. I think this might be an appropriate point to discuss, then, what I understood you to say, that the bill, S. 3074 imposes upon the manufacturer the representations made by the retailer or his salesman. Is that your understanding of the bill?

Mr. PICKETT. No. What I tried to make clear in the point was, and that was point 4, that whether it is the manufacturer or the retailer, under the language of this bill the retailer would be additionally bound by the oral statements of his sales employee, the manufacturer would also be additionally bound by the oral representations of his employee.

To be specific, it is perfectly clear that a manufacturer gives a printed warranty and the retailer gives another warranty. You can have two warranties, the manufacturers and the retailers.

Mr. SUTCLIFFE. How is the manufacturer prejudiced by the representations of the retail salesman?

Mr. PICKETT. I don't believe the manufacturer is. I was merely pointing out that a manufacturer who has a printed warranty is also equally vulnerable for the statements that the manufacturer's employee may make to the retailer in trying to sell that merchandise.

Mr. SUTCLIFFE. Shouldn't he be?

Mr. PICKETT. When it is inconsistent with the warranty, when it is contrary to the express statements or instructions give to that employee, for the bill to assume and resolve that there is no way you can protect yourself is a very harsh result.

Mr. SUTCLIFFE. The bill covers the sale of consumer goods to consumers; therefore, a manufacturer whose representatives make pronouncements to retailers would not be under the provisions of this particular bill.

Mr. PICKETT. If the manufacturer was selling directly to the consumer, he would, and there are some manufacturers that have their own factory outlets.

Mr. SUTCLIFFE. Then, the question becomes should the consumer pay the cost of the manufacturer's or retailer's personnel misrepresentations or should the company be expected to do that?

Mr. PICKETT. Well, what you are saying is in a social sense we must in effect avoid any of the problems of agency and the scope or limitations of the apparent authority of the agent and resolve it against the manufacturer.

All I am saying is that that is a very harsh result to assume, to assume that everyone must be the victim of the indiscretions, the unauthorized indiscretions of his employee or agent.

Mr. SUTCLIFFE. So, you would object to the provisions of this bill which say that the retailer if he is responsible for the salesman's representations or the manufacturer has to assume the obligations that that salesman used to induce the sale?

Mr. PICKETT. I object to that. Let's take a retailer's warranty or a manufacturer's, I don't care which. It says this is our warranty, this is all we give you, and no one is authorized to make any further statements in connection with this product. The retail sales clerk gives it to the customer, looks at it, and he says, "Now, don't pay any attention to that. I want to tell you personally that as far as I am concerned not only will this last a year but 5 years longer than that."

At the point of sale to get the sales commission, contrary to the instructions of the warrantor or of the guarantor, the retail clerk goes off on his own frolic and detour and the principal is bound despite specific instructions, despite the fact that the written warranty which the customer has seen negates that authority, for the act to then say sorry, the guarantor or the retailer guarantor is bound is a very harsh result in my opinion. There is no way you can control it.

Mr. SUTCLIFFE. It would be much better for the consumer to suffer rather than the retailer in that situation in your opinion?

Mr. PICKETT. You are making every guarantor responsible and an insurer of whatever his employee may say. I don't think life can work

that way. I don't think you can guarantee the honesty, the integrity, and the absolute fidelity of everyone who works for you. If you could, you wouldn't have bonding companies.

Mr. SUTCLIFFE. What it seems to me you are suggesting is a changing of the law of agency so that there would be some way for the retailer or manufacturer to break his connection with the man who is actually making this misrepresentation.

Mr. PICKETT. I submit that if I——

Mr. SUTCLIFFE. Or making, if it is not a misrepresentation, making a new guarantee.

Mr. PICKETT. I submit if I empower you to sell my house in writing and you are a real estate agent, and you proceed to go beyond the bounds of your agency and sell my car as well, that I am perfectly privileged to repudiate that agency which was not what I had given you in the first place.

Mr. SUTCLIFFE. So, if you make it very clear to the sales people the scope of their agency and they go ahead and perform the kinds of practices that we are informed they sometimes perform, it is they who have issued the guaranty and it is they whom the consumer has legal recourse against?

Mr. PICKETT. Precisely.

Mr. SUTCLIFFE. What is wrong with the provision of the bill which says that the guarantor—the maker of the guaranty—is bound when it is up to the framework of the existing law, the Uniform Commercial Code and the principal of agency to determine who that maker is in any particular situation?

Mr. PICKETT. If that is your interpretation of the law, which was not my understanding of it, I would accept that. You and I are not quarrelling.

Mr. SUTCLIFFE. It goes to the maker of the guarantee, and that has to be determined upon the existing legal principles and concepts.

Mr. PICKETT. So, if I understand you correctly, it could be the retail clerk and not the employing store that was held under the statute?

Mr. SUTCLIFFE. If the scope of the agency can be clearly defined as you suggest; that is correct.

Mr. PICKETT. Then you and I have no disagreement.

Mr. SUTCLIFFE. And there would be legal recourse against them, and we haven't changed the laws of agency at all under this particular bill. I am afraid sometimes the word "maker" has been interpreted to be maker of the product. It is the maker of the guarantee in this act.

Mr. PICKETT. I understood that, but our concern was, the maker automatically imposed the liability upon the retailer or the manufacturer.

Mr. SUTCLIFFE. I would like to go off the record for just a minute.

(Discussion off the record.)

Mr. SUTCLIFFE. With the notion of performance guarantee that you seem to object to, could you suggest to the committee any characterization that might be better than the words "performance guarantee" if we are going to indicate to the consumer, either through legislation or through Federal Trade Commission guidelines, that this thing that you are getting, Mr. Consumer, is an insurance policy and that the product will operate for that period of time, and if that product fails to operate, we will repair or replace it quickly without charge?

In other words, you seem to think that the words "performance guarantee" are themselves misleading. Do you have any notion of what might be a better characterization for that type of guarantee, so that the consumer could know that that is one?—let me explain.

The Secretary of Commerce in the Appliance Task Force Report said they had found some situations where the consumers would be willing to pay a little more to insure that they had total protection if the product they purchased failed to function.

So, this seems to be one area where, to improve the warranty, it would be good to let the consumer know that this is the kind of warranty he is getting. It seems to be that not all consumers read carefully the guarantees and in fact understand those guarantees.

Do you have any notion of what kind of characterization could be placed on a warranty of this type that is in the marketplace at the present time, that would also be in compliance with the S. 3074 provisions?

Mr. PICKETT. The proposed statute, as I understand it, does two things. It first preempts the word "guarantee" for the specific type of products covered by the bill.

Mr. SUTCLIFFE. Right, that was the legislative approach to trigger the recognition by the consumer. That is something we want to test the soundness of in these hearings.

Mr. PICKETT. I understand that, and we have commented on that. But, second, where you provide in the act that not only have you preempted the word "guarantee" but you must call it a "preference guarantee" which is moderately baffling, because that is something that isn't ordinarily used in as wide a grouping of products as the bill purports to cover.

Mr. SUTCLIFFE. Let me concentrate on that. You mentioned that normal use is "defect." Is that correct?

Mr. PICKETT. The word "guaranty" is the normal parlance, or warranty, for example, in the appliance field. Guaranty, warranty, it doesn't say performance or it doesn't have any characteristics defining that until you read what is disclosed as the content of that warranty as defined by the particular offeror.

What I am objecting to by implication is to say you have got to call it a "performance guaranty." Candidly, I have no solutions as to a kind of universal solvent on this problem. I can only observe that "performance guaranty" is unfamiliar in the normal usage, for example, in the appliance field today.

They say guaranty, and then they tell you what the contents of that guarantee are.

Mr. SUTCLIFFE. If we can change the focus a little bit because the purpose is to communicate with the consumer, how do you feel the words "performance guaranty" convey this total protection we are talking about? Would it be better to entitle it "insurance guaranty?" You see, in complaint letters we constantly see consumers focus upon whether the thing works or it doesn't work.

As you have mentioned, with the complexity of the marketplace today, what the consumer is worried about when he purchases an item that is thermal, electrical, or mechanical is whether it will work and that is why the bill focuses on these areas, at least initially, because this seems to be the greatest area of concern where the consumer

can't make his own judgments because he has no way to evaluate the engineering aspects of the myriad of technically complicated products.

So, to convey the notion of whether he has protection against its working or not working the word "performance" was chosen in the initial drafting of the legislation. Do the words "performance guaranty" convey that notion to the consumer, even though they may be foreign to the industry itself?

Mr. PICKETT. I think it is potentially a source of confusion. Let me illustrate. Because your guaranty must be labeled a "performance guaranty," suppose it is something—it is just any affirmation of fact or promise that relates to the bargain by definition under the statute, so, I am in effect guaranteeing that this refrigerator is pink and it has got chromium decoration on it or whatever promise or affirmation of fact may be an inducement to the housewife. She likes pink refrigerators.

Mr. SUTCLIFFE. Is that related to performance?

Mr. PICKETT. Absolutely not. That is my point. But your definition of what constitutes an express guaranty has no relation to performance when you talk about that kind of breadth in the statute.

Mr. SUTCLIFFE. Here is where the bill has failed to communicate to those people who have been reading it. The notion of express guaranty in the bill simply dseignates what is an express guaranty.

Mr. PICKETT. An express guaranty by definition is any affirmation of fact or promise which constitutes part of the bargain and induces the purchaser to buy.

Mr. SUTCLIFFE. That is the exact definition of express warranty under the Uniform Commercial Code.

Mr. PICKETT. Precisely, but to which you have attached the additional requirements that it be called a performance guaranty.

Mr. SUTCLIFFE. That is where we are not communicating, because the bill, as drafted, only requires the attachment of that label "performance guaranty" when in fact the express warranty or guaranty created under the act relates to performance under section 3.

Let me see if we can trace this through because I think this is important for understanding and for later discussions of this bill.

Under section 2(9), the words "express guarantee" are defined, and they fairly well track with the Uniform Commercial Code. Under section 3, "Duties of Guarantors," line 7, "any express guarantee," which we define, qualified by the term "related to performance * * * imposes upon the maker or makers of such guarantee the duties"—

Leaving for the moment whether or not those words "related to performance" have the necessary clarity, this was at least the initial legislative attempt to designate the performance aspect—those things that work or don't work.

Tracing over to section 6, only section 3 express guarantees have to be labeled "performance guarantees." In other words, we have the express performance guarantees only imposing section 3 duties and being labeled "performance guarantees." So if you wanted to give a warranty on the color, the chrome, that type of thing, that would be perfectly permissible.

The only thing that we have put in the bill is to require that you call it a warranty rather than a "performance guarantee." The words

"preformance guarantee" only have to be used in relation to the express guaranties related to performance.

Mr. PICKETT. Let me ask you this question then: Suppose it is a vacuum cleaner and suppose all it says is "steel housing," it doesn't say the vacuum cleaner will work or anything else, it just says "steel housing, unbreakable," is that a performance guarantee on that component alone, nothing else?

Mr. SUTCLIFFE. No. And let me explain why at least the bill would probably not attempt to cover that. Through that description under the uniform commercial code at the present time, under the warranty of merchantability, the goods have to perform to the description attached to those goods when they are sold.

Mr. PICKETT. In other words, even though a particular component has been singled out, and there is an affirmative representation which may be important to the consumer that that housing is made of steel, not plastic, and hence will not break, this bill would not be operative?

Mr. SUTCLIFFE. Again, we have a difficult time with any kind of notion that would define the criteria that we are after because, as you put your finger on it, we are after the communication to the consumer and his awareness of what is happening. Is it an express guarantee related to performance? I would imagine that some representations made as to the kinds of materials used would convey to the consumer a performance aspect, a duration, something for him to judge the quality in terms of its working or not working, and others I would imagine would not do that at all.

Mr. PICKETT. Would we have to label that steel housing a performance guarantee under the bill?

Mr. SUTCLIFFE. This is why the Federal Trade Commission has been asked to help in establishing guidelines, and this is why the manufacturer has incentive to go to the Federal Trade Commission and ask them to consider the aspects of the product and determine what will and will not mislead the consumer.

Mr. PICKETT. My concern, I think, Mr. Sutcliffe, is obvious from that. As a practicing lawyer with a company, I would be very concerned on what I would tell my clients with respect to some of these problems that we have referred to. As an example again, you sell a flashlight and it says the bulb is guaranteed forever. Now, that may be true, that is a performance characteristic of the bulb, but the flashlight won't light forever. We say nothing about the batteries, we say nothing about anything else.

Now, do we have to focus in on that particular component and label that a performance guarantee where in truth and in fact the flashlight just won't work because the batteries last only 10 hours? It is these practical problems in the light of what they are doing that give us the concern and why we are very specific in pointing out what appears to be the language applied to complex factors that create marketing problems and advertising problems under the language as it exists.

Mr. SUTCLIFFE. It seems there is agreement as to the necessity to try to better communicate to the consumer what you mean by these things. So, if the bill does not do that at this time and even outside the framework of the bill, I think it would be very important to the committee to hear from industry as to what will be a characterization that will com-

municate to the consumer so he can make an informed and valid judgment as to the particular product he is buying.

Mr. PICKETT. Let me try one simple one, for example, that focuses upon—I may not have it here, but that focuses upon the kind of warranties that are currently being used consistent with full disclosure, simplicity, and clarity of expression that we think is desirable. We stand fully behind the efforts to do that.

For example, in the ad I was referring to was one on a color TV set which very simply said "If you are not completely satisfied with XY's color TV set and it has been given normal care, all you have to do is notify your dealer within 30 days of purchase and he will take back the set and refund your money promptly." I think that is rather clear. I am for getting the address and all that, but I mean the promise to the consumer is that simple.

Now, if the manufacturers continue to strive for simplicity of expression, conciseness, and get away from disclaimers which in fact are unnecessary many times, I think that objective would do much for the consumer whom I believe is quite intelligent and understanding and knowing what his rights are and being satisfied. I think you will make a giant stride.

Mr. SUTCLIFFE. I would agree with you, but how does the consumer differentiate between that type of guarantee or waranty, however it is characterized, and another one that does not do that? That is the inquiry of this particular committee.

Mr. PICKETT. I think that is the fundamental issue. We each have a different attitude toward the perception and understanding of the consumer. Your invitation is a sensible one, industry should come forth and try to give you specifically what their experience has been and whether or not the consumers are really as perceptive as they maintain or need more specific help in every situation as in your premise.

Mr. SUTCLIFFE. Let me turn to one final thing and discuss your notion of unfairness as to the awarding of reasonable attorney's fees in successful suits by consumers and the denial of the recovery of cost by manufacturers. Let me ask whether there is or is not a basic distinction, and I will set that distinction forth and have you react to it.

The consumer has no way to pass on the costs of any litigation he feels is desirable. In other words, if he feels there has been a breakdown and he is going to court to protect his rights, he has no way to pass on his costs if his cause is just as determined by a court. In other words, if he has a $30 or $40—let's put it a little higher, let's put it at $300, as this gets us oftentimes out of the small claims area, if he has that situation, then, he oftentimes does not have the real alternative of going to court, because the expense connected with any suit in that range may be such that it really doesn't pay him to go to court. Or even if he wanted to as a matter of principle, it is going to cost him as much for attorney's fees as he can recover. I think you see that focus.

If we turn it around, the argument is the manufacturer should have the ability to recover costs to prevent frivolous suits and as a matter of parity or fairness.

If that is the case, then, we should see whether or not the two parties are in the same position. If the manufacturer has to bear the cost of a suit, he has the ability to pass that cost on even if he is successful; he

has the ability to pass that cost on in terms of pricing, and that will be spread throughout the entire consumer community.

It should not end up in any kind of differentiation against one company over another because litigation should not work that way, unless some company sets up some kind of intermediate informal dispute settlement mechanism which insulates it from this kind of a suit. But it would still have costs connected with that to pass on.

Is it valid to say that in some respects there is a basic distinction between the consumer and the manufacturer, and this seeming inequality in treatment turns out to be not as unequal because of the manufacturer's ability to pass on litigation costs through prices in his products. Would there not also be protection from frivolous lawsuits if the consumer ends up paying $300 or $400 or $500 when he is trying to recover $300?

So, these are the arguments, these are statements—suggestions—that I would like to have some comment on and exchange, because we really haven't focused on this area very significantly.

Mr. PICKETT. Well, your postulate was the individual consumer suing the big recalcitrant manufacturer, and as a discipline that manufacturer should know that he has got to pick up the litigation costs and maybe he will be a little more thoughtful and responsive and generous and tractible in resolving the grievance and, of course, if we start with your premise you win the argument.

The point that we were making is you also have to concern yourself with the frivolous lawsuits, and frankly until I heard you yesterday I assumed that this bill had class action potential in it, and that is why in my illustration this morning I made the point on the question of unfairness that you had to consider that under this bill for you might be pitting powerful consumer groups against a small manufacturer like the famous stockholder strike suits which had to be resolved, like the kind of protection in the presently pending class action litigation where they are trying to avoid, shall we say, an overzealous bar making a very excellent living by representing broad groups of consumers.

So, what I am saying is apparently this bill, from what you announced yesterday, doesn't have any of these implications, and you are just looking at the one premise that you have outlines to which we concede there is some merit. I was trying to look at it on the broader basis with these other concerns which are very real if the bill had that scope.

Mr. SUTCLIFFE. I don't believe I have any further questions, but I think it might be useful if you have any further comments or questions to make them now.

Mr. PICKETT. Well, may I make this observation, if I may: I noted from the general tenor of the hearings to date that there will be additional hearings at some later time when inputs are made from the President's Task Force and the like. I would hope that you would be willing to extend us the privilege to add additional data that may be relevant in the light of these hearings and what we think would be helpful for you to consider, either submit it in the form of a letter for incorporation in the record or submit it at a later date when we have had a better chance to evaluate some of the points in the light of the explanations that you have given or have come out in

hearing as to what really the thrust of the bill is. If we may have that privilege and assurance that we can make those submissions in that way, I would forego any comments now and try to evaluate and examine some of the points that seem most helpful to offer more data and be content with that assurance that you might offer. Would we be privileged to do that as the record continues?

Mr. SUTCLIFFE. That has been a continuing policy of the chairman of this committee and the chairman of the subcommittee.

Mr. PICKETT. With that I would forego any further comments now and ask for the opportunity to thoughtfully consider the points that have been made and see where we could be in our opinion more helpful.

Mr. SUTCLIFFE. Thank you very much for your statement and testimony.

Mr. PICKETT. Thank you for the opportunity for appearing here this morning.

(The statement follows:)

STATEMENT OF A. S. YOHALEM, DIRECTOR, CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. Chairman, I am A. S. Yohalem, Senior Vice President and Director of CPC International which you may know better by its former name, Corn Products Company. I have the honor to serve as a Director of the Chamber of Commerce of the United States, and as Chairman of its Consumer Issues Committee, and it is in this capacity that I present the Chamber's views on S. 3074, the proposed "Consumer Products Guaranty Act." Accompanying me is Charles S. Mack, Committee Executive of the Consumer Issues Committee.

Mr. Chairman, there is little question that problems relating to product warranties and service stem directly from the abundance and complexity which are the twin fruits of our increasingly affluent and technological society. The consumer's desire for convenience and choice which require more features, ease of operation, greater utility, and generally a greater diversity in product characteristics has led to the steadily growing complexity and number of consumer products. It has been estimated that there are more parts in just the transmission of some of today's automobiles than there were in the entire car of a generation ago—and this phenomenon is by no means limited to automobiles.

The consumer has demanded variety and features and business has provided them for him. He has demanded, if not complexity, at least characteristics which inevitably have produced complexity—and business has provided those too.

There is always a cost to complexity. All other things being equal, doubling the number of parts in a product multiplies the possibility that something will go wrong. Given the mind-boggling complexity of many products, the wonder is not that they occasionally break down . . . but that trouble occurs as rarely as it does.

Today's consumers, for all our vaunted education and sophistication, are probably less able to understand the inner workings of our everyday goods than any other generation in history. Not only do most of us lack the technical competence to do our own repairs on our cars or television sets . . . but we lack the ability even to confirm to our personal satisfaction that the repairman who has performed repairs actually has done so correctly. Our inability to confirm or comprehend leads inevitably, given human nature, to suspicion, frustration, and often hostility. This, too, is a cost of product complexity.

The warranty on the product becomes important to the consumer when malfunctions occur. Does he understand it? Does it really say what it seems to promise? What is it exactly that the warranty promises will be done? What does the consumer have to do to obtain performance under the warranty? Are there obligations, such as required maintenance, which he must perform to keep the warranty viable?

These are some of the problems which the President's Task Force on Appliance Warranties and Service discussed in its report a year ago. Undoubtedly, they are discussed in the as yet unreleased report by the Federal Trade Commission on automobile warranties. And they relate to the subjects covered by the study of automobile repairs being made by the Senate Antitrust and Monopoly Subcommittee.

Despite the breadth of the problem, it is difficult to envision a satisfactory evaluation of legislative remedies without having the complete findings and conclusions of these investigations—or even to decide if this legislation is at all an appropriate response to the problem. What additional facts have been developed to justify legislation broader than Senator Magnuson's warranties bill, S. 2726, of the 90th Congress?

Reflecting this uncertainty, the President's task force proposed a variety of measures which could be implemented voluntarily or administratively to deal with the problems discussed in the report of January 1969. In effect, the task force proposed a one-year moratorium on warranties legislation to determine what significant progress can be accomplished voluntarily.

One year, of course, is by no means too long for voluntary action to occur, let alone to show results. The problems are too vast, the roots of these problems too ingrown, for sweeping changes to occur rapidly.

It is remarkable, therefore, that in this short period of time voluntary progress by industry has been so widespread and considerable. In his October 30 consumer message, President Nixon reactivated the warranties task force and asked it to report on progress to achieve voluntary compliance with the January 1969 recommendations. Undoubtedly, this report will show that industry has indeed been responsive. For instance, the Association of Home Appliance Manufacturers and the Gas Appliance Manufacturers Association have moved swiftly and effectively in response to the problem. Other industry groups are moving to bring about modernization of warranties, among them the National Retail Furniture Association, the National Appliance and Radio-TV Dealers Association, the American Advertising Federation, the American Retail Federation, the Variety Stores Association, and others. Many companies have initiated significant voluntary reforms in this area.

There are additional indications of business responsiveness. In February 1969, the National Chamber's Board of Directors adopted a statement on warranties initiated by the Consumer Issues Committee. The statement, not dissimilar to the FTC's guidelines for warranties advertising, specified the information which each warranty should provide the consumer and advocated simplicity and clarity in the expression of that information. The Chamber's warranties statement was distributed to 160,000 businessmen, companies, and industry groups to encourage speedy implementation.

We submit that the pace of voluntary industry action thus far has been sufficiently great to preclude any necessity for the confining limitations of Federal legislation governing warranties and guarantees. We submit, too, that companies are showing imagination and resourcefulness in streamlining their warranties, using them as instruments of competition and that these varied efforts would be discouraged and stifled by legislation which would inevitably require a highly complicated and uniform approach by competitive firms in widely diversified industries.

Accordingly, it is our belief that business should be given a full and fair opportunity to continue desirable changes—without the threat of imminent government action. We pledge our own efforts to help bring about full implementation in product warranties of the points and principles contained in our February 1969 statement. We believe that, given adequate time, industry will continue to act voluntarily to implement that statement.

As hostage to that belief, our CIC would be prepared to recommend that the Chamber support promulgation of a trade practice rule by the FTC to put the objectives and principles of the Chamber's statement into effect if, after a full and fair opportunity, business is shown to have failed to demonstrate significant voluntary compliance. The FTC has the authority, under Section 5 of the the Federal Trade Commission Act, to issue such a trade practice rule. And, under other proposed legislation before this committee, its jurisdiction may well be broadened to include matters "affecting" commerce.

Even though the National Chamber has a fundamental difference of opinion with the authors of S. 3074 on the need for legislation, we are aware of the thoughtful efforts given to its preparation and commend this subcommittee for the extensive advance circulation it gave early drafts of this bill. A wide variety of sources were contacted for comments, and we at the Chamber were glad to be of service in circulating the drafts. While a number of constructive comments are reflected in the bill as introduced, we are unable to give it our support because of significant defects of substance in its provisions.

Without going into the kind of detailed analysis which specific industry groups will undoubtedly supply you, here are a few of the fundamental objections we have to this bill:

1. One year after enactment the word "guaranty" would become the exclusive province of consumer products containing electrical, mechanical, or thermal components. The makers of such diverse products as soaps and detergents, toilet goods, foods and most groceries, most furniture products, textiles, drugs, paints, soft goods and many others—would all be barred from the use of the word "guaranty." Would stores which have traditionally offered "satisfaction guaranteed" on *all* products sold also be barred forever from so doing?

2. We are troubled by provisions of the bill which are unduly vague in word and concept. An example is the measure of reasonableness imposed by Section 3. "Magnitude of the economic burden" is a phrase which appears to imply that some companies would be judged differently than others, depending on their economic circumstances. Moreover, the "magnitude of the economic burden" of the sellers would have to be somehow weighed against the "magnitude of the trouble and the costs of his defense?

3. There are other built-in inequities as well. For instance, if the consumer who successfully sues, individually or as a party to a class suit, for breach of a performance guaranty is entitled to recover attorneys' fees and other costs incident to initiation and prosecution of the suit—then would not basic fairness require that a successful defendant in such a suit should be similarly enabled to recover the costs of his defense?

4. Because the bill covers oral as well as written guarantees, it requires retailers, distributors and manufacturers to control somehow the statements of salespersons which may be incompatible with a written guaranty—an undertaking impossible to perform effectively. In fact, this bill could hold the maker of a written performance warranty additionally responsible for a salesperson's oral comment even though wholly contradicted by the terms of the written warranty. The language in the bill exempting "sellers opinion or commendation of the goods" from creating a performance warranty does not reach such situations.

5. Moreover, we feel there are basic problems in the "performance guaranty" approach. For example, is not any written affirmation of fact or promise about a component of a product automatically a "performance guaranty" which would have to be somehow labeled in the prescribed manner even though the product itself is not otherwise covered? To evaluate, has a "performance guaranty" been created where the seller simply promises or affirms only that an electrical iron has a stainless steel sole plate, or that a fry pan has a non-stick cooking surface? With the many different factual descriptions of component parts in the marketplace, confusion would reign if the mandated "performance guaranty" recitals were compulsory under the wording of this act.

6. Finally this legisaltion suffers because of its sweeping coverage. The kind of guarantee provided with a $9.95 toaster must differ from that given with a $30,000 Rolls Royce. Yet this legislation attempts to force them into a common mold by setting warranty content and consequences over widely diverse and heterogeneous types of products. Furthermore, the manufacturer's capability to provide warranty service varies to a great degree with the size of his enterprise. Yet the legislation treats the small manufacturer the same as the huge corporation and makes him ultimately liable under Section 8 regardless of his contractual relationships with his dealers.

Mr. Chairman, we do not believe that S. 3074 is legislation that will successfully resolve the warranties problem. To the extent that it seeks to make varying warranties fit into identical standards, it discourages competitive diversity from coming into play, and to that extent fails to serve the interests of either consumers or business.

In sum, Mr. Chairman, we believe that voluntary progress has been sufficient to warrant a continued extension of the legislative moratorium on warranties and guarantees. We believe that business should, and will, act to implement the "full disclosure" warranties statement adopted last year by the Chamber . . . and, if business does not act, the FTC already has authority, under Section 5, to effect the principles of that statement.

It is not more laws that the consumer wants: it is solutions of his problems. If voluntarism in a competitive marketplace will produce a workable and satisfactory solution to warranties problems—and we believe it will—then consumers would be less well-served by legislative remedies.

Thank you for letting us present the views of the National Chamber on this matter.

CHAMBER STATEMENT ON WARRANTIES

The consumer's ability to choose wisely from the variety of products brought forth by competitive enterprise is an essential step on the path to consumer satisfaction—and adequate information, clearly expressed, is in turn a critical ingredient in the consumer's freedom of choice.

For this reason, the National Chamber encourages business to expand its publication of essential consumer information, and this properly includes information on product warranties and guarantees which are business' pledge of product integrity.

There are certain basic elements that must be recognized in every warranty and guarantee if consumers are to be adequately informed about the warranty's provisions. These include:

Clear identification of the name and address of the warrantor.

Identity of the party to whom the warranty is extended.

The product or parts covered.

A statement of what the warrantor will do—at whose expense—and for what period of time.

A statement of what the owner must do and at whose expense.

Exceptions or exclusions from the terms of the warranty.

The place to which the owner must take or send a faulty product if not the address given above.

The language of the warranty or guarantee should be clear, concise, and expressed in nontechnical, readily understandable terms. Affirmative and negative statements should be set forth prominently. Printing should be clear, well spaced, and easy to read rapidly. Headings or titles should not be misleading.

The Chamber encourages voluntary action by business to incorporate these principles in all product warranties and guarantees offered to consumers.

Adopted February 21, 1969, by the Board of Directors of the Chamber of Commerce of the United States.

Senator SPONG. Mr. Mullane's statement will appear as a part of the record of this hearing without him appearing to give his oral statement.

(The statement follows:)

STATEMENT OF EDWIN J. MULLANE, PRESIDENT, FORD DEALERS ALLIANCE, INC.

My name is Edwin J. Mullane. I am the President of the Ford Dealers Alliance, Inc., a non-profit corporation which was organized for the purposes of improving business conditions with respect to the retail distribution of passenger cars and trucks and the sale of parts and equipment as well as the service of said vehicles. The membership of the Alliance comprises more than 200 dealers in the states of New York, New Jersey, Connecticut and Pennsylvania, all of whom hold sales agreements or franchises from Ford Motor Company.

I will attempt to express the viewpoint of our organization with respect to S. 3074 which, as you are well aware, has applicability to the automobile industry and particularly to automobile dealers who, pursuant to their sales or franchise agreements, are required by their manufacturers to perform or fulfill the warranty, or to use the language of the bill, the performance guarantee and parts warranty, which the manufacturer has extended to the consumer. Additionally, as with Ford's 1970 warranties, the manufacturer often unilaterally requires the dealer to be a co-guarantor.

I should like to express to the Committee the appreciation of our organization for your kind invitation to visit with you and present the opinions of the particular group of automobile dealers, or "designated representatives", to once again use the language of the bill, who comprise our membership. My comments are specifically limited to the distribution of new units.

We generally favor the legislation proposed. We think it is a good bill with a worthy purpose. However, we do not think the bill, as presently drafted, will achieve its goal—to protect the consumer—unless certain existing problem areas are considered and the problems created by the existing draft of the proposed legislation are cured.

We believe that in order to properly protect the consumer, any legislation dealing with guarantees, or warranties, as they are presently referred to in the automobile industry, must clearly define the rights and duties of the representative

designated by the manufacturer and/or maker of the performance guarantee vis a vis both the manufacturer and the consumer. In the automobile industry, that designated representative has been, presently is and, hopefully, always will be the local automobile dealer. In the automobile industry, it is the dealer and not the manufacturer that deals with the consumer on a day-to-day basis with respect to both the periodic maintenance of the vehicle and the exercise of the guarantee which the manufacturer, for competitive reasons, extends to the consumer. That guarantee is, much like an insurance policy, a risk spreading device against defective manufacture and defective design, both of which activities are clearly within the province and control of the manufacturer and not the dealer. Yet, the manufacturer, because of his economic power and the one-way relationship he enjoys, is uniquely qualified to shift his burden to the dealer who must satisfy that consumer who has been disappointed by the failure of the manufacturer to complete the manufacturing process.

Your bill, it is respectfully submitted, as presently drafted, does not address itself to certain very important problem areas which, it is our intention, to point out to you. In addition, we have proposed solutions to these problems which, we hope, you will give some thought to and include in any amendments to the present draft of S. 3074. We understand the difficulty in drafting legislation that effects the broad spectrum of industries which rely on the guarantee as an inducement to purchasers in the competitive economy in which we live. It is not our purpose to offer any suggestions as to whether the guarantee is or is not a valuable competitive device. It is only our hope that S. 3074 can be improved to enhance its opportunity to protect the consumer, particularly the consumers of automobiles, which automobiles are manufactured in this country primarily by three giant corporations. The automobile industry is perhaps the largest and most important consumer oriented industry which regularly relies upon guarantees. Therefore, if this legislation is to achieve its stated purpose, then, these problems must be given consideration.

Before addressing myself to the specific existing problem areas and those created by the bill, I wish to call your attention to and summarize for you testimony which I presented in my capacity as chairman of the Newark, New Jersey and New York Ford Dealers Warranty and Policy Committee to the Federal Trade Commission on January 17, 1969 and to the Antitrust and Monopoly Subcommittee of the Senate Judiciary Committee on April 22, 1969. My purpose in quickly reviewing that previous testimony is to demonstrate to you the relationship of the factory, the dealer and the consumer with respect to the automobile warranty and how the policies and practices of the factory, which policies and practices are unilaterally determined because of the enormous economic power and influence of the factory with respect to the dealer, may result in and cause the consumer to be disappointed with the promise held forth on the face of the piece of paper, presently called a warranty, which the consumer receives when he purchases that sparkling new automobile that the advertising suggests is the latest technological development of the ingenuity that we have come to expect from our Detroit assembly lines. Unfortunately, and unknown to the public at large, because of developments in the automobile industry, that same assembly line in too many cases does not end in Detroit but ends in the dealership, and the dealer is required to perform numerous functions for which, in the past, he has been unreimbursed by the factory or if reimbursed then on a far inadequate basis. In effect, the factory has forced the dealer to subsidize the completion of the manufacturing process, a function which should not be the dealers unless he is adequately compensated so that he is able to afford the very best personnel in order to make good the manufacturer's "boast," if you will, which takes the form of a warranty, that the product is free from defects.

Attached hereto and made a part hereof by reference as Exhibit A is the text of the prepared statement that I delivered to the Federal Trade Commission. To briefly summarize, the testimony clearly demonstrates that at that time Ford Motor Company utilized unfair methods in their relations with their dealers with respect to the administration of the warranty and policy program, particularly as to the computation of cost recovery allowed dealers. The cost recovery permitted was *wholly inadequate* to reimburse the dealer for his actual out-of-pocket costs in performing the labor and supplying the parts, let alone providing for a profit on his investment or for his service to the manufacturer in fulfilling the warranty obligations which the factory had unilaterally extended to the consumer without consultation with the dealer as to manner or method of performing the imposed obligation. Obviously, the effect of the program as it existed to the date of that testimony had a drastically adverse effect on the

dealer and consequently resulted in dissatisfaction among the consumers. I will not take your time presently to review the statistics cited therein but I respectfully direct you and the staff of this Committee to the "Study of Cost of Service for Selected Ford Dealers" (Exhibit A, page 8), compiled at the dealer's expense by the noted management consultant firm of Booz, Allen & Hamilton. I also respectfully call to the Committee's attention the "Staff Report on Automobile Warranties" prepared by the Federal Trade Commission which report was prepared in part to be furnished to the appropriate congressional committees in connection with hearings on legislation introduced by Senators Magnuson and Hayden on December 6, 1967 (S. 2726 "Guarantee Disclosure and Product Servicing Act of 1968" and S. 2727 "Federal Motor Vehicle Warranty Act").

Further, by way of background, I respectfully wish to call to the Committee's attention my testimony presented to the Antitrust and Monopoly Subcommittee of the Senate Judiciary Committee to which I have previously referred. The applicable portions of the prepared statement of that testimony are attached hereto as Exhibit B. If I may briefly summarize, that testimony was to the effect that the consumer did not receive the same satisfaction on warranty work as he does on retail labor work because the manufacturers had not allowed the dealers to recover their costs let alone a fair profit. In effect, the manufacturers, who make the promises contained in the warranties had not given the dealers, the "designated representatives", the tools to make good on those promises.

I am happy to be able to report that the inadequate compensation for warranty work which, I suggest, is primarily to blame for the poor experience consumers have had with respect to automobile warranties, is, by and large, fading from the actual practice in the automobile industry. The three major automobile manufacturers have instituted plans whereby the hourly rates they pay for warranty repairs are being raised. Hopefully, the manner of computation of the time allowed for the performance of particular repairs will also be revised, and the parts mark up used in warranty work will also be revised. Therefore, dealers should no longer have any cause to avoid warranty repairs or use lesser skilled mechanics to complete them.

The Problems.—The above "report" does not mean that the problems of warranty reimbursement no longer exist. Firstly, there is no guarantee to the dealer that the rate will always be a fair and equitable one with respect to both labor and parts. Secondly, as to defects existing upon delivery, it is still the factory which unilaterally determines when and under what circumstances dealers will be compensated for the repair of these defects prior to sale to the consumer.

In addition to the two aforementioned existing problem areas which the present draft of the bill does not resolve, the present draft creates the following problems as a result of the language utilized or because the bill is silent or the newly imposed requirement will prove unworkable:

1. The bill contains no prohibition against a manufacturer unfairly passing off his duties and liabilities to his dealer, franchisee or distributor who has had no role whatsoever in the manufacture or design of the product.

2. Section 5(c) may result in the manufacturer fixing the price of the maintenance required.

3. The "informal dispute settlement mechanisms" contemplated by section 16 do not extend to disputes between the manufacturer and his designated representative.

4. The bill does not require the guarantor where there is a consumer claim to indemnify the innocent dealer for any liabilities imposed or reimburse the designated representative for his expenses in defending such a claim when the recovery is based upon a failure by the *guarantor* to fulfill his performance guarantee or parts warranty. The remedies section is so broad as to appear to catch an innocent dealer who has been diligent and has exercised due care but has been named a party defendant merely because he has been designated a representative or has been unilaterally forced to extend a warranty as in the 1970 Ford warranties.

As you can see, I have attempted to articulate six problem areas either existing or independent of the proposed legislation or created by the bill. In order for the legislation to achieve its purpose these problems must be met by the bill. I offer the following solutions to these problems.

As to the problem of inadequate reimbursement for labor and parts, we recommend that section 10 be amended to provide that a guarantor not be permitted to designate a representative to perform any duties with respect to a performance guarantee or parts warranty unless the designated representa-

tive is reimbursed at a fair and equitable rate with respect to both parts and labor as well as any other duties which he is required to perform or costs incurred to include but not limited to alternative transportation. A proposal is annexed hereto and made a part hereof as Exhibit C.

With respect to the problem of defective delivery and the burden placed upon the dealer, in order to insure that the defective delivery is corrected and the burden for said correction placed upon the person or persons most responsible for said defect, it is recommended that the phrase "first purchaser" appearing in the third paragraph of section 3 be defined in the definition section, section 2, to include the retailer, in this case, the automobile dealer. The effect of this will be to provide an incentive to the retailer to find and cure defective merchandise prior to its sale to the consumer. Essentially, this proposal means that a dealer will be paid for predelivery inspection, an approach recently adopted in Wisconsin on October 14, 1969. A proposed definition is annexed hereto and made a part hereof as Exhibit D.

As to whether the retailer can or should be forced to extend a guarantee or parts warranty on a product which he has not manufactured or designed, or had any say with respect to either manufacture or design, it is recommended in the interests of the consumer that the bill contain a prohibition against manufacturers compelling or requiring retailers to extend a warranty either solely or concurrently with the manufacturer. Proposed language is set forth at Exhibit E. The evil to be eliminated by the inclusion of a prohibition is the situation where a manufacturer does not, in its own name, make a guarantee but rather, as a condition to granting a sales franchise, compels the franchisee to extend the guarantee even though the latter has not manufactured or designed the product. This danger extends to all industries using the franchise method of doing business.

Another problem pertains to section 5(c) of the bill. Costs vary from region to region and from time to time with respect to the maintenance required of a vehicle which maintenance, as I am sure all of you well appreciate, must necessarily be extensive in that an automobile is a most complex item of equipment having many, many parts which, given our consumers propensity to mistreat, must from time to time be serviced. Therefore, because these costs are so variable, it is respectfully submitted that section 5(c) be eliminated from the proposed legislation.

The "informal dispute settlement procedure" contemplated at section 16 is an excellent method whereby the many disputes involving guarantees may be settled. Section 16 should also include a provision to the effect that if and when the makers of guarantees designate representatives that those representatives be included within the dispute settlement mechanism and further that the mechanism extend to disputes involving the manufacturer and the designated representative. Language to this effect is suggested at Exhibit F.

A final problem involves the remedies section. Under no circumstances should a manufacturer be permitted to pawn off upon the dealer any of his losses resulting from the establishment of these remedies. To do so will discourage guarantors from fulfilling their promises because it will permit the factory to shift the cost responsibility to the dealer who has neither manufactured nor designed the product. As I have indicated earlier, such was the practical effect of the low reimbursement rate. In effect, the dealer was subsidizing the manufacturing process without the expense of same being included in the cost of goods sold on the manufacturer's income statement where it belonged. Therefore, we recommend that an additional section be included under Remedies to provide that the guarantor shall indemnify his designated representative for any and all losses and expenses incurred by the designated representative where said losses have not resulted from the negligence of the dealer and the costs are occasioned by the requirement to defend an action in which the dealer was not responsible for the consumer's loss. The proposal takes the form of both a separate remedy for the dealer over and against the manufacturer and also in those situations where a consumer has recovered from a designated representative as well as the maker of the guarantee. Language is suggested at Exhibit G.

The problems which I have attempted to articulate and the solutions which I have proposed, it is respectfully submitted, will benefit the consumer because, in those industries where designated representatives are a way of life, it is important that the designated representative be given incentive to perform and fulfill the promises contained in a guarantee which the designated representatives has

not given and has not shaped as to scope and burden because of the economic imbalance as between factory and dealer. It is respectfully submitted that by strengthening the designated representative, you are insuring that the representative, who deals directly with the public, will be best able to fulfill the promises which the manufacturer has extended directly to the consumer. In the automobile business, the dealer, and the independent franchised dealer system of which he is a part, given the tremendous economic power of the automobile manufacturers, is the first and only line of defense for the retail consumer.

Finally, thank you again for this opportunity to present the "designated representative's" point of view.

EXHIBIT A

My name is Edwin J. Mullane, Chairman of Newark, New Jersey District Dealer Council and Chairman of Newark, New Jersey and New York Ford Dealers Warranty and Policy Committee. I am also a Ford Dealer.

I should like to express our council and committee's appreciation to the commission for inviting me to visit with you and relate to you our dealers' position and feelings on warranty and policy.

I should like to ask your indulgence if our statement suffers from an absence of professionalism in expression, for we do not have the manufacturer's fire power, resources, unlimited staff and armor. What we do have are firm convictions after laboring in this warranty and policy vineyard for the past 36 months. We hope we can make a significant contribution to your forum.

To appear before you and to proclaim that the dealer body is without fault and misgiving is not my intention. But it should be understood that our interest, our concern, and our desire for an elevation of the entire service image is not phony, but real—we have a social responsibility as dealers and as members of our community, both of which ally us with the consumer.

In my statement, I should like to develop, in depth, the inequities of both the past and present warranty and policy programs as going systems, and suggest some possible solutions to this very complex unilateral arrangement.

A superficial observation would make it appear to be a simple arrangement. We (the dealers) receive a franchise to sell and service a manufacturer's product. The company (manufacturer) views the satisfactory handling of warranty work at the dealership level as an inseparable part of the franchise agreement. There are responsibilities spelled out for both dealer and manufacturer in the sales agreement. The manufacturer has the right to expect adequate facilities from the dealer and adequate sales and service penetration. But with every right there is a corresponding duty. The factory, in turn, has an obligation (duty) to the dealer to manufacture an automobile that will not require remanufacturing under the present dealer cost structure.

It should be noted in passing that the remanufacturing process is much more than dewaxing the car and installing hub caps. In fact, this remanufacturing process has an iceberg quality. The nine-tenths below the surface includes many non reimbursable predelivery items, customer satisfaction and dealer attitude to mention just a few.

It should be understood that the effort of the Newark and New York Warranty and Policy Committee—dating back three years—was and is entirely voluntary, without compensation, and at considerable sacrifice to their individual dealerships. It should also be understood, especially in light of recent criticism of the dealer body, that our group (consisting of about 274 dealers in New Jersey, New York and parts of Pennsylvania and Connecticut) made a judgement of its own, to study the service area as it relates to the consumer, the manufacturer, our own service departments survival *and our social responsibility in the marketplace.* This effort has been endorsed by the Pennsylvania, New York, New Jersey, Ohio, Michigan, Maryland, Connecticut and Minnesota State Associations and the Canadian Association, representing thousands of dealers throughout North America. We are not an island by ourselves. Also, our viewpoint has been nurtured by the white heat of the jungle crucible called the New York market.

