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OVERSIGHT HEARINGS INTO THE FEDERAL TRADE COMMISSION—BUREAU OF CONSUMER PROTECTION

(Delays in Rulemaking—Regulation of Advertising)

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HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

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FEBRUARY 25; JUNE 22 AND 24, 1976

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[1] Deceased May 21, 1976.

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OVERSIGHT HEARINGS INTO THE FEDERAL TRADE COMMISSION—BUREAU OF CONSUMER PROTECTION

(Delays in Rulemaking—Regulation of Advertising)

WEDNESDAY, FEBRUARY 25, 1976

HOUSE OF REPRESENTATIVES,
COMMERCE, CONSUMER,
AND MONETARY AFFAIRS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2247, Rayburn House Office Building, Hon. Benjamin S. Rosenthal (chairman of the subcommittee) presiding.

Present: Representatives Benjamin S. Rosenthal, Cardiss Collins, Robert F. Drinan, Elliott H. Levitas, Andrew Maguire, Edward Mezvinsky, Willis D. Gradison, Jr., and John N. Erlenborn.

Also present: Peter S. Barash, staff director; Jean S. Perwin, counsel; Eleanor M. Vanyo, assistant clerk; and Henry C. Ruempler, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRMAN ROSENTHAL

Mr. ROSENTHAL. The subcommittee will come to order.

Today's hearing by the Commerce, Consumer, and Monetary Affairs Subcommittee is the first in a series of oversight hearings into the operations and activities of the Federal Trade Commission. Today we will examine the rulemaking process of the Bureau of Consumer Protection.

Our concern is a basic one: Why does it take so long for the Commission to promulgate rules and guides?

Since the power to promulgate industrywide rules and guides has been upheld by the courts and legislatively affirmed by the new Magnuson-Moss Federal Trade Commission Improvements Act, rulemaking has become the FTC's most valuable and effective consumer protection tool in putting a stop to industrywide unfair and deceptive acts and practices in the marketplace. It is therefore extremely important that the rulemaking process function as efficiently and effectively as possible.

To help us focus on the reasons for delays in the rulemaking process, we have prepared a chart which traces the rules currently pending at the Commission from the initial investigation to the final rule, if any. An explanation of the formation of the chart and an evaluation of the data contained in it will be presented by a member of the subcommittee staff, Ms. Jean Perwin.

The chart suggests that the FTC's rulemaking process has been subject to excessive delays. The subcommittee is concerned, for example, that the proposed rule providing for adequate disclosure in the sale of franchise dealerships is still not final 5 years after the Commission's investigation began. We are concerned that the action on the food nutrition advertising rule has been postponed again and again. We are concerned that in 1974 and 1975, out of 21 pending rules and guides, only 1 rule and 2 guides became final.

A second focus of the hearing today is the failure of the Commission to respond to petitions for rulemaking from consumer and citizen groups outside the Commission. Public access to the regulatory process at all levels should be an important goal of all Federal regulatory agencies. That access is especially important to an agency like the FTC whose actions so directly affect the rights of consumers. When public interest organizations like Action for Children's Television and the Center for Law and Social Policy spend their limited resources and time developing a case for the initiation of a rule in a particular area, such petitions obviously should be taken seriously and responded to promptly. It is inexcusable that they have been neglected. I understand that a new internal procedure has recently been adopted to deal with outside petitions. The subcommittee will be most interested to hear it.

Finally, we will be looking at a new management information system that the Commission has set up to help reduce delays in operations. Will it address the kinds of problems we will be discussing here today? How successful has it been so far in helping to reduce delays?

The rulemaking process is a very important part of FTC activities. We hope this hearing will serve to highlight problems that exist in that process in an effort to make it work effectively.

Jean, do you want to tell us where we begin and the facts of this inquiry?

Ms. PERWIN. I am going to talk about what is reflected on the chart and some of the statistical data which we gathered after putting the chart together.