Initially, allow me to capsulize chronologically our dealer efforts. I only hope in this simple tale that you sense our frustration in attempting to galvanize our manufacturer to assume the mantle of social responsibility and thus give us the tools necessary to live up to his promises (warranty) which he expands and contracts arbitrarily.

As 1966 National Chairman of the Parts and Service Committee of the National Dealer Council, I had many discussions with the then Vice President in charge of the Ford Division concerning warranty and policy. At his suggestion our local committee sent a questionnaire (Attachment I) to approximately 800 Ford dealers in the Northeast region, soliciting information on their own warranty and policy problems. Among other areas, the questionnaire revelaed that 92.3% of the respondents were not satisfied with the manufacturer's warranty and policy program. As a result of the dealer dissatisfaction and concern our warranty and policy committee launched its program of study to determine what steps should be taken to overcome these difficulties. On January 23, 1967, we made a report to Mr. Donald Frey, then Vice President in charge of the Ford Division, on the basis of this questionnaire. (If the commission desires, this report will be made available.) The report which took many months of preparation was an attempt to refute a highly controversial white paper issued by Ford service management wherein the latter attempted to place all blame for the warranty and policy mess on the dealer's doorstep. We concluded this dealer research project by asking for five remedial steps:

1. Ford Division immediately increase the present warranty labor rate by one third for each dealer.

2. Ford Division immediately increase the time allowances in the suggested time schedule by 25%. This, pending receipt of recommendations on equitable time allowances to be obtained by an outside engineering firm, the selection of whom must be approved by Ford Motor Company and Ford National Dealer Council.

3. Ford Division immediately reimburse dealers at the full retail rate on parts used in warranty and policy.

4. Ford Division provide technically qualified engineers on a basis of a minimum of one per zone, over and above administration help, service instructors, and supervisory service department personnel.

5. The administration of the Ford warranty and policy program be handled by sales-oriented personnel so that the warranty and policy becomes the important sales tool it rightfully should be.

In the Spring of 1967 Ford introduced the BLS system. On May 8, 1967, I wrote Mr. Arjay Miller, then President of Ford, a letter from which I excerpt.

"The divisions implementation of BLS reimbursement rates is a step in the right direction, however, without an impartial review of time studies and a thorough accountants review of back-end true labor costs, plus your new methods of payments—all are analogous to treating leukemia with Listerine . . . a new rise of consumerism that is gredually demanding a higher type of quality merchandise and dealer service capability . . . with these conditions existing, you, as President, should attempt to bridge this chasm by an apollo-type review of warranty and policy."

Needless to say an apollo-type review was never held.

The Summer and Fall were seasons of disenchantment in our desire to move forward on this ever-increasing consumer cancer.

In complete frustration, and I might add desperation, the New York-New Jersey committee on November 13, 1967, engaged Booz, Allen and Hamilton to probe and study dealer cost of warranty and retail labor. It should be added our committee pleaded with our manufacturer to make this a joint venture. Our plea fell on deaf ears. We had no choice but to commit $100,000.00 of dealer funds, in order to engage this highly responsible consulting firm.

Is it not ironic that a very small sector of the retail automotive business, based in New York and New Jersey, were forced to retain the largest consultant firm in the world to find out whether or not we were getting a fleecing from our manufacturer?

In introducing John McKee, Vice President of Booz, Allen and Hamilton, which is the largest management consulting firm in the world, I would like to point out that we selected Booz, Allen and Hamilton because of its wide experience and its reputation for integrity, objectivity, and impartiality and because we would be satisfied with nothing less than a study clean as a hounds tooth.

Study of Cost of Service for Selected Ford Dealers

Basic objectives of study

This study had two main objectives:

1. To determine, for the dealers selected, the average cost of providing retail repair service versus the average rate charged for that service.

2. To determine the average cost of providing warranty repair services versus the compensation received.

And the overall objective of the study was to provide dealer management with a set of facts concerning their repair business that would give them a realistic picture of whether or not they were making any profit from either the retail or the warranty repair business. The data was developed on a conservative basis to assure validity of the findings i.e., only costs that were specifically identifiable as relating to service were included.

Study coverage

The study included 13 dealerships. Five were from the Newark District, five from the New York District and three from the Houston District. The aim was to use dealerships which were judged to run better than average repair shops. The warranty and policy committee in each district selected the dealerships. In both the Newark and the New York Districts, the committees picked one large metropolitan dealer, one small dealer, one with a new facility and one with an old facility in order to get a more representative sample.

Within the 13 dealerships new vehicle sales ranged from 297 to 2,926 units per year. Used car sales at retail ranged from 266 to 2,748 units per year. The number of shop mechanics ranged from 8 to 38 per shop.

Cost data used in the study was for the year 1967. Unusual or non recurring expenses were deducted from actual costs.

Analysis of pay plans and retail rates

On retail work—

3 dealers paid mechanics a weekly salary
8 dealers paid mechanics 50% of the flat rate charged for the work performed. (Two of these were union shops)
1 dealer paid mechanics 52% of the flat rate charged and
1 dealer paid mechanics 45% of the flat rate charged

On warranty work—

3 dealers paid mechanics a weekly salary
4 dealers paid mechanics 50% of the Ford allowance
2 dealers paid mechanics at a fixed rate per hour for the actual hours worked
1 dealer paid mechanics 52% of the Ford allowance
1 dealer paid mechanics 45% of the Ford allowance
1 dealer paid mechanics a negotiated rate per hour times the Ford allowed times and
1 dealer assigned some of his mechanics who were paid on a salary basis and some who were paid 50% of the Ford allowance

Analysis of internal work

One factor that has an important bearing on the calculation of cost of service work is how internal work is costed. Internal work is performed when mechanics, who could work on either retail repairs or warranty work, are used to do work for other parts of the dealer business. Practically all of the internal work is done on used cars prior to their being put on the sales lot.

Of the 13 dealers studied, 11 charged internal work at direct labor cost, that is—no add-on for overhead support. One charged internals at direct labor cost plus 25% and the other at direct labor plus 10%.

For the 13 dealers studied, the hours spent by mechanics on internal work in 1967 averaged 26.8% of total mechanic hours charged or sold. Thus this represents a significant portion of mechanic time.

Overhead cost allocation

Dealership overhead costs were allocated to the three main revenue producing segments of the business, namely: Service Department, Parts Department and Vehicle Sales Department.

The allocation to the three departments averaged as follows for the 13 dealers in 1967:

	Percent
Service department	40.0
Parts department	22.3
Vehicle sales department	37.7

For the 13 dealers in 1967 overhead cost chargeable to service averaged $4.48 per hour sold or charged. The total used as "hours sold or charged" included the hours worked on internals.

RETAIL SERVICE ANALYSIS

The retail service comparison was made on a "per hour sold basis" in order to develop cost figures that would be comparable to the retail rate quoted to the customer. The average cost of retail service for the 13 dealers in 1967 was as follows:

	Per hour sold
Mechanic cost	$3.48
Overhead cost	4.48
Total retail service cost	7.96
Average quoted retail rate was	7.55
Average loss in 1967 on retail service for the 13 dealers was	.45

Thus the average retail rate was about 6% under cost.

SAMPLE CALCULATION OF MAGNITUDE OF LOSS IN RETAIL SERVICE

[Shop with 10 mechanics—33 percent warranty]

	Highest loss dealer	Average of 13 dealers
Loss per:		
Day	$120	$24
Week	600	120
Month	2,500	500
Year	30,000	6,000

WARRANTY SERVICE COST ANALYSIS

The warranty service comparison was made on a "per hour charged" basis in order to develop cost figures that would be comparable to the compensation rate for warranty work. For warranty work an additional cost element is involved to identify the additional costs incurred that are specifically attributable to work. These include:

Supervisor's time to review and approve warranty paper work prior to its submission to the manufacturer.

Clerical and space costs related to storing and handling defective parts for return to the manufacturer.

Time of administrative personnel in following up on parts orders for warranty jobs.

Extra clerical time required to complete paper work for processing warranty claims.

The average cost of warranty service for the 13 dealers in 1967 was as follows:

	Per hour
Mechanic Cost (charged)	$3.18
Overhead cost (sold or charged)	4.48
Cost of processing warranty work (charged)	1.26
Average total warranty service cost (charged)	8.92
Average compensation on warranty for the 13 dealers was (charged)	7.27
Average loss in 1967 on warranty work was (charged)	1.65

The average cost of overhead allocable to retail parts sales was 32.3% of parts cost. The mark up allowed on warranty work was 25%.

The average dealer's cost was about 23% above the compensation received for warranty work and while one dealer broke even the other 12 all lost money.

SAMPLE CALCULATION OF MAGNITUDE OF LOSS IN WARRANTY WORK

[Shop with 10 mechanics—33 percent warranty]

	Highest loss dealer	Average of 13 dealers
Loss per:		
Day	$98	$43
Week	490	215
Month	2,058	903
Year	24,696	10,836

Now I should like to summarize the important facts of Booz, Allen and Hamilton's presentation in relation to our manufacturer's position on cost recovery and its effect on the attitude of the dealer and its resulting effect to the consumer.

It should be simply stated that reasonably efficient dealers are not recovering their costs on warranty parts and labor despite Ford's positive position as stated by their representative on January 10th before this commission, namely, "Ford's present reimbursement procedures which were adopted in mid 1967 are designed to permit full cost recovery on warranty work performed in dealerships where the service operation is conducted with reasonable efficiency."

To further cloud the issue Ford's representative at the same time goes on to state, and I quote, "Ford also challenges the conclusion that customer service would improve if warranty reimbursement terms were liberalized." He further states, "if reimbursement rates were increased to a cost plus basis, many more administrative controls would be required by the factory." This statement implies that, if cost plus a profit were paid, the warranty procedure would become a further obstacle course. Our committee challenges the logic of this arbitrary position as it would appear to be a further attempt by the manufacturer to evade his responsibilities.

Now, members of the commission, if you were a dealer and it had been proved to you that you were being reimbursed at less than your cost for doing this work wouldn't this adversely affect your attitude towards warranty work?

And by the same reasoning, if you *were* reimbursed on a basis that enabled you to recover your cost plus a profit to which we feel we are entitled, wouldn't this greatly improve your attitude toward warranty work in your shop?

Now what can be done by the manufacturer to implement programs that will accomplish what must be done to solve the problems of the consumer?

We have proposed a plan to the Ford Motor Company, which is a dramatic improvement on their BLS plan, that we feel will accomplish the task. It is a plan which gives the dealers incentives to improve themselves in specific areas so that they can adequately service their customers under warranty. A copy of the plan is attached to this report. (Attachment II)

It starts with a minimum base amount and reimburses dealers on a graduated basis in the areas of proper training of mechanics, proper number of mechanics in relation to the dealers vehicle sales, proper size of facilities in relation to dealers vehicles sales, proper amount of up-to-date equipment, a method to improve customer relations by grading the dealer on customer complaints and finally a program to attract and retain mechanics to the automotive field.

We are firmly convince that the plan just briefly described would accomplish the removal of the customer dissatisfaction that you so ably describe in your staff report.

One further thought, we as dealers can study and research, suggest possible solutions, and make personal accommodations for our customers, but nothing will result in customer benefits until all manufacturers adopt the creed, and believe it, that inherent in this automobile, as it rolls off the assembly line, is a social responsibility.

This social responsibility must be implemented on a vast scale if the consumer is ever to be treated with fairness and equity. Time is running out! Some compelling force must move the manufacturer.

(District ____, Dealer total planning potential ____)

1. Are you satisfied with the present Ford Division Warranty and Policy reimbursement program?

Yes _____. No _____.

2. Is your Warranty and Policy reimbursement return equal to your return on customer labor?

Yes ____. No ____.

3. If the Warranty and Policy reimbursement brought you a return equal to your retail repair service, would you welcome visiting owners and Warranty work with the same care, consideration and thoughtfulness as your regular service customers?

Yes ____. No ____.

4. If the answer to the above is yes, would you find it less difficult to retain and attract quality mechanics?

Yes ____. No ____.

5. If your Warranty and Policy reimbursement netted you a return equal to the return on your retail customer repair services, would you consider expanding your service facilities to handle the increased Warranty load? (If you have recently expanded your facilities, do not answer.)

Yes ____. No ____.

6. Have you increased your service facilities in the past two years?

Yes ____. No ____.

7. If the answer to the above is yes, have you found it less difficult to retain and attract quality mechanics?

Yes ____. No ____.

8. What is your percent of Warranty and Policy labor to customer repair labor (account No. 374 divided by account No. 370), for:

First 6 months of 1966 ____.

First 6 months of 1962 ____.

9. What is your percent of Warranty and Policy parts to Shop parts (account No. 357–362 divided by account No. 355), for:

First 6 months of 1966 ____.

First 6 months of 1962 ____.

10(A) What is the number of Warranty and Policy claims written (from your Claims Register) for the first 6 months of 1966?

Number of Claims ____.

10(B). What is the number of Repair Orders written (from your financial statement) for the first 6 months of 1966?

Number of Repair Orders ____.

11. What guide do you use for retail labor charges? What dollar rate per hour do you use?

Guide:	*Rate*
Chilton	$_____
Motor	_____
Ford Time Schedule	_____
Other	_____

12. My Ford Warranty rate is: Car $_____ Truck $_____ Body $_____.

13. Do you believe that the Ford Division Mechanic Training Program is adequate?

Yes ____. No ____.

14. Do you believe that there is a sufficient number of Ford District Service personnel available in the field to assist dealers?

Yes ____. No ____.

15. Do you believe that the Ford Service personnel are technically qualified to handle the complexity of service problems?

Yes ____. No ____.

16. Do you compensate your mechanics on a percent of list price of labor operations? i.e.,

60/40 ____.

55/45 ____.

50/50 ____.

Other ____.

Salary ____. Hourly Rate $____.

17. Is your present method of mechanics' compensation satisfactory to you?

Yes ____. No ____.

18. As a result of study of Dealer Warranty and Policy programs, a suggestion has been advocated to eliminate the 50/05 pay plan and substitute a salary or salary-plus-incentive plan for mechanics.

Do you agree with this proposal?

Yes ____. No ____.

19. How much has your employee benefits (account No. 65) increased for the first 6 months of 1966 over the first 6 months of 1962? (Divide 1962 by 1966.)
Answer. _____.
20. Additional comments or information concerning the Warranty and Policy Program (if necessary—use reverse side of questionnaire).

ITEM NO. 1. WARRANTY REIMBURSEMENT PROPOSAL

A. Bureau of Labor Statistics.—We propose 2.5X the present area based B.L.S. labor rate, per mechanic, for the labor rate reimbursement.

B. $4 maximum bonus credit.—We propose a $4 maximum bonus credit equal to 100 percentage points for dealers qualifying in each of the following categories:

B–1—Training.—20 percentage point availability, or 80 cents per hour. A credit maximum of 20 perentage points.

Increase the number of training hours per man per year from approximately nine hours to fifteen hours. This hourly requirement shall be reviewed annually by the Newark-New York District delegates to the National Service Council, Chairmen of the Newark-New York Ford District Dealer Councils and representatives of Ford Motor Company on the following basis:

15 hours per man, 20 percentage points, or 80 cents per hour
13–15 hours per man, 16 percentage points, or 64 cents per hour
10–13 hours per man, 10 percentage points, or 40 cents per hour
Under 10 hours per man, 0 percentage points, or 0 cents per hour

B–2—Mechanics.—20 percentage point availability, or $0.80 per hour.

The definition of a mechanic is a registered technician with the Ford Motor Company having passed a qualifying examination approved by both the Ford Motor Company and the Dealers Service Council.

The establishment of this category is on the basis of one certified registered technician for every eighty (80) new vehicles sold per year.

80 Cars per year per mechanic, 20 percentage points or $0.80 per hour
81 to 90 Cars per year per mechanic, 15 percentage points, or $0.60 per hour
91 to 100 Cars per year per mechanic, 5 percentage points or $0.20 per hour
Over 100 Cars per year per mechanic, 0 percentage points,$0.00 per hour

B–3—Facilities.—30 percentage point availability, or $1.20 per hour.

Dealer must have one stall per forty (40) car sales per year, based on the previous three years sales average.

40 Cars per bay or less, 30 percentage points, or $1.20 per hour
41 to 45 Cars per bay or less, 25 percentage points, or $1.00 per hour
46 to 50 Cars per bay or less, 10 percentage points, or $0.40 per hour
51 to 55 Cars per bay or less, 5 percentage points, or $0.20 per hour
56 and over cars per bay or less, 0 percentage points, $0.00 per hour

B–4—Equipment.—15 Percentage Point Availability or $0.60 Per Hour.

We recommend a change of total value only. The method of computation seems to be equitable.

B–5—Customer relations.—10 Percentage Point Availability of $0.40 Per Hour.

All "Red Border Letters" (Customer complaints) will be classed as chargeable complaints until a reply is sent to the District Office from the dealership. At that time a determination will be made as to whether it is chargeable or non-chargeable complaint. On a monthly basis a listing of all chargeable complaints will be sent to the dealership. If the dealer feels the complaint was not rightfully a chargeable complaint a review with the District Service Coordinator (a position to be established equal in stature to that of the assistant district manager-refer Item #6) shall be made. Final decision to be the responsibility of the service coordinator.

Under 2 chargeable complaints per 100 vehicles sold, 10 percentage points, or $0.40 per hour
2 chargeable complaints per 100 vehicles sold, 8 percentage points, $0.32 per hour
3 chargeable complaints per 100 vehicles sold, 6 percentage points, $0.24 per hour
4 chargeable complaints per 100 vehicles sold, 4 percentage points, $0.16 per hour
5 chargeable complaints per 100 vehicles sold, 2 percentage points, $0.08 per hour
6 chargeable complaints per 100 vehicles sold, 0 percentage points, $0.00 per hour

B–6—Fringe benefits.—5 percentage Point Availability or $0.20 Per Hour.

We recommend that the formula for computing these points remain proportionately at the same as it is presently, but with a change in total value.

$1000, and over, 5 percentage points, or $0.20 per hour
$999, and $900, 4 percentage points, or $0.16 per hour
$899, and $700, 3 percentage points, or $0.12 per hour
$699, and $500, 2 percentage points, or $0.08 per hour
$499, and $300, 1 percentage point, or $0.04 per hour
$299, and $000, 0 percentage points, or $0.00 per hour

Comments: A one year test program is too short (2 Year Minimum) completion of mechanics testing is impossible in one year dealers encouraged to invest in facilities will need more time to amortize.

Item No. 2—Reimbursement payment.—A 36 to 48 hour reimbursement on all claims presented. Pay now—Argue later.

Item No. 3—1863 Form.—A simplified warranty claim form.

Item No. 4—Parts markup.—Parts markup to be mutually agreed upon as previously discussed. (Our request was for a 35% markup above factory cost.)

Item No. 5—Parts pickup.—A truck for returning parts to Ford Motor Company to call at each dealership biweekly. Driver and parts manager to sign receipt.

Item No. 6—Service coordinator.—To institute the job of service coordinator and make available enough service representatives as the dealer service council representatives and Ford Motor Company deem necessary.

Item No. 7—Training center.—A program to be implemented by January 1, 1969 with an initial grant of $250,000.00. This program to be run with the dealers and Ford Motor Company with an outside director. At the outset 25 to 35% of the working area of the present diagnostic center would be used for actual training of the hard-core unemployed. The closing of the diagnostic center as such, shall materialize by June 1, 1969. At that time the entire facility to be devoted to a training center with the probable ultimate outlay for this training program to be in the neighborhood of two million dollars.

Item No. 8—Equipment purchases.—An 8 to 10 year payoff on any large Rotunda equipment purchased and a suitable leasing arrangement for updating of equipment.

Item No. 9—Credit card.—The establishment of a Ford product owner credit card to be issued at time of sale subject to necessary credit investigation.

My name is Edwin J. Mullane. I am Chairman of the Newark, New Jersey District Dealer Council; Chairman of the Newark, New Jersey and New York Ford Dealers Warranty and Policy Committee, and for fourteen years I have been a Ford Dealer. I will attempt to express the viewpoint of the metropolitan automobile dealer.

I should like to express to the Senate Sub-Committee on Antitrust and Monopoly the appreciation of the council and the committee for the invitation to visit with you and for the opportunity to relate to you dealer feeling on a number of problems.

The subject matter this morning is inherently dangerous for the consumer and for the franchise system. Yet the central issues and the solutions to the problems have become obscure because of the tremendous economic leverage, economic supremacy and advertising power of the automobile manufacturer vis-a-vis the consumer and the dealer. As I attempt to prove that there is an unfair and imbalanced relationship between the auto companies and their respective franchise dealers, I would ask that you be constantly aware and alert to this overt economic advantage which has existed for more than 30 years. I refer you to Exhibit 1. It actually puts in motion parallel economic and prestige forces which not only dehydrate the organic life of the franchise system, but also produce resultant adverse effects on the consumer in the market place.

This is a strong statement, but, as our testimony unfolds, we believe we will give credence and substance to the accusations both logically and statistically.

The areas that this paper will cover are:

1. Lease and fleet subsidies.
2. Warranty and policy.

The second topic, the warranty mess, is a National Automotive scandal, and the manufacturers who created the problems, assume the unbelievable posture that all is well in the warranty marketplace.

The customer, who paid for the warranty in the purchase price of the car, has been deceived and subjected to an emotional and financial drain.

The dealer, who has been much maligned in this warranty crossfire, has not been given the tools to make good the promises of the manufacturer.

If the manufacturer had built a zero-defect automobile, there would be *no* warranty problem. The dealer body is thirsting for a quality-built automobile,

not a partial contribution with which to remanufacture the manufacturer's mistakes. With vehicles lacking this quality, which seems illusory, we must be adequately paid to make this vehicle acceptable to our customers.

The degree of zero-defect, to a point, can be predicated on design, quality control, assembly line speed in relation to an increasing proliferation of equipment, worker dedication and the cost of dealer remanufacturing.

Two elements of this statement require further explanation—quality control and dealer cost of warranty work. On quality control, all four manufacturers appearing before the FTC recently offered vaunted quality control programs yet three weeks later one of these manufacturers recalled the equivalent of one year's production, approximately four million nine-hundred thousand cars—a recall prompted by the loss of human life. Doesn't this contradiction in testimony—quality control versus operational fact—create a deep chasm of doubt, a feeling of uneasiness?

On dealers' warranty costs and their effect on the consumer, the problem can best be stated by quoting *An Addendum to Testimony given by Representatives of the Newark, New Jersey District Dealer Council before the Federal Trade Commission on January 17th, 1969 in Washington, D.C.*

"During the question and answer period following our formal testimony on Friday, January 17th, 1969, a particular question was repeated several times. Namely, 'does the customer get the same satisfaction on warranty work as they do on retail labor work?' It is the considered opinion of our committee that the consumer does not receive the same satisfaction.

"There are many peripheral reasons for this lack of satisfaction but the real, gut reason is the manufacturer's monopolistic relationship with the dealers. They dictate the reimbursement rate and the flat rate time schedules, which do not allow the dealer to recover his cost (let alone a profit). This lack of profitability permeates the entire warranty mechanism.

"The above can be substantiated by referring to the Booz, Allen and Hamilton study and report incorporated in our January 17, 1969 testimony."

All of this can perhaps be said in another way—there exists an obvious inequity in the bargaining power of the two major segments of the industry. The manufacturer is monopolistic—he dictates the terms of the franchise agreement and changes the ground rules almost at will. The dealer has no significant bargaining power. The factory talks about flat rates, efficiency of shops, stall capacity, and many other things, but all that does is confuse the issue, because the factory is the one that *extended* the warranty and the dealer is obligated to *perform* the warranty at such cost as the manufacturer arbitrarily dictates. Basically, I think the real issue is that the manufacturer just does not want to pay the bill, and through his tremendous prestige, makes this unfair arrangement seem believable.

The dealers recognize that the consumer is not getting full value, as advertised, from the warranty program because the factory which is responsible for the cause, has failed to buy the cure. To a great extent, all the dealers are doing is swapping dissatisfied customers and reaping the whirlwind and the wrath of the consumer.

Section 10 of S. 3074 should provide—

"DESIGNATION OF REPRESENTATIVES

SEC. 10. Nothing in this Act shall be construed to prevent the maker of any performance guaranty from designating representatives to perform the duties required under this Act provided that the maker of any performance guaranty shall fairly and equitably reimburse such designated representatives for the performance of said duties and costs incurred but no such designation shall relieve the maker of his direct responsibilities to the consumer."

Section 2 of S. 3074 should include—

"(10) The term 'first purchaser' shall include but is not limited to a retailer who purchases a consumer product for resale to a consumer."

Section 2(9) of S. 3074 should include an additional paragraph:

"A manufacturer shall not impose upon its dealers, distributors or franchisees, as a condition to the right to purchase consumer products from the manufacturer, the duty to extend, solely or concurrently, an express guaranty where the dealer, distributor or franchisee has had no responsibility for manufacture or design of the product."

Section 16 of S. 3074 should provide:

"SEC. 16. Congress hereby declares it to be its policy to encourage guarantors to establish procedures whereby consumer disputes related to performance guaranties are fairly and expeditiously settled through informal dispute settlement mechanisms. Such informal dispute settlement procedures should be created by guarantors in cooperation with independent and governmental entities and should be supervised by some governmental or public body. Such informal dispute settlement procedures should apply to any guarantee-related dispute between the maker of the guarantee and his designated representative as well as between the maker of the guarantee and the consumer and the designated representative and the consumer."

The Remedies part of S. 3074 should contain a separate section:

"SEC. —. The maker of a guarantee who designates a representative in accordance with section 10 of this Act, as a condition to such appointment, shall indemnify and hold harmless its designated representative from any losses and expenses including but not limited to damages, costs and expenses recovered by an owner from a designated representative pursuant to this Act where said recovery in any suit or proceeding is based upon a manufacturing and/or design defect and the designated representative is free from negligence with respect to the duties performed."

Senator SPONG. Because of pending Senate business, the hearing will be in recess, subject to call of the chairman.

(Whereupon, at 11 a.m., the subcommittee was recessed, subject to call of the chairman.)

CONSUMER PRODUCTS GUARANTY ACT

TUESDAY, MARCH 10, 1970

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

The subcommittee met, at 9 a.m., in room 5110, New Senate Office Building, Hon. Frank E. Moss (chairman of the subcommittee) presiding.

Present: Senators Moss, Pearson, and Griffin.

OPENING STATEMENT BY THE CHAIRMAN

Senator Moss. The subcommittee will come to order.

Today the Consumer Subcommittee of the Senate Commerce Committee resumes hearings on the Magnuson-Moss Consumer Products Guaranty Act. S. 3074. The approach of this bill is simple. If a manufacturer or retailer decides to guarantee the performance of his product or any component thereof, he must do so in a prescribed manner that will let the consumer know he is getting a guaranty which meets Federal minimum standards. He must label it a "Performance Guaranty" and tell the consumer how long the guaranty will run and what maintenance is required, among other things. If the guaranteed product or component malfunctions, the guarantor is required to repair, or replace if repair is not possible or cannot be timely made, the malfunctioning component within a reasonable time and without charge. If the guarantor fails to live up to these federally defined obligations, the consumer has quick and effective means of making the guarantor respond either through court action where his attorney's fees are paid if he wins or through informal dispute settlement mechanisms.

There is another important feature of the bill. If a manufacturer or retailer gives a performance guaranty, he cannot disclaim his obligations to provide a product that is of fair average quality and fit for the ordinary purposes for which such product is used. This means that the guarantor can no longer hide behind its express promises of performance to insulate itself against nonperformance defects in its products. An automobile may still perform while the paint rapidly fades or the leather seats crack. By prohibiting the disclaimer of implied warranties, the Magnuson-Moss bill gives the consumer important additional protection in an area now often foreclosed because of disclaimers in the warranty.

It is interesting to note that the approach of S. 3074 is consistent with many of the recommendations of the Federal Trade Commission Auto Warranty report. The bill does not, however, require anyone to

guarantee a product he sells and, to that extent, it perhaps does not go as far as the Commission has recommended.

It is a pleasure for me to welcome here today the Chairman of the Federal Trade Commission, Caspar Weinberger, who will discuss the Commission's Auto Warranty Report and thereby help the members of this committee determine whether S. 3074, as it applies to automobiles, goes far enough. At a later date Chairman Weinberger will deliver in writing the Commission's formal position on S. 3074.

We are very happy to have Senator Pearson here sitting with us this morning.

Do you have any opening statement?

Senator PEARSON. No.

Senator MOSS. We are pleased to have you, Chairman Weinberger, and we look forward to hearing your testimony.

STATEMENT OF THE HONORABLE CASPAR W. WEINBERGER, CHAIRMAN, FEDERAL TRADE COMMISSION

Mr. WEINBERGER. Mr. Chairman and members of the committee, I am delighted to appear before you this morning, in response to your request, to comment on the Federal Trade Commission's Automobile Warranty Report. I am particularly appreciative because it gives me an opportunity to clarify for this committee what the Commission's report did and did not say about the automobile industry, and perhaps to correct any false impressions of the Commission's position which members of the committee may have obtained from occasional headlines in the press accounts which did not entirely match the recommendations in the report.

I will start by summarizing briefly the report's actual findings and recommendations:

1. The most significant finding of the Commission's study was that the automobiles being sold in the United States today are not meeting minimum standards of quality which the purchaser has a right to expect.

Whether one considers the volume of complaints received by the Commission, the volume of complaints received by the manufacturers, or simply the expense to the manufacturers of repairing defective cars the answer is the same: a purchaser is far from certain of getting a vehicle which will perform as he may reasonably expect it to do. This failure of the industry to produce cars which will work reasonably well is, of course, a breach of the promise, made in the manufacturers' warranties, of a defect-free car.

2. A second finding of the report that deserves special emphasis is that repairs of defects in cars, which have to be made under the manufacturers' warranties, have not been satisfactorily performed. It appears that over 20 percent of the repair jobs done under warranties are unsatisfactory, a figure far higher than for nonwarranty repair jobs. When a repair is not properly made, the manufacturers' promise in the warranty is breached again.

In considering the causes of these two failures to perform as promised in the warranty, the Commission identified several distinct fac-

tors. The causes of cars being delivered in defective condition were two:

(1) The manufacturers have not expended sufficient funds on quality control at the plant where the car is made, and

(2) The dealers do not give adequate predelivery inspections to cars before selling them.

Poor performance of repairs under the warranties appears to have resulted from (1) a lack of manufacturer interest in service, since most of their profits come from auto sales, and (2) inadequate compensation to dealers and mechanics for warranty work.

With these findings, both as to the low level of performance of the manufacturers under their warranties and the causes of this low level, in mind, the Commission framed its recommendation to the Congress.

That the auto industry had made promises in its warranties of a defect-free car which it had not fulfilled, and that it continued to make them long after experience had shown that they would not be fulfilled, were, of course, matters of grave concern to the Commission. The making of such promises is a violation of the Federal Trade Commission Act and, as the report makes clear, we intend to take appropriate action to prevent such violations. There are several approaches available to us, and we are actively considering them.

However, it appeared to the Commission that the most serious problem revealed by our study was one which we, as a Commission, could not solve with our existing authority. I mean the problem of quality control of cars produced for sale in this country.

To make the promise in the warranty of a defect-free car and not to produce such a car was a deceptive practice, but this deceptive practice could be eliminated in two ways. S. 3074, the bill before this committee, would eliminate it in one way—by requiring the manufacturer to promise no more than what he was prepared to perform, and to disclose the terms of his promise accurately. In dealing with the automobile industry, our Commission recommends another course—requiring performance by the industry to comply with certain minimum standards, whether promised or not. Accordingly, we have urged passage of an automobile quality control act. The Commission feels the time has come to establish quality control standards through legislation because of (1) the vital importance to the purchaser of an automobile's quality of performance; (2) the danger to the public of automobiles which perform defectively while actually in operation; and (3) the failure of the auto industry to date to provide, on its own, an acceptable level of performance in its products.

We recommend that a bill be passed directing that an appropriate agency of Government, with the necessary resources and expertise, set minimum quality standards for the industry. Failure to comply with such standards in manufacturing then should be subject to strong and effective sanctions under which both the Government and an individual consumer could obtain prompt redress.

I hope that this general proposal for legislation will commend itself to the members of this committee, which has been studying the problem of warranties on all types of products. I think I should make clear at once, however, that the Commission is only recommending the prescription of a statutory standards of performance and durability for

the auto industry. This is because of the vital importance of the automobile to the life of the American consumer, the various safety factors I mentioned a moment ago, and other reasons I have already mentioned. Further, we are not recommending extensive interference with the private control of the auto industry. Despite some headlines, the Comission is not recommending that the automobile industry be regulated by something like a public utility commission with power to set prices and limit the rate of return or profit of the manufacturers.

We do say that the public interest in safety requires that this industry's product must meet minimum standards of quality. The failure of the industry thus far to meet these standards fully, after so many years, and the absolute necessity that they be met convinced us that governmental action is appropriate at this time to encourage this industry to increase its quality control to the extent we have recommended.

The Commission is, as you know, continuing to pursue solutions to the problems of deception and unfairness in automobile warranties. We are also, of course, considering alternative approaches, for the use in the event the Congress should feel that it is premature to require, as we have recommended, minimum standards of quality. Naturally, all depends on congressional reaction to our proposal for legislation.

In advising the Congress of our Commission's belief in the need for legislation after a long study of a segment of the economy, the Commission is performing its historic function assigned to it by the Congress in 1914. This is what those who created the Commission saw as one of the most valuable contributions it could make to the governmental process.

I want you to know, Mr. Chairman and members, that I appreciate very much this opportunity to appear before your committee and present this short summary of our position.

Senator Moss. Thank you, Chairman Weinberger. This is a very succinct statement of the Commission's views on the automobile warranty problem. The committee welcomes the Commission's report on automobile warranties and appreciates your explanation of the Commission's position. We are glad to have it clarified. As you say, some of the reports have been somewhat at variance with your explanation and we are glad to have it from you as to what the Commission had decided at this point.

It seems to me in your testimony you state that the automobile warranty practices could be eliminated in two ways, either through the approach of the bill that we have before us, S. 3074, or the suggested Commission approach. Does your testimony go that far?

Mr. WEINBERGER. Yes, sir. We indicate there are at least these two approaches: That you could require the manufacturer to, in effect, promise no more than he was prepared to perform, and disclose the terms of that promise accurately. The bill before the committee goes one step farther: it forbids the disclaimer of the so-called common law or implied warranties.

The other approach is the approach we have recommended, that somebody with the necessary expertise, and obviously in consultation with the industry, set up minimum quality standards, and then there would be the requirement that those minimum standards be adhered to.

Our thought was the forces of competition would take over, and above the minimums there would be competition for the market, just as there was a few years ago, starting about in 1962, when the warranties were suddenly expanded.

Now they have been contracted and they are back to the point where we felt that legislation imposing some sort of floor was particularly desirable.

Senator Moss. Your proposal would rely on a quality control sort of requirement, minimum standards of quality control on all automobiles, which would sort have been in lieu of the implied warranty that is depended on in the bill, S. 3074.

Mr. WEINBERGER. Well, the implied warranties are a form of floor, Mr. Chairman. The problem has been that when the express warranty is furnished at the time the car is purchased, the implied warranties have been taken away in many cases. And the express warranty that has been furnished has not proven to be adequate or adequately performed.

Evidence is cited throughout the report with respect to the delays, the requirements of additional returns for repairs to be made, and things of that kind.

Our general approach was that if there were certain minimum standards required that would be fixed, as I say, after study of what was a reasonable duration of time for the various parts of the automobile, the powertrain and so on, that once this minimum was determined, then it would be imposed, and any higher warranty or guarantee that the manufacturer wished could certainly be offered, and the forces of competition would undoubtedly come into play, and certain companies would want to go higher. But there should be some kind of floor, because of the problems involved with only three major manufacturers, and with the necessity, as we saw it, of the public to acquire automobiles.

Senator Moss. When you testified before us in January, you expressed your own personal belief that it was improper for a guarantor to disclaim his implied warranties by giving the consumer an express guaranty.

Mr. WEINBERGER. An express guaranty that was below the implied warranty, yes.

Senator Moss. Yes, by limiting his implied warranty. Do you think this is the Commission's point of view as well as yours?

Mr. WEINBERGER. It would seem to be, from the adoption of this report.

Senator Moss. Does the Commission favor the creation of an informal dispute mechanism to settle warranty disputes between buyers and sellers?

Mr. WEINBERGER. I don't believe there is anything in the report from which that conclusion could be drawn, and we did not analyze or make a recommendation on that point. I would be hopeful that, if a reasonable minimum quality standard were adopted, there would be little need for that sort of thing. It seems to me there have been major efforts in recent years to improve quality control. I do not think they have been enough, nor have they achieved the results I am sure everybody hopes for.

This is one of the principal reasons the Commission felt a minimum standard of quality should be established to assure the public that at least that much would be given to them with each purchase of a car.

Senator Moss. What about the time factor, when a purchaser of an automobile says it has not functioned properly and the manufacturer does not come forward to replace or repair it without charge in a reasonable length of time? What time period are we talking about?

Mr. WEINBERGER. This would certainly be one of the details that should be covered in the establishment of a minimum warranty. The Commission did not feel that it had the expertise to say that a carburetor, for example, should be guaranteed for 5 years or a repair must be performed within 30 days, or anything of that kind.

On the other hand, the Commission felt it would be quite possible for a body with the necessary expertise to take testimony and hold hearings and discuss these matters with people who are knowledgeable in the field, certainly the manufacturers are obviously in this group, and eventually to set standards covering such points as the one you have just raised, that is, how long it would be reasonable to make repairs. The Commission report indicates that there is a great desirability to the purchaser being furnished another car or replacement car, if the repairs cannot be made, so as to minimize inconvenience to the purchaser during this period. But we did not attempt in this bill to go into the actual detail of what the minimum standards should be.

Senator Moss. But your response indicates that this is also inherent in this general problem, the time, a prompt response, and the alleviating of the buyer from inconvenience of loss occasioned by the malfunctioning of his car?

Mr. WEINBERGER. I would certainly think so, yes, sir. It is very similar to the old saying, "Justice delayed is justice denied." It will not do you too much good to have a warranty if one of the terms permits it to be performed within 2 years after the defect is discovered, something of that kind. So certainly this would be part of the establishment of minimum standards.

I do not pretend to know what the minimum period should be. It ought to be reasonable for both sides, and it ought to be readily determinable, I would think.

Senator Moss. Do you foresee that there would be a different warranty period for different makes of cars, perhaps longer for more expensive cars than for less expensive ones, any variation like that?

Mr. WEINBERGER. I would think that would be entirely possible. And I would think some manufacturers might well wish to make that point themselves before whatever group is organized to establish minimum standards.

I have no doubt that the establishment of minimum standards in certain areas may require more cost, which would be passed on to the public. I think that is probably inevitable. And I think the additional cost that would be involved in getting some of the standards applied to particular automobiles could well result in differences in standards for different makes of cars, perhaps between manufacturers, any one of a number of variations.

Senator Moss. Was there any evidence in this study leading to your report that more expensive makes of cars had fewer problems in this filed of malfunctioning, for which standards are now recommended?

Mr. WEINBERGER. I do not recall any evidence of that kind, Senator. There may well be some that went into the formation of the report. But as you know, the 4½-year study that led to the report was all completed before I joined the Commission. I do not recall evidence of that in the report itself.

Senator MOSS. The rationale on which the Commission based its study and the report was primarily on, I take it from your testimony, on the needs for safety in the automotive field and second, on the great dependence that our economy, and in fact our whole society, now has on automobile transportation.

Mr. WEINBERGER. Yes, those were two very compelling factors. And the concern, I think it is fair to say, that in this particular situation that over the years there has not been developed at this point the ability to institute a degree of quality control so that the reasonable expectations of buyers could be met.

I do not think anyone anticipates that every car will always be completely perfect in all of its 15,000 parts, whatever happens to go into it. After all, every manufacturer is at the mercy, to some extent of the least competent man on the assembly line.

But we did feel over the years there had been demonstrated a need which had not been fulfilled for higher quality control. Even though quality control efforts and standards have improved, the feeling of the Commission was that they had not improved enough to justify the reasonable expectations of buyers. For that reason this kind of a proposal was recommended.

Senator MOSS. One reason I asked about the more expensive cars is that this committee has a file much, I guess like the Federal Trade Commission of "lemons" that people complain about in automobiles and we have an "elite lemon" file that is quite full.

We have some very expensive automobiles about which complaints were registered. So I wondered if the study had shown any differences among these because of the expense or the cost of the car. I am not sure we can see there is much difference.

Mr. WEINBERGER. I do not believe we have any evidence that there is any difference or that any more effort in quality control is put into a more expensive car. We do have, as you said, Mr. Chairman, a tremendous number of letters. I think more letters on this particular subject than on any other in the files of the Commission. So far as I know, there is no evidence that people who buy expensive cars are more immune from defects than others.

Senator MOSS. Thank you very much.

Senator Pearson?

Senator PEARSON. Mr. Weinberger, you state that the report indicated that automobiles being sold in the United States today are not meeting minimum standards of quality. What was that minimum standard? Was it a hypothetical standard of quality or usability, or was it a precise measurement?

Mr. WEINBERGER. No, it was not a precise measure. It was simply that we felt that of the cars that were being produced, various tests and measurements that were reported to us, as a result of dealers' information, manufacturers' information, surveys that had been conducted by other groups, showed that anywhere from 10 to 15 to 20

percent of the automobiles produced had defects that required some kind of repair.

It was simply the feeling that that was too high a figure; after this number of years the manufacturing process should be so refined and so guarded by quality control that you would not have defects in that amount.

As I mentioned a moment ago to the chairman, there is no feeling that it is in any way reasonable to suppose that every single car every year is going to be defect-free. But we did feel the number of defects now being reported was too high, and that it could be reduced.

Senator PEARSON. You indicated that the reasons for this lack of minimum standards of quality were twofold, first the manufacturers had not expended sufficient funds, and second, that the dealers do not give adequate predelivery inspection. Your recommendation goes to quality control with the manufacturers. It makes no recommendations as to predelivery service. It makes no reference to the failure to correct the situation pursuant to the warranty.

Is it your view that the quality control, if that is satisfied, then the other two conditions will improve measurably?

Mr. WEINBERGER. Well, I was using quality control in a somewhat broader sense, Senator. I was using quality control in the sense that it would involve not only much tighter control on the assembly line itself, but the entire process, which would involve adequate reimbursement to dealers for predelivery inspection, and adequate reimbursement to dealers for warranties, repair of defects under warranties, and things of that kind.

Our report indicated that while certainly not all of the fault is that of the manufacturers, there was some reason to suppose that dealers were not being given an adequate allowance for predelivery inspection.

Senator PEARSON. I don't know how we can legislate in that particular field.

Mr. WEINBERGER. I think the minimum quality control that we had in mind could well include factors of that sort, since it is quite evident, as you correctly point out, that dealers have a big responsibility for the way in which the car is actually delivered to the purchaser. And it is important that dealers be encouraged in one way or another to make an adequate predelivery inspection.

Senator PEARSON. The quality control comes at the time the car is sold and delivered to the consumer.

Mr. WEINBERGER. I think it is all part of the same process: the manufacturing is part of it, the assembly lines is a big part of it, what happens in the dealership is a big part of it, what happens if something unavoidably does go wrong is a part of it. I think all of these have to be examimed, because from the purchaser's point of view, the only thing he is interested in really is not why it happened, but whether or not he is going to get a car that will continue to perform for a reasonable length of time in a reasonable manner.

Senator PEARSON. You indicate that the Federal Trade Commission intended to take appropriate action to prevent these violations. What would be the nature of that action?

Mr. WEINBERGER. Well, if there were any evidence that there was a deliberate deception involved in promising performance when there

wasn't any real attempt to fulfill that, or if there wasn't anything remotely resembling an adequate attempt to fulfill it, it would come within section V, I think, of the Federal Trade Commission Act, as a deceptive and unfair practice.