[The chart referred to follows:]

PROGRESS OF FEDERAL TRADE COMMISSION RULES & GUIDES

INVESTIGATIONS ANNOUNCED	PROPOSED RULE ISSUED	DELAYS IN PROCESS	HEARINGS HELD	FINAL RULE OR GUIDE ADOPTED	REMARKS
1970 Franchise Disclosure	November 11, 1971		February 14 - March 1, 1972		The Rule was republished on August 22, 1974.
January 20, 1971 Detergent Ingredient Labeling	February 28, 1974	June 20, 1975 Public Record Re-opened July 20, 1975 Public Record Closed			
September 28, 1971 Mail Order Merchandise (first proposed rule)	March 8, 1974 (revised rule)	January 24, 1972 Hearings postponed April 15, 1974 Comment time extended	March 27-29, 1972	October 17, 1975	Rule first proposed in 1971. Investigation began earlier.
1971, 1972 Health Spas	August 15, 1975	November 1975 Comment time extended			Health Spa rule was derived from cases brought by the New York regional office.
1972 Vocational and Home Study Schools	August 15, 1974	November 25, 1974 Comment time extended January 8, 1975 Hearings Postponed	December - January 1976		On May 15, 1975 a new proposed rule was issued in accordance with the FTC Improvements Act.
September, 1972 Mobile Homes Sales & Service	May 28, 1975				The first proposed rule was announced on December 28, 1974. On November 1, 1975, a new staff statement was issued.
September 11, 1972 Endorsement & Testimonial Guide	December 1, 1972			August 8, 1975	
September 26, 1972 Flammability of Cellular Plastics	August 6, 1974	January 8, 1975 Hearings Postponed			On July 22, 1975 a new proposed rule was issued in accordance with the FTC Improvements Act.
November, 1972 Food Nutrition Advertising	November 11, 1974	Jan 31, 75 Closing date for written comments extended July 21, 75 Hearing Postponed Aug 18, 75 Rule Proceeding extended			On May 28, 1975, a new proposed rule was issued in accordance with the FTC Improvements Act.
January 30, 1973 Law Book Guide	February 28, 1973			August 8, 1975	On January 30, 1973 the commission minutes authorized the investigation. It had been ongoing since 1968.
November, 1973 Child Directed Premium Guide	June 27, 1974	July 3, 1975 Request for public comment September 9, 1975 Comment time extended			The child directed premium guide investigation was announced in a speech by Chairman Engman.
February 28, 1974 Funeral Practices	August 28, 1975				February 28, 1974 staff report issued. Investigation preceeded the report.
Early 1974 Air Conditioner Labeling	August 20, 1975				The air conditioner rule has been terminated as a result of new energy legislation.
May 22, 1974 Hearing Aids	June 17, 1975		April 12, 1976 (Hearing Scheduled)		
May 30, 1974 Prescription Drug Advertising	June 2, 1975	August 18, 1975 Comment Period Extended	January 12, 1976		
July 1974 Over the Counter Drug Advertising	November 9, 1975	January 14, 1976 Comment Time Extended until March 12, 1976			
August 22, 1974 Protein Supplements	September 4, 1975		May 9, 1976 (Hearing Scheduled)		
September 18, 1974 Fuel Economy	September 10, 1975 (Guide published in Federal Register)				The fuel economy program began as a rule, but resulted in a guide.
April 25, 1975 Used Car Industry	January 2, 1976				
April 25, 1975 Growers, Wholesalers, Retailers of Plants					Ongoing Seattle regional office project.
September 23, 1975 Prescription Eyeglasses Pricing	December 23, 1975				On January 20, 1976 an investigation into commercial restrictions on prescription eyeglasses was announced. A staff report on eyeglasses was released on January 28, 1976.

Prepared for the Subcommittee on Commerce, Consumer and Monetary Affairs.

Ms. PERWIN. We began the chart by looking at the dates that the Commission made a public announcement of certain activities. The Commission began doing that starting the end of 1973. So we looked at announcements from 1974 until November of 1975. We put them all on the chart. Then we tried to trace backwards from the rules which were announced during that period back to the date of initial investigation.

The rules in this column, the second column, were announced during the period of 1974–75. The dates in this column, the first column, are the dates which we traced back from those dates. So it does not represent a 5-year period, the way it may look like it does on the chart; it represents a 2-year period.

After we got all of the information on the chart, we began eliminating things that were beyond the scope of this hearing. We eliminated investigations that were announced by the Bureau of Competition. We eliminated investigations that resulted in cases rather than rules. We eliminated rules that became final prior to November of 1975. We eliminated proposed amendments to existing rules. We eliminated rules that were required to be promulgated by statute.

Some of the statistical data we have from the chart is a total of 21 rules listed on the chart——

Mr. ROSENTHAL. Why did you eliminate the things you eliminated?

Ms. PERWIN. We are looking at rulemaking at this hearing: many of the investigations that were announced during this period did not result in rules.

We would have had a whole column of blanks. This would not be fair to the Commission.

Mr. LEVITAS. Mr. Chairman, on that same subject, I did not understand the distinction between rules which were not included; namely, those required to be promulgated by statute, and the other rules which were included that were not required to be promulgated.

What is that distinction?

Ms. PERWIN. There are some rules which, under statutory mandate, are required to be promulgated by the Commission, such as the warranty rules under the Magnuson-Moss Act. They have a 1-year limitation. They must be promulgated within a certain time.

In other words, they are not representative of the kind of rulemaking that goes on, at least not for the purposes of the chart.

The chart is somewhat confusing. If people have questions, I hope they will ask them.

Mr. ROSENTHAL. Why don't you make it not confusing?

Begin at the top line and tell us what happened on each of these proposed rules or investigations, including the time period and the dates.

Ms. PERWIN. These are all in chronological order.

The first rule is the franchise disclosure rule which was announced in 1970. There was a proposed rule issued November 11, 1971. Hearings were held in February and March of 1972. As yet, there is no final rule.

The detergent labeling rule was announced January 20, 1971. The proposed rule was issued February 28, 1974. There were a number of delays in the process which are reflected on the chart. That is where that rule stands right now.

Mr. ROSENTHAL. So that we all understand, that proposed rule was announced January 20, 1971. As of today nothing has happened.

Ms. PERWIN. That is correct.

Mr. ROSENTHAL. That franchise disclosure was announced in 1970. Has the rule been adopted?

Ms. PERWIN. Not yet.

Mr. ROSENTHAL. Go on to the third one.

Ms. PERWIN. The mail order merchandise rule was announced September 28, 1971. It was revised on March 8, 1974. The hearings were postponed and the comment time was extended in 1972 and 1974. Hearings were held in 1972. A rule was finally adopted on October 17, 1975.

The health spa rule was begun as a result of a New York regional investigation in 1971 and 1972. It was proposed on August 15, 1975. The comment time was extended in November 1975. That is the last thing that shows up on the chart.

The vocational and home study school rule was begun in 1970. The proposed rule was issued in August of 1974. In November of 1974 and January of 1975 the comment time was extended and the hearings were postponed. Hearings were held recently in December of 1975 and January of 1976. As yet, there is no final ruling.

Mr. ROSENTHAL. Were each of these proposed rules accompanied by stories in the press, press releases and public notification?

Ms. PERWIN. Yes. That is how we put the chart together—by the public announcements and press releases that were made by the Commission.

The dates prior to 1973 are often inexact because of the lack of public announcement prior to 1973.

The endorsement and testimonial guide rule was announced on September 11, 1972. The proposed rule was issued in December 1972. A final guide was adopted in August of 1975.

The cellular plastics rule investigation was announced in September of 1972. On August 6, 1974, the proposed rule was issued. Hearings were postponed January 8, 1975. That is where it now stands.

The investigation of the food nutrition advertising rule was begun in 1972. In 1974 the proposed rule was issued. It has been the subject of several delays in the process. The closing date was extended; the hearing was postponed; and the entire rule proceedings were extended.

The law book guide was announced January 30, 1973. On February 28, 1973, the proposed guide was issued. It became final on August 8, 1975.

The investigation on the child directed premium guide was announced in November of 1973. On June 27, 1974, the proposed guide was issued. There were several delays in the process in July and September of 1975. There is still no final guide.

The funeral practice rule began in 1974. The proposed rule was issued in 1975. That is as far as they have gotten.

Mr. ROSENTHAL. Was there a lot of public attention regarding the funeral practices announcement of February 1974? Was there a lot of public interest?

Ms. PERWIN. I believe there was, yes.

Mr. ROSENTHAL. Have hearings been held on that?

Ms. PERWIN. If they have, it has been since this chart went to press.

Mr. ROSENTHAL. Do you mean in the last couple of days?

Ms. PERWIN. Yes.

Mr. ROSENTHAL. I do not think they have.