There could conceivably be actions under the truth in advertising law, things of that sort. We don't have in mind any specific actions or anything pending at the moment. But we simply felt it proper to advise the Congress——

Senator PEARSON. So your report is not a basis for such action?

Mr. WEINBERGER. Oh, no. Each case would have to stand on its own footing.

Senator PEARSON. Previously you indicated if we expand your authority to permit a preliminary injunction you thought perhaps this would give you sufficient tools to do the job. That is now modified on the basis of this report?

Mr. WEINBERGER. Well, this specific report having been based upon some four and a half years' study of one very important, very large segment of the economy, goes beyond that and recommends not additional power to the Commission, but recommends the establishment of this floor on quality and on minimum quality standards.

Senator PEARSON. A supervising agency would not be within the jurisdiction of the Federal Trade Commission?

Mr. WEINBERGFR. No, we don't recommend that this be the case. It would be entirely up to Congress. We felt that the establishment of the minimum quality standards required a vary specialized form of knowledge that would have to be developed, and that these minimum quality standards could only be developed after ample hearings and testimony as to what would be a reasonable requirement for specific parts of the car, the power train, carburetor, tires, batteries, and so on.

Senator PEARSON. We have legislated in the fields of highway safety, we have legislated in the field of tire safety. That is another dimension of that same legislative movement.

Mr. WEINBERGER. That is correct. This is why I was concerned that there seemed to be so much reference to this as a public utility type of regulation as a result of a couple of sentences in the report that pointed out that the cars were in the category of public utilities, because they were so widely used.

What we were talking about is, as you correctly pointed out, an extension of a pattern previously adopted by the Congress where public safety is involved.

Senator PEARSON. You still adhere to the proposition that granting preliminary injunctive relief in the hands of the Federal Trade Commission is a valuable tool?

Mr. WEINBERGER. Yes, I think it is very necessary, because without it there are so many delays that can be engendered by any reasonably competent attorney that you could make almost meaningless the action of the Commission in starting a cease and desist proceeding.

Senator PEARSON. Is that the administration proposal, preliminary injunction?

Senator Moss. Yes.

Senator PEARSON. I thank you very much, Mr. Weinberger.

Senator Moss. We are pleased to have Senator Griffin sitting with the subcommittee this morning, a member of the Commerce Committee, and of course very much interested in the matter we have before us.

Senator Griffin, do you have some questions you would like to ask of the witness?

Senator GRIFFIN. Mr. Weinberger, I have been trying to figure out in view of your disassociation with the use of the term "public utility," which I welcome, incidentally, and commend you for disassociating yourself with it, where in the world it came from. How did we happen to become faced with those kinds of news reports?

I see on page 124 of the report of the Federal Trade Commission "The Commission believes it is clear that in present-day America, the automobile industry is no less a public utility industry." Why is the term "public utility" used if that is not what is meant.

Mr. WEINBERGER. The preceding paragraph is also important. That says:

> It has long been accepted that certain public utility industries must in the public interest meet legal standards of minimum performance. The manufacturers and sellers and distributors of food, drugs, housing, the operators of such modes of transportation as airlines and so on, must meet standards of safety and quality in conducting their business.

The implication from the various headlines in the press accounts—I had a call from Detroit asking me what rate of return we were proposing to allow them——

Senator GRIFFIN. I had a few calls, too.

Mr. WEINBERGER. I am sure you did. I was asked what rate of return we would allow the Ford Motor Co. I had to explain we were talking about quality and safety standards and that there had been many precedents for that with respect to tires, highways, and so on.

I might mention in this connection that some of the newspapers, particularly for example the New York Times, did not use this term in any way, either in their editorial supporting the position of the Commission, or in their news stories.

But it turned out to be an easy, though I think inaccurate way, of describing the basic recommendations of the Commission.

Senator GRIFFIN. I was thinking of some of the other ramifications that follow from this. For example, we have a labor reform proposal recently submitted by the administration right now that applies to the transportation industry which, in effect, takes away the right to strike.

A lot of people believe that employees in public utilities should not have the right to strike, considering the Government regulation over them. I am not asking you to comment, but there are all kinds of ramifications that flow from the use of that term which I think is very fortunate.

I am sure Walter Reuther and some of the labor leaders would be very unhappy if we moved in the direction of putting a pinch on the right to collective bargaining.

Mr. WEINBERGER. That was not the intention of the Commission. We were concerned primarily with the reasonable expectations of the buyers. If the term as it appears from some of the headlines led to

any confusion, that is one of the purposes of my appearance this morning, to make it perfectly clear that what the Commission is recommending is something quite different, though something very important.

Senator GRIFFIN. As I understand it, the Commission leaned heavily on a Newsweek survey, which found that 14 percent of new car buyers were dissatisfied.

Mr. WEINBERGER. This was only, I think, perhaps one or two sentences in the entire report. It was one of the factors mentioned. I would not think it was correct to say the Commission leaned heavily on it; no, sir. We had that as one of the various bits of evidence of the degree and extent of dissatisfaction with the performance under warranties and the performance of new cars.

But there were other factors, some of the ones Chairman Moss mentioned with respect to mail, information furnished to us by the manufacturers themselves, by dealers, and various other measures. This was simply one of a number of indications.

Senator GRIFFIN. Well, of course I think that I would be concerned, and other members of the committee would be concerned—and I know the automobile industry is concerned—when any percentage of buyers is dissatisfied. I think we might keep in mind that apparently 86 percent on the basis of this Newsweek survey are satisfied and 14 are dissatisfied.

Now to do something about the 14 percent, I hope we don't throw the baby out with the bath water, which I am afraid, is a possibility, if the Government is going to try to overregulate an industry which already has been subjected to an awful lot of regulation in the last couple of years.

Let me ask you this: I take it that your proposal would involve stationing Government inspectors at various places along the production lines in an automobile plant?

Mr. WEINBERGER. No, sir; nothing of that kind is contemplated. I don't think that would be very successful, and it would be hideously expensive. What I had in mind, and I think what the Commission has in mind, is that once the establishment of the minimum quality standards is completed, then there would be a standard which would be applicable to the sale of all cars.

Senator GRIFFIN. How would you enforce it?

Mr. WEINBERGER. It would be enforced through court action, under the general outlines of the proposal presented by the Commission.

Senator GRIFFIN. Are not present warranties subject to enforcement by court action?

Mr. WEINBERGER. They are indeed. It is the inadequacy of the warranty that has been one of the principal factors that led to the recommendations of the Commission. The warranties, as you know, Senator, varied in a substantial amount in the years between 1960 and 1968.

In 1962 Chrysler came along with an extended warranty and they made a substantial inroad into the leadership held by other companies as a result. They got a real competitive advantage from it.

After a few years other companies caught up, and after a few years more, all of the companies gradually went back to a warranty that was about where it was in 1960, which is approximately where it is today.

With only three major companies at this time, and one smaller company, involved in the manufacturing process, there are problems presented. But we do not contemplate, I do not contemplate, anything in the nature of a series of Government inspectors.

We do think that if there is a floor to the warranty required, as a result of carefully drafted legislation, after adequate hearings as to what is reasonable, that this will vastly improve the situation.

We would hope, and I would hope, and believe, that once the quality minimum was established, that you would have forces of competition coming into play that would have an even higher standard offered, perhaps for an additional purchase price, comparable to the various sort of insurance policies that used to be offered, service policies, with television sets.

You could pay $100 more and you would have a completely defect-free car guaranteed you, far above any minimum that was established. But I think this could be taken care of and improvement can come by the encouragement that would be given to the industry to improve quality control at all levels as a result of the proposed act.

Senator GRIFFIN. Thank you very much.

Mr. WEINBERGER. Thank you, sir.

Senator MOSS. Perhaps Mr. Sutcliffe of the staff might have a question or two.

I did want to point out an interesting figure, by doing a little arithmetic here. If, indeed, 14 percent of the buyers are dissatisfied with their cars, and if we are turning out 9 million new cars a year, that is 1,260,000 dissatisfied customers each year, which makes it sound a little larger than just putting down percentages.

Mr. WEINBERGER. We had a couple other surveys. On pages 51 and 53 of the report, Senator, it indicates there were other groups that found a larger number of defects. These were the things that led us to believe that something more than we had at present was required.

Senator MOSS. Thank you.

Mr. Sutcliffe, do you have a question?

Senator GRIFFIN. Mr. Chairman, I might interject that I think the automobile manufacturers are very much aware and concerned about the impact of a dissatisfied customer. I don't think it is a secret that a dissatisfied customer is not likely to go back to the same dealer or buy the same make of automobile.

So there is a good deal of built-in motivation and reason for the automobile industry to try to have satisfied customers. This has been my experience.

I don't know how many of you people on the Federal Trade Commission have worked in any phase of the automobile industry. I have. I have grown up in it, and I have some acquaintance with the attitude of people at all levels in the industry. It is not much different than other industries.

Mr. WEINBERGER. I think the report, Senator, speaks with great approval of the efforts that have been made, and the dollars that have been expended in attempting to improve quality control. I think that is recognized in the report.

I would certainly agree with you that it is a fact. As I said, our feeling was that what has been done has not been enough as yet, and that

some additional encouragement in the form of a quality control minimum was required. But I don't think there is any desire or attempt to denegrate what has been done over the years.

Senator GRIFFIN. Thank you.

Senator Moss. Mr. Sutcliffe?

Mr. SUTCLIFFE. Mr. Chairman, you mentioned the two possible approaches to elimination of what you considered to be a deceptive practice. One was S. 3074 type approach, and the other was the recommendation of imposing minimum standards through governmental regulations.

Are these two approaches in any way mutually exclusive?

Mr. WEINBERGER. I think only to the extent that S. 3074 would not require that any particular guaranty be given. To the extent that S. 3074 would eliminate the right to take away the implied or common law warranty, Senate bill 3074 would itself be setting a minimum standard. And to that extent, it might be held to be compatible with the recommendation the Commission has made.

Mr. SUTCLIFFE. And to the extent that S. 3074 does not establish a minimum standard, does it provide a basis for later establishment of a minimum standard? In other words, is it a first step?

Mr. WEINBERGER. Well, it could be taken as such. We indicated that when we presented this report; and at the same time we were considering alternate approaches in the event Congress should feel it was premature to adopt the minimum quality standards we have recommended.

I think if you look at the provisions of S. 3074, which is designed to prevent anyone from taking away on a sale the implied warranty, you have really established one form of minimum standard—that is the common law or implied warranty. You have said, at least you have to have this. You have not gone further and have said you have to have a standard that is directly applicable and developed with automobile industry participation.

But you have, if you take away the right to disclaim the common law standards, you have, by that very act itself, set a form of minimum standards.

Mr. SUTCLIFFE. Let me see if I understand what you are saying. Are you saying your proposal is not that radical, because there has been a minimum standard in the sale of products established in common law from implied warranties?

Mr. WEINBERGER. Yes; the uniform commercial code in 49 States codifies what was essentially the common law, as I understand it, and provides that with every sale there is a warranty of merchantability and a warranty of implied fitness for the known purpose, and so on.

As you know, there has been a practice in which these warranties could be taken away by an express warranty, that gave something else—perhaps less than that.

Mr. SUTCLIFFE. Have these disclaimers enabled manufacturers to avoid certain liabilites that they would normally have?

Mr. WEINBERGER. I think that is the whole point of it, yes.

Mr. SUTCLIFFE. Is there competition in the automobile industry in the opinion of the Commission after the completion of the 4½-year study?

Mr. WEINBERGER. Oh, without any question.

Mr. SUTCLIFFE. What kind of competition?

Mr. WEINBERGER. I think very brisk and healthy competition, and very vigorous competition. But competition among three very large companies and one much smaller company.

Mr. SUTCLIFFE. Over what factors do they compete? Let me see if I can put that question in focus. In a Time magazine article of October 3, 1969, the following quote was attributed to the chief of body engineering, of General Motors Corp. That individual said:

> There is very little to go on when you buy a car these days. If the glove box opens, the seats are soft, and the doors thunk, that is all you have over the competition.

Is that the kind of competition in the automobile industry today?

Mr. WEINBERGER. Well, I'm not prepared to say what it is that motivates a particular buyer, or what appeals to a buyer. But it certainly is apparent that various shares of the market change from year to year, including the example I mentioned in 1962 and 1964, when Chrysler increased its warranty.

There is no doubt in my mind that there is a very brisk and active competition among the producers of automobiles for ever-larger shares of the existing market. I think that competition exists and I think it is healthy.

Mr. SUTCLIFFE. Thank you. Mr. Chairman, did the Commission look to any other Government regulatory activity to determine the feasibility of requiring a Government agency to establish minimum performance standards for automobiles?

Mr. WEINBERGER. I think the example of the Product Safety Commission was before us, the example of the tires, the example of highways that Senator Pearson cited. Those matters were all in the minds, I am sure, of the people on the Trade Commission staff who worked on these recommendations, and of the Commission members themselves.

Mr. SUTCLIFFE. Did the Commission staff or the Commission consider the performance of the National Highway Safety Bureau in attempting to establish a uniform-quality grading system for tires? The relevance of that investigation would be this: That is the one performance standard broader than mere safety, that the National Highway Safety Bureau was asked to establish. They were required to present that standard by 1968. That requirement was in the National Traffic and Motor Vehicle Safety Act of 1966. To date, the National Highway Safety Bureau, working with other Government agencies, including the National Bureau of Standards in the Department of Commerce, has not been able to formulate a uniform-quality grading system for tires.

If they have not been able to formulate a uniform-quality grading system for tires, merely one component of the automobile, is it realistic to expect them to be able to formulate a regulatory performance standard for the entire vehicle?

Mr. WEINBERGER. Well, it may not be realistic to expect that particular group to produce it, but I don't think it is unrealistic to expect that a minimum-quality warranty could be produced.

Mr. SUTCLIFFE. When you refer to minimum-quality warranty, does

it necessarily implicate the setting of performance standards, or are you suggesting a regulatory body could simply say a vehicle must last *x* number of years, or *x* number of miles?

Mr. WEINBERGER. I am inclined to the latter. I don't think there is anything in the report on the basis of warranties which would justify a governmental body saying a car has to be able to accelerate to 60 miles an hour within 5 seconds, or half a second—anything of that kind. These aren't matters that are within the reasonable expectations of buyers which the Government should attempt to interfere with. These are matters that can be developed and determined by the buyer on the basis of his own tests.

What we are talking about is whether the tires will blow out the first week or whether the carburetor is going to fail, or the battery is going to go dead in the first 2 months—things of that kind. We think it is entirely within the reasonable expectation of a buyer that his car should perform in a minimum way, established by the Government; that is, it should run and it should be fit for the purpose for which it is sold.

There have been, we feel, too many cases in which that has not been the case.

Mr. SUTCLIFFE. Does that indicate, then, that the test for minimum standards relates to the reasonable expectations of the consumer? And if it does, does that suggest that perhaps the Federal Trade Commission would have the expertise to determine those things? Because they are the very same things that are now considered in the determination of implied warranties.

Mr. WEINBERGER. I think if the Congress wished to assign us that responsibility, we would try to fulfill it, obviously. It is our belief that there are more technical matters involved, such as the determination of how long a carburetor should be expected to last, how long is a reasonable period of time within which the repairs should be made, things of this kind.

We did not attempt to fix any of these standards, and we expressly stated that we felt an agency with the expertise necessary to do this would be a preferred method of approach.

But we do believe that these standards can be established, and that once established they can then be exceeded by any company that wishes to gain a competitive advantage.

Mr. SUTCLIFFE. Would this take a considerable amount of time, or some time to develop this kind of expertise within an existing governmental agency?

Mr. WEINBERGER. I don't know that it would take a considerable amount of time to develop that expertise. I think it would take a considerable amount of time to develop the standards. But I would hope it could be done within a 2-year period. I don't see any reason why, with proper participation and interest by the people who know the most about it—that is, the manufacturers and dealers—we could not develop standards of this kind that would be perfectly fair and would be usable within a 2-year period.

I would certainly hope that could be done.

Mr. SUTCLIFFE. Thank you very much.

Senator Moss. Thank you very much, Chairman Weinberger. We appreciate your appearing here today, and we have benefitted from your explanation of the automobile warranty report of the Commission.

It is obvious that auto warranty problems plague the American consumer and that it is necessary to have automobile manufacturers stand behind their products. The price of poor quality control and improper repair can mean loss of life and untold millions of dollars, and we cannot pay this price.

The Commission deserves praise for its forthright recommendations of legislative action. It seems to me that the Guaranty Act which this committee is considering is a compatible first step down the legislative road mapped for Congress by the Commission. It would be my hope that no further steps will be necessary.

But if the automobile manufacturers refuse to comply on the basis of the rules set down in S. 3074, I think the committee would quickly consider the second step, which the Commission has suggested in this report. It has certainly been helpful to us. We appreciate very much your coming here this morning.

Senator Moss. Our next witness is Mr. John J. Nevin, vice president of marketing, Ford Motor Co.

We are pleased to have Mr. Nevin.

Do you have any others accompanying you, Mr. Nevin, who would like to sit at the table with you?

STATEMENT OF JOHN J. NEVIN, VICE PRESIDENT, MARKETING, FORD MOTOR CO., ACCOMPANIED BY ROBERT W. SCOTT, GENERAL COUNSEL, FORD MOTOR CO.

Mr. NEVIN. I would like Mr. Scott from our office of general counsel to join me, if I may.

Senator Moss. We are glad to welcome you, Mr. Scott.

The Ford Motor Co. is to be congratulated for appearing before the committee today. Despite the importance of these deliberations here today, the Ford Motor Co. is the only automobile manufacturer who has requested an opportunity to present its views in this forum. No discussions here this morning should implicate the Ford Motor Co. to the exclusion of other automobile manufacturers, and let me assure you that any nonpublic expressions about these problems from other automobile manufacturers will be greeted with the question "Why didn't you tell me this at the public hearing?"

We are pleased, indeed, that the Ford Motor Co. has responded and requested to come forward and be heard.

Mr. NEVIN. Thank you very much for those introductory comments, Mr. Chairman.

I am John J. Nevin, vice president-marketing, Ford Motor Co. Ford welcomes the opportunity to appear today to express its views on the very complex problems associated with providing the American public with adequate warranty protection and general repair services in the consumer durable goods industries.

In addressing these problems, we would prefer not to dwell at length on the specific provisions of the Consumer Products Guaranty Act

(S. 3074). We have prepared specific comments on that bill and these are attached to this statement for the record.

We propose to concentrate instead on what we consider to be the broader issues of public policy that have been raised by testimony before congressional subcommittees and by the recent Federal Trade Commission report on automobile warranties. Most of our testimony today will be concentrated on warranty and repair problems as seen by Ford in its role as a manufacturer of automobiles. The company's Philco-Ford subsidiary is, of course, involved in the manufacture and sale of household appliances. Although the facts that we will cite this morning will be oriented to the automobile industry, we believe that most of our conclusions and recommendations are as applicable to refrigerators and television sets as they are to cars and trucks.

Our testimony today has been organized to deal sequentially with three interrelated issues:

First, are there significant customer satisfaction problems in the automobile repair industry today?

Second, if such problems exist, is there evidence from which the causes of these problems can be reasonably established?

Third, if some measure of agreement can be reached on the severity of the problems and their causes, can that information be used to establish the actions that might most logically be undertaken by industry and by Government to accomplish meaningful improvements?

We would propose to start by expressing our views on the significance of the customer satisfaction problems that now exist in the automobile repair industry.

CUSTOMER SATISFACTION WITH SERVICE

Ford does not consider the current level of satisfaction with automotive repair services to be adequate. The conclusion that repair services are not meeting the demands of the American public can be reached by reading the customer complaint letters received by automobile manufacturers, by listening to testimony heard by the Congress, and the Federal Trade Commission, or by considering market research results.

A Newsweek survey is cited by the Federal Trade Commission as providing a meaningful measure of the current level of dissatisfaction.

Throughout page 51 of the report that Chairman Weinberger referred to, this Newsweek survey is described in detail and I think it is correct to describe it as one of the meaningful pieces used in the report.

We are perfectly prepared to concede that there are other surveys that give higher and lower results with respect to dissatisfaction.

Newsweek surveyed persons who had purchased new automobiles within the preceding 6 months. Its conclusions with respect to customer satisfaction, therefore, were heavily oriented to customers seeking repairs under the terms of automobile warranties. Newsweek concludes that 14 percent of the new car owners were either very dissatisfied or somewhat dissatisfied with repair services. The testimony heard by Senator Hart's Subcommittee on Antitrust and Monopoly

would suggest that customer dissatisfaction with the repair services available for older cars is at least as high as that reported by Newsweek for new car owners.

There are today about 95 million automobiles on the American road; the Newsweek survey would suggest that 13 or 14 million Americans are now dissatisfied with the automobile repair services that are available to them. Since the privately owned automobile has become a substantial element in America's transportation system, Ford accepts as fact the conclusion that the ability of many owners to receive satisfactory service, whether they seek warranty repairs on a new vehicle or more general repairs for an older vehicle, is a consequential problem that must be resolved.

We are not prepared, however, to accept the suggestion that today's problems are related to the attitudes of persons engaged in the business of repairing cars and trucks. Our conviction is supported by the fact that dissatisfied customers are not limited to those owning a particular brand of car nor are there meaningful differences in the levels of dissatisfaction among customers seeking repair services in franchised dealerships, independent garages, or gas stations. There are today some 400,000 retail establishments engaged in the automotive repair business. Most are locally owned enterprises in which the operator has a substantial financial interest. His livelihood, therefore, depends on his ability to attract and hold customers. We find it impossible in these circumstances to conclude that customer dissatisfaction is in any meaningful way attributable to a deficiency in the attitudes of the operators or employes of these establishments.

We believe that assertions suggesting that the problems in the automobile service industry are somehow attributable to a lack of motivation on the part of manufacturers to accomplish improvement are equally subject to challenge. Market research results indicate that Ford can expect to sell a new Ford product to about 71 percent of the owners who are satisfied with the service that has been made available to them. The same research suggests that only 52 percent of the owners who are dissatisfied with service will repurchase a Ford product.

If the market research evidence suggesting that some 14 million Americans are dissatisfied with service is accepted, Ford can also assume that it will eventually lose some 600,000 new-car sales as a result of the now existent dissatisfaction on the part of Ford owners with available repair services. The importance of sales losses of this magnitude to Ford can perhaps be put into perspective by noting that Ford's very successful Mustang produced 400,000 sales in its first year and that Ford's new Maverick will probably require close to 2 years to produce 600,000 sales.

The sales and profit stimulus to a dealer to provide satisfactory repair service is even more direct than is the case for the manufacturers. Market research studies show that a dealer can expect to sell a new car to 48 percent of his satisfied service customers; this expectation drops to 21 percent among customers expressing dissatisfaction with the repair service they have received.

Ford's economic interest in accomplishing improved customer satisfaction in the warranty arena can also be judged by reviewing some

of the costs Ford experienced in the United States during the calendar year 1969. Payments made by Ford to its dealers to reimburse them for warranty repairs made on Ford vehicles totaled approximately $300 million.

These expenditures are for some cars which have been in the field 3 or 4 years, and for some which have been in the field only a matter of months.

In the same year, Ford's total advertising expenditures were about $150 million, and the cost Ford incurred to amortize the special tools that are required to produce its new models totaled about $325 million.

It goes without saying that, when Ford spends $325 million on tooling it hopes to produce cars with functional attributes and styling appeals that will please its customers, and that when Ford spends $150 million on advertising, it hopes to attract new customers to Ford and Lincoln-Mercury dealerships. It should be equally clear that, when Ford spends $300 million to accomplish warranty repairs, it has an immediate and important business interest in seeing to it that those expenditures produce acceptable levels of customer satisfaction.

In our view, the question of whether the problems in the automobile repair industry are related to a lack of will on the part of the manufacturers or repair shop operators to accomplish improvement should be a matter of considerable concern to the Congress. If one concludes that the problem is one of attitude, then the Congress could logically decide that legislation, designed to require the industry to meet some specific standard, would be of benefit to the American consumer. If, on the other hand, the Congress concludes that the difficulties in the repair industry are associated with more basic problems, then congressional action might more logically be directed at finding solutions to those problems.

Ford believes that the automobile repair industry's current problems derive from changes that have occurred in the automobile industry itself in recent years and from conditions that have existed throughout the American economy. We believe that the industry has taken and is taking action that will solve many of these problems, but that in other areas, industry action has thus far proven to be less than fully effective. In the material to follow, we propose to discuss the factors that Ford believes have led to the current problems and to outline the actions that Ford believes the Congress might consider taking in order to assist the industry in accomplishing the improvements that are needed.

CAUSES OF CUSTOMER DISSATISFACTION

Perhaps the most important change that has occurred in the automobile industry in the past decade is the dramatic increase in the number of units in operation. The Nation's car and truck population grew from 66 million in 1959 to 95 million in 1969. Coincident with the sharp increase in the sheer number of vehicles to be serviced, there have been important changes in the complexity of the products that the industry must maintain and repair. The rate at which options, such as air conditioning, power steering, and power brakes have been installed on American cars has increased substantially. Today's cars

include emission control equipment, heaters, emergency flashers, backup lights, windshield washers, two-speed wipers, side warning lights, and collapsible steering columns, as standard equipment. A decade ago, these items were either installed as options or not available at all.

The increase in the car population alone would have necessitated a major expansion of the automobile service industry. Sharp increases in option installation rates and higher equipment levels of standard vehicles have added substantially to the pressures on the industry, for they have required that its mechanics become more versatile and that the parts supply system servicing the industry become more sophisticated. The confluence of these many factors has created demands that the industry simply could not meet with existing facilities, existing work forces, and the existing repair and diagnostic technologies. The repair industry has been confronted with the task of adding new facilities and attracting and training new mechanics during a period when the productive and manpower resources of the Nation were being taxed by a soaring economy and a war in Vietnam.

The recently published Federal Trade Commission report places considerable importance on the fact that the number of franchised dealerships in the United States declined from 33,000 in 1960 to 28,000 in 1968. The report noted that car populations had increased significantly during the same period and suggests that the decline in dealerships is one of the causes of the repair problems confronting America today. Ford considers the statistic to be a meaningless measure of the repair capability of franchised dealerships.

During a period roughly comparable to that in which the number of automobile dealerships in America declined by 16 percent, the number of public grammar schools in America also declined by 16 percent. The decline in public grammar shcools was associated with the shutdown of one-room rural facilities as it became possible to transport children to larger and better equipped facilities that were somewhat more distant. The decline in automobile dealerships in the United States is attributable to exactly the same causes. As vehicles have become more complex, it has become increasingly difficult to provide adequate repair services in facilities that could not attract sufficient volume to support a sizable complement of diagnostic and repair equipment and to employ persons with a wide variety of mechanical skills.

Ford believes that the response made by the company and its franchised dealer organizations to the problem of inadequate service capacity is far more appropriately measured by the investments that have been made in the past 6 years to create new or expanded facilities. During the 6-year period beginning in 1964, investments for new facilities and for the modernization and expansion of existing facilities have exceeded $600 million. It should be noted that we have included in these data only major modernizations and expansions. Some 3,400 Ford and Lincoln-Mercury dealers have invested over $200 million, or an average of more than $60,000 apiece in such modernizations and expansions. An additional 1,200 Ford and Lincoln-Mercury dealers have

been involved in new facility actions requiring investments of over $400 million, or an average of $300,000 per dealer.

About 65 percent of the 7,000 Ford and Lincoln-Mercury dealers in the United States are now occupying facilities that have either been built or consequentially expanded since 1964. It is important to note that approximately 80 percent of the floor space in an automobile dealership is used for parts and service activities and that these facility expansions, therefore, have constituted a very direct response to shortages of service capacity.

In 1964 and 1965, Ford and Lincoln-Mercury dealers were able to obtain local financing and most of the required facility actions; in those years less than 20 percent of the dealership facility investments were financed by Ford. Rapidly increasing construction and money costs in recent years have made it necessary for Ford to play a far more active role in assisting dealerships to create adequate facilities. Through its Americo Realty program, Ford is now financing about 35 percent of the facility actions undertaken by its dealers. The facilities so constructed are made available to dealers on a long-term lease, and the dealer is given the right to purchase the facility from Ford if he elects to do so.

There are three ingredients that are requisite to the creation of an adequate automotive service capability. The first is facilities, the second is tooling and equipment, and the third is skilled manpower. As cars have become more complex, Ford has recognized a pressing need for equipment that would improve the accuracy of diagnosis and improve the certainty of repair.

Through its rotunda equipment program which was initiated in 1963, Ford now offers some 1,800 equipment items ranging from hand-tools and welding guns to complex diagnostic equipment.

The equipment now available includes such items as: An ultrasonic detector to assist mechanics in locating water and dust leaks and in determining their magnitude.

A device to analyze the carbon monoxide and hydrocarbon emission levels in vehicle exhaust. This portable unit draws a sample from the exhaust of a vehicle and provides a reading to the operator by using a chemical-electronic measuring circuit.

The Department of Health, Education, and Welfare has estimated that of the 86 million tons of emissions that automobiles place in the atmosphere each year, approximately 78 million tons are the hydrocarbon and carbon monoxide effluents that this unit can measure.

In 1969 Ford and Lincoln-Mercury dealers invested over $6 million in rotunda equipment. Their purchases of similar items from other suppliers were, of course, also substantial.

With the substantial investment made by Ford and Lincoln-Mercury dealers in facilities and equipment in the past 6 years, it is, of course, logical to ask why we have not been more effective in accomplishing gains in customer satisfaction. A significant portion of the answer, in our opinion, lies in the lack of success that the company and its dealer organization have had in attracting and training new mechanics. Between 1963 and 1965, the number of additional mechanics joining Ford and Lincoln-Mercury dealerships was proportionate to the increase in physical capacity that resulted from the construction

of new service stalls. Since 1965, the rate at which we have been able to attract and train new mechanics has fallen substantially behind the rate at which we have been able to put the physical capacity in place.

During the period beginning 1963 and ending in 1969, the number of service stalls in Ford and Lincoln-Mercury dealerships increased from 108,000 to 134,000—a gain of about 24 percent. During the same period, the number of mechanics has been increased from 61,000 to 67,000—a gain of only 10 percent.

We should have inserted a third statistic, which is car population, the number of Ford cars and trucks on the road which grew from 20 million to 24 million, or an increase of 20 percent. So, we had an increase of 10 percent in mechanics, 10 percent in cars and trucks and an increase of 24 percent in physical service capacity.

In 1963 we had a stall-to-mechanic ratio of 1.8 to 1. We believed that that was too high and that the desirable ratio was 1.5 to 1. Today the mechanic shortage is even more acute. We now have a stall-to-mechanic ratio of 2 to 1.

In connection with our testimony before the Senate Subcommittee on Antitrust and Monopoly last October, we prepared an estimate of the mechanic population gap in Ford and Lincoln-Mercury dealerships. At that time we indicated a need for as many as 20,000 additional technicians to bring the stall-to-mechanic ratio down to the 1.5-to-1 level that we consider optimum.

In November 1969 we conducted a mail survey of Ford dealerships in order to establish the need as seen by the dealers themselves. The 2,817 dealers responding to the survey indicated an immediate need for 10,700 more mechanics—an increase of almost 36 percent from the approximately 30,000 mechanics then employed in those dealerships.

When we reported the results of the survey to the Senate Antitrust and Monopoly Subcomittee, we assumed that the dealers who did not answer the survey had needs only half as great as those responding. On this basis, we estimated that Ford and Lincoln-Mercury dealers in total could effectively utilize some 18,000 more mechanics. That conclusion is consistent with the earlier estimate developed on the basis of the potential for change in the stall-to-mechanic ratio.

In 1964, Ford provided 482,000 hours of mechanic training. By 1969 the number of training hours had almost doubled. The great majority of this training was designed to upgrade the skills of mechanics who were already employed in Ford and Lincoln-Mercury dealerships. In most cases, the mechanics who attended the courses were paid to do so by the dealership that employed them; typically, the dealership also absorbed any related transportation and lodging costs.

During a period of severe mechanic shortage, dealers not only accepted the out-of-pocket costs associated with time spent in training programs, they also accepted the loss of service revenue that might have been generated in their shop had the mechanics been on the job. Despite these pressures, however, Ford and Lincoln-Mercury dealers financed almost twice as many training hours in 1969 as they did in 1964.

There is a very meaningful and understandable difference, however, between the attractiveness of training that is designed to upgrade mechanic skills and job-entry training when the two programs are

looked at from the viewpoint of a small businessman. The dealer who sends an experienced mechanic to a Ford school for training has every expectation that he will retain the services of the employee long enough to recover the training costs. In the case of job-entry training, however, the small businessman is required to make a highly speculative investment in developing an employee who may or may not become a permanent member of his work force.

Ford does conduct a variety of programs of job-entry training for service mechanics. In 1970 approximately 2,275 individuals will receive Ford-sponsored instruction of this type. The leakage between training and stable placement in a work situation, however, is sizeable.

Ford intends to continue and, in fact, expand its job-entry training effort. We have serious doubts, however, whether in an industry in which 400,000 retail establishments compete for employees, any single establishment can efficiently undertake the costs and risks associated with extensive job-entry training. Ultimately Ford and its dealerships can be no more efficient in providing the job-entry training for the beginning mechanics who come to work in dealership shops than we would be in providing typing, shorthand, and bookkeeping training for dealership office employees.

The need for large numbers of new automobile mechanics occurred during a period when rapidly increasing requirements for materials and equipment to support the war in Vietnam and an expanding consumer economy were creating very attractive job opportunities in industry for skilled workers of every kind. Under these conditions, it became difficult for most automobile dealers to retain a staff of skilled mechanics; for many dealers it became impossible to attract the personnel required for an expanded work force.

These were years during which increasing numbers of young men entered the military service rather than the work force and these were years when the States faced financial problems that made it impossible for them to undertake significant expansions in vocational education. In describing this problem, U.S. News & World Report magazine noted, some 6 months ago, that these were also years in which Federal outlays to support colleges exceeded Federal outlays to support vocational education by ratios of about 15 to 1.

During the last several years, it has not only been difficult to get a car repaired satisfactorily, it has also been difficult to obtain satisfactory repairs for kitchen appliances, television sets, home furnaces, household plumbing, and an almost limitless list of other items. Ford believes that consumer dissatisfaction in each of these areas is in large measure associated with the transfer of skilled personnel from service industries to factories and a coincident failure on the part of the society to provide the education programs necessary to develop adequately trained replacements.

Ford's recommendations with respect to the course of action that the Congress might take in dealing with the now existent automobile service problems are derived, of course, from Ford's conclusions with respect to the causes of those problems. As we stated earlier, Ford believes that customer dissatisfaction with automobile repair results from shortages in capacity and not from deficiencies in the attitudes of the persons who own the thousands of repair outlets in America and the persons who manage the automobile companies.

In responding to the automobile repair problem we believe it is important to reemphasize that the Nation is now dependent on some 28,000 independently operated dealerships, for customer-paid repair services. In our judgment this complex of independently owned and operated businesses served the Nation very well until recent years. We believe that its inability to satisfy customer demands fully in the recent past can be attributed to the fact that these repair outlets were confronted with the task of enormously expanding their facilities and work forces at a time when a booming consumer economy and a war in Vietnam were taxing the productive and manpower resources of the Nation.

We are not prepared to suggest to the Congress that the problems of the automobile repair industry will disappear as demands for military production decline or as demands for consumer goods stabilize. In fact, we reach a quite different conclusion. We believe it is probable that a society that has been willing to spend substantial sums of money to improve the safety of the new cars it produces is likely also to demand that existing car and truck populations be subjected to regular inspection in order to make sure that they can be safely operated on the Nation's highways. A trend in this direction would add substantially to the demands placed on the automobile repair industry.

We believe that we can anticipate with some certainty that the widely accepted national objectives in the area of reducing air pollution will have a similar impact. The Department of Health, Education, and Welfare has concluded that the Nation's car population accounts for a substantial portion of the air pollution problem. If the problems of vehicle air pollution are to be dealt with effectively, Ford believes it will be necessary to very consequentially increase the capacity of the Nation's automobile repair industry.

It is, for example, highly probable that the fuels used to operate cars and trucks in America in future years will have either sharply reduced lead contents or no lead at all. As lead-free fuels become available, it may be necessary or desirable that the repair industry have the capability to modify large numbers of automobiles that were produced in prior years.

The devices that will be installed on automobiles in the years to come to achieve nationally accepted pollution objectives are likely to confront the repair industry with time-consuming new maintenance demands.

To cope with the current problems of automobile repair and with the perhaps more serious problems that will be faced in the future, the Nation has the resources of some 400,000 repair outlets, the major manufacturing companies, and Government at all levels. In our view the problems of expanding existing facilities and creating new ones are being dealt with effectively in the private sector through the separate actions of the owners of repair establishments and the programs that manufacturers have developed to provide support. We also believe that the private sector is now making and can in the future make adequate progress in the development of diagnostic and repair equipment. We are not satisfied that the private sector is now dealing, or can in the future deal, effectively with the problem of developing the requisite.

Ford does not believe that the problem of developing adequate num-

number of trained personel and we would urge, therefore, that the Congress place first priority on this problem.

Ford does not believe that the problems of developing adequate numbers of trained persons for the automobile repair industry and for other consumer goods industries is insurmountable. In fact, we believe it is one with which the State and local governments can deal effectively if they are provided with federal suport.

The necesary manpower resources would seemingly be partially available in today's high school populations. Additional candidates might be attracted from those large numbers of young men who for reasons of prior educational opportunity are unqualified today to embark on careers that would provide security and opportunity for them and their families.

It should be possible to supplement these manpower resources by offering training to men who are likely, in the next several years, to be released from the Armed Forces and to those whose careers will be dislocated by changes in national priorities that are likely to reduce the numbers of persons employed in defense industries.

We believe that the technique requisite to the accomplishment of such training in a short period of time are also available. The Nation's school systems have considerable experience in vocational training. The major automobile manufacturers have considerable background with respect to training persons for automobile repair and we would expect that comparable expertise is available in other consumer goods industries.

In our opinion the Nation's military organizations have an expertise that might also be utilized. Since the beginning of the Korean war in 1950, the Armed Forces have been required to maintain a high level of military preparedness while utilizing the manpower resources produced by selective service and short-term enlistments. To accomplish their mission, the Armed Forces have developed and successfully implemented short-term training programs that provide men with expertise in fields as complex as aircraft mechanics and radar technology. We would hope that this expertise might be tapped.

Congress anticipated that vocational education would be supported by the expenditure of $542 million in 1969 and the expenditure of $857 million in 1970 when it passed the Vocational Education Amendments of 1968. We understand that actual appropriations in 1969 totaled less than half the amount originally authorized by Congress and that the current Department of Health, Education, and Welfare appropriation bill provides $392 million for fiscal 1970. Ford is aware of the fact that the Congress is faced with the task of establishing priorities for a large number of worthwhile programs at a time when available resources make it impossible to adequately finance them all.

In a number of other situations, Ford has taken the position that it could not support the earmarking of tax revenues to finance specific projects. We believe, however, that expanded programs of manpower training are a requisite if the repair industry's current customer satisfaction problems are to be resolved and if the industry is to be placed in a position to meet the demands with which it will be confronted in the future.

If expansion of vocational educational programs became dependent upon the availability of funds, Ford would support action to

reinstate the excise tax on automobile replacement parts. Replacements parts for trucks are now subject to an excise tax, and the principle of taxing parts to support vocational training could be extended to the television or appliance fields if the Congress concluded such an extension was desirable. Ford does not, of course, claim expertise in the tax area. We recognize that there are alternative. We would hope that, if a replacement parts excise tax on passenger cars were to be reinstituted, the action would be limited to a specified number of years and rescinded when alternatives funding arrangements could be made.

To summarize, Ford believes strongly that the development of adequate physical and manpower resources will provide the basis for resolving the now existent customer satisfaction problems in the automobile industry and establishing a capability adequate to meet future demands. We believe that these problems can best be resolved if the small businesses that dominate the actual repair industry, the large businesses that constitute the automobile manufacturing industry, and Government each embark on programs that effectively utilize the talents and resources of their separate institutions. We recognize that the Federal Trade Commission's recommendations to the Congress suggest a very different course of action. We would like now to take the opportunity to express our views on those recommendations.

In its report on automobile warranties, the Federal Trade Commission concludes that improvements must be accomplished in automobile quality and in the availability and reliability of warranty repair services for automobiles. Ford agrees. The Commission recommends that the Congress treat the automobile industry as a public utility and rely on massive infusions of Government regulation to accomplish the desired improvements. Ford disagrees. Specifically, the Federal Trade Commission report on automobile warranties states:

> The Commission believes it is clear that, in present-day America, the automobile industry is no less a public utility industry than the other transportation industries. Effective action must be taken, at every level of Government, to bring quality control and performance standards to this public utility industry.

I think it is important I depart from the text here, because Chairman Weinberger's description before this committee this morning of the intent of the Federal Trade Commission recommendation certainly differs from the manner in which we interpreted that recommendation, as we have here, and the manner in which the press interpreted it.

I would go on reading my prepared statement, if I may, but I would have to make the comment that our concerns with their recommendations apply to a far lesser degree after having heard his comments this morning than they did at the time we wrote this paper. I will assure you that we wrote this paper with our understanding of what they were recommending at the time we prepared it.

Senator Moss. I understand.

Senator Griffin. Mr. Chairman as long as Mr. Nevin has interrupted his reading I would appreciate the opportunity to ask a couple of questions, since I am going to have to leave very shortly to go to a meeting at the White House.

Senator Moss. Yes; you may.

Senator GRIFFIN. I just want to comment on what I consider to be a very statesmanlike suggestion here in terms of the suggestions that the excise taxes on automobile replacement parts might be utilized as a means of helping to finance the training of mechanics, particularly to help solve the job entry problem.

I think it would be important to have in the record, how much revenue the excise tax on automobile replacement parts would bring in.

Mr. NEVIN. Senator, I can give you what I think is a good estimate. At the time the tax was repealed, it was repealed only on cars, not on trucks, Federal revenues declined, I believe by $150 million, sir. That is approximate. I would estimate in the intervening years between growth in the business and price increases, that the same level of excise tax might generate some $200 million.

Now, if you accept the estimates, someplace between $150 million and $200 million for this purpose. I cannot be more accurate than that. If you say, and I think this is our conclusion, the need is about 80,000 mechanics, even if you assume these revenues generate $160 million, this would be something on the order of magnitude of $2,000 a man that you were trying to train, which would seem to be far more than adequate.

I do not mean to—I know you have to leave—to give a long answer to the question, but really the course of action we are urging here is one in which the expertise of government, particularly in the health, education, and welfare, indicates an ability to deal with this training problem.

We are urging the first priority be put on that. Let that expertise go to work on that problem. We think we have greater expertise in the area of quality, and we go to work on the quality problem, as we have been doing.

I think it would be unfortunate if we worked out a combination of resources that says let us create in government the ability to establish quality control standards and create in industry the ability to educate mechanics. That does not seem to be an appropriate use of resources.

Senator GRIFFIN. Thank you very much. Thank you, Mr. Chairman.

Senator Moss. Thank you.

You may proceed, Mr. Nevin.

Mr. NEVIN. Ford cannot agree that the public utility approach proposed by the Commission is in the interest of the American consumer. The transportation companies that did not have a monopoly position at the time public utility legislation was adopted to control them have, in virtually all instances, acquired at least a quasi-monopoly position as the controls that characterize utility regulation have been imposed. In the case of the airlines, the railroads, the subways, and the buslines, the agencies responsible for regulation have found it necessary to provide the regulated company with some form of protection. In some cases the protection has taken the form of exclusive routes and in some cases price competition has been controlled. It has not been uncommon for public utility regulation to establish and administer a guaranteed rate of return on investment as a necessary adjunt to the imposition of day-to-day operating controls.

Monopoly conditions do not now exist in the automobile industry, and Ford does not believe that the public interest would be served by the establishment of limitations on competition in this industry. Fur-

ther, we doubt that it would be possible to achieve a public utility level of regulation over the automobile industry without shortly thereafter accepting restrictions on competition.

The report on automobile warranties made no attempt to support the premise that the level of regulation characterizing public utilities would resolve the problems of product quality and warranty repair service that the Commission considers to be critical in the automobile industry. The history of the transportation industries subjected to this level of control suggests that such problems would not be resolved even with the infusion of substantial public subsidies. The Nation's local bus companies, subways, and commuter railroads seem continually to be choosing between rate increases that would be unacceptable to the public and service reductions that would be equally unacceptable. Public subsidy has proven to be necessary in one city after another, but the basic problems have remained unresolved.

In the case of the railroads, regulation seems to have accelerated the abandonment of passenger services. The airlines have achieved a high level of customer service, but have done so in the past only with substantial Federal subsidies. They are today faced with pressing financial problems and the Federal Government is now subsidizing the development of passenger aircraft.

We think it is important to note that significant service deteriorations have been experienced, in recent years, in the telephone and electric power industries. Both have been regulated as public utilities and both have provided good service in past years. These deteriorations, in our view, are the result of the same material and manpower shortages that have contributed so substantially to difficulties in the automobile repair industry. The presence of regulation seems not to have permitted these industries to avoid service problems.

Our first objection to the Commission's recommendations is based on the strongly held belief that this industry has compelling financial incentives to accomplish the desired improvements in product quality and warranty service, and that that the establishment of government regulation will contribute little or nothing to the accomplishment of that goal. In its report, the Commission reviewed in considerable detail the programs that the industry had undertaken to improve quality and customer service. It proceeded then to discount these efforts with the following paragraph:

> The possibility that the various programs of the industry may eventually overcome these problems is of little solace to today's carowner. He is concerned about one thing—how to get his warranty covered car fixed. The programs of the future will not help him today.

Again I have to qualify my comments here, because Chairman Weinberger, I think, used a 2-year estimate in his testimony this morning, as to how long it might take to develop the expertise. I will go on now.

Ford's major disagreements with the Federal Trade Commission's report are, as we have stated, in the areas of the Commission's recommendations with respect to the course of action that should be followed to accomplish desired improvements in automobile quality and repair services. There are, however, several questions of fact in the report that we believe it necessary to challenge.

On the first page of the report the Commission notes that it began its investigation on July 20, 1965. It proceeds then to state, "During

the course of the investigation manufacturers and dealers began to profess concern and commence taking steps seemingly aimed at alleviating the situation."

From the material we have presented in this testimony, we would hope that the subcommittee would note that Ford and Lincoln-Mercury dealers were engaged in major facilities expansions several years before the Commission began its study and that the Americo realty program, that was organized to assist dealers in accomplishing these expansions, was in operation some 2 years before the Commission began its study. The Rotunda equipment program that we have described to the subcommittee was inaugurated in the summer of 1963—again some 2 years before the Commission began its work. Expansion in mechanic training also preceded the Commission's investigation.

The Commission, on page 93 of the report, states:

> No company indexes complaints according to the dealers involved. The present systems of recordkeeping neither prove nor disprove the extent of performances under warranties. They also give manufacturers very little if any information as to troublesome areas of dealer performances.

Every Ford dealer receives a monthly report on service performance including a report on the number of service complaints per 100 cars sold by the dealer and a comparison of that ratio to the ratio being experienced by the average dealer in that area of the country. The report goes on to advise the dealer as to the rate at which he is satisfactorily resolving customer complaints and compares his performance in this area with that of other dealers.

The error in the Commission's report apparently results from a communication problem. A representative of the Commission's Falls Church field office spent a half day in our Washington, D.C., district sales office going through complaint files that were organized by dealer and by model year.

Throughout the report the Commission suggests that the industry has deceived the public by representing that its cars were defect free. On page 69 the report states:

> The car buyer was told by the warranties, advertisements, and sales presentations that he was receiving a defect-free car. Accordingly, the warrantors are responsible for providing that which was promised.

Ford denies that in its warranties, advertisements, or sales presentations it has suggested that its cars were defect free. In fact, Ford has placed very little stress on warranties in its advertising and such advertising as it has done in recent years has met standards that were discussed in advance with the Commssion's staff.

We have attempted in this testimony to support the position that the basic problems of the repair industry are capacity problems and that the private sector can deal and is dealing with those elements of the problem that are associated with facilities and tools. We have stated our doubts with respect to the effectiveness of our efforts to deal with the now existent manpower shortages and we have urged a course of action on the Congress. We believe that this approach is more likely to be successful in dealing with the service problem than an attempt to impose controls on 400,000 small businesses.

The other major problem considered by the Commission, product quality, is the province of our engineering and manufacturing ex-

ecutives. Although I am not qualified to discuss this subject in great detail, I should like to offer a few general comments in concluding my statement.

The quality problems of the automobile industry today stem, in some measure, from the same causes as do our service problems:

To meet sharp increases in demand for new cars, it was necessary to expand employment at a time when manpower resources were limited. These economic conditions have led to high levels of employee turnover and absenteeism and to increased human error in our plants.

Our customers have demanded a growing variety of increasingly complex vehicles and these demands have made today's automobile far more susceptible to failure than the automobile of the past.

Senator Moss, you raised a question about the correlation between the price of the car and the number of failures. If there is a correlation, it is probably inverse. To the extent a man buys an expensive car, installs air conditioning, power brakes, power steering, the great complex of options, there is more vulnerability to failure.

I think if you look at the record, to the extent that you find differences by car line, there is no correlation at all from price class down. I think your observation on the basis of what you have seen is one we would confirm in our experience. If anything, the correlation is in the direction that we have more complaints the more complex the vehicle is, the more equipment that is on it.

We believe that the substantial expenditures made by our company to improve quality control are producing significant results today. We anticipate that quality problems associated with a rapid expansion of production and shortages in the labor market will be alleviated considerably as the economy returns to a more normal rate of growth.

There is also growing evidence to suggest that those automobile buyers who are concerned primarily with a high level of reliability can and will achieve their objectives in the free market. Ford's new Maverick was designed to appeal to customers with such interests; it has met with marked success. Foreign cars that have been characteristically less complex than domestic cars are attaining a growing share of the domestic car market. The Congress can be assured that the automobile industry's future product programs will be designed to meet this competition.

The Federal Trade Commission has advised the Congress that "The time has come for warranty and quality control in this industry to be established by the public through Government action rather than by the automobile manufacturers."

It is Ford's opinion that the public can and has succeeded in establishing the standards it wishes to see met in the automobile industry through the actions it takes in extending or withholding patronage. This very direct form of communication has required that manufacturers be both efficient and responsive if they are to survive. In Ford's opinion, communication between the consumer and the manufacturer would not be enhanced by installing a government agency charged with the responsibility for transmitting the requirements of one to the other.

This concludes Ford Motor Co.'s statement. Thank you for permitting us to express our views on these very important problems.

(The balance of Mr. Nevin's statement follows.)

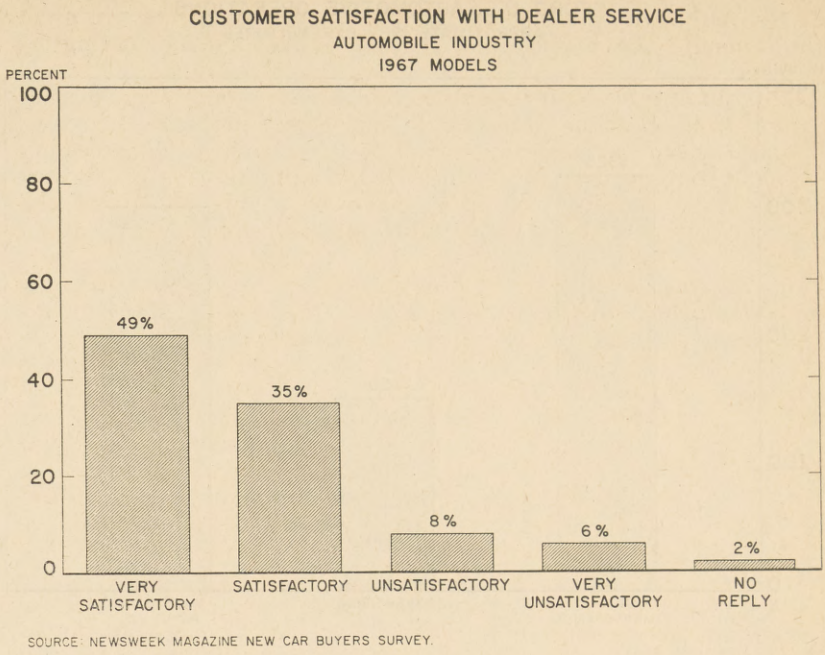


FIGURE 1

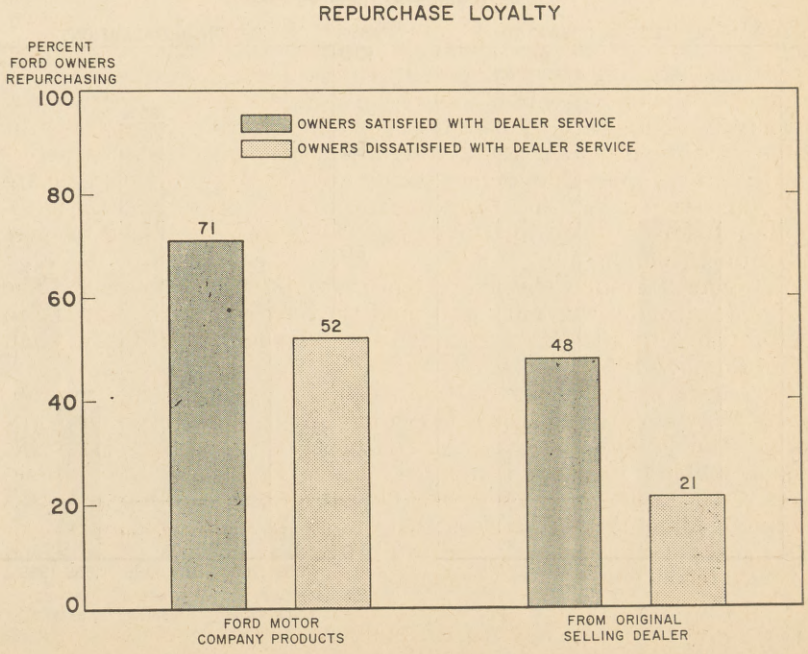


FIGURE 2

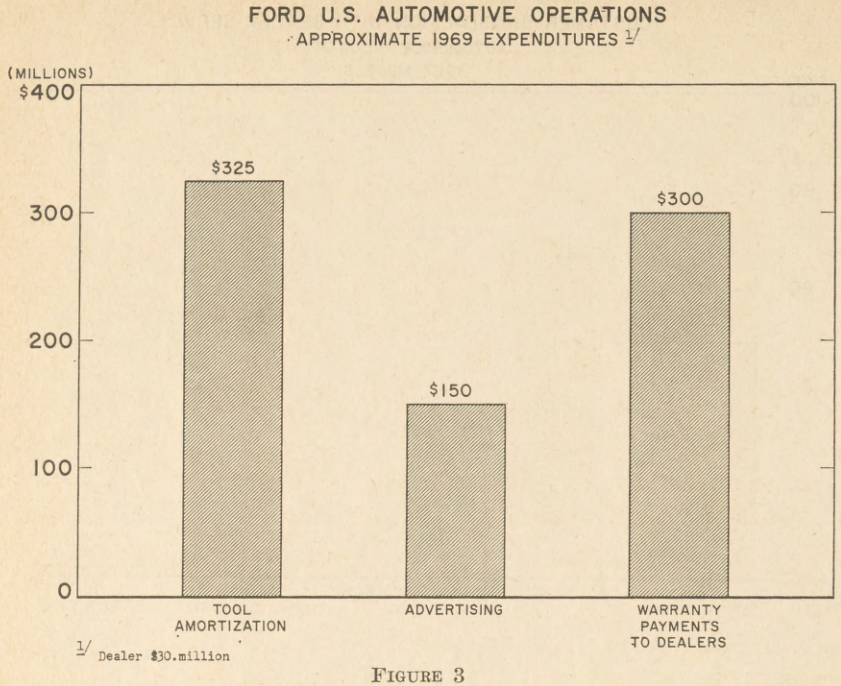


FIGURE 3

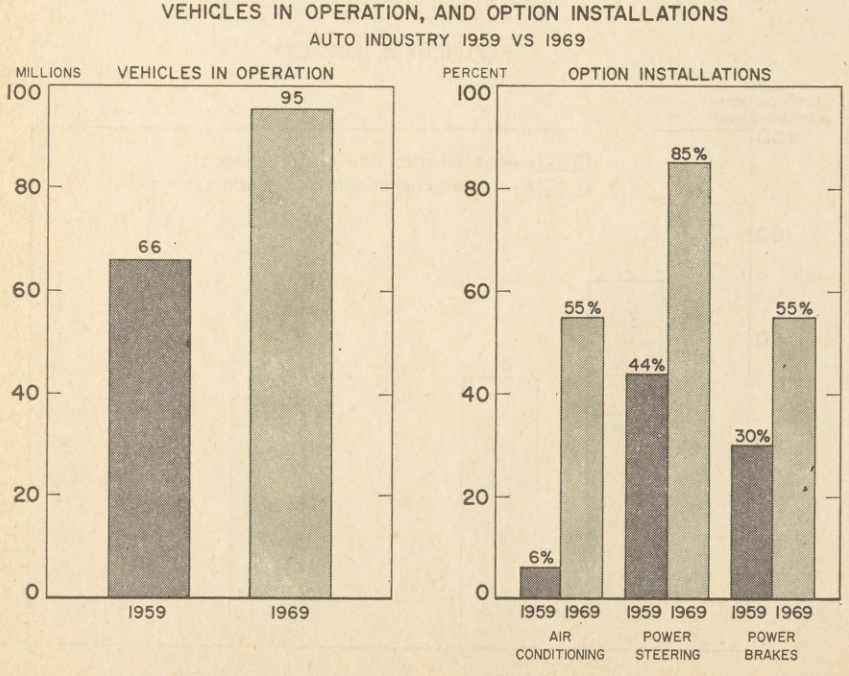


FIGURE 4

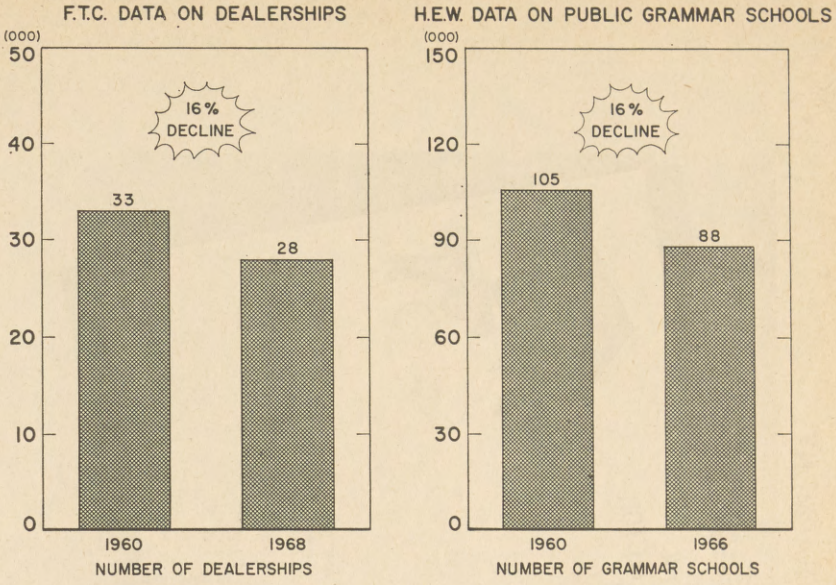
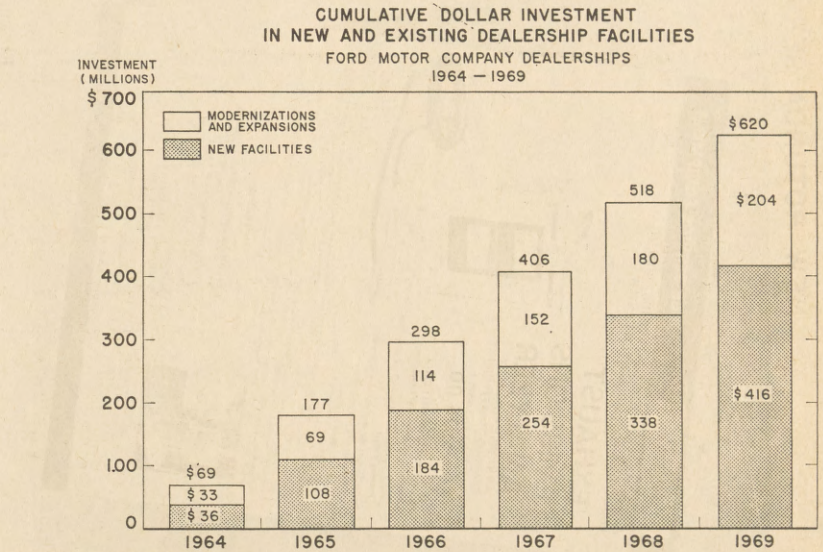


FIGURE 5



FACILITY ACTIONS (CUMULATIVE)	1964	1965	1966	1967	1968	1969
NEW FACILITIES	179	452	695	886	1,077	1,244
MODERN/EXPANSION	693	1,298	1,963	2,462	2,772	3,391
TOTAL	872	1,750	2,658	3,348	3,849	4,635

FIGURE 6

NEW ROTUNDA SERVICE EQUIPMENT

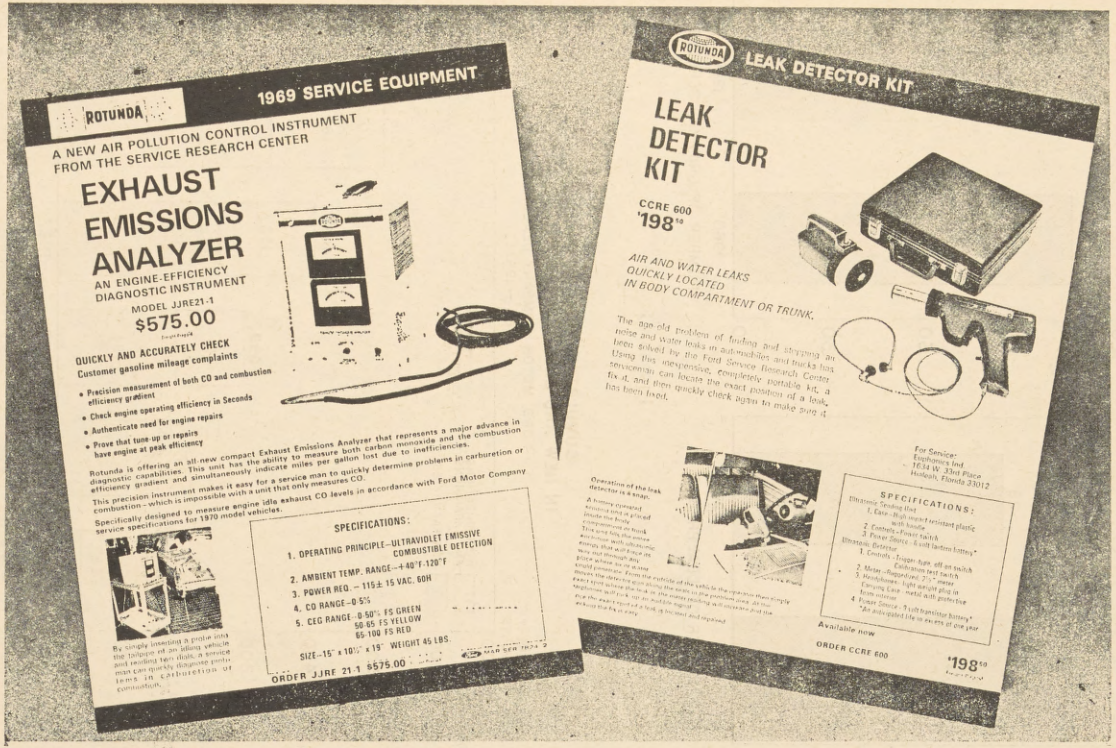


FIGURE 7

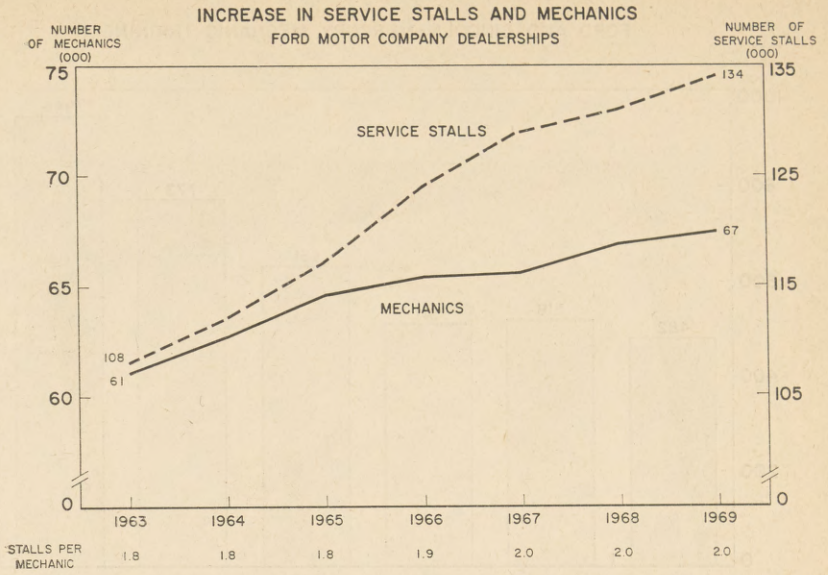


FIGURE 8

ESTIMATED MECHANIC SHORTAGE
FORD MOTOR COMPANY DEALERSHIPS

	Survey Sample		National Estimate	
	Number	Percent Increase	Number	Percent Increase
Dealer Count	2,817	- %	6,929	- %
Mechanics Currently Employed	30,066	- %	67,000	- %
Additional Mechanics Needed Today: Experienced	7,979	26.5%	13,600	20.3%
Inexperienced	2,749	9.2	4,700	7.0
Total	10,728	35.7%	18,300	27.3%

Source: 1969 Ford Dealer Service Technician Survey.

FIGURE 9

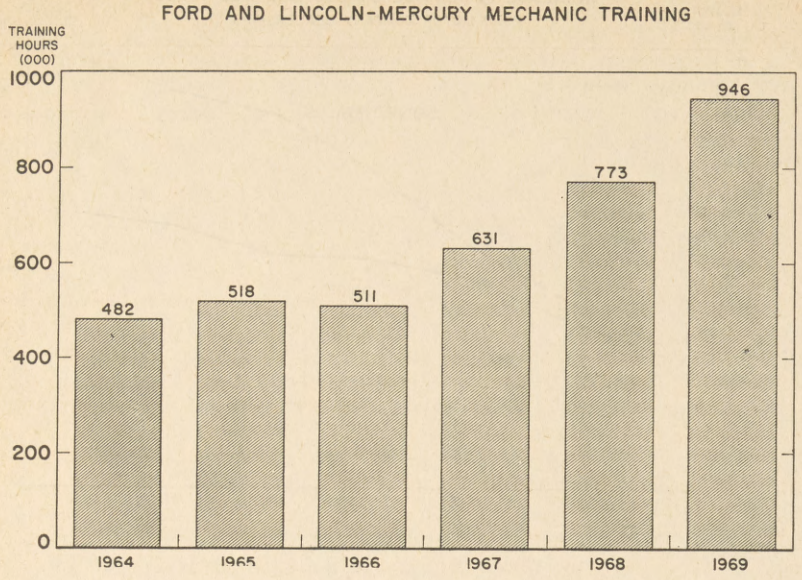
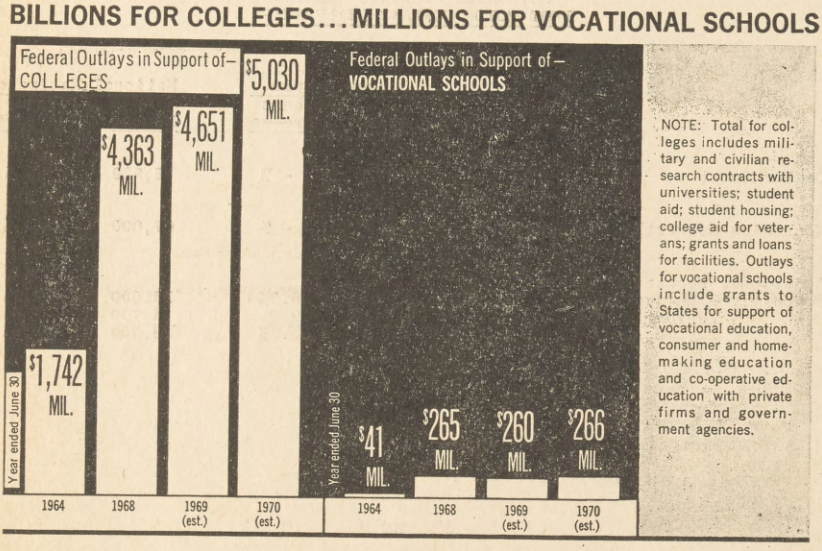


FIGURE 10



SOURCE: U.S. NEWS AND WORLD REPORT, OCTOBER 13, 1969

FIGURE 11

Senator Moss. Thank you for a very fine presentation of the position of the Ford Motor Co.

You have some material here specifically on S. 3074. Did you intend to comment on that too?

Mr. NEVIN. Yes, sir; I think I might make a general comment and then let Mr. Scott respond to questions that have to do with interpretation of the law, because that is not my area of competence.

I think I would summarize our testimony by urging that in responding to this problem, which Ford agrees exists, and I think we made that perfectly clear, that the first level of priority ought to be placed on dealing with the cause of the problem, the basic inadequacies in the manpower and productive resources that have been made available.

For this reason, I would put a higher priority, sir, on dealing with some of these questions of resources and the ability to do the job, than I would on defining the task confronting us.

The Federal Trade Commission has been, as you know, critical of us, because it maintains we have held out a warranty to the consumer that we have not been able to meet. We concede we have had far too many instances of failure to meet it.

As I understand the legislation, it would put us in a position of to the extent we made any representation of a warranty to the consumer, being required to meet some more stringent demands than those which we are today meeting.

I would prefer to see the first priority—I use the term "first priority" advisedly—first priority on creating the capability to deal with the problem as opposed to establishing new demands with respect to the problem.

(The prepared statement summarized above follows:)

STATEMENT BY FORD MOTOR CO. RE CONSUMER PRODUCTS GUARANTY ACT (S. 3074)

The Consumer Products Guaranty Act provides that no person manufacturing or selling consumer products that contain electrical, mechanical or thermal components would be permitted to issue any warranty or guaranty on such a product unless the specific provisions of the bill are observed. The alternative of such a person would be to sell his product "as is" and then, if he wished, offer to sell a service policy to the first buyer only. One year after enactment, sellers of products that do not contain electrical, mechanical or thermal components, would not be permitted to use the word guaranty in any affirmation or promise, but, presumably could use the word "warranty."

When a guaranty, as specified in the bill, is given, the guarantor would be required to repair or replace defective electrical, mechanical or thermal components within a reasonable time and without charge. The bill then specifies certain limitations and requirements for performance guaranties.

For the most part, Ford does not quarrel with the intent of Sections 2 through 9 of this bill. We believe they represent generally a codification of our current practices. In these sections, however, we have a number of technical objections:

1. The definition of a "malfunctioning component" (Section 2, paragraph 5) is limited to electrical, mechanical, and thermal components. The effect of this relatively narrow definition of components on a car, for example, is to exclude sheet metal, paint, upholstery, glass, etc., from the coverage of the bill. Consumers might find it confusing to operate under a law that applies to less than the total product.

2. The manner in which an "express guaranty" is created (Section 2, subsection 9) is completely unacceptable and could conflict entirely with the requirements of a performance guaranty. An express guaranty should be limited to the written document. The law provides protection to those who are induced by fraudulent representations, which are reasonably relied upon.

No additional laws are required in this area. The present language seemingly would permit a salesman to commit a retailer to a totally unintended course of action.

3. Terms such as "within a reasonable time," "unreasonable duty on owner," etc., are extremely troublesome. While Section 15 of the bill would require the Federal Trade Commission to establish the meaning of these terms, we believe that there are too many relevant variables to permit the promulgation of trade rules covering all consumer products.

4. The maker of the guaranty is required (Section 5) to inform the first purchaser of the costs of maintenance if required to be performed by a designated representative of the maker. We are concerned that this provision may well expose the maker to a violation of Section 1 of the Sherman Act for price fixing.

Our principal concern with the bill, other than as expressed with respect to Section 2, subsection 9, are Sections 11 through 14. Section 11 provides that state law is not preempted except as set forth in Section 12. Section 12 provides that there may be no disclaimer of the implied warranties if a performance guaranty is given. (Presumably, even though given unintentionally as in subsection 9 of Section 2.)

Despite these provisions, Section 2, subsection 6, provides that the guarantor need not pay for incidental expenses under a performance guaranty unless the repair or replacement was not made in a reasonable time or an unreasonable burden is imposed on the owner. As we understand the Uniform Commercial Code, incidental expenses are recoverable "in a proper case." So this section may provide an additional exception to state laws, although unintended.

Our principal objections to these sections, however, are the prohibition against the negation of implied warranties and the impossibility of limiting the duration of implied warranties. The prevailing practice in business today is to provide an express warranty of specified duration and to negate implied warranties.

We recognize the fact that this prohibition of present practice is not inadvertent. Senator Magnuson, in commenting on the bill to the Senate, stated:

". . . No maker should disclaim all implied warranties while purporting to give the consumer an express guaranty of performance.

"This bill would not force a manufacturer or retailer to guaranty a consumer product. He could sell it 'as is' or he could sell a service contract instead of issuing a guaranty."

There is a real question in our mind as to whether it is sound public policy to force a manufacturer who extends an express warranty to assume all implied warranties. Our understanding of the provisions and interpretations of the Uniform Commercial Code with respect to implied warranties is that the mere existence of a product failure caused by defective material or workmanship immediately precipitates an exposure in a proper case to both incidental and consequential damages. It may seem only fair to hold a manufacturer of a defective product responsible for any incidental or consequential damages resulting from its failure. In fact, however, the determination of appropriate consequential and incidental damages is very difficult and would certainly become a major new area of controversy and litigation between manufacturers and the owners of their products.

It seems much more reasonable to us to postpone the manufacturers' liability for such expense until there has been reasonable opportunity to perform under the terms of the warranty. This is precisely what existing interpretations of present law allow. If a manufacturer repeatedly fails to correct a defect, he can be held to have breached his warranty and to be liable for incidental and consequential damages.

The current provisions of the Uniform Commercial Code, which permit a seller to disclaim implied warranties, have been enacted by all States, except Louisiana. The enactment of S. 3074 would, in effect, override on this issue the combined judgments of the American Law Institute which framed the Uniform Commercial Code; the endorsement of the Code by the National Conference of Commissioners on Uniform State Laws and the American Bar Association; and the combined judgment of the legislatures of 49 States.

Further, it is our opinion that consumer product manufacturers, when confronted with the choice between selling a product "as is" or offering a guaranty which includes all implied warranties, would almost unanimously choose the former alternative, probably offering some form of optional service contract.

The unknown and probably sizable costs of performing under implied warranties would be a powerful deterrent to any extension of warranty coverage.

In our judgment, the elimination of all warranties would be a step backward in buyer-seller relationships. A consumer purchasing an automobile or a refrigerator is in no position to assess his exposure to cost as a result of product defects. The express warranty has provided meaningful protection against these risks.

For those who purchase a service policy, presumably coverage would be restored. If, however, as we acknowledge, customers do experience from time to time problems in obtaining satisfactory warranty service, we do not see how these problems are exorcised by the substitution of a service contract for a warranty. The skill of the repairman will not increase because a service contract rather than a warranty has been issued. The customer relations problems with buyers who failed to purchase optional service contract coverage and subsequently experienced a costly product failure would be enormous.

Summing up our views on Sections 11 through 14 of S. 3074, it is our opinion that consumer equity will not be any better served under the proposed new law than under existing law and hence we oppose the enactment of these provisions.

Sections 16 through 19 of S. 3074 are a recital of remedies. Our comments on these sections are as follows:

1. We agree with the intent of Section 16 which encourages the establishment of informal dispute settlement mechanisms. Ford is working with Better Business Bureaus and with state and local consumer agencies to increase customer awareness of the services available through these kinds of organizations.

2. Section 17 extends jurisdiction to the Federal courts on guaranty disputes. We question whether this is necessary or desirable in view of the amounts typically involved and the existing case load of the Federal judiciary.

3. We have already voiced our objections to the recovery of incidental expenses as provided in Section 18.

4. With respect to Section 19, we agree with other witnesses who have urged that guarantors be permitted to recover costs when they prevail in order to discourage frivolous claims.

In summary, considering S. 3074 in its entirety, it is Ford's judgment that this bill would not contribute in any meaningful way to an improvement in customer satisfaction with the warranty service available on durable consumer goods.

Senator Moss. I appreciate that comment. We will perhaps have more discussion with Mr. Scott on it.

It seemed to me in your presentation, Mr. Nevin, that you dealt almost entirely with the repair and servicing of vehicles, rather than the quality control side of this that was stressed by Mr. Weinberger when he testified.

Mr. NEVIN. Yes, sir; I am sure you have read the Federal Trade Commission report. But I would point out the report deals almost exclusively with service and with quality. I would like to read, if you let me, a key paragraph on the subject of quality, which is on page 71 of the report:

The Commission is not in a position to evaluate the specific steps taken by the manufacturers in their quality control programs. Rather, it must focus on the results of these programs.

I would suggest to you, sir, that I think that the quality problem is one where the Congress can be quite well assured that we have got some overwhelming incentives. I have disclosed to you $300 million expenditures to fix failures. Let me give you another number. We pay something in excess of $8 an hour to a dealer in a reimbursement rate, hourly reimbursement rate, when he has a mechanic fix a car in his dealership. The average rate is $4 in our plants.

But the order of magnitude of twice as much in a dealership to fix the problem as it costs us in a plant is correct. I think that, incidentally, the Commission report point out that enormous expenditures have been made. They quote General Motors as having increased expenditures by over $200 million for quality control.

I think this is an area in which the economic interests of the automobile industry are simply overwhelming. We have no interest whatsoever in asking a customer to be disappointed, dissatisfied, come back to a dealership and ask for repair, and then us pay the dealer twice as much as it would have cost to fix it in the plant.

On the subject of quality, I guess my overhelming observation would be that I think that those things that technology now makes available to us to accomplish improvement are being done, and therefore overwhelming kinds of economic motivation is present in the industry to accomplish this.

Senator Moss. Let me say that I agree with you very much on the need for additional vocational training which would apply to this problem.

You have suggested one possible solution to the problem, by perhaps the reinstatement of the excise tax on replacement parts, with the funds to be used for that. This was before us rather dramatically in the health, education, and welfare appropriation bill this year.

One of the amounts to which objection was raised by the administration, part of the reason for the President's veto of the bill, was the congressional increase of funds in the vocational training field.

And even in the second bill which we passed it was still above the amount recommended by the President, but apparently he is willing to accept this second bill.

So I think we have been conscious of the fact that there is a great need for additional training in this vocational field and specifically you bring it down to mechanics and those with the expertise and skill that they can deal with these more complex machines that are being produced all the time.

As you pointed out, the things that were options are now standard, and more coming on all of the time.

Mr. Nevin. We were aware, of course, of this difficulty, Senator, and this is the reason why we felt that constructive testimony here today required that we suggest a course of action. There is no question that the Congress has been confronted by, on one hand a wish to control expenditures and control inflation, on the other hand to meet some of these objectives. This is the reason we felt it was necessary for us to make some proposal that might help to accomplish both objectives, which we all accept to be legitimate.

Senator Moss. We have a letter from a medical doctor to the committee anticipating these hearings on S. 3074, which is a chronology of the delays and frustrations that he met in getting service on a Mustang that he had purchased here from a local dealer. It is rather lengthy and goes on over quite a period of time.

I thought I would just summarize at the end what he places as a summary of these four pages of trouble. He says:

> First it took six weeks to get a part for a production line transmission for a new model car. I dare say if considerable pressure which was fortunate enough had not been exerted, it might have been twice that long.

Two, I was told by the service department to continue to drive a car that had no reverse gear. The safety implications of this need hardly be pointed out.

Three, the amount of time that I lost from work is impossible to assess, as would be the other inventory that accompanied these past three or four months.

Four, at no time was I ever offered transportation to my job at the National Institutes of Health which is in the same town. This was true even when I was returning for repair of damage that had been done by Shelton Ford.

Five, I almost had to fight to get the motor tuned properly even when it was obvious there was something wrong.

One happy note is his last entry here on the chronology is: "The car was fixed, the motor tuned and the gas mileage has gone up to 17 miles per gallon." So I guess he finally got it fixed.

Now I just wonder how often this happens. This is a very severe case it seems to me.

Mr. NEVIN. Yes, sir, this is a severe case. In my position I receive letters regularly from customers who have had this kind of disappointment. I think I can assure you, Senator, that the process of some news reports describing my testimony before this subcommittee this morning will generate some new mail for me in the next week or two.

It is just one of those facts of life, just as you will get the mail when your subcommittee indicates an interest. I was going to ask you to let me have that letter, because we do like to follow up these things one at a time.

The fact that it is resolved is of some importance to me obviously. But I would appreciate if you would make it available to me so I can find out what happened here.

Senator Moss. We will give you a copy of it.

Mr. NEVIN. Fine. And I will be certain to give you a written response to what we discovered went wrong in this instance. I think I can say this to you, at the two extremes of the problem, when I get these serious customer complaint letters, there are two extremes.

At one extreme it is a crank letter, a customer nobody could have satisfied. I must tell you my experience is that they are relatively rare—the crank letters. Let me just say 5 percent. At the other extreme there is a case where we find a clear-cut deliberate failure on somebody to do what he was paid to do. A dealer service manager that flatly refused to help a customer, or a mechanic who, you know, flatly refused to be of assistance.

We find that to be relatively rare. The enormous majority of these complaints, the ones that really bother us, because we can really deal with the two extremes pretty effectively and rapidly, in our view are a result of a failure of men to understand what should have been done or a failure on his part or an inability on his part to bring together the resources, be they tools, technical knowhow or whatever, at the moment in time the customer needed it.

I must say that some of our best dealers will on occasion, men who have longstanding investments in their community, will on occasion get themselves in a position where they are involved in some serious failure to meet a customer's demand.

The evidence is simply overwhelming to us in these cases. Here is a man whose entire business reputation is one of not having that kind of problem, but yet his shop is involved. I think that this is the prob-

lem that we are attempting to solve. Obviously diagnostic equipment will help us. When we can help mechanics find out quickly and certainly what is wrong, the more certain we can be to get it fixed. But I think the problems are ones that we have to deal with in the slow way we are, with putting more facilities in, more tooling in, more trained man-power.

Senator Moss. Don't you believe there is room for improving quality control at the manufacturing level, so that you wouldn't so often come to this repair situation or adjustment situation?

Mr. NEVIN. Yes, I think that the Commission's report goes into great length, Senator, on describing the growth and the number of quality control people assigned to the plants by Ford, General Motors, and Chrysler. There is no question but what the right place to solve these problems is at the assembly plant. There is no question about that.

We can talk about whether we are talking about customer satisfaction or economics. I think that we have made substantial progress and I have already conceded in my testimony that we are not close to being satisfied with where we are.

The same news we can report that says 14 percent of the people are dissatisfied with warranty service says close to 10 percent of them show some measure of dissatisfaction with the condition of their car at the time they got it.

This has to be a disappointing experience when a man spends $2,000 or $3,000. The market is solving some of the problems for us. America has given us a message with these Maverick and imported car sales. A substantial portion of the population is saying to us we want a clearly functional automobile and we will give up this complexity in order to have it. Certainly it is incumbent on us to try to serve that market, as well as the market that wants power steering and air conditioning. I hope we can continue to make progress.

Senator Moss. What about the delay of being able to get the part that the doctor complained about? He had to wait a long time for an assembly line part.

Mr. NEVIN. Well, sir, you may or may not know that I was a general manager of the Ford Parts Division for 3 years, a division of Ford that handles our service parts requirements for dealers and other customers.

I would like to get you a specific answer on why the delay, because the answer ranges all the way in some instances from somebody made a mistake in the dealership and ordered the wrong part to in fact we were out of the part. We have had serious physical problems of making parts available.

During the period that the automobile industry went from the days of the Ford, Chevrolet, and Plymouth to today's world of people able to get Falcons, Fairlanes, Mustangs, a wide variety of cars, the number of service parts Ford was required to stock and keep available for the dealers jumped from about 88,000 to over 200,000.

In my testimony before Senator Hart's subcommittee on antitrust and monopoly, we pointed out this required we start taking some major physical actions. Our board of directors some 3 years ago approved the building of a $50 million new facility in Detroit. As a matter of fact we are now moving into that.

To give you an idea of the size, it is some 3 million square feet. That is the equivalent of 53 football fields under one roof. This is the only right solution to the problem, for us to be able to get our parts in a single place with an immediate ability to ship them to the field depots or dealers as the case may be.

We are moving into that facility now and I would hope again that there are more expenditures of this nature to get us in the right physical position to provide the solution.

Senator Moss. I know the problems are many. I had a little experience with a competing company of yours, where I had to have a light switch——

Mr. NEVIN. I have to say that is a relief, sir.

Senator Moss. But I had one of my employees drive it out there to get the light switch fixed. They said: "Well, we don't do anything after 4:30." He said it is only 4. The serviceman said: "We can't get to it now, bring it back some other time." I couldn't drive the car because I couldn't turn the headlights on. But that is how I was turned away and I just didn't have a car over the weekend, because at 4 they wouldn't look at the light switch to see what could be done. So I have had some of the frustrations that come when there is something wrong with the car which seemed to me to be very simple to fix.

I didn't care if he jumped the wires around, just so I could have some lights if I had to drive the car at night.

Well, you indicate, Mr. Nevin, that the compelling financial incentives to accomplish the desired improvements in quality control seem to not have measured up yet to bring it up to where it is acceptable. Is that true? And, if so, do we need additional financial incentives?

Mr. NEVIN. No, sir; I think I have to say Ford is not satisfied yet with the level it is achieving in day-to-day quality control. We are delighted with some of the improvements we have accomplished, and we are delighted that some of the problems don't appear any longer.

But I think the question, as we deal with this problem, is do we have the adequate incentive. I would thoroughly understand a conclusion by Congress of inadequate incentive if we were selling the car without a warranty, if we were spending no money at all to correct our problems, or if we weren't confronted by competition. I was delighted to hear Chairman Weinberger describe the industry as being as competitive at it is. We are faced with this kind of competition, really from the people who are your constituents. The people writing to you that say help me solve this problem, are the same people who are our customers. They are not different people. When there is such obvious competitive advantage to be accomplished by achieving gains in this area. I really have to tell you, sir, I know of no objective in the company that has a higher level of urgency, with the possible exception of meeting the standards on air pollution control which is really similar in nature.

It is a matter of maintaining the confidence of the people of the United States and we are a business that has prospered and I think has served the country well.

Senator Moss. Do you object, really, to selling your product with a warranty of merchantability, a warranty as it comes from the manufacturer?

Mr. NEVIN. May I ask Mr. Scott to respond to that?

Senator MOSS. Surely.

Mr. NEVIN. Because the specific definition of what is meant by some of these terms becomes quite important.

Senator MOSS. All right, Mr. Scott.

Mr. SCOTT. I think over the years, of course, we have offered our cars with a warranty that disclaims the implied warranties of fitness and merchantability, as have all other manufacturers. We have no experience on what that is going to cost us. We do know, or we do believe our costs will be substantially increased if we have to pay for incidental and consequential damages, but we have no idea of what that is. We have taken advantage of the Uniform Commercial Code which permits us to do that.

I listened to Chairman Weinberger this morning say he didn't agree with that. Yet you have to say that the Uniform Commercial Code was drafted by the American Law Institute, which is an institution of scholars; it has been approved by the uniform law commissioners in 49 of our States. And it has been blessed by the American Bar Association. So anybody can disagree with it as they will. But the fact of the matter is we are permitted to disclaim them.

It is a cost. We don't know how to quantify that cost. Basically what we want to say to the customers is, I think, that we want an opportunity to fix your car. In other words, our warranty says our obligation is to fix the defect.