Ms. PERWIN. The air-conditioning labeling investigation has been terminated as a result of the new energy legislation. On May 22, 1974, the investigation was announced into hearing aids. The proposed rule was issued June 17, 1975.

The investigation on the prescription drug advertising was announced in May of 1974. On June 2, 1975, the proposed rule was issued. The comment period was extended in August. Hearings were held on January 12, 1976.

The over-the-counter drug advertising investigation was announced in July of 1974. The proposed rule was issued November 9, 1975. On January 14, 1976, the comment time was extended until March. That is where it is at the present.

The protein supplement investigation was announced in August 1974. In September 1975, the proposed rule was issued. Hearings have been scheduled for May.

The fuel economy guide investigation was announced in 1974. Originally it began as a rule, but it ended up being published as a guide in the Federal Register on September 10, 1975.

The used car industry rule investigation was announced on April 25, 1975. In January of this year the proposed rule was issued.

The growers, wholesalers, and retailers of plants investigation is a Seattle regional office investigation.

The prescription eyeglasses pricing rule was announced in September 1975. In December 1975, a proposed rule was announced.

Mr. ROSENTHAL. You said in some cases guides were adopted. Is the guide voluntary? Can you tell us more about that?

Ms. PERWIN. Guides are, as I understand it, voluntary. The Commission works together with industry to propose a guide. Rules are mandatory.

Mr. ROSENTHAL. How many cases do we have where an investigation was announced with appropriate public attention on that chart?

Ms. PERWIN. There are 21.

Mr. ROSENTHAL. Of 21 public investigations announced from 1974 to the present time, on how many have rules been adopted?

Ms. PERWIN. There have been one rule and two guides.

Mr. ROSENTHAL. The two guides are voluntary understandings reached with the cooperation or consent of the industry to be regulated.

Ms. PERWIN. Yes.

Mr. ROSENTHAL. So of the 21 matters that we have directed our inquiry into, only 1 has resulted in a rule.

Ms. PERWIN. That is correct.

Mr. ROSENTHAL. Which one?

Ms. PERWIN. Mail order merchandise.

Mr. ROSENTHAL. Did we look into the question of whether the rule that was adopted resembled the rule that was proposed in any way?

Ms. PERWIN. No; we did not look at all into the substantive merits of the rule. We do not know what the status is.

Mr. ROSENTHAL. How long did it take for that rule to be adopted from the time the investigation was announced?

Ms. PERWIN. It took 42 months to investigate and propose a rule. It took another year and a half after that to reach a final rule.

Mr. ROSENTHAL. Congressman Levitas.

Mr. LEVITAS. Getting back to this question of guides and rules, in order to issue a rule the Commission presumably has to go through a formal procedure prescribed by the Administrative Procedure Act. Or is it governed by some other statute?

Ms. PERWIN. I believe—and the people from the Commission can correct me if I am wrong—that the guides are not under——

Mr. LEVITAS. I am talking about rules.

Ms. PERWIN. Rules definitely are; yes.

Mr. LEVITAS. You believe guides are not?

Ms. PERWIN. I believe they are not.

Mr. LEVITAS. If a guide does not have the procedural safeguards in promulgation that the Administrative Procedure Act requires for formal rules, the difference, presumably, is that one is mandatory and one is voluntary.

Ms. PERWIN. That is right.

Mr. LEVITAS. Does your investigation show whether the Commission would view a business that did not follow a so-called voluntary guide as being engaged in an unfair trade practice under section 5?

Ms. PERWIN. I do not know.

Mr. ROSENTHAL. They will appear and explain it.

Mr. Drinan, do you have any questions?

Mr. DRINAN. No.

Mr. ROSENTHAL. Thank you very much.

Our next witnesses are Peggy Charren, the president of Action for Children's Television, and Lois Schiffer, attorney, Center for Law and Social Policy. They will be followed by the distinguished Acting Chairman of the Federal Trade Commission, Mr. Paul Rand Dixon, and his colleagues.

Mr. DRINAN. Mr. Chairman, may I just say that I am particularly pleased that Peggy Charren is here. She is one of my good constituents. I have read her testimony and I commend her upon Action for Children's Television. I look forward to her testimony.

STATEMENT OF PEGGY CHARREN, PRESIDENT, ACTION FOR CHILDREN'S TELEVISION

Ms. CHARREN. I am Peggy Charren, president of Action for Children's Television.

ACT is a consumers group that is located in Newtonville, Mass., with members across the country. We started in my living room 7 years ago. Now we have thousands of members and the support of just about every institution in the country concerned with children and social concerns, from the National Education Association to the American Academy of Pediatrics and everybody in between.

We are concerned because of the impact of television upon America's children. They spend an average 15,000 hours in front of the television set by the time they graduate from high school and only 11,000 hours in school. That should give you some idea of how much watching there is.

The problem affects all children all over the country, particularly the disadvantaged where the television set becomes more of a window on the world.

ACT recognized that the advertising messages on children's programs were a significant problem very early in our operation. Dentists complained about the highly sugared foods that were being sold directly to children because of the problem with their teeth. Pediatricians were concerned because of the effect on the child's developing dietary attitudes. Parents were disturbed because the $20 toy that was sold directly to their child fell apart the day after the holiday and created certain parent-child problems.

Like good consumers, we examine the system to see what buttons to push and how to get our concerns across to the people who could do something about them.

We found out that the Federal Communications Commission and the Federal Trade Commission were those directly responsible in the Government for the kind of problems that we saw on children's television.

We went in 1971 to the Federal Trade Commission for the first time with a request for a trade regulation rule relating to vitamin ads on children's television.

In the prepared testimony that I have submitted I have all kinds of statistics and comments as to why these particular petitions are important. However, I feel that this group is not really concerned about the merits of ACT's petition, except that we should come across as a responsible group. So I am not going to read from the testimony, but I am just going to tell you the story of our days with the Federal Trade Commission.

We submitted a petition which was very carefully prepared. We were trying to do everything right. We found out that the way that the Commission makes changes is through trade regulation rules. We asked for one.

We never heard from the Commission on this. We never got a thank you. We never got any kind of a response at all. Our file from the Federal Trade Commission has almost no official papers in it. We keep very careful files.

There was a voluntary response from the businesses involved, the three corporations that sold vitamins, because we made such a good case. It was reported all over the press, including the New York Times. ACT manages to get much better press than it gets reactions from regulatory agencies, which is one of the reasons we are making change.

In 1972 the three companies then selling vitamins directly to children voluntarily withdrew their commercials because of the poison dangers from overdose. These pills said on the back of the box "Keep out of reach of children." We in this country permitted manufacturers to sell them directly to kids on programs designed for children, which seemed a remarkable misplacement of concern.

Mr. ROSENTHAL. Tell us about your days with the FTC. You have entitled this your "days with the FTC."

Ms. CHARREN. That is what I am getting to.

We still felt that a rule was needed. We felt that even though the companies had withdrawn, the FTC should still make a rule.

We ignored that particular problem for a while because the ads were off of television. In 1975 we were proven right because Hudson Pharmaceuticals, which is owned by Cadence Industries that also owns Marvel Comics, designed a vitamin called Spiderman vitamins. Spiderman is a hero figure.

Mr. ROSENTHAL. Slow it down, please.

What do they do for you or someone who takes them?

Ms. CHARREN. The position of the vitamin companies—and we are willing to give them that—is that a vitamin pill is an aid to a person when he does not eat right.

When I checked with doctors across the country, we discovered that over the age of 2 most people in this country do not need vitamin supplements.

It could be considered an economic problem to convince parents and children that they need a vitamin. Certainly it was a problem in overdose because the pills were coated with chocolate and looked like candy. It was ACT's position that you do not sell those directly to children because of the dangers. It is a pill, a medicine. It is a decision between a parent and a child.

The Spiderman vitamin situation started as a test market advertising problem in the New York City area. I found out about it in the trade press. We waited for the first ads to appear.

On October 24 we submitted this petition to the Federal Trade Commission. It was carefully researched. It had a lot of data. I know you cannot tell much about a book from its cover, but we tried very hard to make our concerns clear. We even gave them alternatives.

We offered them a petition to promulgate a rule prohibiting the advertising of vitamins on children's and family television programs and a request for a temporary injunction by the Federal Trade Commission against Hudson Pharmaceutical Corp. The alternative was a formal complaint against Hudson Pharmaceutical Corp. for failure to meet public interest obligations with respect to advertising to children.

We got no official response from the Commission to this document at all.