Now, if we have a reasonable opportunity to do that, and we fail to do it, we then, as we view it, have breached our warranty, and we are liable for any damages that proximately flow from that breach, including any implied warranties of fitness and merchantability, the same kind of an exposure to liability. But what we would like to do is not assume that kind of a cost at the moment the defect manifests itself. We are saying no, not at that time. Give us an opportunity to fit it, then if we don't fix it, then under the law we are exposed to that liability.

That is the difference as we view it.

Senator MOSS. Are you saying you have an obligation to do this under the implied warranty?

Mr. SCOTT. No. What I am saying is our warranty that we give obligates us to fix the defect. If we are given a reasonable opportunity to make that correction, and we fail to do it, we then get ourselves into a posture where we have breached our warranty.

Once we have breached our warranty, we are liable to all of the damages that proximately result from a breach, which I think puts you in the same place you would be if you had an implied warranty, except that you do have a time limitation that we provide in our warranties that are not involved in the implied warranties.

Senator MOSS. Other than the time limitation, what about the disclaimers in an express warranty that nullify the implied warranty provisions?

Mr. SCOTT. I think the point I am trying to get across is we have that same kind of liability once a breach occurs. Under the warranty that we give, the breach occurs when we fail to make the fix. Under the uniform commercial code, if you do not disclaim the implied warranties, the breach would occur when the defect manifests itself.

We are saying we want an opportunity to fix it before we are in breach of our contract.

Mr. SUTCLIFFE. I think for the record it might be important to point out under the uniform commercial code, section 2–718, there is the express provision to allow the manufacturer to liquidate his damages for breaches of implied warranty. One of the provisions of that liquidation could require the consumer to provide the manufacturer with the opportunity to cure the defect or breach prior to the obligation to pay money damages.

Mr. SCOTT. Yes. And I have section 2–718 in front of me and the conditions and limitations therein don't offer me much solace.

Mr. SUTCLIFFE. The only limitation is reasonableness and the only proscription is the ability to disclaim in the case that personal injury would be involved.

Mr. SCOTT. Let me read it.

> Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

So, you know, if you specify liquidated damages, there isn't much hope it will be sustained in any particular case.

Secondly, if I could, with respect to personal injuries, our warranties specifically—and I think you have a copy of it there—specifically say we don't disclaim implied warranties with respect to personal injuries.

Mr. SUTCLIFFE. That is a specific provision of your warranty?

Mr. SCOTT. Yes, sir.

Mr. NEVIN. Let me interrupt here a minute. We have as you are aware I am sure, rewritten our warranty this year to go to a very simple one-page statement. Part of our problem here, sir, it is not only do we need the standard we should meet, it is also do we communicate effectively with the customer, so be understands what obligation we are undertaking and what obligation we are not. We attempted to develop this very simple warranty. You are familiar with the complaints on a whole series of things like wheel balancing, wheel alignment, headlight adjustment. Are they warranted? We simply say for the first 90 days the burden of proof is on us. If those wheels are not aligned, if the wheels aren't balanced, we will fix them for you. After 90 days, the burden of proof is on you. We will assume the reason they become out of line is you bumped into something.

I think in this area there is a second objective we all have, which is to make sure that contract is understood by both the dealer and the manufacturer on the one hand and the customer on the other, as to what each party is expecting from the other.

Mr. SCOTT. If I could, I would like to read that. The last sentence of our warranty says:

> Except for responsibility for personal injuries shown to have resulted from a defect, this warranty is expressly in lieu of all other warranties, et cetera.

Mr. NEVIN. May I make this warranty available to you for the record?

Senator MOSS. We do have a copy of that here. Thank you very much.

Senator Pearson?

Senator PEARSON. I don't have any particular questions, Mr. Nevin. I just would observe that I believe Congress is going to act in this field. I don't know what they are going to do. I don't even know what this subcommittee will do, whether it will be S. 3021, the administration proposal of expanded authorization for the FTC on preliminary injunctions, or whether it will be this bill on warranties, or the new proposal we heard this morning. I think the Congress is going to act here.

I am most appreciative of the responsibility you have shown in testifying and the very frank way in which you have delineated the problem.

On the excise tax, I just doubt the feasibility of that proposal, although I am very grateful to you for having some responsible recommendation to make. As you know and as you have been advised, the process of getting the Bureau of the Budget to agree to the earmarking of funds that go into the general revenues is just a fantastically difficult problem. We finally did it in the airport user tax provision. Maybe the 7-percent investment credit approach could be advisable—we did it for machines, maybe we can do it for people. That might be more palatable for the Congress than the excise tax, which you know we had a responsibility and a promise to the people of taking it off when we put it on.

But I only make those observations because I am going to be a little pessimistic about expanding manpower programs, quite pessimistic about the 7-percent investment approach or the excise tax approach. Yet at the same time while you are caught between consumer demands and competition pressures, and the fact that the Government is about to do something about this particular field, I am very sympathetic with you, it is a very serious problem you are facing.

We are in a consumer wave now, a safety wave.

Mr. NEVIN. Sir, I think that is probably constructive. I think that will improve a great many things in our society. I think our legitimate concern is to the extent some of these problems seem clearly to have risen through all of the pressures the economy has been undergoing during the last 10 years—I think none of us would have suggested that prices could have skyrocketed the way they have without dislocations taking place in the labor force, et cetera. I think it would be tragic if we responded to those kind of dislocations, which have clearly contributed to the inability of any industry in this country to meet the demands of their customers, by tearing down the fabric of the institutions that have under other circumstances contributed quite substantially to the country.

This is a very difficult judgment. Obviously it is one the Congress is responsible to make. I appreciate your comments.

Senator PEARSON. Mr. Nevin, is the manpower available? Suppose we went into the vocational education field with a very expensive program, either through your leadership on investment credit or through the Government's program of manpower training. Would we have the people available? Are there enough motivations for the manpower as there are for the automobile manufacturers to come into this field?

Mr. NEVIN. Senator, my answer has to be "yes," sir, and I am not sure I would have answered it "yes" if you had asked me this question

2 years ago. Two years ago when defense production was expanding, when the consumer economy was expanding, I am not certain I would have answered you affirmatively, sir. But I think when we go into a time when hopefully men will be coming out of the Armed Forces, we certainly owe them some opportunity to get careers with dignity and security and opportunity. When we have substantial numbers of young people in the cities who for reasons of educational opportunity, or race, or other things have not gotten the opportunities that we would like to give them in our society, then it seems to me very difficult to understand why we can, on the one hand, look at a critical need for trained people in careers that provide great security and great income, on the other hand look at people who need this opportunity and say we are not able to bring them together.

I guess the third piece I would put into this is the experience of the military. The military has, since the Korean war, been doing an extraordinary job of providing exceptional skill levels to men in short periods of time, because they had no alternative. I have to say, sir, I understand the problems, I have no—I want to make sure you understand this—I have no reason to urge the excise tax as the only way to deal with the problem. I think this question of resources, however, is one which we wanted to deal with in depth today, and we sincerely appreciate the manner in which our testimony has been received and listened to.

Senator PEARSON. Well, I thank you very much. Thank you, Mr. Chairman.

Senator Moss. Thank you. Do you have a question on that incentive, Mr. Sutcliffe?

Mr. SUTCLIFFE. Yes, sir.

Senator Moss. Go ahead.

Mr. SUTCLIFFE. Mr. Nevin, in your testimony there is a chart explaining the repurchase loyalty which you have provided the committee in order to indicate the incentive that the industry, both at the manufacturing and dealership level, has to provide or improve present service operations, either through quality-control programs or through actual performance of service at the dealership level.

Because charts are sometimes difficult to understand, I would like to ask you several questions about the information provided here to see if this committee has the proper understanding of that information.

Because the incentive for repurchase would probably focus upon the dealership, let me just develop and ask some questions about the facts that you give us about repurchase loyalty from original selling dealers.

So we might understand, let me assume that we start with the dealership who sells 100 units in a given year. Is my understanding correct that of those 100 units, which he sells, that there is a correlation between satisfied and dissatisfied customers? And that that correlation at the outside is 20 percent dissatisfied, 80 percent satisfied—at the outside? I think the outside is important to you because it indicates a higher incentive. Is that correct?

Mr. NEVIN. Yes. The dealer will lose some number of customers—let me follow your example, because I think I understand your question. If the dealer sells a 1967 model automobile to 100 people, he will

lose some number of them—let us say they all reenter the market in 1970, to keep it simple—he will lose some number of them because they move away, live in a different town.

He will lose some number of them because of somebody else's styling appeal or their product becomes more attractive and he doesn't handle that particular car.

When we try to zero in on this question of service, what influence service has, we find if you take all of the other things that would cause him to lose the customer, like the fellow moves away, among satisfied service customers the dealer will sell one in two of them a new car.

In other words, if he is satisfying them, all of the other variables, moving away, trading to a competitive make, et cetera, he will hold one in two. He will only hold half as many among the dissatisfied customers.

Mr. SUTCLIFFE. I understand that relationship. But I want to see what it means to that particular dealer, because that is where the incentive is provided.

If we use the 80–20 percent ratio, that means that of the 100 cars that he sells, 80 of those cars will have satisfied owners. Half of those owners will repurchase. So we have a repurchase from consumer loyalty of satisfied customers of 40 cars. Of the dissatisfied customers, which are 20 people or 20 cars, the repurchase loyalty will bring in five cars or four cars depending on—let's use the half of that again ratio. So that gives him 45 cars that the statistical average can bring in for his sales force.

Now if we were to eliminate dissatisfaction from customers on the basis of the statistics you have provided, it would bring in another five sales.

Mr. NEVIN. Yes, sir, you understand the statistics correctly, that is exactly right.

Mr. SUTCLIFFE. Now that increase of five sales, assuming he is maintaining his sales volume between the years we are discussing, accounts for 5 percent of his total volume of sales. That leaves, on a total account, 50 percent of the sales that he has to make to maintain the volume of sales unaccounted for. So in order to provide incentive from this source, it would have to be shown that it is less expensive for him to completely reduce customer dissatisfaction to get 5 percent of the market than it is to use some other avenue to get 5 percent of the market, either advertising, or promotion among his satisfied customers, through the mailing out of post cards asking them to come to the dealership, or a variety of other methods.

Mr. NEVIN. Let me see if I can't put some other facts in perspective.

The first factor you may be interested in is 30 percent of the gross profit in an automobile dealership comes from service operations. It is a very consequential part of the profit. If he wasn't selling new cars, if he had two separate businesses, the service business is in terms of gross profit about a third of the size of the new car business.

Second, the dealers have invested $600 million over 6 years, an average of $100 million a year. And 65 percent of them have engaged in facility expansions. Eighty perecnt of that facility expansion goes into parts and service space. Eighty percent of the floor space in a

dealership. Obviously when they are buying land, it is floor space they are buying.

Mr. SUTCLIFFE. Let me see if I understand that statistic now. You said his net income can be divided 70–30, 70 on new car sales, 30 for service?

Mr. NEVIN. His gross profit.

Mr. SUTCLIFFE. Gross profit. His need for expansion and increase in facilities is directly related to the 30 percent gross profit factor?

Mr. NEVIN. No, I am trying to say the two are inseparable. The reason a dealer invests $300,000 in a new facility that is 80 percent service capability is both to generate service gross, which is important, and to satisfy his new car owners. But a rational businessman doesn't enter into a $100 million investment a year in new facilities, 80 percent of which is used to provide service capability, and then fail to do the other things that would make that service capability meaningful to his customers.

Mr. SUTCLIFFE. Isn't he obligated to provide a good portion of that service under the warranty requirements?

Mr. NEVIN. Yes, sir; he is obligated too. The Federal Trade Commission report indicates that 10 to 15 percent of the service work in a dealership is associated with warranty work. The other 85 percent is customer satisfaction—not fully 85 percent, some of the capability is used for predelivery work for example. But if there is anything that characterizes an automobile dealer—and I am not just talking about Ford dealers now—it is a man who makes an investment in a community. Unlike those of us who work for large companies, who may get moved from one State to another, he puts his roots down, he builds a building and says I am going to offer you this service. These are people who have to live with problems of service satisfaction in the neighborhood and have to live with their reputation. In the economic world they respond with $100 million in new facility investment—and please accept the 80 percent of the space in a new facility is service and parts, because that can be demonstrated. The rational businessman doesn't behave in that manner, he doesn't make this enormous investment in order to disappoint people. He does it because he believes it is a major determinant of his ability to stay successful, both because he will generate growth by satisfying customers service-wise who perhaps never will buy a car from him, and secondly by being able to sell more cars, because he is able to demonstrate to the customer that he can service them.

All the dealer is really saying is that he is listening to the same people you are listening to. The people who are writing you are saying this is a critical problem, I am not happy with my new car, because I don't get service. You are saying these are my constituents. I must respond to their needs—or Senator Moss' constituents. The dealer is saying these are my customers and if I don't respond to their needs, I don't survive.

Mr. SUTCLIFFE. Are you suggesting that the facts that we have before us might not explain the actual motivation of the dealership? Because the facts before us suggest that only 5 percent of the market is related to the total elimination of dissatisfied service customers.

Mr. NEVIN. Sir, we put a Mustang car into the market and we are absolutely delighted with 5 percent. Now this is not inconsequential. Dealerships, automobile dealerships in America, averaged a profit of less than 2 percent on sales.

Mr. SUTCLIFFE. But we are comparing that to the 50 percent that don't come back, that have no repurchase loyalty, that he has to go out and get anyway.

Mr. NEVIN. Aren't you talking about controllables versus uncontrollables in a business? If a man is running a retail establishment and he loses 50 percent of the customers every year because they move away, using that simple example, he has to live with that. Therefore his opportunities to sell new people who move into those houses will either be random or associated with his reputation.

I think the loyalty numbers I quoted here understate the importance to a dealer, because a dealer is both going to get repeat sales from the customer who is satisfied, or lose those repeat sales to a customer who has been dissatisfied.

If there is anything a dissatisfied customer is likely to do over time it is to injure the reputation of the dealer with people who have similar kinds of interests. A satisfied customer similarly will attract business to the dealership.

Mr. SUTCLIFFE. In that situation, would GM's loss be Ford's gain and vice versa?

Mr. NEVIN. There is no question about it. At the moment the automobile industry is trading dissatisfied customers. If that is what you are getting to, I must agree at the moment we are trading dissatisfied customers.

Mr. SUTCLIFFE. As long as the trade-offs retain some semblance of similar magnitude, would that be a further disincentive to elimination of service?

Mr. NEVIN. Let me not ask you to accept my judgment on the competition. Chairman Weinberger expressed the view that we are terribly competitive. But I can assure you Ford doesn't go out and introduce a new Maverick or new Mustang to get more customers and then say "Fine, we will be happy if GM introduces something, because, you know, they will get their fair share of our customers." The incentive for the dealer and automobile company is to attract new customers.

Let me make another observation regarding the same Newsweek survey so widely used in the FTC report. When Newsweek asked the customers to list the considerations they felt led to the purchase decision, a part of the survey that has not been quoted, 53 percent of the customers said "past experience" led them to make the purchase decision, 53 percent of them. This is certainly consistent with what you are seeing in your mail.

Mr. SUTCLIFFE. That means 47 percent didn't though.

Mr. NEVIN. Yes; the next 22 percent said styling was a major factor. Everybody talks about styling as a sales appeal in the automobile industry. The Newsweek survey says the ability to please the customers—that is what the customer says when he says past experience is why I came to your store, he is saying he was pleased by some combination of quality or warranty or service after the warranty was completed. They are saying that is twice as important as styling, as any of the other listed variables.

I would hope you would not underestimate this motivation.

Mr. SUTCLIFFE. If we could at this point turn to the chart to see if we can clarify for the record the meaning and import of that. That $150 million figure for advertising; does that include expenses by dealers or only Ford Motor Co. (See fig. 3, p. 196.)

Mr. NEVIN. That includes expenses by Ford Motor Co. It includes the corporate advertising, the advertising of the Ford and Lincoln-Mercury Division, and sales and promotion expenses.

Mr. SUTCLIFFE. Do you have any indication of what the dealers have spent or will spend this year on advertising?

Mr. NEVIN. I would judge on the order of perhaps $30 million. We actually run——

Mr. SUTCLIFFE. How does that compare with what they will spend for manpower training and expansion of facilities?

Mr. NEVIN. Well, if you take the number on expansion of facilities, $100 million invested by Ford dealers in the last year in new facilities, that is roughly equal to half of their profits before taxes, the investment in new facilities.

Mr. SUTCLIFFE. So we have a total advertising expenditure of about $180 million. Is that correct?

Mr. NEVIN. If you want to treat it that way, you would add to the $300 million we spent in paying warranty claims to dealers the moneys dealers spent in satisfying customer claims, where they did a service job and it didn't turn out right, and the customer came back and the dealer did it again to meet the customers' demands.

Mr. SUTCLIFFE. What percentage of that $300 million figure would you calculate could be directly attributable to the 1969 model year sales? In other words, you have cutback on warranties now. And this $300 million figure brings in models from other years. Do you know what percentage or have you calculated or guessed at what percentage?

Mr. NEVIN. I perhaps should have responded to this earlier. The statement was made earlier that the automobile industry had cutback the warranties to those like they had in 1960.

Ford's warranty is 12 months—you did not make the statement, Chairman Weinberger made it—Ford warranty is 12 months, with no mileage limitation whatsoever in the first year. That is the basic warranty. Twelve months, no mileage limitation whatsoever.

For $15 you can buy a 5-year 50,000 mile power train warranty from us, if you wish to purchase it. And that represents a very substantial increase in coverage over anything that has been available, or was available in the early sixties.

Mr. SUTCLIFFE. This $325 million figure you put in for tool amortization, is that a cost directly attributable to style changes each year?

Mr. NEVIN. No; that is a cost that is attributable to all changes each year, whether style or function—the tools that are required to stamp out the metal, sheet metal, the tools that are required to make the rear axles, the tools that are required—we have special tooling throughout our plants to manufacture a series of components. Some of them are subject to rather irregular change. For example, engine tooling may be changed over a long period of time. Tooling for front fenders may get changed every 2 years. It is a complex of all tool amortization.

Mr. SUTCLIFFE. What are the tax consequences of that amortization? Are you able to write off any of those expenses?

Mr. NEVIN. We are able to writeoff to amortization advertising and warranty payments to dealers. All three of them are tax deductible expenses.

Mr. SUTCLIFFE. There is no special writeoff coincident with the tool amortization?

Mr. NEVIN. No, I am not aware of any.

Mr. SUTCLIFFE. That is all of the questions I have at this point.

Senator MOSS. I am sure Mr. Nevin will be willing to respond if we have further questions that we might submit to him in written form.

Mr. NEVIN. Yes, sir, I would be delighted to.

Senator MOSS. The record will also include the material you prepared on S. 3074, which was not read orally, but it will be in the record, and if we have any questions on that, we will also write to you about it.

Let me say how much I appreciate your testimony, Mr. Nevin, and that of Mr. Scott. It certainly has been helpful and very forthright. As Senator Pearson indicated we are in a real time of great pressure on all sides on this matter and I think you have been very helpful to us in giving us the picture of the automobile manufacturer and his dealers and have given us a great deal of background that we will need as we deal with S. 3074 or deal possibly with the recommendations made by the Federal Trade Commission.

So I thank you very much and we hope we can get all this pulled together and come out with something that is reasonable.

Mr. NEVIN. Thank you very much, sir.

Senator MOSS. The committee will now be adjourned.

(Thereupon, at 11:35 a.m. the hearing was adjourned.)

CONSUMER PRODUCTS GUARANTY ACT

WEDNESDAY, MARCH 11, 1970

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

The subcommittee met, at 9:30 a.m., in room 5110, New Senate Office Building, Hon. Frank E. Moss (chairman, of the subcommittee) presiding.

Present: Senator Moss.

Senator Moss. The subcommittee will come to order.

Today the Subcommittee on Consumers of the Senate Commerce Committee begins its final day of hearings on S. 3074, a bill to provide minimum guarantee standards for consumer products.

Yesterday the Committee received an explanation of the Federal Trade Commission's automobile warranty report from Chairman Weinberger. In our discussions with Chairman Weinberger it became clear that the basic approach embodied in S. 3074 was a compatible and perhaps necessary first step down the legislative path recommended by the Commission.

I was personally pleased to hear him reiterate as a Commission position of his own previously stated belief that no implied warranty should be disclaimed by a seller of a consumer product who gives an express warranty.

In this morning's hearings the consumer subcommittee welcomes back Mrs. Knauer and Mr. Lynn. While testifying in January, Mrs. Knauer and Mr. Lynn promised to return in March to give this subcommittee the President's Appliance Warranty Task Force report.

It is the subcommittee's good fortune to also receive the views of Mr. McLaren, the Assistant Attorney General. I look forward to their comments on this very important warranty and guaranty problem and I am sure our other witnesses this morning will contribute substantially to these hearings.

We will ask Mrs. Knauer, Mr. Lynn, and Mr. McLaren if they would come forward and be seated at the table here and leadoff our discussion today.

STATEMENT OF VIRGINIA KNAUER, SPECIAL ASSISTANT TO THE PRESIDENT FOR CONSUMER AFFAIRS; ACCOMPANIED BY RICHARD W. McLAREN, DEPARTMENT OF JUSTICE; AND JAMES T. LYNN, GENERAL COUNSEL, DEPARTMENT OF COMMERCE

Senator Moss. We are most happy to have you back with us again, Mrs. Knauer and gentlemen, and we look forward to hearing from you

Mrs. KNAUER. Thank you, Mr. Chairman. I am delighted to be back.

Mr. Chairman, on January 20 I requested the opportunity to appear beore this committee again and discuss the views of the task force on appliance warranties and service regarding specific legislative approaches to solving the problems consumers experience with warranties and service under warranties.

Thank you for giving me this opportunity and I must apologize to the Committee for not being able to give you the leadtime to consider our testimony which I had earlier thought possible.

First let me summarize the analysis by the task force of the progress major home appliance manufacturers have made in following up on the recommendations made in the task force report of January 8, 1969.

The industries manufacturing and purveying major home appliances—so-called "white goods"—represented by their associations, the Association of Home Appliance Manufacturers, the Gas Appliance Manufacturers Association, the American Retail Federation, and others have been extremely cooperative in supplying the task force with progress reports, and it would be less than accurate to say that the industry has not made progress toward achieving the goals outlined in the task force report. I would like to give you what I consider to be an excellent example of what can be accomplished when a manufacturer is disposed to be honest with the consumer and attempts to recognize the needs of the public. (Maytag fact sheet and warranty.)

The fact that this kind of warranty and product information can be written and adhered to should help to dispel the unreasonable fears that many have concerning the aims of this Committee.

Mr. Chairman, I am holding up the new telltag put out by Maytag. It tells about the product, gives a description of it, tells how to care for it, and also how to install it. On the back there are safety precautions and a full warranty covering service and the parts warranty. Would you like this example for your records?

Senator MOSS. Yes, I would like to have that.

Mrs. KNAUER. In general the task force is of the view that increased efforts by the manufacturers of "white goods" will accomplish many but not all of the recommendations contained in the task force report of January 8, 1969. The task force is of the view that the problems outlined in the report and the barriers confronting voluntary efforts at eliminating these problems are typical throughout industries supplying the consumer.

Practices and abuses that were identified and criticized in the original task force report are still engaged in by manufacturers of various types of consumer goods. Full disclosure of the protection afforded by a warranty and full performance of the warranty are easily stated but not easily brought into being.

Despite the efforts of individual manufacturers or industries, the problems of consistently supplying quality products and quality servicing do not appear to be amenable to an entirely voluntary approach to improvement.

There are many operative factors which militate against the prospects of effective voluntary response of business to this major source of consumer irritation, namely, how to keep the new gadget operating in a way that is consistent with the justified expectations of the consumer.

Among these factors are the historical practices of failing to compete vigorously through guarantees and servicing practices. There are legal and practical difficulties facing an industry in trying to effect an element of the total value represented to the consumer, i.e., the guarantee and service protection. Then too the proliferation of new appliances and new types of appliances available to the consumer, coupled with heightened consumer expectations created by advertisements, also compound the problem. These factors viewed against the lack of effective sanctions under existing law against the manufacturer who would refuse to perform obligations implied in the giving of his guarantee strongly suggest the need for some Government response.

The task force has recognized that many warranties are not adequate to advise the consumer of what he is purchasing. Consumer complaints of failure to perform warranties adequately or equitably still crowd into Government agency files. The task force believes that these existing marketing practices connected with the sale of consumer durables and performance of guarantees also inhibit effective competition in the marketplace.

The task force believes that informative, accurate, clear and fairly written guarantees, backed up by guarantors who deliver what they promise, are essential to our free market economy.

There are three applicable points in time where these objectives must be accomplished: (1) fair presentation of the guarantee prior to sale in advertising; (2) fair presentation and definition of the guarantee at the point of sale; and (3) full performance of guarantee obligations after the sale. Achieving these objectives should facilitate value comparisons by consumers and promote competition in marketing and servicing. In the view of the task force these advantages are attainable without destroying the fruits of the competitive system that has provided the technological advances that have so changed and improved the consumer's life today. However, some governmental action does seem appropriate, since the above-referenced problems are not easily susceptible to joint corrective action by all manufacturers of a given product.

The task force came to the conclusion that warranty legislation should accomplish the following objectives:

Greater protection against deception in describing the characteristics of consumer goods, and in the marketing of warranties and guarantees;

Much more disclosure to consumers of exactly what their warranties cover, and what they do not cover, with clear FTC authority to require this disclosure.

Assurance that there will be at least a minimum meaning to the terms "warranty" and "guarantee" on which consumers can rely—fitness for ordinary use.

More assistance to consumers in obtaining performance of the obligation to make guaranteed products fit for ordinary use.

Continuing efforts in this area, we do not think work on warranty problems should end when this bill is passed. We believe Congress should mandate a continuing inquiry in this area, and a report when we have more experience with this bill.

The task force believes that the specific legislative proposal that has been drafted will accomplish these objectives and Mr. McLaren will

go into some detail in describing the approach the task forcce recommends.

Thank you.

Senator Moss. Well, thank you, Mrs. Knauer, for that very fine statement and your point by point description of what should be accomplished by warranty legislation gives us a measurement by which to judge the bill, S. 3074.

Of course we will hear further from Mr. McLaren and Mr. Lynn and perhaps we can postpone any questions we have until that time. But I do appreciate your statement.

Mr. McLaren, next we will have you, sir.

STATEMENT OF RICHARD W. McLAREN, ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE

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

I appreciate the opportunity to come before you again on this general subject.

As Mrs. Knauer has described, we have substantially ready a bill which I would like to outline for you.

First, if I may——

Senator Moss. May I interrupt there?

By "substantially ready," can you tell me when it will be ready and up here?

Mr. McLaren. In the next few days. This week certainly.

Senator Moss. Definitely this week?

Mr. McLaren. Yes, sir.

Senator Moss. All right.

Mr. McLaren. I would like, if I may, to discuss some of the considerations which have shaped the proposal which we are making.

As Mrs. Knauer has pointed out, meaningful and satisfactory warranty practices require both full and accurate information on consumer products and warranty coverages before and at the time of sale; and effective performance of warranty obligations. One can attempt to improve warranty practices by taking measures to improve the performance of the free market, by exerting direct legislative or administrative control over the market, or by lending the courts' assistance to consumers in requiring that guarantors or warrantors make good on their obligations.

We believe that there is very substantial value in maintaining markets are free and as diverse as is feasible. We therefore tend to stress measures to improve markets, and to help consumers get relief when the market fails them, in preference to extensive administrative control of the market.

Taking these considerations into account, our proposal will attempt to improve the quality of market transactions in three major ways.

First, we will recommend a broad prohibition of false or deceptive statements relating to consumer products. This prohibition would be applicable whether those statements are intentionally deceptive or not. It would be applicable whether they are deceptive because affirmative misrepresentations or because of failures to provide information necessary to prevent deception.

Second, we would spell out for the Federal Trade Commission very broad rulemaking authority to require affirmative disclosure of the

terms and conditions of warranties and guarantees, including disclosures as to any exclusions of coverage and disclaimers of obligations. These rules would have the force of law.

Third, we would recommend the enactment of a new Federal implied warranty of fitness for ordinary use with respect to products covered by our bill. This warranty could be disclaimed if the disclaimer were clear and accurate. But the warranty could not be disclaimed if the supplier were to use the terms warranty or guarantee. The effect of this would be to give a minimum content to any warranty of guarantee an implied warranty of fitness for the ordinary uses for which the product is sold.

We expect that these measures would substantially enhance the quality of information available to consumers, and the quality of many warranties and guarantees. But this, alone, would deal with only part of the problem. Consumers are also entitled to enhanced protection from the failure to meet basic warranty obligations.

Our proposal will address this need in the same fashion that our Consumer Protection Act addresses the need for enhanced consumer protectin in the economy at large. That is, we will propose that the Justice Department and the Federal Trade Commission be authorized to bring suit against both the deceptive acts proscribed by this warranty legislation, and failures to perform the fitness-for-use warranty obligations. And we would make it possible for consumers to bring suit in the State or Federal courts after a successful government action, for deceptive acts, for failures of companies to meet the FTC's disclosure requirements, and for failures to meet warranty obligations.

Both the Justice Department and the Federal Trade Commission would be authorized to obtain preliminary injunctions with respect to violations of this act, as is the case with the Consumer Protection Act.

This legislation would require annual reports from the Attorney General, as would the Consumer Protection Act. In addition, the administration proposal would require the Federal Trade Commission to make further inquiry into consumer warranty problems and to report to the Congress in greater detail on those problems, and on the effects of the legislation we recommend, within a period of 2 years after the date of enactment of the legislation.

Now let me discuss some of the similarities and differences between our proposal and S. 3074.

The administration's proposal would define a somewhat different field of coverage. Instead of dealing only with products with electrical, mechanical, or thermal components, it would deal with all consumer goods having a value of $25 or more. Thus, we would propose to cover a broad range of consumer products, but to deal primarily with the larger and more substantial purchases.

Senate bill 3074 would require that a supplier be required to make good all costs involved in the correction of any deviation from affirmations of fact or promises made by the seller to the buyer. Although we understand the basic intention of this proposal is to assure honesty in the market, as is the intent of our proposal, we think this formulation might restrict to some extent desirable freedom in the marketplace. We think there should be a degree of flexibility in the extent to which postsale performance is or is not completely underwritten—so long as the buyer is fully informed—and that there should be a good deal

of flexibility allowed in the quantity and quality of postsale service which sellers will offer. Consumers should, in our view, have an opportunity to buy cheap goods as well as expensive goods, and to buy a wide range of postsale service obligations.

We do believe, however, that if the terms warranty and guaranty are used, they should have a minimum commercial content, and that commercial content should be very similar to what is provided in section 12 of S. 3074. In our view, the minimum commercial content should be fitness for ordinary use.

There are several reasons for enacting a Federal implied warranty of fitness for ordinary use, and not allowing it to be disclaimed when a seller uses the terms warranty or guaranty.

First, under existing legal practice the uniform commercial code implied warranty of fitness is often negated in consumer transactions, without consumer knowledge; second, we think it is entirely appropriate that the terms "warranty" and "guarantee" have as their minimum content assurance of fitness for ordinary use; third, giving these terms this minimum content is likely, in our view, to promote a higher standard of warranty protection, and promote comparability among warranty offers, without restricting the right of suppliers to offer lesser degress of backing for products, if they wish; fourth, the concept of fitness for ordinary use has evolved out of the comman law and the uniform commercial code—there should be no major difficulty in this application. It is a workable minimum standard, based on reasonableness; fifth, enacting this Federal right provides additional foundation for Federal Government action on behalf of consumers to require the performance of this warranty in cases where failures to make warranted goods fit for ordinary use is of sufficient general importance to require Government action.

The enforcement scheme provided by our proposal differs from that in S. 3074 in that it authorizes direct Government action instead of relying entirely upon private actions to remedy breaches of warranties, and it contains provisions to protect the Federal courts from a mass of small litigation for which they are not designed. We have previously explained the rationale for the so-called "triggering device" for consumer suits—that is, allowing consumer suits after the termination of a successful Government action. This is to prevent the use of the Federal district courts as small claims court, to avoid the possibility of harassing, strike suits on a nationwide basis, and to assure a public selection of cases of general public concern.

Finally, I want to emphasize that this legislation would in no way restrict any of the authorities which the FTC presently has, or any rights which consumers now have under any other applicable State or Federal law with respect to warranties, guarantees, or to deceptive acts and practices. This is protection additional and suplementary to that now provided for.

Nor would the proposed legislation prevent a supplier selling goods on an "as is" basis, selling service contracts, or otherwise tailoring his postsale obligations.

In summary, we think it is time to give more meaning to warranties, and better machinery for enforcement of the basic warranty obligations. We think this proposal will do these things, consistent with maintaining a free and diverse market in consumer goods.

The legislation is responsible, and it is workable. We hope you will give it your careful consideration.

Thank you, Mr. Chairman.

Senator Moss. Thank you, Mr. McLaren. I can assure you we will give the most careful consideration and scrutiny. We are very anxious to have the draft get up here so that we can consider it, lay it along side of S. 3074 and make decisions as to which parts of which ought to go into a bill that could be presented from this committee to the full committee, and then to the Senate, for consideration.

You do have a very excellent statement outlining what in general the proposal will contain. We want to see the specifics.

Now, we will hear from Mr. Lynn and then we may have some questions that we would like to ask. So, Mr. Lynn, General Counsel for the Department of Commerce.

STATEMENT OF JAMES T. LYNN, GENERAL COUNSEL, DEPARTMENT OF COMMERCE

Mr. LYNN. Thank you, Mr. Chairman. I appreciate the opportunity to appear again today before this committee on behalf of the Department of Commerce, to discuss the subject of warranties on consumer products.

Mrs. Knauer has outlined to you the report of the Task Force on Appliance Warranties and Service. Mr. McLaren has amplified the description of the legislation the administration will propose. The Department of Commerce report on S. 3074, to be filed shortly, will cover in more detail a comparison of the administration proposal with S. 3074.

Accordingly, I would like to limit my formal remarks to a restatement of some basic points which I hope will be of some utility to the committee in its evaluation of various alternative proposals directed at correction of abuses in the warranty area.

At the outset, it is of utmost importance that the various warranty problem areas be carefully distinguished one from the other. We analyze them to be as follows:

PROBLEM AREA 1—HOW IS THE WARRANTY PRESENTED?

The first problem is to present the warranty or guarantee in a way that gives the consumer a good understanding of what he is and is not getting by way of postsale protection. There is substantial evidence of room for considerable improvement in the presentation of many warranties. The administration proposal will afford a broad and flexible weapon against wrongdoing in this area.

PROBLEM AREA 2—IS THE WARRANTY ADEQUATE, AND WHERE SHOULD ADEQUACY BE DETERMINED?

By law, or in the marketplace, or by some combination of both? A separate problem from the presentation of the warranty is whether the protection given by the warranty meets some minimum standard which you and I as consumers would like to have available in the market.

This is a much more difficult problem to handle. An approach which imposes, either as a matter of law or practical effect, a system of compulsory warranties, will in my judgment have more harmful than good effects in the long run.

In the first place, compulsory minimum warranties are bound to stifle competition, which when all is said and done, is still our best protection against the poorer performers. Such a Federal standard would undoubtedly work against any tendency of the established competitors to do more than the standard.

Perhaps even more important, the small business might well be hurt the most because it cannot risk the resources to cover the potential expense of offering some Federal standard warranty. Many times the small businessman is the innovator, the one who gives us a new type of product, better or as good at a cheaper price. We certainly don't want to put barriers in his way needlessly.

I have a very strong conviction that if a manufacturer hiding behind an unclear warranty is compelled to bring out into the light exactly what his warranty does and does not do, the fear of adverse marketplace reaction to the truth will bring about voluntary substantive changes in the warranty to prevent such marketplace embarrassment.

PROBLEM AREA 3—PERFORMANCE OF THE WARRANTY

A third distinct warranty problem is that of performance, whatever the terms of the warranty may be. My guess would be that of the total warranty-based complaints received, this is the predominant one.

The repairman didn't come. He didn't have the right parts. The machine has broken down three times in as many months. It's a lemon. It is no comfort to the poor guy who suffers these misfortunes to be told that his is the exceptional case as to the particular model, that it has been a good machine.

But in thinking about this problem of warranty performance and postsale service in general we should try to keep in mind the following:

(1) That most manufacturers are earnestly trying to develop a favorable reputation for their products and are striving to lick this problem. Why spend thousands or millions of dollars on promotion if the good will is to be lost by past-customer to potential-customer tales of how bad the product or the service has been. But we live in a period where trained hands are hard to find and hard to keep. Certainly an important facet of any solution is to assist in making these skills available.

(2) Although there is undoubtedly plenty of room for improvement in the durability of many products at an additional cost that we would all be willing to bear just to get a product less likely to be "back in the shop" before the smell of newness wears off, a point can be reached for every product where further reductions in defect rates can be achieved only for a price increase which is not worth it to us as consumers—in other words, the point at which we would rather risk our getting the occasional bad one, than paying more.

(3) How can the machinery for redressing customer complaints be improved so as to: (*a*) Provide speedy relief, (*b*) provide prompt resolution of differences of opinion, and (*c*) do so at minimal cost both

to the buyer and the seller? The area hardly seems appropriate in most cases for full bloom lawsuits or the threat thereof.

One way recognized in S. 3074, by congressional recognition, is that manufacturers should be encouraged to establish voluntary arrangements whereby the customer can have a speedy hearing with respect to his grievance and a determination of the matter.

Another way is to look hard at our Small Claims Courts and like devices to see areas for improvements, where a person without the assistance of a lawyer can go in and get speedy, prompt, and equitable relief.

One last point. I think it would be useful to all who are concerned with these problems and possible solutions to have better facts as the frequency, both absolute and comparative, of each category of important consumer problems in the marketplace. This would certainly assist in determining priorities for action and in framing the best course of action.

We would be pleased to explore with those interested the ways in which the Department of Commerce can assist in this effort.

Thank you, Mr. Chairman.

Senator Moss. Thank you, Mr. Lynn, for your statement. You have all three been before us now.

First I would like to ask Mr. Lynn what the words "to be filed shortly" mean. How soon may we expect the report of the Department on S. 3074?

Mr. LYNN. I guess in the contract you would say, Mr. Chairman, subject to force majeure, by the end of the week. I am certainly shooting toward the end of the week.

Senator Moss. All right. We have been promised the draft from Justice by the end of the week and if we can have your report by the end of the week, we may start the new week with a burst of activity up here having all of this before us.

Mr. LYNN. Incidentally, Mr. Chairman, we do want to say we appreciate your patience in this regard.

Senator Moss. Thank you.

Mr. McLaren, I noticed in your statement you say the administration proposal is going to be broader in its field of coverage than S. 3074, which limits itself to electrical, mechanical, and thermal components, and will deal with consumer goods having a value of $25 or more. Does this include even soft goods, like textiles, things of that sort?

Mr. MCLAREN. The only exclusion would be the nonconsumer goods below, or the consumer goods below, $25.

Senator Moss. So that would be the only limitation on it at all. Consequently we would be getting into many places or areas where customarily we have not had warranties or guaranties given on goods of that sort? There have been implied warranties also, but I mean you seldom think of buying a suit of clothes or a bolt of cloth, going back to textiles again, with any kind of a warranty or guarantee, except maybe they advertise fast color, something of that sort.

Does this strike you as broadening it unduly, so that it would be difficult to administer?

Mr. MCLAREN. I wouldn't think so, Mr. Chairman. The minimum proposition we are talking about is fitness for the use for which sold,

and let's assume it is a suit of clothing, it will have normal usage, and I expect that everyone expects, relies on both the manufacturer and the dealer who sells it to him to perform and yet this could be excluded by a clear statement, disclaimer, the form of which would be subject to Federal Trade Commission regulation, which is part of the bill also.

And of course the guarantee itself, if the words "guarantee" or "warranty" are used, would be an explicit matter also. And again the contents are reviewable by the Federal Trade Commission. I think that we have come—perhaps this is a personal view of the American scene at this time—we have come to the point where it is time to say and face up to the proposition that where goods are sold that there is a willingness to say that these are fit for the purpose for which they are being sold unless I tell you otherwise.

Senator Moss. Well, this implied warranty that every product is fit for owner use for which it was sold or designed follows every kind of product. That is what you are saying?

Mr. McLaren. Well, of course there are State laws to this effect on every kind of a product. This legislation would apply to consumer products.

Senator Moss. I am interested in the $25 limitation and how you arrived at that figure. Do you have any figures on the percentage of our appliances that are sold that for instance come below the $25 mark and the percentage above the $25 mark?

Mr. McLaren. I don't believe I can answer that, Senator.

Senator Moss. Do any of you know that? Mrs. Knauer?

Mrs. Knauer. No, I don't know.

Senator Moss. Well, this is an interesting question. Of course, prices being what they are in the market, maybe most everything costs more than $25 now, but I could still think of a number of things, a small clock, for instance, alarm clock, the kind you used to buy for $1, but now it probably costs quite a bit more—but still not $25.

I wonder if we don't exclude, by having a dollar limitation or price limitation, quite a number of mechanical items and possibly other items where perhaps we ought to be requiring the same sort of protection we are talking about for the most expensive items.

Mr. McLaren. Well, I think our rationale on that is that as far as the Federal Government is concerned, the Federal Government should move into the areas of more major purchases, just as the Federal Courts should be reserved for the more major lawsuits. And we ought to avoid getting into the small claims area.

I think we hit on the $25 cutoff as really being where you might think of anything below that level as small claims.

Senator Moss. Of course, I understand that, if we are looking at it on the basis of recovery and the mechanics of getting satisfaction, where the whole thing breaks down. But if we are looking at the other side of getting started clearly and in everyday language the terms of a warranty or guaranty, precisely what it means, and assuming a very ready adjustment system based on that, I think perhaps the dollar limitation might be subject to question.

But I am just trying to find out what your rationale was for putting that limitation on.

Mr. McLaren. I might add this, Mr. Chairman, if I may: It seems to me that sometimes no law is better than a law that is not properly enforced or that is unenforced. I just wonder, if we get the Federal Trade Commission and the Justice Department interested in individual transactions under $25, if this isn't just going to swamp them under with the result that the whole thing kind of falls into disrepute.

Senator Moss. Well, obviously you are looking at it from your particular point of view, about the enforcement part. And this is something we must look at.

What I was saying is, there are many aspects to the legislation other than the final enforcement part. It is an attempt to standardize and set down the rules of the game, as it were, on warranties and guaranties; and particularly on your proposal, of course, that there be some preliminary action by the Department before a suit would lie, that would enable the enforcement and supervision to be in rather broad categories and not with each individual small case.

This requirement, that the Department of Justice itself must have brought an action first, before the individual consumer may bring a suit, is one that is at variance with S. 3074.

I wonder about the situation where the consumer feels he is aggrieved and yet he can't get the Department to move? We haven't solved our frustrations if that happens. Is that right?

Mr. McLaren. Well, this, of course, is supplementary to what we have at the State level. We do have a certain amount of legislation in all 50 States. I think we do have to face up to that, as long as a Federal agency, or two Federal agencies are going to be involved, there is going to have to be some discretion in cases that are followed up and that are not. Some man may be just really redheaded about the treatment he individually has gotten, and yet a check into that company's activities may show that there are very, very few complaints about its service and its support of its products.

I think that the agencies would have to have the right to make the choice of where they are going to expend their resources and devote them to the more frequently occurring cases and the more glaring violations.

Senator Moss. Does your proposal now provide that either the Federal Trade Commission or the Department of Justice could bring an action, or must it always be by the Department of Justice?

Mr. McLaren. No, no. There would be a coordinated jurisdiction here, just as under the other consumer legislation we proposed, Mr. Chairman.

Senator Moss. That would depend on coordination between the agencies. Would there be any problems of coordination there? Different points of view developing in Justice and the Federal Trade Commission? Which has the last say?

Mr. McLaren. Well, this concept parallels the system followed for the last 30 years in the enforcement of the antitrust laws, specifically the Clayton Act. The Federal Trade Commission and Justice have a very close day-to-day liaison arrangement.

Primarily it gets into the question of industries in which one or the other has specialized in, or a situation where one agency perhaps has had specific experience with a particular company. And it has really worked very well in practice.