We know that the Federal Trade Commission is in negotiation with Hudson, but we know that from Hudson, not from the FTC.

I would like to submit this for the record.

Mr. ROSENTHAL. Without objection, we will include it in the record subject to some other considerations.

[This and other petitions are in the subcommittee files.]

Mr. ROSENTHAL. I do think what we will do is pass that around so the members can look at it.

Ms. CHARREN. We know that sometimes when negotiations are happening you cannot make the whole thing public. However, we think that there is a certain obligation on the part of the Commission to let us know what is happening. Based on our experience in our earlier petition, we are not hopeful of finding out what is going on or even of having much of anything happen.

Mr. ROSENTHAL. Let me ask a question so we can get this done expeditiously.

You filed this application or petition for rulemaking and you heard nothing from them whatsoever?

Ms. CHARREN. That is right.

We have contact—and have over the years had contact—with staff. We call the Commission and ask to talk to people and eventually end up with some very pleasant person on the staff.

We are not complaining about the way we are talked to on the telephone. Everybody is very polite.

Mr. ROSENTHAL. That is not the concern or jurisdiction of the subcommittee—the ambience and personality of the staff people.

We simply want to know for the record this: You filed the application. Did you receive any communication? Did you receive any acknowledgement from the Commission at all?

Ms. CHARREN. No.

Mr. ROSENTHAL. Did you ever at any time receive any written communication from the Commission whatsoever?

Ms. CHARREN. Yes.

Mr. ROSENTHAL. What did you receive and when?

Ms. CHARREN. We filed another petition with the Commission in 1971 on toy advertising directly to children.

Mr. ROSENTHAL. As far as the vitamin petition is concerned, did you ever receive a letter, postcard, or telegram, or anything whatsoever?

Ms. CHARREN. No.

Mr. ROSENTHAL. OK. Tell us about the other petition.

Ms. CHARREN. We submitted a petition on toy advertising to children. We received nothing from the Commission relating to that petition.

Mr. ROSENTHAL. Does it frustrate you that you do all this work and file this and then never hear from them?

Ms. CHARREN. It certainly does.

We submitted a petition in 1972 on food advertising directly to children. We submitted in 1973 an addendum to that petition relating to the highly sugared nature of food advertising directly to children. From 1972 to 1974 we heard nothing. We finally sued the Commission. We sued them for inaction.

At that point we did hear from the Commission. Our only official response from the Commission was the turndown of ACT's food petition. They denied the petition without a public hearing on a 3-to-2 vote.

That was the only real response, except for an invitation in 1974 from the Chairman to participate in conversations with representatives of consumer organizations and industry which took place at the Commission. It was supposed to come up with a compromise position on children's advertising. The consumers came up with a compromise, but the industry came up with nothing. Chairman Engman made a very encouraging speech saying that the industry had done nothing and now it is up to us to do something.

ACT feels that Chairman Engman's beautiful speeches during his tenure as Chairman were almost an instance of misleading and unfair expectations to consumers.

Mr. ROSENTHAL. That is why he got out of town.

Thank you very, very much.

You stay here and we will do this as a panel.

Without objection, your prepared statement will be made a part of the record.

[See p. 23.]

Mr. ROSENTHAL. Please proceed, Ms. Schiffer.

STATEMENT OF LOIS SCHIFFER, ATTORNEY, CENTER FOR LAW AND SOCIAL POLICY

Ms. SCHIFFER. Good morning. I am Lois Schiffer, an attorney with the Women's Rights Project of the Center for Law and Social Policy, a public interest law firm in Washington. It represents women and women's rights organizations that seek to improve Federal agency action affecting women's health.

My connection with the Federal Trade Commission is a petition which we filed on behalf of the media task force of the National Organization for Women in January of 1974.

The purpose of the petition was to seek a rulemaking which would require advertising disclosures for so-called feminine deodorant sprays or vaginal sprays which were, and continue to be, heavily marketed to the tune of many millions of dollars a year.

The Food and Drug Administration had already considered the hazards which were posed by the sprays. In June of 1973 the FDA issued a proposed rulemaking for labeling disclosures of these products. It had specifically found, as a part of the preamble to its rule, that the sprays caused irritation and serious infection and that the Food and Drug Administration knew of "no medicinal benefits derived from these sprays."