I think the coordinated jurisdiction also works out so that where one agency is not interested, perhaps the other one is. And there is a little bit of competition in enforcement.

I think it is a good, healthy arrangement. I think it would work well also in the consumer field.

Senator Moss. I think all three of you, but particularly you, Mrs. Knauer, recommend that the Congress mandate a continuing inquiry into this area and report when you have more experience with this bill. Would that mandate run to your office or run to the Federal Trade Commission, or who should make this; or should the task force be continued?

Mrs. KNAUER. I would leave this up to Congress. But I would certainly think that our three offices would be working together anyway, just as we would under our Consumer Protection Act. Possibly a continuation of a task force to watch it, or a body appointed by Congress; but I would think that perhaps, because we have developed a certain amount of expertise in this area, that this could be a continuing report. Or because we work together anyway, as members of the task force, you see, this would seem to be a logical point of view.

Mr. McLaren, do you agree?

Mr. MCLAREN. Definitely.

Senator Moss. If we directed you to make the report, would you be disposed to continue the task force to assist you in monitoring the working of the act, and preparing a report to come back to Congress?

Mrs. KNAUER. I would be delighted to.

Senator Moss. I am going to read a little bit from our transcript on the consumer product testing bill that we talked about, Mrs. Knauer.

In this, I said—I think Dr. Tribus was with you then—I said:

> You have voluntary performance standards and they measure against safety standards that may be mandatory. Do you think this bill creates a bias in favor of big business because the small businessman has limited testing facilities and is placed at a disadvantage?

You answered—

> I think it would be of benefit to small businessmen, because they can have their products tested * * *—

and so on.

I might ask you what your reaction to that is, Mrs. Knauer?

Mrs. KNAUER. Senator, as you know—and I think I have testified before other committees—that next to complaints on automobiles in all areas, the complaints we receive from consumers in the household appliance area rate second on that list. And in reference to the warranties, we find that this is a very big group.

Now, I don't have statistics available at the moment, or with me, but I would say the complaints we get are largely about the high-ticketed, the more expensive type household appliances. When consumers have a major appliance breakdown, and they find their warranty does not cover what they think it should, that is when they get very angrey and write to us. I mean we are less likely to get a complaint about a $5 clock than we are a $350 freezer or dryer, or something like that.

Senator Moss. Well, of course they have a lot more money invested, and can spend more time complaining about it.

Mrs. Knauer. Yes, it is a major investment.

Senator Moss. Might not the frustration be just about as great on small items?

Mrs. Knauer. Yes, it can be, especially if that alarm clock failed to wake them up as mine once did. But as Mr. McLaren has said, in the administration's proposal the rationale was that as far as the Federal Government is concerned we ought to avoid getting into the small claims area.

Senator Moss. Mr. Lynn, in your statement you said compulsory minimum warranties are bound to stifle competition and consequently you thought that they would be harmful.

Now, I wish you would expand on that. Are you talking here about the seller who openly says he gives no warranty and guaranty or are you talking about limiting implied warranties? What do you mean by that?

Mr. Lynn. First of all, Mr. Chairman, the purpose of this statement was simply to set forth some benchmarks of my own in considering approaches to solution of the warranty problem in general. And I divided it, as I said, into three parts. The first one, disclosure, knowledge of the customer as to what he is getting; the second one, just how good is the warranty. In other words, if you look at its terms, just what is the customer getting? And the third area, the performance. In looking at what the approach ought to be as to assuring that the warranty that is given is something that meets our demands for what we want, I say on page 2 that I think we ought to reject anything that approaches telling the manufacturer what he has to give by way of minimum post-sale service obligation.

Whether you do that by some Federal agency decreeing a minimum standard of service, parts, whatever it might be, or whether you do it by other requirements that are not direct but have the effect of forcing him to give certain minimums if he wants to stay even in the ball game, if you will, I did not intend by this to have a specific reference to any particular legislation, either our own, S. 3074, or any other approach.

It was intended simply to state that when we are approaching the second problem, the one of how we get good contents in waranties to the consumer, let's please not go to compulsory minimums.

I just think in the marketplace when you go to that compulsory minimum it can provide a rallying point for the big fellows to say, "Look, this is what the Federal Government prescribed. If we are going to have competition, let's have it in some other areas besides the warranty."

And I think for the little fellow, who may be just coming in with an innovative product, where he is not sure what his service record will be and so on, it could provide a substantial obstacle to his being able to come into the market.

Senator Moss. By saying that, you are not objecting to the requirements that the warranty, if given, means certain things, are you?

Mr. Lynn. I am not certain I understand what you mean by that, Mr. Chairman.

Senator Moss. For instance, we say, I think, in both the propsal that the administration is talking about and in S. 3074 that first of all

a warranty, if given, is not allowed to free the person from the implied warranty that the product is suitable for the purpose for which it was sold. By saying that you cannot have at least minimum standards, you are not going that far, are you?

Mr. LYNN. Let us break it down between the administration proposal on the one hand, and S. 3074 on the other. I would like to enlarge upon this in our report we will be submitting.

There are matters of degree in this respect as to whether or not a prohibition on use of words will result in forcing a certain course of action. The administration approach in the bill that will be presented simply says if you want to use either of these two words in your post-sale service obligation, if you want to use either of these words, you cannot negate the implied warranty of fitness.

S. 3074, if I understand it, goes quite a bit farther by way of obstacle, because whether you use the word "guaranty" or "warranty" or any other words under S. 3074, the minute you get over into promising anything by way of post-sale obligation or servicing, you have to offer a certain minimum. The minute you open your mouth at all with respect to promising him anything, you have got to promise him a certain minimum, which, as I testified the last time I was here, could well drive a person, or could lead to a person with a new product to being forced to sell "as is," perhaps "as is" with a service contract, in a format that the customer in the market might not understand.

I think these are matters of degree. And a matter which we intend covering in our report.

Senator Moss. Well, we will be examining that most carefully. It gives me some concern. Although I tend to agree with you we should not put them in a straitjacket, we should allow flexibility to the extent that it is a competitive factor and induce better service in order to attract customers—and this includes post-sale services, too—it ought to be encouraged.

But the flat statement just worries me a little bit, because I think we are trying to fix some standard rules of the game and that may be something that could be called a minimum or compulsory minimum that must be met.

Mr. Sutcliffe may have a question or two. Do you have any questions, Mr. Sutcliffe?

Mr. SUTCLIFFE. Yes, Senator. Thank you.

Let me begin by asking whether for the competitive problems that have been suggested in your testimony, in order to encourage or promote competition for product reliability or competition on guaranty whether it is necessary for the consumer to be able to discern between different types of warranty protection? Is that necessary to the promotion of competition for product reliability?

Mrs. KNAUER. I would think that the whole idea is to make warranties meaningful and easily understandable by the average person. I would think when this bill is passed that manufacturers, both big and little, will crank into their advertising or promotional plans this competitive factor in warranties.

I think it will have a tendency to increase what they offer in warranties. I think the average housewife will then decide which gives her the best break. Certainly she would choose a product that perhaps

gave her more under the warranty or guaranty, or a company that promised in a warranty or guaranty to give her parts and service, rather than one that just gave parts, you see.

I think women would learn how to read these warranties, and especially if they were simplified.

Mr. SUTCLIFFE. What if at the top it said "complete warranty" or "complete guaranty" to indicate when in fact it was that kind of thing, without conditions imposed—was sort of an insurance policy so that if anything went wrong during the stated period of time, the product would be repaired or replaced within a reasonable time without charge. And as to some other category, label it "partial guaranty," or some such partial thing? Would this provide a useful triggering mechanism so the free market system would allow the consumer to select those products he wanted and thereby encourage competition in the marketplace—competition from which the consumer is supposed to benefit?

Mrs. KNAUER. I think so.

Mr. SUTCLIFFE. Would you anticipate under your bill the ability of the Federal Trade Commission to promulgate regulations defining what is permissible to use on the titling of warranties to allow the consumer to discern on an initial glance at the warranty what kind of thing he is getting?

Mrs. KNAUER. I would think so. I might turn this over to Mr. McLaren, because it gets into a legal area.

Mr. MCLAREN. Yes. Our bill would give the Commission very broad authority to establish regulations, both on what the guaranty or warranty must set forth in order to be clear, and not misleading, and what a disclaimer must say in order not to be misleading.

I think it should be a fairly simple matter for the Commission to develop these factors that go into this, so that the consumer in shopping will be able to compare and it may very well lead, because it would be my guess that not very many manufacturers are going to want to come out with a clear disclaimer of warranty of fitness for use, this is going to put them into the subject of guaranties and warranties, and this will give the Federal Trade Commission's rules an effectiveness that should flow to the advantage of the consumer.

Mr. SUTCLIFFE. Thank you.

Now, in order to understand the way in which the Administration proposal would work, perhaps we could begin with a hypothetical and trace through the hypothetical to determine exactly how the consumer would be protected under the provisions that you propose.

Let us take a warranty that has on the top "warranty," but through the terms of the warranty it has an obligation that the consumer return the object to the manufacturer prior to repair; that the warranty is not effective if the registration card is not returned within 15 days; and that there is a disclaimer of the implied warranties of merchantability and fitness for a particular purpose as embodied in the Uniform Commercial Code, but no disclaimer as to the Federal implied warranty of merchantability. With that type of warranty, let us begin to examine the way in which, if at all, the customer would be——

Mr. MCLAREN. Why don't we stop before we get it too complicated. You have already triggered the thing in saying it is headed warranty and so on, but it contains a disclaimer. Under our proposed legislation,

the disclaimer would be ineffective, therefore, the warranty would fall under the FTC regulations and must be clearly set forth.

Mr. SUTCLIFFE. Perhaps you did not understand my hypothetical, because I said it did not disclaim the Federal-implied warranty, but it did disclaim State obligations. Under your presentation to this committee, you said State law was not affected by the act you propose. Therefore, it would be perfectly permissible to disclaim the implied warranties of merchantability and fitness for a particular purpose under State law, while retaining that prohibition of disclaimer under Federal law.

Mr. MCLAREN. I disagree with your interpretation.

Mr. SUTCLIFFE. A prohibition against disclaimer of the Federal-implied warranty would also prohibit——

Mr. MCLAREN. Now, you have changed your example. A disclaimer of fitness for use would not be permitted in connection with the use of guaranty and warranty. You have put them together both times. If they use guaranty and warranty and disclaim fitness for use, then they are going to fall under the FTC regulations on how you must set forth guaranty and warranty. I understand this is tricky.

Mr. SUTCLIFFE. Let me be sure I understand that, because it is an important point. Would that also prohibit them from saying this: this express warranty is expressly in lieu of any implied warranty of merchantability or fitness for a particular purpose under State law, although it does not serve as a disclaimer to any implied warranty of use under Federal law?

Mr. MCLAREN. I am not sure I follow the question. If there is a disclaimer of fitness for use, then under Federal law, under the proposed bill, there would be no right to use the terms "guaranty" and "warranty." Now there are other things under State law they could disclaim and still use "guaranty" and "warranty," but they would have to use the guaranty and warranty in accordance with the FTC regulations.

Senator Moss. Mrs. Knauer, would you like to be excused? Mr. Sutcliffe has no further questions of you, and I know you have a tight schedule. So I can permit you to leave at this time.

Mrs. KNAUER. If I may. Thank you very much, Mr. Chairman.

Mr. SUTCLIFFE. So the Federal implied warranty controls the State implied warranty under the bill you propose?

Mr. MCLAREN. Only to the extent of fitness for use. There are a number of other implied warranties that can be disclaimed broadly when you say you disclaim merchantability.

Mr. SUTCLIFFE. Such as the ability to pass as fair and average quality in the marketplace. That is one important element of the warranty of merchantability in the Uniform Commercial Code. That wouldn't be covered under your proposal.

Mr. MCLAREN. That would be covered, I think, because it is part of the fitness for use proposition. Again I think I said in my prepared statement that essentially this comes down to a proposition of reasonableness. It would be reasonably decent quality for a reasonable period of time, but these would vary in terms of the particular product.

Mr. SUTCLIFFE. Well, let's then assume that it did not violate the prohibition against disclaimer. Now, who would make the determination as to whether or not that was or was not a deceptive warranty?

Mr. McLaren. Well, I am assuming we are at the stage where the bill has been in effect for awhile and the Federal Trade Commission has spelled out some regulations and so on. At this stage both the FTC and Justice would have jurisdiction, the liaison procedure would work, and whichever agency took on the particular job—here again we are assuming that it isn't just an isolated situation where somebody got mad at some company that otherwise apparently has been doing a good job.

Mr. Sutcliffe. But we are talking about the warranty terms themselves. Suppose an isolated consumer gets mad, but these are the warranty terms that are in effect?

Mr. McLaren. But you are saying who is going to decide if they are deceptive. I am saying the liaison procedure will work and one agency or the other will take it for an indepth look and make that determination.

Mr. Sutcliffe. In the meantime what happens to the consumer who feels that it is deceptive? What recourse does he have?

Mr. McLaren. He would continue to have only his State rights until such time as the agency acted and then assuming that an order were issued, then the consumer could proceed under the Federal.

Mr. Sutcliffe. He would have no State rights under the terms of the Uniform Commercial Code unless he brought an action alleging unconscionability. Is that correct?

Mr. McLaren. Whatever State rights he would have he would have, and this wouldn't change it.

Mr. Sutcliffe. Right. So basically that means under the terms of the warranty that we have laid out, there would be no State rights?

Mr. McLaren. Well it would depend. You see, mostly the States, under State law, as I understand it, manufacturers tend to disclaim merchantability and so on, and having done that, they would put themselves outside the pail insofar as using guarantee and warranty is concerned.

So I think the reluctance of manufacturers to disclaim fitness for use is going to generate a rather deep, new look at the subject of guarantees and warranties by industry as a whole.

Mr. Sutcliffe. So if the business was a legitimate business, shall we say, there would probably be no action against that warranty as a deceptive warranty?

Mr. McLaren. Well, I think if it is analyzed, and there it is on the tag, and either Justice or FTC regards it as deceptive, there would be action. There would be action to make them stop using it or get them in when they issue it and advise them that if it is used that they will be proceeded against and so on.

Mr. Sutcliffe. So you are suggesting that the Federal Trade Commission would set down rules and regulations prescribing what were and were not deceptive practices? For example, the registration card—it would be determined whether that could or could not be in warranty, the mailing back to the points of manufacture of a product, they would have some kind of a distinction as to whether that could or could not be under the terms of the use of the word "warranty"?

Mr. McLaren. Right. Let's be clear that we have provided that FTC is not going to have the right to lay down what in substance you must or you may not have in your warranty.

But they will have the regulation power over what is deceptive, what terms you must use to accomplish a particular purpose or to disclaim it.

Mr. SUTCLIFFE. What if they determined that the return to points of manufacture of a heavy object was a deceptive practice?

Mr. MCLAREN. That the return——

Mr. SUTCLIFFE. Under the designation——

Mr. MCLAREN. If it is clearly laid out, I don't see how that can be deceptive.

Mr. SUTCLIFFE. That I think is a very important point to understand here. Under the word "warranty," you would allow the manufacturer to clearly set forth the obligations that it undertakes and the duties it imposes upon the consumer. Once that was clearly stated, Federal Trade Commission would not have authorization to promulgate rules or regulations to say basically: if you say "warranty" at the top and you require the consumer to mail back to the manufacturer a heavy object, then you have in fact been deceptive in your presentation and use of the word "warranty".

Mr. MCLAREN. As long as it is laid out in accordance with the requirements that the Commission lays down. We are strongly urging—and both Mr. Lynn and I have testified on this in our earlier statements—that we think it is important not to try to lay down Federal requirements on what does and what does not go into a guarantee or warranty.

I think it is important for a manufacturer, who wants to put out the cheapest kind of a product, to be able to say no warranty at all. As long as the fellow who is getting the benefit of the cheap price, maybe he is a good mechanic and he thinks he can take care of this himself. And he thinks he would much rather have the cheap price.

This is something that should not be taken from the American people. As long as it is clearly set forth what they are buying when they pick out a particular product, I think that is the way the free enterprise system should work.

Subject to the one thing—that I think that a minimum requirement is when you sell that you undertake a warranty of fitness for use unless you clearly tell the purchaser that you have disclaimed that he isn't getting it.

Mr. SUTCLIFFE. Let me take that point and ask: Suppose the object that was sold violates the fitness for use? Let's assume that. This is a Federal remedy under the procedures described by you. What would be the first and necessary step? Would the Federal Trade Commission or the Department of Justice have to find out if it did violate the fitness for use warranty?

Mr. MCLAREN. Yes. As far as Federal procedures are concerned.

Mr. SUTCLIFFE. Then you would have to have a successful action brought by the Federal Trade Commission or the Department of Justice for violation of that fitness for use.

Mr. MCLAREN. Yes.

Mr. SUTCLIFFE. And then after that time the consumer could sue to recover for himself any damages resulting from the breach of that fitness for use?

Mr. MCLAREN. Yes. That is correct.

Mr. SUTCLIFFE. What kind of time delay are we talking about here if we wait for the fitness for use action? We have to wait for Federal action? Do we have a time delay?

Mr. MCLAREN. And this is a balancing proposition, Mr. Sutcliffe, that we think is necessary in order, (1) to protect the Federal courts from becoming small claims courts, and (2) to protect the free enterprise system from being victimized.

Mr. LYNN. Let me add to the time element you are talking about. I can foresee circumstances where the two-step approach—if you will, with the Federal Government taking action first, to be followed by the consumer action—could be a lot faster than the consumer trying to go directly into a court with the crowded dockets that the court has.

Mr. SUTCLIFFE. Why not give them the opportunity to do both—I mean begin a lawsuit and let the Government proceed. If the courts are clogged there would be a proscription on future activity and he would have been fairly well along the line to his own economic recovery.

Mr. LYNN. We are stipulating a case where there has been a violation, a breach of contract case. I take it it would be not reasonable to pursue him in that case, that he would have broken the Federal implied warranty of fitness, without breaking the State implied warranty of fitness? It is hard for me to visualize circumstances where that wouldn't be so.

If that is so, he does have a right to go directly under the State law.

Mr. SUTCLIFFE. What if the State disclaimer has been made, because it is permissible under State law to disclaim the warranties?

Mr. LYNN. I am saying as a practical matter it is hard for me to foresee a warranty that would not disclaim the Federal one, but disclaim the State one.

Mr. SUTCLIFFE. He would have to not disclaim the Federal one, in other words to use the word warranty, but he could disclaim the State one to insulate himself.

Mr. MCLAREN. Not the fitness for use he couldn't. He couldn't disclaim that one and still use warranty or guaranty.

Mr. SUTCLIFFE. Fine. I think that is an important thing to understand. So you would suggest that he had his remedy in the State court.

Mr. LYNN. That is right. As far as this Federal remedy is concerned, I would think in many cases, particularly where it is flagrant, that even the threat of that Federal action can result in voluntary action on the part of a manufacturer of an offer of recall, adjustment, whatever it may be, in a way that could give relief a lot faster than the person could get directly in the courts.

As we come toward better systems of handling small claims, where a man can go in and get rapid justice, that certainly will be an advantage too.

Mr. MCLAREN. I think that is the basic thrust of this legislation, as I view it, that you develop a deterrent from violations. If your main interest is in the recovery aspect of the thing, I think we better look at what Sweden did a couple of months ago, which was to set up a federal law, but set up at the same a system of small claims courts. I think we should think a long time before we clog our Federal courts with this kind of claim. In many of the major cities, it takes

5 or 6 years to get to trial, and there is the old saw "Justice delayed is justice denied," and I would hate to see that come into the Federal courts in the same way it has in a great many of the city and State courts.

Mr. SUTCLIFFE. In that connection then let me ask you about section 4(b) of the administration bill, S. 3286, which says:

> If there has been a violation through a false or misleading statement or failure to omit an important statement when discussing testimony results from a certified Government consumer product testing area.

It says:

> The district courts of the United States shall have jurisdiction over suits by the Attorney General to prevent and restrain violations of subsection (a) and over suits by persons injured by such violations for damages and equitable relief without regard to the amount in controversy.

Have you not opened up the Federal courts in that bill, administration bill, to suits by private individuals without regard to the amount in controversy? And, if so, wherein do you draw the distinction between a consumer products testing act and a consumer products guaranty act?

Mr. MCLAREN. I am not familar with that.

Mr. LYNN. Mr. Sutcliffe, would you read the language again exactly? I don't have it in front of me. I can think of a distinction quite quickly between the two.

Mr. SUTCLIFFE. I will give you a copy of it.

Mr. LYNN. I find quite a bit of distinction between the product testing bill, Mr. Sutcliffe, and the kind of thing we are talking about here.

In the first place, the product testing——

Mr. SUTCLIFFE. First of all, would you agree with the analysis that S. 3286 does allow entry into Federal courts by a private party, without regard to the amount in controversy?

Mr. LYNN. On a quick reading here, I do. If I have a difference in that regard I will advise the committee later. In the first place we are talking about a bill which enables a manufacturer to take advantage, voluntarily, voluntarily, of Government prescribed testing rules. There is nothing in the Product Testing Act that requires a manufacturer to do anything. The only time that remedies arise at all is if he decides that, yes, he does want to advertise the fact that he is using a Government approved testing technique. That is quite different from the kind of thing we are talking about here.

And where a man is going to represent that what he has done is in accordance with what the Government has prescribed, I think there is room to make the remedies a lot more potent, if you will.

Mr. SUTCLIFFE. Is a warranty ever mandatory?

Mr. LYNN. As a practical matter of doing business, in many cases it is. Whether you call it warranty or not, I am not making that distinction. But as far as giving post-sale service is concerned, yes, in the practical marketplace it is.

Mr. SUTCLIFFE. And if the Federal Trade Commission has specified rules and regulations, as you would have the agency setting forth testing methods specifying rules and regulations, and if in both situations those rules and regulations are breached, if it relates to con-

sumer information as to performance or durability information, that is to be distinguished from consumer information relating to the type of protection afforded under the promise to correct any deficiencies in performance?

Mr. LYNN. I am sorry, I have got lost, Mr. Sutcliffe.

Mr. SUTCLIFFE. I think I probably did too. It is difficult under the provisions of the bill, S. 3286, which say that you would set forth rules and regulations as to what constitutes fair representation and under your proposal setting forth under FTC rules what constitutes fair representation to then say in one instance you can have access to the Federal courts and in another instance you must await successful action by a Government agency before you can have access to the Federal courts.

Mr. LYNN. I say in the one case you are dealing with an area where there is no compulsion, really, as a practical or legal matter, for the manufacturer to do anything. If he is going to use the name of the Government to sell his product, he darn well better not be misleading.

On the other hand, in the warranty area, it is an area we have all lived with for a long time, as being a practical necessity and the rules of the game are quite different there.

I would also point out I don't believe there is a provision for payment of attorney's fees in S. 3286, and one of the problems that arises on direct action is that now we have imbalance in the sense that it may not be worth the legal fees to a consumer who has not had a performance of his warranty, because the cost of the product doesn't relate to what it would cost to get a good lawyer. To provide conversely for direct rights of action with an attorney's fee to the plaintiff's lawyer could tip the scales out of balance in the opposite direction, because from the manufacturer's standpoint if suits are brought consistently against him with assurance by the plaintiff's lawyer that fees will be paid if there is victory, the manufacturer will have the same kind of a problem. His problem will be: if I defend the case and win, it will cost me a lot more in my own legal fees than to give the fellow a new refrigerator, even if he is wrong, even if he has abused it. "I can't afford it," he will say, "to try that case." The reason is that our present judicial system is such that whether you are the plaintiff or defendant, the costs are such they just don't fit an appliance problem. That is why I stress in my prepared remarks we must focus very, very hard first on voluntary methods for manufacturers to assure the customer a quick form of equitable relief; and second, for those who won't provide this sort of thing, to have the kinds of small claims courts, if you will, or similar devices, where a person can go in without a lawyer and get a fair hearing.

But I don't think the problem is one that you solve by simply saying let's give the plaintiff some attorney's fees. This is a matter where the attorney's fees are too high for either party.

Mr. SUTCLIFFE. Of course under the provisions of S. 3286, it would be unnecessary to provide attorney's fees, because you provide for a substantive right of class action, by waiving jurisdictional amount, so it would be economical for an attorney to bring a class action suit.

Under S. 3074 there is no substantive right of class action.

Mr. LYNN. There is no substantive right of class action?

Mr. SUTCLIFFE. That is correct. That was made clear in hearings of January 20, 21, and 22. There is reference to existing class action rights under procedures already set forth in Federal law under rule 23.

Mr. LYNN. I am not certain I understand how that relates to this particular issue.

Mr. SUTCLIFFE. It relates in this way: By not having a consumer class action right, the individual would have to bring, unless there was under normal rules presently in existence the ability to form a class, his own suit. Therefore reasonable attorney's fees are afforded him if he is successful. In other words, to allow for distinction between the manufacturer's ability to pass on costs to the consumer and the consumer's inability to pass on costs to anyone, attorney's fees are awarded the successful litigant.

Second, under the administration bill there is a right to bring a substantive class action suit for violation, without regard to any other—without regard to the amount in controversy provision. Therefore it would be economical for an attorney to amass a class and bring the suit.

So there are some distinctions evident in the way the approach is set forth in S. 3286 and S. 3074.

Mr. LYNN. I see; of course to the extent that the number of people aggrieved is large, it is the kind of an action that does merit bringing, as far as the cost is concerned, on both sides. I think we agree on that.

Senator Moss. Thank you very much, gentlemen. We are a little handicapped; we need the bill. So we will look forward to seeing that by Friday and the report from the Department of Commerce.

We may need a few more questions answered then. We do appreciate your coming today and giving us your statements and responding to the questions that we have had. Thank you very much.

The next witness is Mr. George Gordin, National Consumer Law Center, Boston College of Law.

We appreciate your coming here to testify before us and we look forward to hearing your statement.

(Further information follows:)

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C.

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

DEAR MR. MOSS: During my testimony on S. 3074, "The Consumer Products Guaranty Act," before the Subcommittee on Consumers of the Senate Commerce Committee, Mr. Sutcliffe asked me to provide for the record an example of a warranty practice that would be deceptive and subject to a preliminary injunction under the Administration's "Consumer Protection Act" (S. 3201). This letter is in response to that request.

There are undoubtedly existing situations where a manufacturer markets a new product or new model with a warranty that covers the replacement of parts, but where he knows that the parts covered by the warranty are not yet available in sufficient quantity to meet anticipated need for warranty repairs within a reasonable time. In my opinion, this practice would violate the Consumer Protection Act. In relevant part, the Act proscribes: "representing that the consumer will obtain any . . . remedies, knowing that the consumer will not" (Section 201(a)(5)). Assuming that traditional principles of equity justified relief, such a warranty practice could be enjoined.

Sincerely yours,

JAMES T. LYNN.

STATEMENT OF GEORGE GORDIN, JR., SENIOR ATTORNEY, NATIONAL CONSUMER LAW CENTER AT BOSTON COLLEGE LAW SCHOOL

Mr. GORDIN. Thank you, Mr. Chairman. I would like in the course of my testimony to comment briefly on some of the remarks that have been made by the Government witnesses who have just appeared and also to comment briefly on the proposals that they have made.

Senator MOSS. Fine.

Mr. GORDIN. But this will not be in my prepared statement.

Senator MOSS. I understand.

Mr. GORDIN. Mr. Chairman, there are billions of dollars, probably hundreds of billions of dollars spent annually by the American public on consumer merchandising and on the servicing of consumer merchandise.

All kinds and types of products are purchased by our citizens, particularly machines and appliances, to make life simpler and happier. But too frequently the end product instead is complication, frustration, and despair.

Surely anyone who purchases a product has a right to expect that it will do what it is supposed to do and be what it is supposed to be—that it will, in the words of the uniform commercial code, be "fit for the ordinary purposes for which such goods are used." In an age that has produced moon walks and space satellites, it is not unreasonable for a purchaser to expect reliability from the products he buys. Indeed, in this day of specialization, the consumer is utterly dependent on the efficient functioning of the goods he buys. When, as too frequently happens, the goods fail to conform to the expectations instilled by the manufacturers, the consumer is put, at a minimum, to an annoying inconvenience. More usually, he is put to some expense or economic loss as well, not to mention the occasional physical injury that occurs.

There was a time in that not too distant past when it appeared that the maker of a product took some pains to assure quality control. Most of the expense and risk of defective merchandise really rested on the manufacturer by virtue of his assuming the function of quality control through inspection and other means. But today that role has been passed off to the purchaser.

The effect of this on the consumer is devastating. Because the manufacturer is apparently placing less emphasis on quality control, the consumer now becomes the inspector of the goods. He uses them until a defect shows up. During this period the manufacturer has his money and is certainly not paying for this inspection service. And when a defect or malfunctioning is discovered, it is now the consumer, not the manufacturer, who must carry the major share of the inconvenience and economic loss involved. The philosophy of caveat emptor has not yet gasped its last breath.

I think, Mr. Chairman, there is a broad misconception about warranties and I think this is perpetuated by business spokesmen and others. It is that somehow the consumer bargains for the kind of warranty he gets, and they cite this as a principal reason for opposing the imposition of minimum standards for warranties.

I think we heard that this morning from Mr. Lynn, who in effect reiterated what he stated at the January 20 hearing, when he said he was opposed to dictating the kinds of warranty protection that must be sold, because, he said, it is a basic commercial right of both the buyer and seller to freely and knowingly allocate the economic risk relating to the quality of the goods.

I would ask you, Mr. Chairman, or anyone in this room when the last time was when they had an opportunity to bargain, freely and knowingly, or in any other way, for the kind of warranty that they received.

I think it is pure myth to suggest that consumers bargain for their warranties. There is no competition in warranty today. I don't really believe there ever has been. The only competition in warranty that most of us are familiar with was the so-called competition of the automobile manufacturers in warranties and we know from the reports of the Federal Trade Commission what in effect the consumer got for the so-called bargaining that was offered to them and the bargains that they supposedly received. These are contracts of adhesions, they are presented on a purely take-it-or-leave-it basis. You can't shop around for better bargains in warranties. The only real difference is in language, it is not in the substance of a warranty.

It seems to me that if people who say that there ought to be competition in warranty really mean what they say, then they ought to have no objection whatever if the statute that you are proposing here would say something to the effect that you cannot have any boiler plate language in warranties, you can not have any prewritten warranty language in a warranty offer, because then clearly it is not bargained for.

They ought to be prepared to accept a statute that would require them to prove that warranties were bargained for. This at least would go along with the motion they offer of competition—it seems to me.

Mr. Lynn also said that it would be a barrier to small businessmen to require some sort of minimum content or substance to warranties. I cannot understand why it would be a barrier to any businessman to require him to say that his product is what it is supposed to be and if it doesn't turn out to be what it is supposed to be, to require him to do something about it, which is what I conceive S. 3074 will do.

After all, we have now a dependency of the consumer on the conformity and accuracy of the products and simultaneously with that we have what I think is clear, an outpouring of defective and malfunctioning products.

Consequently warranties are now very important. But here warranties just seem to disappear. You have promises made by the sellers, and at the same time these promises evaporate, they turn out to be in effect little more than just promises. You have what I call in my prepared statement, Mr. Chairman, the nonperformance of the nonwarranties.

I think this is something the consumer today is very concerned about. One of the things, it seems to me, that the Government proposal fails to take into account is that there are legitimate expectations the consumer has regarding not just the product itself, but all of the surrounding elements of the product, that is, what it will be and what

the manufacturer himself will stand behind in order to ascertain that the consumer gets what he believes he is getting.

I think in this respect the Government bill, at least as the proposal was started in Mr. McLaren's testimony, is completely deficient, because it fails to recognize that the consumer has definite expectations here that are instilled by the manufacturer. He certainly has the expectation and the manufacturer has inculcated this expectation that any factory new item will be what it is represented to be, he expects certainly it will work properly for a reasonable length of time, he certainly expects if something is wrong, it will be either replaced promptly or he will get his money back or it will be repaired in a professional manner without cost or undue inconvenience to him.

Now certainly he is induced by the state of our marketplace today to believe these things. I think it is clear that we are deceiving the consumer if we say that a manufacturer can by disclaiming warranties put on the market a product which is not what it says it is, and at the same time not stand behind that product to the extent of doing something about the fact that it is not what he says it is.

I have given to the staff of the committee a number of warranties, in addition to the warranty that I quote in my prepared statement, and if the committee wishes, they can be put in the record.

I would like to comment about the warranty that is in the prepared statement: I would not repeat it at this time, but it is a very typical warranty. It seems to give so many things to the consumer.

It says it is guaranteed for 1 year against defects, but then goes on to say that the manufacturer is the sole judge of whether the product is defective. This happens to be on a stove. The purchaser may have to send a part or parts back to the factory. If he doesn't know what part is malfunctioning, he will have to send the whole product back, so he might have to send the whole stove to the factory rather than have the manufacturer pick it up. Furthermore, the purchaser is given no choice as to whether the part is to be repaired or whether it is to be replaced. That decision in itself is important, because repair or replacement may have a great deal to do with affecting the length of time he will be without the use of the product. All of this time, of course, the manufacturer has his money.

It also is going to, if it is going to be repaired, it might mean there will be some additional inconvenience to him because of the further malfunctioning.

In addition, he has to pay labor costs, he has to pay service costs, he has to pay transportation costs; the manufacturer has almost no economic burden left of what used to be his sole function of inspection and quality control here.

For these reasons, we support, as a definite step in the right direction, the Magnuson-Moss bill, S. 3074. It is our hope, though, that the bill can be broadened and strengthened sufficiently to give all of the protection reasonably required to assure that the industrial system than we have and that our manufacturers and sellers are going to be of the best possible service to the whole consuming public.

In the Congressional Record of October 27, 1969, Senator Magnuson stated the philosophy behind this bill to be that—

When a manufacturer or retailer purports to guaranty the performance of a consumer product, he should, in fact, provide a meaningful assurance of performance. The manufacturer or retailer should not hide behind mountains of fine print which negate the very essence of "guaranty."

The thrust of this philosophy seems to apply to all consumer goods, rather than being limited to those which have electrical, mechanical or thermal components. Moreover, the abuses that this bill aims at apply equally to the abuses found in the sale of furniture, clothing, kitchen, and other household goods.

This philosophy applies not just to guarantees of how a product with electrical, thermal, or mechanical components will perform, but to guarantees of quality, quantity, durability, safety, and so forth. In fact, to all affirmations or promises pertaining to goods.

In this respect if I understood the Government proposal correctly, the administration proposal, it is that they would indeed extend the bill, coverage of the bill, to all types of guarantees, not merely those relating to performance and would indeed extend the bill, as I understand it, to all types of goods except they would provide a monetary limitation.

In that respect I believe that the Government proposal is a valuable one. I believe that the coverage of the bill could and should be broadened. However, I can conceive of no sound reason for a $25 minimum. The consumer certainly who buys goods under $25 is just as frustrated if they don't work as the consumer who buys goods that are more than $25. I see no reason why he should not have the same legal remedy as anyone else.

If in fact our courts are not set up to handle this, then it seems to me we have to set up some system of handling it. But we don't simply say we can't do it and therefore you can't have the right.

Senator Moss. Do you think there might be a rash of sale prices of $24.99?

Mr. GORDIN. This could well be. But I think what is more likely is you will have a rash of goods sold that do not use the words "warranty" or "guaranty," because if I understood the gentleman correctly, the only thing you need to do to get out from under the administration-proposed bill would be to not use the words "warranty" or "guaranty." No real basic minimum standards are required. To say you are setting up a standard of fitness for ordinary use is merely to say you are taking part of what is already a State right implied in the warranty of merchantability in the Uniform Commercial Code that all of our American jurisdictions except Louisiana already have in their statutes.

I don't see that the Government bill is giving the consumer anything he doesn't already have, because he can simply disclaim in a different way under the Government bill. He disclaims by not using the words "warranty" or "guaranty," as I understand the proposal.

I would also like to comment on the administration proposal this morning. It would seem to simply be imposing new duties, new burdens on the Justice Department and on the Federal Trade Commission. I don't know where they are going to find the time to do all of these things. There has been constant criticism of both Departments over the years, and I think probably a good deal of it is justified, that they are unable, for various reasons, to fulfill the functions

and duties they already have. In this bill, the suggested administration bill, as well as in the Consumer Protection Act that the administration has proposed, they are adding all sorts of burdens. I think it would be far more effective to let the consumer have his remedy, as is proposed in 3074. Let him enforce his own rights. And if the manufacturer has to pay it will be only because he hasn't met some sort of reasonable and normal expectation that the consumer is entitled to. He is not going to have to pay lawyers' fees as Mr. Lynn suggested simply because a consumer is irritated. He would have to pay them because he lost a legitimate suit wherein a jury or a judge had said that you did not do what you were supposed to do. In which case it seems to me he ought to have to pay the lawyers' fees as well as any other costs that might be incurred.

We would suggest, as a matter of fact, Mr. Chairman, that the bill ought to be amended in addition to the two suggestions I have already made to provide that there be no exclusion, no limitation, and no modification of implied warranties or of remedies for breach of warranties. That would include damages.

We would also suggest that there should be minimum standards, in addition to the implied warranties, which would meet the legimate expectations of the consumer.

Now you can think of many ways to do this. Certainly there would be minimum standards for performance, minimum standards for duration. Probably you would have to have either the Federal Trade Commission or some agency work out minimum standards for other types of guaranties.

Thirdly, we would agree that the bill ought to be broadened to apply to all sellers irrespective of whether any express guaranty is given.

The only other major changes that we might suggest at this time to the Committee would be that the suggestion that the two words "guaranty" and "warranty" somehow be divided and have different meanings, that this proposal be changed insofar as we believe it is too sophisticated a proposal for the average person in the marketplace. I think really lawyers may understand the difference, if there is one, between warranty and guaranty, assuming that this provision would go into effect, but I really doubt that the average person in the market would be able to make this distinction on any consistent basis. Certainly I think we would have trouble with a large number of people who are either uneducated or speak the English language with difficulty.

I have boiled down my prepared statement in order to not take up too much time, Mr. Chairman. But I would be glad to answer any questions you may have.

Senator Moss. Thank you, Mr. Gordin. Your statement in full will appear in the record and we will have an opportunity to look at it. And the warranties which you have supplied, at least selected ones of them, will appear in the record in order to illustrate the point you are making about the conditions that are placed in a document that looks very official and seems to grant to an unsophisticated buyer—and I guess most of us are—a lot of protection and rights that are nullified by language in the warranty itself.

We appreciate your recommendations as to changes that might be made in S. 3074, in broadening its coverage and eliminating exclusions.

On this point you brought up near the end about "warranty" and "guaranty," using these two words in different contexts, did I understand you to say that we ought to settle on one or the other and utilize that rather than the way we have it done here, a performance guaranty and warranty in another section?

Mr. GORDIN. I would think, Mr. Chairman, that assuming the bill were to remain unchanged, to use the word, to prohibit the use of the words "guaranty" and "warranty," prohibit use of both words, except in connection with the performance guaranty or warranty. In other words, I think what the bill suggests now is that "guaranty" would be used only in connection with performance, and therefore a manufacturer could use "warranty" in any other way that he wished, but the performance would bring on certain duties and obligations brought on by this bill.

I really doubt that the consumer could make that distinction. Therefore, I would suggest that both words ought to be incorporated in the minimum guaranty, minimum standard that is provided by the bill. Let the sellers, as they will, develop other terms to denote whatever it is they are offering other than the performance guaranty or warranty. This would be my suggestions.

May I, Mr. Chairman, make one comment also about the Government bill as opposed to—that is, the administration bill; I keep saying "Government," and after all your bill is a Government bill also—the administration bill as opposed to S. 3074.

That is, at the very least the S. 3074 imposes some minimum duties. It assures that at least part of the expectations that any buyer has in regard to a product are going to be met. That is the part in section 3 where he has to repair or replace, and he is forbidden to impose either an undue burden or an economic cost for performing that function. As I understand the administration proposal, it simply offers nothing of this nature, but says that there is a guaranty that the product will be fit for ordinary use.

As I say, a guaranty that basically he already has in law. But no standard duty to do anything about this. I suspect, perhaps he can get damages, after a lengthy lawsuit. It seems to me that 3074 may well eliminate law suits for damages by spelling out these duties that are imposed on the seller.

Senator MOSS. Thank you very much, Mr. Gordin. Your comments are very helpful and your appearances before the Committee on previous occasions have been most appreciated. We are glad to have your comments and we are glad you were here in the room to hear the discussion by the administration witnesses. As you learned from that, we haven't yet received the text of the bill they are talking about nor the report from Commerce. So we are a little limited on being fully specific on what their proposals are. But you have given us some comments as to what you think could be done to improve S. 3074, which is before us, and you commented on what they testified about.

If we run into some knotty drafting problems when we get their bill and try to have a wedding perhaps with S. 3074, we may call on you to give us some counsel and advice.

We appreciate your expertise in this field.

Mr. GORDIN. We are very happy to make ourselves available to help you at any time with any problems you may have.

Senator MOSS. Thank you, sir. We appreciate that.

(The statement follows:)

STATEMENT OF GEORGE GORDIN, JR., SENIOR ATTORNEY OF THE NATIONAL CONSUMER LAW CENTER AT BOSTON COLLEGE LAW SCHOOL

THE CONSUMER AS INSPECTOR

Hundreds of billions of dollars are spent annually by the American public on consumer merchandise and the servicing of those self-same goods. All kinds and types of products are purchased by our citizens, particularly machines and appliances, to make life simpler and happier. But too frequently the end product instead is complication, frustration and despair!

Surely anyone who purchases a product has a right to expect that it will do what it is supposed to do and be what it is supposed to be—that it will, in the words of the Uniform Commercial Code, be "fit for the ordinary purposes for which such goods are used". In an age that has produced moon walks and space satellites, it is not unreasonable for a purchaser to expect reliability from the products he buys. Indeed, in this day of specialization, the consumer is utterly dependent on the efficient functioning of the goods he buys. When, as too frequently happens, the goods fail to conform to the expectations instilled by the manufacturers, the consumer is put, at a minimum, to an annoying inconvenience. More usually, he is put to some expense or economic loss as well, not to mention the occasional physical injury that occurs.

There was a time in the not too distant past when it appeared that the maker of a product took some pains to assure quality control. Most of the expense and risk of defective merchandise really rested on the manufacturer by virtue of his assuming the function of quality control through inspection and other means. But today that role has been passed off to the purchaser.

The effect of this on the consumer is devasting. Because the manufacturer is apparently placing less emphasis on quality control, the consumer now becomes the inspector of the goods. He uses them until a defect shows up. During this period the manufacturer has his money and is certainly not paying for this inspection service. And when a defect or malfunctioning is discovered, it is now the consumer, not the manufacturer, who must carry the major share of the inconvenience and economic loss involved. The philosophy of caveat emptor has not yet gasped its last breath.

BARGAIN OR BOILER-PLATE

There is a broad misconception concerning warranties that is perpetuated by business spokesmen. This is that somehow the consumer bargains for the kind of warranty he receives. Consequently they cite this as a prime reason for opposing the imposition of minimum standards for warranties. Typical is the testimony before this Committee on January 20, 1970 of the General Counsel of the Department of Commerce. He stated that the Department was opposed to legislation that would dictate the kind of warranty protection that must be sold, adding that it is—quote—"a basic commercial right—of both buyer and seller—to freely and knowingly allocate the economic risks relating to the quality of the goods"—unquote!

I would ask the members of this Committee when was the last time they had an opportunity to bargain "freely and knowingly" or in any other fashion for the kind of warranty they received. It is pure myth to suggest that consumers bargain for their warranties. These are contracts of adhesion, presented on a purely take it or leave it basis. Nor is it possible to shop around for better bargains in warranties because the principal differences distinguishing warranties is the language, not the substance.

If sellers truly meant what they say about warranty bargaining, then they should not object if this proposed statute prohibits all "boiler plate" warranties, the prepackaged warranty we are all familiar with. Such legislation should require sellers to prove that any limitation of a warranty or remedy granted

by law was in fact bargained for between the parties, and not simply the result of the buyer having no effective choice. Until sellers are willing to encourage a free marketplace, they should not be permitted to drag this red herring across the path of constructive legislation such as that under consideration.

NON-WARRANTIES

It is in a large part because of the dependency of the consumer on the conformity and accuracy of the product simultaneously with what appears to be an outpouring of defective and malfunctioning products, that the issuance and performance of warranties becomes so important. And it is precisely at this point that warranties put on a disappearing act. There is an apparent promise of the maker which develops an expectation in the consumer as to what is warranted—only to discover that a Houdini wrote the warranty.

Manufacturers have succeeded in so circumscribing the warranties that they apparently give, that the expectations of the consumer are invariably frustrated. And the conditions imposed on the operation of such warranty as actually remains again causes the warranty to fail of its essential purpose of fulfilling the expectation inculcated in the purchaser at the time of sale. It is the non-performance of the non-warranties, and it is adding up to a national scandal.

What are some of the principal legitimate expectations the consumer has. First, certainly, that a factory-new item will be what it is represented to be and that it will work properly for at least a reasonable length of time. And then, if something is wrong, that it will be promptly replaced or repaired in a professional manner without cost or undue inconvenience to the buyer.

Express warranties and guaranties induce the consumer to think he is receiving something over and above the product itself—a level of quality, safety, duration, performance, etc. in excess of the average standard and, of course, in excess therefore of that seemingly granted by law. Certainly they also induce the consumer to believe that the guarantor will stand behind the product and honor the implications of the warranty.

These are normal and reasonable expectations of buyers, and they are deliberately inculcated by sellers. Therefore, we agree with Chairman Weinberger of the FTC when he stated at the hearing of this Committee on January 20, 1970, that the federal minimums for a guarantee should include the existing warranties a purchaser has at law including merchantability and fitness. It is clearly anomalous to permit sellers to issue guarantees that reduce or diminish the protection that a buyer receives without such guarantee. It may be of interest that the Commerce and Labor Committee of the Massachusetts Legislature has recently reported to the Floor a bill which would prohibit disclaimers of implied warranties.

Thus the buyer turns for protection to his warranties, only to discover that they protect the manufacturers instead. All too often the express warranties made by the seller protect him from the warranty implied in law that a brand new product will meet the legitimate expectations of the buyer.

Representative of the most typical problem is this from the warranty of a reputable stove manufacturer:

"This new * * * Range is warranted for a period of one year from date of original installation against defects in workmanship and material * * * Our obligation under this warranty will be to repair or replace at our option F.O.B. our factory without charge by us any part or parts that prove defective within the terms of warrantys—said defect being confirmed by our inspection within one year from date of original installation. This warranty does not include any labor or transportation charges involved in the return and replacement of the parts. The new parts will be guaranteed for the remainder of the warranty period * * * This warranty herein is in lieu of all other warranties or guarantees express or implied and of all other obligations or liabilities on the company's part."

The warranty starts with the sweeping statement that the product is guaranteed for one year against defects. But, the manuafcturer is the sole judge of whether the product is defective. And the purchaser may have to send the part or parts to the factory (if he doesn't know what part is malfunctioning, he may have to send the product itself). The purchaser is given no choice or say as to whether the part should be repaired or replaced, although

this decision may affect the length of time he is without use of the product or the additional inconvenience of future malfunctioning.

As if this weren't enough, the purchaser has to pay the labor costs incidental to the repair or replacement of these parts. He has to pay the service costs incidental to the repair or replacement of these parts. He has to pay the transportation costs incidental to the repair or replacement of these parts. The manufacturer is thus relieved of almost the entire economic burden of inspection and quality control. And then to add insult to injury, this typical so-called warranty says that the manufacturer didn't mean and isn't responsible for any other promises or affirmations of fact he may have made elsewhere and that the protections implied by law can be satisfied by these sham promises. It would not be unfair to characterize such a warranty as a fraud on the consumer.

WARRANTING THE WARRANTY

Because warranties of this nature are the rule rather than the exception, there is a clear need to provide a warranty for warranties, guaranteeing to the consumer that the seller's guarantee is what its name implies. We must not lose sight of what too many sellers have forgotten—that the purpose of warranty is protection of the buyer, not protection of the seller.

We support as a step in the right direction the Magnuson-Moss Bill, S. 3074, a Bill to Provide Minimum Standards For Guaranties Covering Consumer Products Which Have Electrical, Mechanical, or Thermal Components, and For Other Purposes. It is our hope, however, that the Bill can be broadened and strengthened sufficiently to give all the protection reasonably required to assure that the industrial system will be of optimum service to the whole consuming public.

In the Congressional Record of October 27, 1969, at S13228, Senator Magnuson stated the philosophy behind S. 3074 to be:

"When a manufacturer or retailer purports to guaranty the performance of a consumer product, he should, in fact, provide a meaningful assurance of performance. The manufacturer or retailer should not hide behind mountains of fine print which negate the very essence of a 'guaranty'."

The thrust of this philosophy seems to apply to all consumer goods rather than being limited to those which have electrical, mechanical or thermal components. Moreover, the abuses that this Bill aims at apply equally to the abuses found in the sale of furniture, clothing, kitchen and other household goods, etc.

This philosophy applies not just to guarantees of how a product with electrical, thermal or mechanical components will perform but to guarantees of quality, quantity, durability, safety and so forth. In fact, to all affirmations or promises pertaining to goods. We suggest, therefore, that this Bill should in logic be broadened to include all guarantees of any consumer product. If this were done it would go far toward removing one of the principal concerns and major causes of frustration to the average American.

It would leave a gaping hole in the coverage to which consumers are entitled if this Bill failed to cover those who service as well as those who sell consumer goods. At the very minimum it should cover services offered or performed by the guarantor or his representatives. Guarantors should be required to assume responsibility for training service personnel and for dealer servicing.

As the Bill now stands, a seller who gives no express guaranty as to performance may disdain all warranties, including merchantability. This assumes, in effect, that a consumer is not entitled to have goods fit for their ordinary purposes and working properly for a reasonable length of time. It assumes that the consumer is not entitled to repair or replacement without cost or burden. These are unjustified assumptions in today's marketplace and should not be reflected in a federal statute.

Moreover, the Bill discriminates in this respect against the honorable merchant who stands behind his product. He must meet the minimum duties imposed by this Bill. It is not only logical, it is also fair that all merchants should meet the normal and reasonable expectations of the consuming public.

We suggest, therefore, that the Bill be amended to provide:

First, that there be no exclusion, limitation or modification of implied warranties or of the remedies of breach of those warranties, including damages;

Second, that there be minimum standards, in addition to the implied warranties, to meet the legitimate expectations of the consumer, such as minimum periods for performance and for duration; and

Third, that the duties contained in the Bill apply to all sellers.

There is one other change of major import that we recommend at this time. The Bill attempts to set up a dichotomy between the words guaranty and warranty, so that one will stand for the basic minimum duties provided by the Bill and the other will cover a nebulous area formed by sellers. These two words, however, are inextricably bound up with each other in the public mind. It is expecting too much of the unsophisticated buyer, and most buyers are unsophisticated, to expect him to sort out and recognize this kind of lawyer's distinction. It can only lead to further efforts to bamboozle the public. Let both words be prohibited for use except in accordance with the provisions of the Bill, and sellers will coin other words for what they are offering. Clearly the poor, the uneducated, the poorly educated, the blue collar worker, even the white collar and professional workers have difficulty enough understanding the marketplace. Let us not confuse them further. And if the Committee accepts our suggested changes in the Bill, such a distinction would serve no useful purpose anyway.

We have previously in a memorandum to the Committee staff suggested specific changes in language to better forward the purposes the Bill seeks to serve. We would be pleased at any time to meet with any members of the Committee or of the Staff if we can be of any service in drafting appropriate language or for any other purpose.

Senator Moss. Our next and final witness is David A. Swankin, the Washington representative, Consumers Union.

STATEMENT OF DAVID A. SWANKIN, WASHINGTON REPRESENTATIVE, CONSUMERS UNION

Senator Moss. We are pleased to have you with us again, Mr. Swankin, and look forward to your testimony.

Mr. SWANKIN. Thank you, Senator Moss. I have given you the entire statement for the record, and I won't take the time to read it all, because it is rather long. I would rather highlight it and summarize some of the more important parts.

Senator Moss. Thank you. We would prefer you to do it that way. The full statement will be in the record and before the committee for use. If you highlight it we will appreciate that.

Mr. SWANKIN. In our prepared testimony we have laid out some of the general problems that the committee has heard about in the January hearings and again today and I won't repeat them. We do try to make the point that was made by the last witness and by the Federal Trade Commission in the report on automobile warranties, that we have to look at the guaranties and realize that in automobiles and in other products as well, they aren't the product of a bargain between two parties. A warranty or guaranty is there, take it or leave it. That is a very significant factor, as you consider what kind of legislation is needed to bring some order to the chaos that exists today.

We talk about unfair and meaningless warranties, tough luck for the consumer. We have cited in the testimony an example of a warranty issued by the Baldwin piano people. It covered defects in materials and workmanship for a 10-year period. If the buyer had reason to give effect to the warranty he was invited to ship the piano back to the factory, at his own expense.

We wrote the Baldwin people and asked them how they could possibly justify so ridiculous a condition. They wrote us back a letter which is attached to my testimony, but which I would like to read.

This warranty, like similar warranties quite generally used throughout the piano industry, is indeed worded to discourage impulsive "return to factory" of so large and expensive an instrument as a piano. The intent and the practice behind the literal wording, however, is most lenient and flexible. Our dealers, as a matter of enlightened self-interest, take care of most service problems requiring labor or parts, in conjunction with our technical service department. More stubborn problems are dealt with—still at local level—by dispatching a factory technician to assist in or to perform the required adjustments. In extreme cases—cracked pinblock or similar major failure or defect—the piano is then transported to the appropriate factory, and often at no cost whatsoever to the customer.

An 107-year-old company like Baldwin, which consigns merchandise to dealers until sold, and which also directly finances installment purchases, is perhaps especially responsive to customer attitudes and concerns; that is certainly our policy. Nonetheless, we elect to use the tight and strict wording of our warranty as a precautionary measure, and have found the liberal interpretation of it described above to work very well.

I would like to make a couple of points about that warranty. I listened this morning as the administration laid out their proposal. It seems to me that that particular warranty would be perfectly valid under the proposal laid out by the administration, as I understood it. It certainly did not attempt to disclaim fitness for use. It certainly was clear. The warranty is very clear, bold print, nobody could misunderstand it. There would be nothing that a rule or regulation of the Federal Trade Commission could apply to in that particular warranty, unless perhaps it were to say that that particular section should be in more boldface type.

The point is that if that is what this committee produces, as has been recommended by the administration, what would it do for the purchaser of the Baldwin piano?

The second point is that in the letter, the company claims that, well, they just put that language in there to protect themselves, but that really in most cases the consumer is treated differently. Don't bother with the legal language. That is nice for the man who calls up his local dealer and is treated the way the company says he is treated. It is absolutely unfair to the person who doesn't happen to be treated that way; either the company means to treat the customer fairly and honor the 10-year warranty or it doesn't. Either the warranty is meaningful or it is not.

I think it is pretty clear that to expect customers to ship a piano back at their own expense is worse than having no warranty at all.

It is when the product stops working or otherwise gives him trouble that consumers' real problems begin and the gap between the guaranty as a tool of sales promotion and the guaranty as a legal document is evident. The problems run the full gamut—"The guarantee doesn't cover this particular part," "We don't handle this manufacturer's repair work," "We don't have the part," "You'll have to pay for the labor," "The company that made the guarantee is out of business," and so forth. It goes on and on.

We put another appendix in our testimony setting forth a case history of a warranty on a color TV set. I call that to your attention too. We have laid out step by step what a particular woman did over a 16-month period when the set was back in the manufacturer's shop, in the dealer's shop, some six, seven, or eight times. She summed up her feeling of frustration with this sentence in the last of the many letters she wrote to Consumers Union:

"I pay my taxes and I believe in our system of Government, but our system isn't going to last another 100 years if we permit this practice to continue. I am a firm believer in 'the pen is mightier than the sword'—but someone has to listen and do something about this practice. Must I continue to pay, pay, and pay to rectify defects in a product without any penalty to the seller whatsoever?"

Based on our experience at Consumers Union, that woman is voicing a point of view shared by many.

In our 1968 annual questionnaire, we asked information of our readers on their repair experience with color television sets. We heard from about 90,000 color set owners, of whom 74 percent reported their sets had required repairs. Most of the sets had been purchased in 1966 or later. By comparison, surveys of other appliances indicated that only 50 percent of washing machines and 50 percent of black and white television sets needed repair. Cost of repairs to color TV were also likely to run higher than for any other household appliance.

I would like to point out here that the administration witnesses this morning seemed to be talking about the need for more information and more data before we do very much more than tell the Federal Trade Commission to set some rules to be sure the guaranties and warranties aren't deceptive.

I think certainly Consumers Union's experience, certainly in the case of color TV sets with 90,000 responses, is enough evidence for us to go on.

How well satisfied were our surveyed readers with their color TV repairs?

Of sets in service less than 1 year, owners of one set in 10 were unhappy over service. Of all sets in service, owners of one set in eight—12.5 percent—were dissatisfied with service. But the level of satisfaction varied with the brand. Least satisfactory was Westinghouse, whose service displeased 25 percent of those reporting. Overall, Zenith owners made out best of all in the service department.

In another document submitted to this committee, Consumers Union is supplying testimony delivered to the Federal Trade Commission last year on the subject of automobile warranties. Included in that testimony are the survey results from Consumers Union's annual questionnaires asking our readers for their experience in buying and servicing new cars. Each year we ask these two questions:

Was your car in satisfactory condition when delivered?
If not in satisfactory condition, were you successful in having repair work done under the factory warranty in a satisfactory manner?

For the past few years, since we started using those questions in 1964, the returns have shown that about one-third of those responding were dissatisfied with the condition of their car as delivered and that, of the dissatisfied group, 20 to 25 percent were unable to have the defects corrected satisfactorily under warranty.

At this time we should like to submit to the committee the results of our 1969 annual questionnaire. This will be more fully reported on the April issue of Consumer Reports. The data shown are for the most recent car purchased, designated as car 1 in the questionnaire (for the instruction of those owning two or more cars): "Was your car in satisfactory condition when delivered?"

Thirty-five percent said no. I might add here in the April Consumer Reports we have broken this down into the four American makes and

Volkswagen. And it is interesting to note that of that average figure of 35 percent who said no, their car was not in satisfactory condition when delivered, the figures were 33 percent for American Motors, 33 percent for General Motors, 34 percent for Ford, 37 percent for Chrysler, and 14 percent for Volkswagen. The experience of our readers was that more than twice as many of these American made cars were delivered in unsatisfactory condition.

It appears then that the quality level of new cars, in the estimation of the people who answered our questionnaire last year, had not improved.

We asked them: "Were you successful in having repair work done under factory warranty in a satisfactory manner?" Of those asked, 55.4 percent said yes, 32.3 percent said no, and 12.3 percent said no work required.

It appears that along with a high percentage of defective cars, our readers experienced significantly increased difficulties in having those defects corrected.

When a consumer is dissatisfied with the way in which his guaranty claim is mishandled, there is precious little he can do about it. For all practical purposes, he is shut off from effectively using the courts because the amount of money likely to be involved is not enough to finance a lawsuit. Independent, third party arbitration is virtually nonexistent. Federal, State, and local government consumer protection programs have only a limited capacity to handle individual consumer complaints. The irate consumer has the dubious power to withhold any future patronage from the dealer and/or the manufacturer, but this is small consolation to him in his hour of need. He remains disgruntled and, worse, he has another piece of evidence that the system is unfair.

What does he want? He wants—and deserves—honesty in the marketplace. With regard to guarantees, he wants—and deserves—accurate representation as to what the guarantee means, in language he can understand and with a clear and unencumbered procedure for gaining satisfaction under the guarantee should the occasion arise. In short, he wants—and deserves—a set of rules that are simple and fair.

But much more than that is involved. What we are talking about today involves the kind of economic system we are to have. Consumer spokesmen often speak of a consumer-oriented economy. What that means is an economic system that encourages the manufacturing of products without defect, products that do what they are claimed they will do, and when they don't, the consumer gets his money back.

In other words, an economic system that is designed to assure better quality products. We will have better quality products when there are sufficient economic pressures on producers to make better products. Any new guarantee law ought to aim at doing just that—that is, to apply economic pressure on producers to improve the quality of their products. That will be good for consumers, obviously. It will also be good for the Nation as a whole.

In the last four pages we cite a number of areas in which we would like to see this bill strengthened. I won't read them, but I will make the points.

We would like to see the coverage of the bill extended and expanded to all consumer goods, without a dollar limitation and not limited only to electrical, mechanical, and thermal components.

On express guaranties, we support what your bill attempts to do, but we suggest strongly that you take out some language in section C which now reads that an affirmation merely of the value of the goods or statement purporting to be merely the seller's opinion or commendation of the goods does not create a guarantee. We read that to take back a little too much of what that section gives. As we read it, the section is attempting to take the oral word and translate that into a guarantee. Yet that seems to us just a little bit too broad of a loophole to allow anybody to state that all he was doing was giving his opinion. So we certainly would like to see you work on that language or consider taking it out.

On the duties of guarantors, we have two problems that we cite in the prepared testimony. The most serious one is leaving so loose the time when the manufacturer or the dealer would be required to replace rather than repair the product.

Again I cite to you the example that we have in our appendix of the television set. Here the woman took the set back, a set that cost her $800 and began to go wrong 2 weeks after she bought it. It was in and out of the shop four times in the first month. Sixteen months later it still didn't work properly; it never worked properly. There has to be a time when a decision must be made that that product cannot be repaired and must be replaced.

We have suggested for your consideration that the bill be changed so as to give the maker of the guarantee a first option of attempting to repair the defective part or product. Then if the consumer finds the repaired product unsatisfactory he would be able to demand a replacement. We offer that this might be too strict, that maybe you would want to give the repairman two shots at it, but certainly there has to be a cutoff at some point when repair has proven to be not the proper route.

We have also suggested that the term "replacement" be broadened a little bit. We recognize that things like batteries and tires have a use factor to them, so that if the consumer has used them for half the expected life and they are to be replaced under the warranty, certainly he should not get a full replacement at market value. Yet if an electric toothbrush is guaranteed for a year and it goes wrong 10 months later is the consumer to be charged for 10 months of use?

What does the guarantee mean then unless the product is repaired or replaced when it goes wrong, if it is within the period? We would like to see that tightened up.

On the requirement of written guarantees in section 5, we would like you to seriously consider taking out section C where you state, or the bill states, that the cost of such maintenance, if required, to be performed by a designated representative of the maker is one of the things to be specified.

We would like to get away from any possibility that this bill might add to any artificial maintenance of price. What we are concerned with here is the beginning of the development of a practice where not only would the manufacturer tell the consumer what he has to do to provide maintenance on that product, but how much it was going to cost him. Once the manufacturer stated a price we fear that it might become the standard price for that particular type of

activity. We would rather leave that matter to the competitive market.

On the disclaimer of implied warranty, we would go along with all of the other comments here that clearly it is essential that that be done. In fact, we say it is so essential that it be done in two ways, negatively and positively, so there can be no misunderstanding on anybody's part that this is no longer to be allowed under Federal or State law, and that clearly it is an illegal and unmeaningful act.

We say that the Federal Trade Commission, rather than be given general broad rulemaking powers which are fine, should be given specific duties with some specific timetables by the committee bill. This bill to be meaningful both in your version and even in the administration's much more limited version, requires that there be implementing rules by the Federal Trade Commission. I think it would be a good idea for this legislation to specify and give time limits to the Commission. We would like you to tell them that you want rules defining reasonable time and rules defining unreasonable delay, and rules defining reasonable depreciation and rules defining the necessary maintenance. We would also very much like to see you suggest that these rules be promulgated by such and such a time, so that the consumer can expect this bill to be given life at a definite period and not come back 2 or 3 years later and have the excuse well, the Commission didn't get around to issuing rules so nothing has happened.

Finally, on remedies, we are very encouraged by and support entirely the thrust of S. 3074, which calls for an encourages the establishment of local mechanisms to negotiate the settlement of problems over the warranty and guarantee. But we would like you to go further and adopt much more than an encouragement, to do what you have done in the other bill that you sponsored with Senator Magnuson and provide for the establishment of these mechanisms. We are doubtful that they will come about by themselves. As much as we go along with the encouragement of their development, I think that we ought to go the next step and be serious about it and provide for their establishment.

I know you have a separate bill doing that, and we would like to see that concept incorporated in this bill too.

Thank you, Mr. Chairman.

Senator Moss. Thank you, Mr. Swankin, for your usual careful and complete statement. I appreciate your suggestions, particularly your specific suggestions of changes you think ought to be made in the bill, S. 3074. We will give them great consideration.

I am in agreement, I think, with you most all of the way. Your idea of the independent consumer council is intriguing. I don't know whether we are ready to take that big a step yet or not. But we, of course, have that other bill before us, and have had some hearings on it, and it is going through the gestation phase, perhaps, in the committee, to see what we can come up with by way of a consumer council, an independent body where the remedies can be very quickly applied.

I think we all recognize and certainly it was inherent in our dialog with the administration witnesses this morning that enforcement in

the courts is rather cumbersome and we need something that can operate more informally, perhaps, but with greater rapidity to get the kind of satisfaction that the consumer deserves and claims.

I am glad to have these case histories that you have given on the television set and the Baldwin piano. These help to bring us back down to the concrete situations that are facts in the marketplace and not so much on the rather abstract discussions that we were having earlier about the free marketplace and so on. You have brought it down to what it actually means.

Mr. SWANKIN. Mr. Chairman, as I listened to the administration describe their approach, I think there is a basic philosophical difference between the two approaches. I think that the specific examples more than anything else bring out that difference.

The administration is saying, if I heard them correctly, that anything goes, as long as you are honest and fair about it. If you want to have a 25-year warranty, all right, but require the consumer to ship the stove back. That is OK, as long as you don't hide it in fuzzy language. It is really a bill to clean up the small print, put it in boldface, get rid of language the lay consumer cannot understand. Senate bill 3074 goes much further and recognizes something that is a fact of life in the marketplace and that is, that the guarantee and warranty have become a sales pitch. They are used by the businessman to entice the consumer into buying his product. If that assumption is true, if that is a correct appraisal of the use of the guarantee in the marketplace, and if it is also a fact that after the sale the product too often goes bad, which all of our figures seem to show, then what is the proper role of legislation?

The administration recognized that there ought to be full performance, and there is disagreement over whether or not the right would be triggered by the Government, but they go no distance at all in the concept of minimum standards. That is where their approach, in our opinion, is deficient. Because that guarantee doesn't mean anything, since the piano has to be sent back at your expense. And I think it is better not to have it at all, it is better to sell the product "as is" and say you are selling it "as is," than to hold out a product that has an apparent guarantee which is, in fact, meaningless when its language, even when not deceptive, is read.

Senator MOSS. That states it very clearly I think as to what I think the different thrust is and on whom the burden must fall if the product is not satisfactory and does not operate. This is what we are trying to get at.

I notice, though, that you agree with the administration's idea of broadening the coverage of the bill and not just limiting it to the thermal, mechanical, and electrical components.

Mr. SWANKIN. Yes, we see problems with rugs and carpets, raincoats that are rainproof, a whole host of products.

That is not to say your bill doesn't cover a major share of the problem where guarantees and warranties are misleading today. But there are these other areas that we would like to see covered.

Senator MOSS. Thank you very much. Do you have any questions, Mr. Sutcliffe?

Mr. SUTCLIFFE. Just one question. When you suggested imposing limitations, time limitations for the Federal Trade Commission or whatever other agency would be promulgating the rules for defining the specific elements of the duties imposed, were you suggesting that the implementation of the act would await those standards, or simply there would be some kind of cutoff point?

Mr. SWANKIN. No.

Mr. SUTCLIFFE. For example, under S. 3074 the reasonable time factor could be used and worked out within a judicial process or in bargaining between the seller and buyer prior to the time of promulgation of the Federal Trade Commission rules. Is that correct?

Mr. SWANKIN. As our President used to say, I am glad you asked me that question, because there is no intent at all to delay the effective date of this act or to make it dependent on the promulgation of those rules and regulations. It is only an attempt to be sure those rules and regulations are forthcoming.

Mr. SUTCLIFFE. If there were such liabilities or recognized duties placed upon the manufacturer, would this facilitate the promulgation of rules by such an organization as the Federal Trade Commission because it would be to the advantage of the manufacturer as well as the consumer to know exactly what his obligations were?

Mr. SWANKIN. I think it would. You have heard from a lot of industry witnesses who told you that the bill is deficient because it is so uncertain. Clearly that would be my guess, that their reaction would be let's get the rules and get them quickly.

Mr. SUTCLIFFE. So the Federal Trade Commission might be able to handle the job, because it would be assisted by or have a strong input from the industries which sometimes oppose the rulemaking activities of the Commission?

Mr. SWANKIN. I think so, yes.

Mr. SUTCLIFFE. Thank you.

Senator MOSS. Well, thank you very much, Mr. Swankin. We appreciate it. We are glad to have the record made.

(The full statement follows:)

STATEMENT OF DAVID A. SWANKIN, WASHINGTON REPRESENTATIVE, CONSUMERS UNION

My name is David A. Swankin. I am the Washington Representative of Consumers Union of the U.S., a non-profit membership organization chartered in 1936 under the laws of the state of New York to provide information and counsel to consumers about the management of family expenditures.

A word more about Consumers Union for the record. Our financial support comes from the more than 1,600,000 subscribers and newsstand buyers. We accept no support from any commercial organization. *Consumer Reports* carries no advertising. Besides testing and reporting test results on products, *Consumer Reports* publishes general information for consumers on health and medicine, the economics of the marketplace and the legislative, judicial and regulatory actions of government affecting consumer welfare.

We have in the past spoken out on the problems of guarantees. Just a year ago, in February, Mr. Klein appeared at a Federal Trade Commission hearing on automobile warranties. I have submitted a copy of that testimony to the Committee. While it was limited to a single product, automobiles, it contained many points that are applicable to consumer products in general. In the 1970 Buying Guide Issue of *Consumer Reports*, we carried a section on guarantees and warranties. I have attached the entire text of that section as an appendix

(#1) to this testimony. As you can see, we have warned our readers in that publication about a number of gimmicks and pitfalls to be wary of when dealing with guarantees, and given them some general advice on how to attempt to get a manufacturer or retailer to make good on a guarantee, or, failing that, to seek relief through the courts and otherwise.

Having been aware of the guarantee and warranty problem for a good many years, we are delighted that the Chairman of this distinguished subcommittee, along with the Chairman of the full Committee, have seen fit to co-sponsor legislation, S. 3074, to clean up some of the abuses in this area. We are pleased also that you have called hearings on this bill and have invited Consumers Union to share with you our views on this subject. We hope our suggestions for strengthening the proposed legislation will be helpful.

Before I begin on a section-by-section commentary on the bill before you, it would be useful, I believe, to outline generally some of the problems consumers face with regard to warranties and guarantees.

There is, first of all, the problem of misrepresentation as to what the guarantee is all about. "Lifetime guarantee", "unconditional guarantee", "fully guaranteed", and just plain "guaranteed" are words skillfully used by manufacturers and retailers as part of the sales pitch. If, at the point of sale, the consumer makes genuine effort to cut through the verbiage and see what it is that is being guaranteed, more often than not he is confronted with a legal document which he does not—and cannot be expected to—fully comprehend. Moreover, any written guarantee is extended to him on a take it or leave it basis. There is no—repeat—no negotiation over the terms of the guarantee. In its recent Report on Automobile Warranties, the Federal Trade Commission stated, "It is unrealistic to view an automobile warranty as a voluntary contract between two bargaining parties. The purchaser of an automobile has no true bargaining power beyond the power to haggle over price." We agree with that statement, and would extend it to warranties from all products. If they are unfair, or meaningless, that is his tough luck. I recall, for example, a warranty issued by the Baldwin piano people. It covered defects in materials and workmanship for a ten year period. If the buyer had reason to give effect to the warranty, he was invited to ship the piano back to the factory—*at his own expense.* We wrote the Baldwin people and asked how they could possibly justify so ridiculous a condition. The company wrote back and said that the clause was there so as to discourage impulsive returns. (A copy of the guarantee and the correspondence with the company is appended to this testimony as Appendix # 2).

It is when the product stops working or otherwise gives him trouble that consumers' real problems begin, and the gap between the guarantee as a tool of sales promotion and the guarantee as a legal document becomes evident. The problems run the full gamut—"the guarantee doesn't cover this particular part"; "we don't handle this manufacturer's repair work"; "we don't have the part"; "you'll have to pay for the labor"; "the company that made the guarantee is out of business", etc., etc., etc.

Still another appendix (#3) to this testimony sets forth a case history of a warranty on a color television set. After 16 months of frustration in trying to get satisfaction under the warranty, the woman involved in that case summed up her feelings as follows:

"I pay my taxes and I believe in our system of Government, but our system isn't going to last another 100 years if we permit this practice to continue. I am a firm believer in 'the pen is mightier than the sword'—but someone has to listen and do something about this practice. Must I continue to pay, pay, and pay to rectify defects in a product without any penalty to the seller whasoever?"

Based on our experience, that woman is voicing a point of view shared by many.

In the Consumers Union Annual Questionnaire mailed to subscribers in 1968 we asked for information on their repair experiences with color television sets. We heard from about 90,000 color-set owners, of whom 74 per cent reported their sets had required repairs. Most of the sets had been purchased in 1966 or later. By comparison, surveys of other appliances indicated that only 50 per cent of washing machines and 50 per cent of black-and-white television sets needed repair. Cost of repairs to color tv were also likely to run higher than for any other household appliance.

How well satisfied were our surveyed readers with their color tv repairs? Of sets in service less than one year, owners of one set in ten were unhappy over service. Of all sets in service, owners of one set in eight—12.5 per cent—were dissatisfied with service. But the level of satisfaction varied with the brand. Least satisfactory was *Westinghouse*, whose service displeased 25 per cent of those reporting. Overall, *Zenith* owners made out best of all in the service department.

In another document submitted to this Committee, Consumers Union is supplying testimony delivered to the Federal Trade Commission last year on the subject of automobile warranties. Included in that testimony are the survey results from CU Annual Questionnaires asking our readers for their experiences in buying and servicing new cars. We ask each year these two questions:

Was your car in satisfactory condition when delivered?

"If not in satisfactory condition, were you successful in having repair work done under the factory warranty in a satisfactory manner?"

For the past few years, since we started using those questions in 1964, the returns have shown that about one-third of those responding were dissatisfied with the condition of their car as delivered and that, of the dissatisfied group, 20 to 25 per cent were unable to have the defects corrected satisfactorily under warranty.

At this time, we should like to submit to the committee the results of our 1969 Annual Questionnaire. The data shown are for the most recent car purchased, designated as Car 1 in the Questionnaire (for the instruction of those owning two or more cars):

Was your car in satisfactory condition when delivered?

Yes, 65.1 per cent.

No, 34.9 per cent.

It appears that the quality level of new cars, in the estimation of the people who answered our questionnaire last year, had not improved.

Were you successful in having repair work done under factory warranty in a satisfactory manner?

Yes, 55.4 per cent.

No, 32.3 per cent.

No work required, 12.3 per cent.

It appears that along with a high percentage of defective cars, our readers experienced significantly increased difficulties in having those defects corrected.

To give the committee some inkling of the kinds and numbers of defective products reaching the market, we can also go beyond our own findings. One monitor of such woes is a trade newspaper Home Furnishings Daily. Looking through our files at random, we found two items of interest.

September 17, 1968, page 1: the headline read: Faulty Refrigerators Plague New York Stores.

NEW YORK.—An abnormal number of refrigerators with serious internal defects have been received by major local department stores and appliance chains during the past three months.

The problem has mushroomed to such a point that many units now are received "dead on arrival."

And what is most important, stated the merchants, damages are not only caused by poor factory packaging and shipping, but also because of the use of defective component parts.

However, to add zest to the retailers' accusations, they too believe they are at fault. They admit to bad handling at their own level.

Several appliance retailers said these problems often don't appear until the unit is already installed in the consumer's home. As a result, these dealers said there has been a "terrible pressure" on their service departments.

September 19, 1968, page 1, the headline read: Air Conditioner Firms Deny "Faulty" Charges.

Air conditioner producers are at odds with their retail customers.

The manufacturers claim that service problems on their products are at normal or below normal levels for this year.

And the merchants state the opposite.

The whole issue was drawn into focus recently by a number of leading New York-New Jersey merchants who insisted that they had a sharp increase in consumer complaints this past season.

When a consumer is dissatisfied with the way in which his guarantee claim is mishandled, there is precious little he can do about it. For all practical purposes, he is shut off from effectively using the courts because the amount of money likely to be involved is not enough to finance a law suit. Independent, third party arbitration is virtually nonexistent. Federal, state and local government consumer protection programs have only a limited capacity to handle individual consumer complaints. The irate consumer has the dubious power to withhold any future patronage from the dealer and/or the manufacturer, but this is small consolation to him in his hour of need. He remains disgruntled, and, worse, he has another piece of evidence that "the system" is unfair.

What does he want? He wants—and deserves—honesty in the marketplace. With regard to guarantees, he wants—and deserves—accurate representation as to what the guarantee means, in language he can understand, and with a clear and unencumbered procedure for gaining satisfaction of the guarantee should the occasion arise. In short, he wants—and deserves—a set of rules that are simple and fair.

But much more than that is involved. What we are talking about today involves the kind of economic system we are to have. Consumer spokesmen often speak of a consumer-oriented economy. What that means is an economic system that encourages the manufacturing of products without defect, that do what they are claimed they will do, and when they don't, the consumer gets his money back. In other words, an economic system that is designed to assure better quality products. We will have better quality products when there are sufficient economic pressures on producers to make better products. Any new guarantee law ought to aim at doing just that—that is, to apply economic pressure on producers to improve the quality of their products. That will be good for consumers, obviously. It will also be good for the nation as a whole.

With that in mind, I would like to devote the rest of this testimony to some of the specific provisions of S. 3074, pointing up areas in which we would like to see the bill strengthened.

Sec. 2 *Coverage.* While it is undoubtedly true that many guarantee problems relate to consumer products that have electrical, mechanical or thermal components, many others do not. Furniture, clothing, and carpeting come quickly to mind as examples of products sold with guarantees that are outside the scope of the Act as presently written. We see no reason to limit the coverage of the Act and suggest that it be broadened to cover all consumer products.

Sec. 2. *Express Guarantees.* The bill is on solid ground in defining express guarantees in sections (9)(a), (b), and (c). We hope the thrust of this section is aimed as much at advertising as anything else, and is an attempt to close the gap between use of the guarantee as a sales device versus its true legal meaning and function. If that is so, then we most strongly urge you to delete the qualification that follows section (c), in which the bill states, "an affirmation merely of the value of the goods or statement purporting to be merely the seller's opinion or commendation of the goods does not create a guarantee." We see this as a contradiction that would have the effect of taking back most of what the rest of the section gives.

Sec. 4 *Duties of Guarantors.* We have two specific problems with Section 3 as it is now written. First and foremost, we do not think it is sufficient to leave it entirely to the seller to determine whether or not a defective item under guarantee is to be repaired or replaced. Consumers Union has heard too many complaints concerning the unwillingness on the part of the guarantee maker to replace, rather than repair, defective items that just don't work right. Certainly it makes sense to allow the guarantee maker a first option to repair a defective consumer product. But what happens when his repair work is unsatisfactory? Is the consumer to be expected to bring the item back again and again for further repair? We would like to see the bill changed so as to give the maker of the guarantee a first option of attempting to repair the defective part or product, but, if the consumer finds the repaired product unsastifactory, he would be able to demand a replacement.

Of course, there will be exceptions to this general rule. We would like to see the Federal Trade Commission directed to promulgate rules and regulations that would spell out the exceptions. Secondly, the term *replacement*, as defined in Section 2(8), is too narrow. In the event a product cannot be repaired or replaced, the consumer should be entitled to a refund in the amount of the current

market value of the guaranteed item, and not of "the purchase price of the product less reasonable depreciation based upon use prior to malfunctioning" as currently provided. After all, if a seller guarantees a product for a specified period, it should mean that the consumer can expect a functioning product for the entire period of the guarantee, and should the product fail and be unrepairable or irreplaceable, it is the seller who should bear the *full* cost of replacement. Again, there will be exceptions to the rule, where equity and fairness call for less than a full refund—auto batteries or tires, for example. Here again, the Federal Trade Commission should be specifically directed to promulgate rules and regulations spelling out the exceptions.

Sec. 5 *Requirement of Written Guarantees.* We are delighted that S. 3074 creates a minimum standard to which all guarantees must adhere. This is clearly the first step toward putting some meaning into the word "guarantee". We would like to see Section 5(c) deleted, however, since it appears to encourage a form of artificial price maintenance. Generally, consumers should be free to shop around for the best buy when having maintenance performed on a product in order to meet a condition of a guarantee. While there may be some instance where only a designated representative can adequately perform maintenance on a consumer product, these instances are—or should be—the exception and not the rule.

Sec. 7 *Separate Guarantee Periods.* While we recognize the need to allow the maker of a guarantee to assign separate guarantee periods to separate components of a consumer product, we think it essential that the bill not lose sight of the fact that a consumer buys a whole product, and not a set of component parts. Therefore, we would like to see language in the bill, here or somewhere, that would prohibit the maker of the guarantee from disclaiming liability for consequential damages. If a defect in part A can be shown to cause damage to another part of the product, or something outside of the product, then the bill should clearly state the liability of the maker of the guarantee to repair or replace not only the guaranteed part, but all damaged parts of the product (or property or persons outside the product), whether or not covered by the guarantee.

Secs. 12, 13, 14. *Disclaimer of Implied Warranties.* We think the principle of protecting against disclaimers of implied warranties should be more forthrightly stated. We would urge the Committee to make void *all* disclaimers of implied warranties of merchantability. We think this is so important that we would encourage the bill's stating the principle both in the affirmative and in the negative. That is, we would like to see a section that states that all products, regardless of whether or not accompanied by express and/or performance guarantees, are warranted as to their merchantability, and that any exclusion or modification of the implied warranty of merchantability is inoperative.

Sec. 15 *Federal Trade Commission.* We are disturbed that the bill as drafted leaves so large a job of rule-making to the Federal Trade Commission with so little in the way of directives to assure that regulations are in fact developed and promulgated. We would rather see the Congress mandate specific areas in which the FTC should develop rules and regulations—rules to define reasonable time, rules to define unnecessary delay, rules to define reasonable depreciation, rules to define necessary maintenance, etc.

Secs. 16–19 *Remedies.* We are concerned with the remedies section of S. 3074. The remedies in the bill do not go far enough in assuring that the legislation will work. It is essential that the remedies be made more real, given the realities of the situation as we see it.

The bill as written merely encourages, as a matter of policy, that informal dispute settlement procedures be created. Why should the Congress stop at that? If it is a valid concept to establish mechanisms to negotiate the fair settlement of guarantee disputes, why merely encourage that this be done? We would far prefer to see the Congress mandate the establishment of such a mechanism, along the lines of the concept proposed by Senators Hart and Moss in their bill to establish an Independent Consumer Council.

We say this because we have little faith in the ability of individual consumers, in adequate numbers, to use the court system. While Section 17 is a good one, in specifically providing for class actions, these will more than likely be limited to cases of product design failure. And while Section 19 provides for the recovery of attorneys' fees in successful suits, the consumer is still being asked to take a gamble on winning the suit. We can hardly realistically expect consumers to flood the courts with law suits to make this law work. That is why we put so much importance in mandating a system of negotiation and arbitration. Also,

we feel that there should be included a specific economic penalty for excessive delay by the maker of the guarantee in repairing or replacing a guaranteed product or component. Finally we are disturbed that the remedies section applies only to performance guarantees and not to express guarantees. We think this unfortunate. As we read the bill, Section 2(9) defines the way in which an express warranty is created. This is a good section, if modified as mentioned earlier in this testimony. Once an express guarantee is created, whether orally, through advertising, or in writing, it should be subject to the same legal rules as a written performace guarantee. To distinguish between the two is to leave the recipient of an express warranty at a disadvantage—that is, with none of the remedies available to him that are available to the recipient of a performance guarantee. Yet the intent of the bill is to set a common definition and a set of minimum standards for all guarantees. We believe that a full set of remedies should be available in cases of both express and performance guarantees.

"Guarantees and Warranties" (from the Buying Guide Issue of Consumer Reports December 1969, p. 391)

APPENDIX No. 1

When a warranty or guarantee (they amount to the same thing) is put in writing, it is called an "express warranty". Most makers of durable goods, such as household appliances or automobiles, attach an express warranty to their goods. Instead of standing behind the general fitness of what they sell, they try to assert narrower obligations for themselves by setting time limits, making exceptions to lists of parts covered, and being their own judge of warranty claims.

Warranties therefore are required reading *before* you make the purchase. Be wary of "lifetime guarantees". Some of them don't even say whose lifetime. Beware, too, of the words "unconditional guarantee" or the like. There are almost always conditions. Besides setting a time limit on liability, the guarantee frequently limits the manufacturer's promise to the mere replacement of parts; you must pay for labor and often shipping. When a bad part has caused total destruction of the item guaranteed, manufacturers have sometimes been known to make good for the part only.

Guarantees on expendables such as automobile tires and batteries are often prorated. They offer an allowance on the purchase of a replacement; sometimes the replacement price is set so high that you pay as much as you would have paid without any guarantee. And while some companies do offer a long-term guarantee in good faith, the promise may not outlast the management that made it. In these days of conglomerate mergers, stockholder takeovers and tactical bankruptcies, managements can and do change frequently.

Warranty language can be mighty hard to follow. Under massive consumer protests and Government pressure, some appliance makers have said their mea culpas and, with fanfare, have simplified the wording. Color television makers have tried to soothe public disquiet about defective sets by putting a longer-term warranty on the picture tube. But the real test of good faith is not the promise or the clarity of its language, but the performance you are able to get under a warranty, even within its expressed limits. CU's mail attests to the satisfaction received by some, and to the downright frustrating dissatisfaction of many others. Your first resort usually is to an authorized dealer or service center, as indicated in the warranty itself. But don't give up if that source cannot or will not repair the defect. Write to the president of the company that made the guarantee. His name and business address are likely to be listed in Poor's Register of Corporations, Directors and Executives" and "Moody's Industrial Manual", available at the reference desks of many libraries. If you still get no satisfaction, try seeking support from the consumer agency, if any, in your state government.

A last resort, if nothing else works, is to the courts. In some states, you can bring suit for limited amounts in small claims courts without hiring a lawyer. Call your local magistrate, justice of the peace or county clerk for instructions. If your losses are heavier or involve personal injuries, it may be wise to consult a lawyer. The limits a manufacturer attempted to set on his own liabilities won't necessarily be recognized in court. Many courts recognize an *implied* warranty underlying state sales laws—a warranty beyond the power

of a seller to void despite what he says in his written warranty. In some cases, courts have also interpreted advertising claims as warranties. The law of product liability has more and more tended to discount warranty language as an escape-hatch for the manufacturer.

APPENDIX No. 2

DECEMBER 3, 1969.

LUCIEN WULSIN,
President, Baldwin Piano and Organ Co.
Cincinnati, Ohio

DEAR MR. WULSIN: One of our readers has sent us a copy of "Specifications for Baldwin Grand Pianos, Styles M, R, L, F, and SD-6 201, 202, 225 and 226, Engineering Department Standard No. S-1011-D." The reader points out the following paragraph:

(27) Warranty.—Baldwin Grand Pianos are fully warranted to the original purchaser for ten years from the date of delivery against any defect in workmanship or material under proper use, reasonable care, and normal conditions of temperature and humidity. We agree to promptly repair or replace without charge any part which is found to be defective, *provided the piano is delivered to our factory* (or other place designated by us), *and the transportation costs borne by the purchaser.*

The reader commented: "I thought you might be interested in some clever warranty coverage. Apparently if say a hammer or string breaks you must ship the whole grand piano or pay for the parts to have the job done in your home—which also means paying for the service."

We at Consumers Union would like to have our reaction to this criticism of your firm's warranty. Our reader has chosen as his examples some defects that would be relatively inexpensive to have repaired out of pocket. What about serious defects that might require the replacement of basic parts?

Sincerely,

ROBERT J. KLEIN,
Economics Editor.

BALDWIN PIANO & ORGAN CO.,
Cincinnati, Ohio, December 12, 1969.

MR. ROBERT J. KLEIN,
Economics Editor, Consumers Union,
Mount Vernon, New York

DEAR MR. KLEIN: Acknowledging your December 3 letter to our President, Lucien Wulsin, we appreciate the opportunity to respond to one of your reader's comments on our grand piano warranty.

This warranty, like similar warranties quite generally used throughout the piano industry, is indeed worded to discourage impulsive "return to factory" of so large and expensive an instrument as a piano. The intent and the practice behind the literal wording, however, is most lenient and flexible. Our dealers, as a matter of enlightened self-interest, take care of most service problems requiring labor or parts, in conjunction with our Technical Services Department. More stubborn problems are dealt with—still at local level—by dispatching a factory technician to assist in or to perform the required adjustments. In extreme cases—crack pin block or similar major failure or defect—the piano is then transported to the appropriate factory, and often at no cost whatsoever to the customer.

An 107 year old company like Baldwin, which consigns merchandise to dealers until sold, and which also directly finances installment purchases, is perhaps especially responsive to customer attitudes and concerns; that is certainly our policy. Nonetheless, we elect to use the tight and strict wording of our warranty as a precautionary measure, and have found the liberal interpretation of it described above to work very well.

We hope the foregoing will be helpful and informative.

Cordially,

BALDWIN PIANO & ORGAN COMPANY,
ROBERT C. COSGROVE,
Director of Sales Promotion.

Appendix #2 - 3

(20) FALL AND LID:

The lid and fall board are of five ply construction. The fall board consists of a plain-sawn poplar core, crossbanded with 1/20" poplar and 1/28" finish veneer. The lid consists of a quarter-sawn poplar core crossbanded with 1/28" Mahogany and 1/28" finish veneer. On Styles F and SD-6 fall board is solid Maple ebonized.

(21) FINISH:

All cases are stained, filled, multiple lacquered and rubbed by hand.

(22) CASTERS:

The casters for Styles M, R, L, & F have swivel stems and solid brass wheels with brass plated steel forks. Special casters which facilitate moving are available. These have double hard rubber wheels and oilite bearings. The Style SD-6 caster has double wheels of hard rubber, and is of suitable swivel stem construction.

(23) HARDWARE:

All external trim hardware is of solid yellow brass.

(24) CORES:

All lumber is kiln dried to an even moisture content of 6½% ± 1½%, glued with moisture-resistant glue and properly seasoned after gluing.

(25) GLUE:

Moisture resistant glues are used except where the size or construction of the part makes this impractical or undesirable.

(26) BUILT BY BALDWIN:

Component parts (often purchased "on the outside" by other manufacturers) are designed and built by Baldwin. These include pin blocks, key bed, bass strings, hammers, etc.

(27) WARRANTY:

Baldwin Grand Pianos are fully warranted to the original purchaser for ten years from the date of delivery against any defect in workmanship or material under proper use, reasonable care, and normal conditions of temperature and humidity. We agree to promptly repair or replace without charge any part which is found to be defective, provided the piano is delivered to our factory (or other place designated by us), and the transportation costs borne by the purchaser.

How's that for a warranty!

BALDWIN PIANO & ORGAN COMPANY • **CINCINNATI, OHIO 45202**

BALDWIN
CINCINNATI, OHIO 45202

BUILDERS OF:

Baldwin Grands, Spinet, Console and Studio Pianos
Baldwin Organs
Baldwin Guitars and Amplifiers
Baldwin Banjos, Combo Organs and Harpsichords

Dear C R:
I thought you might be interested in some clever warranty coverage. Apparently if say a hammer or string breaks you must ship the whole grand piano or pay for the parts to have the job done in your home — which also means paying for the servicing.

PRINTED IN U.S.A.

APPENDIX NO. 3

Case history of a warranty: Mrs. Schilling's color television set.

Mrs. John Schilling of Brooklyn, N.Y., bought a *Magnavox Model RT-522DW/P* color television set on November 4, 1966. The price was $734, including sales tax. With interest on her retail installment sales contract, the total price came to $819. She made a large down payment and arranged to pay the store a $450 balance in 12 months. The deal included a nine-month service agreement at the expiration of the manufacturer's three-month "service warranty." The set also came with a one-year guarantee on the parts. The retail dealer was Friendly Frost, a large appliance store chain.

When the set was delivered and installed on November 10, 1966, it was operating, but a short time later it stopped operating properly, according to Mrs. Schilling. The dealer sent a service man to her home four times, and several tubes were replaced. But on January 21, 1967, Mrs. Schilling said, the set "expired." The service man came four days later, and said the set would have to be returned to the factory and repaired under the provisions of the warranty. Mrs. Schilling became alarmed. She wrote to the president of Magnavox, requesting a new television set or her money back. "Under no circumstances do I want the present set," she said.

Mrs. Schilling's demand was not unreasonable, as events proved. The following September, she wrote again to the president of Magnavox, "I have had the set . . . serviced in and out of my home so many times that it is impossible to enumerate or remember them." The set was still not performing adequately, in her estimation, and was once again in the repair shop. Mrs. Schilling was getting panicky because in less than two months her one-year parts warranty would expire. In 10 months of set ownership, she had had very little use of the set. And she pointed out: "Yet I must still meet my obligation on this contract while you as President of the Magnavox Company do not even have the courtesy to investigate your product or your franchised dealer Friendly Frost, Inc. to determine why in the past ten months this set is not operating properly." Again she pleaded for replacement of the set:

"If this set was in good working order at the time of delivery, it surely would be operating at this time. But it is not; and once more, I don't think it ever will . . . I might add at this time, if someone in your respective organizations had the foresight to replace this set after a lapse of a reasonable time, this situation could have been avoided. Accordingly, I feel constrained to implore you to take the necessary steps to replace this television set. Until that time, I will discontinue to make any further payments on this "lemon."

Mrs. Schilling sent a copy of her letter to the president of Friendly Frost. She also sent the correspondence to the New York State Attorney General, hoping for advice or assistance.

It was at this point, too, that she contacted Consumers Union. She was most eloquent, and what she had to say anticipates the subject of these hearings.

"After almost a year of aggravation and a minimum amount of entertainment from my $819.00 Magnavox Color Television Set, I feel that this situation can only be remedied by REPLACEMENT. But, this will not only take an act of CONGRESS, but a MIRACLE on the part of GOD!

"Surely, there must be, or there should be, some protection for a consumer against legitimate business practices by legitimate companies who protect themselves legally, collect their money, and leave the customer STUCK with their defective product. Legally, a dealer can take a week to a year to service the same set at various times with no apparent results. The consumer must continue to make payments even though they (sic) are not receiving any benefit for the money expended. Then to add insult to injury, after the warranty period is over,

the consumer will have to pay, pay, and pay to keep the defective set operating even though it was in a defective state at the time of delivery. After all, the manufacturer does not want the defective product he manufactured—the dealer does not want the defective product he sold—so, who's left with the defective product—ME—THE CONSUMER—and as evidenced by the enclosed correspondence—no one seems to care or want to do anything. I can't believe this is the system we are trying to preserve. I guess I better join a militant organization and start a riot. That seems to be the only way to get results today."

In behalf of Mrs. Schilling, Consumers Union wrote to F. M. Freimann, president of Magnavox. A couple of weeks, later, on October 24, 1967, we received a telephone call from Warren Fitch, manager of customer relations at Magnavox headquarters in Fort Wayne, Ind. He informed us that, before receiving our letter, the company had replaced the picture tube in Mrs. Schilling's set. In a follow-up letter to us, he said, in part:

"Because of our interest in the proper operation of this instrument, we have gone to considerable length to investigate and provide assistance to the dealer through our field engineering staff.

"Our concern is that the customer receives full benefit of the original specific warranty given with the instrument and in addition, a review of any unusual circumstances which may occur *either in or out of warranty.* In this particular situation, we cannot concur with the customer's feelings that a replacement instrument should be provided by the factory." (emphasis added.)

Mr. Fitch also contended his records showed that Mrs. Schilling's set had been in operating condition from March until September of 1967. We sent Mrs. Schilling a copy of his letter, and she noted that her own letters to the company had explained that the set had not been in operating order throughout that period. But at least the set was now operating, she said. "Like the ancient Chinese," she wrote, "I hesitate to say the 'set is operating well' for fear of proking 'The Gods.'

That was December 29, 1967, more than one year after purchase of the set. We did not hear from Mrs. Schilling again until the following March, when she sent us a copy of a letter she had written to Governor Nelson A. Rockefeller. In it she said that her set had failed to function again on March 9, 1968. After an independent repairman couldn't fix it, she appealed once again to Magnavox.

This time her letter went to Mr. G. C. MacDonald of the Magnavox New York office. "Since the warranty period expired, Mr. MacDonald (conveniently forgetting previous calls and correspondence) quickly referred me to the Tru-Val Television Service, an authorized Magnavox Service Shop, she said. "This authorized Magnavox television repairman told me that the picture tube was a 'reprocessed Sylvania picture tube.'"

Mrs. Schilling went on to say that her set was once again taken to the repair shop. The next day she was informed that the repair, including replacement of three tubes, the high voltage transformer and the focus control unit, would cost $74. She authorized the repair. The set was delivered one week later. According to Mrs. Schilling, it still did not operate. Back it went to the shop—for the fourth time. Once again, rather sadly, Mrs. Schilling asked, "why wasn't this television set replaced after evidence of continuous trouble was apparent?"

That's the last we've heard from Mrs. Schilling, so perhaps, just perhaps, 15 or 16 months after she had bought her color TV and some months after she had completed payments on it, her troubles may have ended.

Mrs. Schilling is not alone. Consumers Union receives a steady run of letters complaining of defective color television sets and may other products. Several such letters were excerpted and commented upon in the May issue of *Consumer Reports.* A copy of the articles is attached.

#3 - page 7

The trouble with color TV

The service people told us that our set could not be repaired. The president of the company told us to contact the local representative, who said he cannot make the president's decisions!

Last year I bought one of the color-TV sets you had check-rated. Thanks for nothing. I've never been able to get the color to hold, and the manufacturer won't even acknowledge my letters. Tell me, how do you arrive at your recommendations? Do you really check the products?

So asks Mrs. R.C., one of a growing number of disenchanted color-TV owners. The answer to her last question is Yes—we really check the products. But we can't check quality control in a large sampling of each model, and there's no way to tell whether gremlins will creep into a set during shipment or after it reaches the buyer. All we can tell you is how the set performed for us—*when in proper operating condition*. If a set we buy is defective, we repair it—or get it repaired—before we start testing.

As the evidence comes in, there seems little doubt, as we warned readers in our January report on color TV, that a color set can be a very chancy thing indeed. Too many of our own test sets have come with defects. And we've been getting steady playback from our readers in the form of such letters as the ones quoted on these pages. The volume is great enough for us to state that the color-TV buyer should be especially on guard. Of all types of products, only autos generate more complaints.

Defects that show up a day, a week or a month after the set is delivered and adjusted are bad enough. But most of the letters go on to say that, too often, it's downright impossible to get the defects corrected. Over and over we read about put-offs, evasions and buck-passing among manufacturer, service agency, dealer and repairman—and, it would appear, just plain incompetence. If the owner is fortunate enough to get any attention at all, his set may well be shop-bound for weeks while he misses his favorite shows or makes do with his black-and-white set. It seems a bit much that a TV set costing $500, $600 or $800 should be out of whack five times, eight times—in one case *13 times*—in a fairly short period, and at the end of all that "authorized" service, *still* be out of whack.

Not to mention the expense. Color TV costs more to repair than black-and-white. And if the picture tube needs to be replaced, costs really soar. Until recently, every manufacturer guaranteed the picture tube for one year from the day the set was bought. But if a 23-inch-diagonal color tube fails after a year and one week, say, there goes another $150 to $175 for a new one. Judging by our mail, picture-tube failures shortly after the year is up are not rare.

CU can think of only one defensive strategy: Before you buy, buttonhole your friends, seek out neighbors and office colleagues who own color sets, and find out what their experience has been with various brands and service organizations. Arrangements for servicing differ so widely—by brand and by area—that it's hard to generalize. But if you know someone, or preferably two or three people, who did reasonably well with Brand A bought from Dealer B and perhaps serviced by Repair Company C, we'd advise you to go and do likewise.

There's no doubt that the color-TV people have their troubles, too. Manufacturing and servicing is more complex with color than it is with black-and-white. Simple tube replacement, for example, which most servicemen accomplish easily in black-and-white, often involves, in color, additional adjustments. Color sets gushed onto the market in such a flood in the last three years that the repair industry was swamped; not nearly enough technicians could learn the new repair and adjustment procedures fast enough. But those are problems the industry should solve—and not, we think, at the consumer's expense.

We hope to offer some guidance in a report based on responses to our 1968 Annual Questionnaire and scheduled for publication early in 1969. The Questionnaire will include questions on readers' experience with color sets, brand by brand. The resulting data would not, of course, predict how a new model might behave, but it should give a brand-performance index along the lines of our earlier Questionnaire studies on the repair histories of black-and-white TV, refrigerators, automobiles and dishwashers, and this month's report on air-conditioner frequency-of-repair (see page 253).

As we went to press, Admiral announced that it was extending its warranty on color picture tubes to three years. That's a step in the right direction: we hope other manufacturers follow the lead. But longer warranties will not by themselves solve the repair problem. Until there's a more reliable product and a more knowledgeable repair industry, the trouble with color TV should give pause to any potential buyer of this expensive product.

My color set was delivered promptly but service to get it operational spread out spasmodically over several weeks with the dealer finally agreeing it did not work very well but that he could not spend any time on it.

Letters to the company went unanswered, and a telephone call finally elicited the information, "We only guarantee the picture tube. We do not guarantee the set will work." They suggested I pay another franchised dealer to adjust the set.

#3 - page 8

The repair man had our set for five weeks; and as soon as it was returned to us, it was out of focus—there are lines in it—the color is green (even though we have the green tint turned all the way out)—there is continuously a series of all different color bars going through the picture. He refused even to come and look at the set (saying that he wasn't going to leave a paying customer to come and look at our set for nothing). Since then the dealer has been giving us the run around.

During the first three months we enjoyed only about three weeks of entertainment because the picture tube had to be replaced twice. Four months after the warranty had expired, the real blow landed. The transformer burned out and will cost about $100 to repair.

We are once again watching our black & white TV. The color set has become a financial disaster, and we doubt whether it is even worth repairing. The company said it was an "unfortunate situation" but there wasn't anything they could do about it.

At fourteen months the blue gun of the color tube failed. Most of us expect and accept the fact that minor parts or tubes may have to be replaced occasionally, but to find that a picture tube fails two months after a warranty expires, with no recourse except to purchase a new one for about one-third of the original cost, hardly fulfills the manufacturer's claim of reliability.

Although we have spent over $250 for repairs on our set, we have no color.

Our set has large color blotches of yellow, red and blue. The service man had done all he could. But there was not any improvement. My dealer is now very reluctant to replace the set even though he had agreed to do that if those color blotches could not be satisfactorily removed. He said he will suffer losses because he will not be able to sell the set to anyone else and the company will not reimburse him for the bad set.

On the second day the picture started stretching and contracting. After many calls to a technician who came after two weeks, the defect could not be corrected so the chassis was taken to the shop or 10 days. When it was delivered the defect showed up again. A B & W set on the same antenna and line works fine so it cannot be a local disturbance. The dealer will not exchange the set.

I purchased my color television one year and nine months ago. I have spent $295 on repairs and a new picture tube. The company sent me a polite letter saying that this is my problem not theirs. I disagree.

Senator Moss. We will now adjourn.

(Thereupon, at 12 noon the hearing was adjourned subject to the call of the Chair.)

ACOUSTIC RESEARCH, INC.,
Cambridge, Mass., March 25, 1970.

Hon. FRANK E. MOSS,
Chairman, Senate Consumer Subcommittee,
Washington, D.C.

DEAR SENATOR MOSS: In connection with your hearings on product guarantees I wish to submit a statement for your consideration.

We have been seeing reports on TV and in the press of the hearings of your subcommittee which seem to indict a large part of American business for their practices in connection with consumer product guarantees. From my personal experience I agree that much of the criticism is justified. However, there are many American manufacturers of consumer products who offer and fulfill meaningful guarantees. I think ours is such a company.

Acoustic Research, Inc. has been in business since 1954. We manufacture and sell a line of high fidelity speaker systems, turntables, amplifiers and FM receivers designed primarily for reproduction of music in the home. We will sell directly to retail stores who offer our products for sale to consumers. The list prices of our products range from $57 to $420 per unit.

The following is a verbatim statement of the AR product guarantee as set forth on the inside of the back cover of our product catalog (copy enclosed).

"AR Product Guarantee: the workmanship and performance in normal use of AR products are guaranteed from the date of purchase; 5 years for speakers, 3 years for turntables, and 2 years for electronics. These guarantees cover parts, repair labor, and freight costs to and from the factory or nearest authorized service station. New packaging if needed is also free.

"This means no cost for parts, no cost for labor, no cost for 'service charges,' and no cost for freight, whether to and from the nearest authorized service station or the factory. New cartons, if needed, are free. The only cost is inconvenience, which we greatly regret, and try to minimize.

"On occasion, consumers have reason to complain about a product they have bought. If you buy an AR product and are dissatisfied for some reason we want to know about it. You may write to one of the following:
G. Landau, Vice-President, Marketing
R. F. Allison, Vice-President, Production & Quality Control, Acoustic Research, Inc., 24 Thorndike Street, Cambridge, Massachusetts 02141."

Acoustic Research, Inc. also spends part of its advertising budget to urge upon its consumers a greater understanding of its product guarantee. In this connection I enclose copies of five advertisements, two of them in current publication.

Please note that the AR product guarantee relates not only to factory workmanship, but also to performance in accordance with published specifications based on objective measurements. In this connection I am pleased to enclose technical specifications which we furnish to consumers on:

(*a*) All AR speaker systems.
(*b*) The AR turntable.
(*c*) The AR amplifier.
(*d*) The AR receiver.

We believe that our guarantee is unique in our industry. Besides being fair, such a guarantee policy is also very good business practice. We have become, over the years, one of the most successful companies in our industry.

We also measure the effectiveness of our policy by the unsolicited acclaim which it receives from consumers. We have built up several thick files of letters of commendation. A recent one which crossed my desk came from a Mr. James M. Langston, Jr. of Bladensburg, Maryland. This was a carbon copy of a letter he sent to Consumers Union with a further copy to the President's Commission on Consumer Research. I enclose a copy of this letter.

Our guarantee policy has also received recommendation from other parties, among them *Consumer Reports*, the publication of Consumers Union, a non-commercial organization. I enclose a copy of page 332 of the June 1967 issue of *Consumer Reports* which comments on our guarantee policy.

It is my feeling that the manufacturer of a consumer product should be obliged in some reasonable manner to apprise prospective consumers of all material elements of the products offered including the guarantee. I believe particularly that omission of a clear statement of the product guarantee and lack of a reasonable attempt to place it before the eyes of the consumer may sometimes properly be regarded as constructive misrepresentation.

I very much appreciate the opportunity to present this statement. We are prepared to submit further details upon request or to appear before your subcommittee should you wish us to do so.

Sincerely yours,

A. J. HOFFMAN, *President.*

CONSUMERS UNION,
Mt. Vernon, N.Y.

GENTLEMEN: In early 1969 I purchased an Acoustic Research amplifier. After receiving the amplifier, I asked several important questions about special installation problems. These questions were answered promptly and courteously by AR's field service engineer.

In September the right channel of the amplifier developed a hissing and bubbling sound. The amplifier was subsequently returned for repair. It was repaired and returned; followed by a check for the transportation charges.

In January 1970 I again had trouble with the right channel of this amplifier. I wrote AR and I quote from their answer.

"Please use the enclosed label for returning your amplifier to us. If we confirm the defect, we will replace the unit with another. * * *"

AR replaced the amplifier with a new one and once again reimbursed my shipping charges.

Acoustic Research had a 2-year guarantee on their amplifiers plus reimbursement for shipping charges incurred. They evidently intend to live up to their warranty.

In this day and time when you get so many run-arounds about warranties and shoddily made equipment, it is indeed a pleasure to find a company whose aim is to please its customers.

Sincerely yours,

JAMES M. LANGSTON, Jr.

PRODUCTS AND GUARANTEES—AR'S VIEWPOINT

The goal of high-fidelity reproduction is the truthful, accurate reproduction of the broadcast or recording chosen by the listener. Writers and reviewers may speculate about their preferences in equipment appearance, cabinet size or eccentricity of design, but accuracy is a measurable, objective quantity. It is the quality for which the consumer pays when he buys high-fidelity equipment. Degrdation of this quality is as offensive in the cartridge as in the tuner, as unacceptable in a speaker system as in an amplifier, for the end result as heard by the music listener is the same.

Acoustic Research publishes comprehensive performance data for every one of its products. The data given is measured in accordance with standards established by recognized government and technical organizations. The specifications for the AR receiver, for example, include 29 curves, carefully plotted on graphs which allow the interested reader to compare the performance we state to that actually measured on typical receivers. Claims are the language of advertising; data is the substance of science.

The accuracy and validity of the data published by AR and its reliability, even after the products have been used, is assured by a guarantee which to our knowledge is without precedent or counterpart in the audio field.

The workmanship and performance in normal use of AR products are guaranteed from the date of purchase: 5 years for speaker systems, 3 years for turntables, 2 years for electronics. These guarantees cover parts, repair labor, and

freight costs to and from the factory or nearest authorized service station. New packaging if needed is also free.

The AR catalog and complete technical data on any AR product are available free upon request.

The AR Guarantee—Not One Cent for Parts, Not One Cent for Labor, Not One Cent for Service Charges, Not One Cent for Freight

AR guarantees are unmatched in the high fidelity industry. They are also easy to read. We believe that when a consumer buys a product, he should get one that works as he has been told it will work for the price he has been asked to pay. If the product then fails to operate correctly through no fault of the consumer, the manufacturer must accept responsibility for the failure at no cost to the consumer. A guarantee under which the consumer is forced to pay, perhaps repeatedly, for the manufacturer's errors, is not fair.

Acoustic Research guarantees its loudspeaker systems for 5 years, its turntable for 3 years, and its amplifier and receiver for 2 years from the date of purchase. During this time, if a product we have made fails to operate properly through no fault of the owner, Acoustic Research takes full responsibility for the necessary repairs. There is no charge for parts which need to be replaced; no charge for the labor of locating these parts and replacing them; no "service charge" by Acoustic Research or its authorized service stations; no charge for shipping, whether to the nearest authorized service station or all the way to our factory in Cambridge and back; not even a charge for a new carton and packing materials, if these are needed. The only cost to the owner is inconvenience, which we deeply regret and make every effort to minimize.

Quality Control at AR

The frequency response of every AR speaker is checked in an anechoic chamber before it is shipped. (Many other tests, of course, are also made.) Acoustic Research is one of the very few companies in the history of loudspeaker manufacturing, so far as we know, that have followed this rigorous practice.

The purpose of such careful quality control is to make sure, as far as is possible, that AR speakers provide natural reproduction of music, without rattles, buzzes, distortion, or pseudo-hi-fi exaggerations.

Until now, AR speakers have been sold under a one-year guarantee covering materials, labor, and freight to and from the factory.

On the basis of our field experience we are now able to extend this guarantee to five years. The extension is retroactive, and applies to any AR speakers bought since 1956.

AR speakers are on demonstration at AR Music Rooms, on the west balcony of Grand Central Terminal in New York City, and at 52 Brattle Street in Cambridge, Massachusetts. No sales are made or initiated at these showrooms.

Specifications and Performance Curves for the AR Amplifier

The AR amplifier is an integrated stereo preamplifier/control and power amplifier, all silicon solid-state. Dimensions (not including control knobs): with optional wood cover, 15¾ in. wide by 4½ in. high by 10 in. deep; without wood cover, 15⅛ in. wide by 4⅝ in. high by 10 in. deep.

AC power input: 110–120 volts AC, 60 Hz, 125 w. average (500 w. max.). The following specifications are based on 120–volt AC supply.

Power output, each channel, with both channels driven: 60 watts RMS, 4 ohms; 50 watts RMS, 8 ohms; 30 watts RMS, 16 ohms.

Distortion at any power output level up to and including full rated power: IM (60 & 7,000 Hz, 4:1), less than 0.25%; harmonic distortion, less than 0.5% from 20 Hz to 20 kHz. Distortion figures include phono preamplifier stages.

Freyuency response: ±1 db, 20 Hz to 20 kHz at indicated flat tone control settings, at full power or below.

Switched input circuits: magnetic phono; tuner; tape playback.

Input impedance: phono preamplifier circuit, 50 kilohms; tape playback and tuner circuits, 150 kilohms.

Signal to noise ratio: phono input, 57 db, ASA "C" (flat' weighting; tape playback and tuner inputs, 75 db, "C" weighting. Measuurements taken with phono

input level controls and volume control at maximum gain settings. Input circuits shorted in accordance with IHF test specifications.

Input sensitivity; phono circuit, 2 mv. to 5 mv. (adjustable) at 1 kHz for full power output; tape playback and tuner inputs, 200 mv. for full power output.

Outputs: tape record; 4–16 ohm speakers.

Output impedance, tape record output circuit: 5 kilohms when selector switch is in PHONO position; same as output impedance of music source component when selector switch is in other positions.

Output impedance at speaker terminals: 0.2 to 0.5 ohm, depending on frequency; see impedance curve on reverse side. Includes resistance of AGC–3 speaker fuses.

Damping factor: 8 to 20 for 4-ohm speakers; 16 to 40 for 8-ohm speakers; 32 to 80 for 16-ohm speakers. Lower figures apply at 20 Hz; higher figures apply from 75 Hz to 20 kHz. Measurements taken with AGC–3 speaker fuses in circuit.

Safety features: line fuse; speaker fuses; thermostatic circuit breakers on both channels, self-resetting.

Controls: input selector switch; tape monitor switch; individual bass control for each channel with concentric friction-clutch shafts; individual treble control for each channel with concentric friction-clutch shafts; concentric balance control and mode switch (mono, null-balance, stereo positions); power on/off and volume control. On rear panel, individual phono input level control for each channel with concentric shafts.

Special circuit features: DC driver clamping circuit to provide very clean clipping and recovery from overloads. This feature increases the usable dynamic range by keeping sound clean at very high power levels ● "Idler" power supply takes over while main amplifier power switch is in "off" position, to eliminate turn-on pulses and noise bursts typical of other transistor circuits. ● Bass tone control curves are tailored to provide meaningful loudness compensation, by equalizing for the differences in hearing sensitivity curves at varying loudness levels. Other types of "loudness compensation" circuits do not allow for the fact that the ear's frequency response is not "flat" at the loudness levels of live music itself. ● built-in null circuit provides quick, accurate means for channel balancing. ● Color-coded input and output connectors simplify installation, help prevent mistakes in hookup. ● Stable, trouble-free operation with speakers of any conventional make or design; will even tolerate short circuits without damage to transistors.

Suggested selling price: $250 with black aluminum cover. Optional oiled walnut wood cover: $15.

Guarantee: The workmanship and performance in normal use of the AR amplifier are guaranteed for two years from date of purchase. This guarantee covers parts, repair labor, and freight costs to and from the factory or nearest authorized service station. New packaging, if needed, is also free.

Statement of American Motors Corporation

American Motors Corporation appreciates the opportunity to comment on the Federal Trade Commission report concerning product quality and warranty performance in the automotive industry.

Programs to improve all areas of our operations that have a bearing upon customer satisfaction have top priority throughout our organization. We look with the greatest sense of urgency upon the need to provide our customers with constantly improved product quality, easier repairability and satisfactory service. There is no question that we can meet our growth objectives, and achieve a stronger competitive position in the automotive industry, only by deserving and retaining the confidence and support of those who purchase our products. We can do this only with products that are identifiable for quality and with service and warranty policies which demonstrate a basic concern for the needs and expectations of the motoring public.

Our approach to product quality is that it is a total concept, which involves more than modern manufacturing techniques and programs to check upon results at the end of an assembly line.

It originates with the product idea and then must be carried through the full development process, involving design, purchasing, engineering, manufacturing, quality control and service.

It reflects more than management policy, however firmly stated. In the face of ever increasing production pressures and ever increasing product complexity, it requires a firmly ingrained organizational philosophy and the establishment of specific objectives for each function which has a part in the total system.

It necessitates that the quality assurance function operate completely apart from the manufacturing quality group, running daily audits on production and evaluating quality from the standpoint of the customer.

This is our approach to product quality. We believe in it because it works. We cannot claim to have eliminated mistakes, but we are reducing their number. Equally important, we are improving the speed with which we pinpoint and correct them.

When our customers require servicing, whether under terms of our warranty or not, we know that their continued loyalty depends upon their being able to get prompt and satisfactory service.

We are strengthening our service capability with programs in several key areas—by building cars which are easier to repair, providing intensive training for dealer service management and mechanics, working with our dealers to improve their service facilities.

Our 1970 product lines reflect the progress we have made in the matter of easier and less costly repairability. The compact Hornet, which we introduced in September, and the subcompact Gremlin, which will be in the show rooms of Washington area dealers on April 1, both include a variety of features which were developed with fast, easy servicing specifically in mind. These include easily removable fenders, grill, headlamps, instrument clusters, locks and latches, more accessible engine parts and fuses, and key parts that can be quickly adjusted if necessary.

In training dealer mechanics, we are not aware that other car manufacturers have matched our program for bringing advanced, up-to-date instruction right to dealers' doorsteps.

We accomplish this with a fleet of vans which serve as completely equipped traveling classrooms, staffed by expert instructors. These vans now travel 60,000 or more miles a year. Since we began the program, more than 50,000 specific courses have been completed by dealer servicemen.

However, developing the skills of mechanics meets only a part of the challenge of good customer service. The quality of service management is an equally, if not more, critical factor.

Organization and planning are all important today in improving service, and it is the manager who must perform these functions. We believe that these are areas in which the automotive industry faces its most pressing customer relations problems, for in our opinion, the quality of service management throughout the industry has been woefully inadequate.

Accordingly, we have organized with the faculty of Northwood Institute a special advanced training program for the service managers of our dealerships. It is available on a regional basis, and both the company and dealers have been well pleased with the results.

A key factor in any program aimed at improving customer service is the relationships that exist between the company and its dealers. The market pressures exerted by the presence on our highways of 100 million vehicles can, as has become apparent, give rise to problems and misunderstandings concerning warranty coverage and procedures, and servicing requirements covered by the franchise agreement.

We believe that our dealer relationships at American Motors are the best in the automotive industry—an opinion that we have expressed publicly on numerous occasions. We intend to keep them that way, for this is a significant plus factor in our drive to even a greater share of market in the only way it can be won—by assuring that we meet our customers' expectations to the best of our ability.

We have gained considerable satisfaction from the fact that many of our dealers, on their own, have invested considerable sums of money in improving their service facilities. Of course, we cannot claim all of four dealers are fully equipped to handle the service demands put upon them, but when we find evidence that dealer service is not up to the standards required by our agreement, we work with them to upgrade performance.

In substantive terms, our training programs and other activities related to improving dealer service resulted in approximately a 50 per cent reduction in customer service complaints reaching the factory over the past two years. Such complaints, including warranty-related problems, now involve less than four per cent of cars sold.

We can and must improve, but we cite these figures to show that we are making real and encouraging progress.

We want to emphasize that we consider our warranty program to be a basic customer relations tool.

We expect our dealers to observe the specific requirements regarding new car preparation, warranty work and service that are included in our franchise agreement. In turn, American Motor provides liberal reimbursement for work done under the warranty program and for all customer relations policy adjustments.

For example, our dealers are reimbursed at a hourly rate that is much higher the basic hourly pay rate of a comparably skilled craftsman. Further, we pay for each job on the basis of a standard work time that we know is 25 to 35 per cent above the total time actually needed by the average mechanic.

We believe that this approach is fair and equitable, and that it provides the necessary foundation for satisfactory performance on the part of our dealer group.

Many customer complaints can be traced to a misunderstanding of the conditions of the warranty, but our position is that good customer relations requires more than a strict interpretation of these conditions.

When a complaint reaches the company, we judge it from the standpoint of the customer. If his expectations are reasonable and valid, we make every effort to satisfy him, regardless of warranty. This is supported by many cases on file. In the past four years, American Motors has paid almost $8 million for policy adjustments over and beyond normal warranty obligations.

We look upon administration of the warranty program as a valuable source of quality information, one which provides quick identification of defects requiring corrective action. Field reports are processed through our computer system, and the information becomes one basis for improved quality procedures from point of supply through final assembly.

In summary, we believe that the inexorable relationship between our success in the automotive industry and sound customer relations programs provides all the incentive we need to strive for constant improvement.

We further believe that our present product quality and customer relations programs are effective, and provide all of the control points that are necessary.

If it were possible to produce defect-free cars with present technology, and to reduce customer complaints to zero, we would do so. But we are dedicated to working toward these goals, and we can conceive of no further regulation which would increase that dedication. We don't believe that punitive regulation will help solve the problems we face.

Unnecessary regulation increases costs in area where costs are already a tremendous problem, without producing customer benefits which are even nearly comparable.

For one example, the Automobile Quality Control Act outlined in the recent Federal Trade Commission report includes no provision for problems of misuse and improper maintenance over which manufacturers have no control. We can visualize that this could seriously impair programs aimed at providing satisfactory service to customers whose complaints are fair and reasonable, aside from warranty considerations.

Imperfections exist in any large, complex business. However, we submit that the automotive industry is, in good faith, making costly and far-reaching efforts to minimize these imperfections. The industry has the resources, the skills and the knowledge resulting from experience to get the job done.

The problems we face involve the experiences of a relatively small number of car owners. This does not make them less serious, but at the same time, they cannot be construed as representing the failure of a total system which, despite shortcomings, is a tribute to the ingenuity of an industry and of our business system.

Government and industry are logical allies in meeting the various problems which explosive growth has created. But effective answers will come from within

industry, particularly if government views its role as stimulating the competition which propels dedicated people toward ever higher standards of performance.

We have been told that the Department of Justice will submit proposed legislation on this subject on Friday, March 13. American Motors would like to reserve the right to comment on that bill when it is available.

GENERAL MOTORS CORPORATION,
March 23, 1970.

The Honorable FRANK E. MOSS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MOSS: General Motors has been following closely the consideration your Consumer Subcommittee has been giving to proposals for legislation on warranty and quality. The wide diversity of these proposals, as well as the general nature of some (covering as they do all types of end products), makes it difficult for use to comment specifically on them. Moreover, the administration proposal has not yet been introduced, though it was outlined in testimony presented to your Subcommittee by administration witnesses on Marcch 11, 1970.

Thus, at this time it would appear to be more fruitful for General Motors to submit a statement as to what we have been doing recently to alleviate and eliminate problems of customer satisfaction in connection with automobile warranties. We certainly recognize, and have recognized, that this is a troublesome area. However, we believe these comments will show we are responsive to appropriate criticisms and suggestions. We believe we have made progress and that what we have been doing in this regard should be thoughtfully considered before the enactment of any legislation which would provide warranty standards for the automobile industry in an area which historically has been competitive.

In the last year or so, General Motors and its dealers have intensified their efforts—or instituted new programs—in the following areas:

DEALER COMPENSATION FOR PERFORMANCE OF WARRANTY REPAIRS

Beginning May 1, 1969, General Motors increased its compensation to dealers for labor expended in performing warranty repairs.

We now markup the dealers' base labor costs by 220% instead of the 200% markup previously used. For a dealer who has a base labor rate of $3.50 per hour for mechanics, the new markup means an increase of 70¢ per warranty labor hour, or a total of $7.70. In addition, dealers receive reimbursement for mechanics' eligible fringe benefits at 150% of the costs. For example, if the dealer paying his mechanics $3.50 per hour has fringe benefit costs of 50¢ per hours, he would receive fringe benefit reimbursement of 75¢ per warranty labor hour. This amount added to the $7.70, results in a warranty reimbursement rate of $8.45 per hour—on a base labor cost of $3.50 per hour.

Over the years General Motors has furnished replacement parts needed for warranty work to the dealer at no charge, and currently pays the dealer 25% of the regular dealer parts cost for handling.

General Motors is continuing its policy of paying a warranty advance to its dealers. Under this policy, each dealer receives an amount equal to his warranty claims for an average month. This advance is adjusted periodically to reflect changes in his average. As a result, the dealer is working with General Motors money and does not have his capital tied up in warranty claims receivable.

As a matter of policy, General Motors studies warranty reimbursement on a continuing basis.

CUSTOMER COMPLAINTS

To assist customers who want to know how and where to register complaints of unsatisfactory service, each of the GM car divisions now includes in the Owner's Manual given to each purchaser, a simple three step procedure for the owner to follow. These steps are:

1. Discuss the problem with a member of dealership management.
2. Contact the local zone office, if the dealer could not readily resolve the problem.
3. Contact the divisional owner relations office in the event satisfaction is not achieved from the first two steps.

The addresses and telephone numbers of the zone offices and the divisional owner relations office are listed in the Owner's Manual.

GM was the first auto manufacturer to cooperate with the Better Business Bureau in its "BBB Hot Line" to expedite customer complaints regarding automobile service problems. In dealing with complaints, BBB urges they first be handled at the local bureau and dealer level. If results are not obtained there, the complaint is referred to the National Bureau which puts the problem directly before an executive of the manufacturer for action and receives a report on the action taken.

In an effort to be of greater assistance, General Motors prepared and sent to each local BBB office a booklet showing the three step procedure by which an owner can register a complaint. The booklet also contains the addresses and telephone numbers of the zone offices and divisional owner relations office for each of the car divisions.

In many localities—and in all but two states—there are either official agencies or voluntary organizations which are devoted to consumer interests. GM has just furnished each of these 111 groups with a booklet listing the addresses of all zone and home offices of the car divisions. This booklet enables each group to contact the appropriate office regarding a consumer complaint. In addition, each group was advised of the address of the executive in the corporation who handles owner relations, along with his offer of assistance.

Last year, personnel of the car divisions held over 2,400 special meetings—most of them dinner meetings—with entire dealership organizations. The purpose was to create a renewed awareness of the importance of treating people like they themselves would want to be treated. Over 62,000 dealer employes and our sales and service organizations were exposed to the theme "a rising tide lifts all boats"—stressing the benefits to every employe—regardless of his job—of maintaining good owner relations.

MECHANIC TRAINING

Under the GM Training Center Program which began in 1953, mechanics receive training in 30 centers located strategically across the United States in areas of high vehicle and dealer density. In 1969 alone, 96,835 mechanics received nearly 2.5 million man-hours of free classroom and shop instructions at a cost of approximately $7.5 million to General Motors.

Of particular interest at this time are the "job entry" training activities GM developed so that persons with limited experience can obtain training to help them qualify as auto mechanics. Three programs are involved:

1. Dealer Cooperative Work Training Program, which is designed to upgrade dealer service personnel who have mechanical aptitude but who lack mechanical training. This nine-week program covers body or mechanical repairs, and alternates two or three week periods of instruction at the GM Training Center with two week periods of on-the-job training in the dealership.

2. Advanced Vocational Training is offered to graduates of high schools and vocational trade schools. Young men, employed by GM dealers are enrolled in an intensive 240-hour advanced training course.

3. Project Transition (which was initiated by the Department of Defense) is designed to help members of the armed forces learn job skills before they return to civilian life. Special six-week courses in auto mechanics are offered at GM Training Centers near military bases. On completion, each trainee is offered a job opportunity with a GM dealer. The training is offered without charge to the serviceman, the armed forces, or the GM dealers.

In 1968, more than 3,000 persons received training under these programs while in 1969 this number increased to almost 5,300 people.

From the foregoing, it is evident that General Motors has proceeded on its own to improve the availability of mechanic trainees and to upgrade the skills of existing mechanics. This is being accomplished without financial assistance from any outside source and without cost to dealers.

FIELD SERVICE PERSONNEL

Last year, we reported to the Federal Trade Commission that the GM car divisions had 914 field service personnel whose primary responsibility is to assure that customers are able to obtain all necessary service repairs and to handle complaints if customers are not satisfied. On December 31, 1969, there were 1,065 men in this capacity—an increase of over 16% in one year.

Moreover, there are approximately 1,600 additional field employees who are available to assist in handling service problems. This total includes 920 district sales managers who, in their frequent contacts with dealers, review dealer service performance in an effort to eliminate any conditions causing complaints.

PARTS AVAILABILITY

In 1969, General Motors consolidated its car division parts distribution activities into the GM Parts Division and charged it with the responsibility of procuring and distributing replacement parts to car dealers through a network of fifty warehouses. It should be noted the Parts Division is independent of the car divisions. It has made an excellent beginning in providing better service to dealers. It is maintaining an improved parts availability in all warehouses.

The Parts Division recently developed a computerized system for use by GM dealers in ordering parts from the local warehouse. The new system is called *R*emote *A*utomatic *P*arts *I*nput for *D*ealers (RAPID). The system began at the end of 1969 on a pilot basis, and already is being used by over 700 dealers. We anticipate that during 1970, approximately 100 dealers per month will be added to the system. Although the availability of equipment is a limiting factor, we expect to have all sections of the country represented in the system by the end of 1970.

These dealers no longer phone or mail parts orders, but instead send all orders to the warehouse via leased electronic equipment which is installed in the dealership. With the RAPID system dealers receive faster delivery of parts and are better able to provide service for their customers. When priority delivery of parts is necessary, RAPID dealers can receive information regarding parts availability and shipping dates from the warehouse in approximately one hour.

In this connection, all GM parts warehouses are linked through a computer system. In the situation where a car is inoperative, if the replacement part is not immediately available in the warehouse nearest the dealer, the part can be located at any warehouse for shipment to the dealer.

We believe it significant that complaints concerning parts availability (for all car models) have been substantially reduced in the first two months of 1970 compared to 1969.

TIRE WARRANTY

Last year, we advised the FTC that tire service agreements had been developed by the five tire manufacturers which supply original equipment tires to General Motors and that such agreements were being offered to GM care dealers by the tire manufacturers. Under the agreements, the dealers make adjustments on tires, including tire warranty adjustments, without the necessity of prior contact with the tire company or a local tire dealer. Claim forms are sent by the dealer directly to the tire manufacturer. Under this arangement, the owner is spared the inconvenience and possible misunderstanding which might arise when there is a question as to whether the unsatisfactory condition reported by the owner is attributable to the tire or to the vehicle.

During the past year, over 80% of our dealers have signed agreements and are now able to handle adjustments in connection with customers' complaints regarding tires.

DEALERSHIP FACILITIES

During the last five years (1965 through 1969) more than 7,100 (or 51%) of the GM dealers have spent approximately $735,000,000 for new or improved facilities to better serve their customers. This added over 315 million square feet of land and over 33 million square feet of building area. In the year 1969 alone, GM dealers added almost 41 million square feet of land area and well over 4 million square feet of building area.

It should be noted that approximately 78% of the building area, and 35% of the outside area, is used for service operations.

SERVICE RESEARCH AND DEVELOPMENT SECTION

General Motors has recently established a Service Research and Development Section to improve service to customers.

This Section is responsible for the development of information, procedures and techniques which will enable our dealers to improve their skills in accurately

and promptly diagnosing vehicle problems as well as to improve their service and repair capabilities. To achieve these ends, the Section will thoroughly research existing procedures and equipment relating to diagnosis and repair. Wherever possible, the Section will improve upon—and develop new—procedures and equipment in those areas.

Improvements in procedures and techniques will be disseminated through the car divisions. Improvements in existing equipment, or ideas for new equipment, will be made readily available to the equipment industry.

The foregoing is a brief summary of the voluntary efforts being made by General Motors to reduce and eliminate complaints regarding warranty repairs on automobiles. As we said before, we believe this shows we have voluntarily made substantial recent efforts to improve customer service in this area and these efforts will be pursued vigorously. We realize there will continue to be problems but we are working hard to do a better job for our customers. We would hope you would take this into account in considering enactment of any legislation which would place restrictions on automobile and truck warranties.

It would be appreciated if you would make this letter a part of the record.

Sincerely,

M. W. WORDEN.

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