In other words, this was a product where another agency of the Government administered the exact same standard as the Federal Trade Commission was administering. The product had been found to be causing serious injury to substantial numbers of American women and, through them, to certain American men as well.

Based on these findings, the media task force petitioned the Commission to require advertising disclosures as well as labeling disclosures.

Advertising disclosures were particularly important for this product because it was really a phenomenon of advertising. It was an unknown and uncalled for product in 1966. By the early 1970's it had become an enormously widely used product. The key, as has been discussed in article after article, was advertising.

Therefore, if people were being misled about the safety, effectiveness, and usefulness of the product by advertising, it was critically important that the information that they needed to know be provided in that very same advertising.

Mr. ROSENTHAL. Your position is that this product is an advertising-created phenomenon.

Ms. SCHIFFER. That is exactly correct.

The advertising which pushed it was misrepresentative in a wide variety of ways. First of all, it misrepresented the safety of the product, both in slogans and in the more substantial text of the advertising. It indicated that the product was a hygienically useful product, although the Food and Drug Administration found that it had no hygienic benefit whatsoever.

The advertising misrepresented the ways in which the product could or should be used and by innuendo suggested that the product should be used at times and in circumstances which were particularly harmful to the person who was using the product.

The advertising also misrepresented the manner of operation of the product, suggesting that it worked in a more bacteria-killing manner than it basically did.

As a result of all this misleading information, it has been indicated in one article that up to 25 percent of the users were having some adverse side effects.

It seemed that any advertising which did not indicate that and which did not indicate that there was no hygienic use for the product was seriously misleading the public.

Despite the fact that the Food and Drug Administration had found in June 1973 that these problems existed and the fact that our petition, which was quite extensive, asked for relief in January of 1975, we heard nothing from the Commission.

Mr. ROSENTHAL. Did you file a formal petition?

Ms. SCHIFFER. We filed a formal petition for rulemaking on behalf of the media task force. It was approximately 20 pages in length. It cited a substantial number of authorities to back up the rulemaking. It contained an offer to provide further information or further discuss the matter with the Commission, if they thought that such information would be useful or helpful.

Mr. ERLENBORN. Mr. Chairman, may I ask a question?

Mr. ROSENTHAL. Certainly.

Mr. ERLENBORN. I think I would like to ask this of both witnesses.

As you have been testifying, I have had difficulty in my own mind trying to determine whether the proper forum for action would be the Federal Trade Commission, the Food and Drug Administration, or the Federal Communications Commission.

Has this given you any cause for concern? Is there a question of proper forum or of who has the authority?

Ms. SCHIFFER. It is my understanding that, in administering the relevant acts, the division of labor made among the agencies has been that the Food and Drug Administration would regulate labeling and the Federal Trade Commission would regulate advertising.

We were seeking to affect both print and broadcast advertising. We did not really consider the Food and Drug Administration at this time. What we were seeking is very similar to the kinds of disclosures required in cigarette advertising. The Federal Trade Commission had authority for that and was clearly the appropriate forum.

If they are not the appropriate forum—and we certainly had precedent for going to them—they have not indicated that in well over a year of having the petition for review.

Mr. ERLENBORN. I would like to follow up on that.

Do I understand correctly then that your research would indicate that labeling would be under the jurisdiction of the Food and Drug Administration?

Ms. SCHIFFER. That is correct.

Mr. ERLENBORN. Advertising would be under the jurisdiction of the Federal Trade Commission?

Ms. SCHIFFER. That is correct.

Mr. ERLENBORN. Would either one have any obligation to try to conform with the requirements of the other? Or do they each go about their job separately and possibly come up with different conclusions?

Ms. SCHIFFER. That is an excellent question. My understanding is that they certainly have the authority to go about their business in their own way and come up with separate conclusions. However, they may have working agreements. In addition, the Federal Trade Commission is beginning to develop a doctrine so that it will not have to redo the research which has been done by other agencies.

For example, if the Food and Drug Administration finds that something presents a health hazard, it can take that finding at face value and proceed to regulate advertising on the basis of that decision.

I think the development of that doctrine is absolutely critical. It is clear that Federal agencies are sufficiently overworked as it is. For them to feel obliged to redo work which has been done by another agency makes no sense.

Mr. ERLENBORN. It would seem to me that what we sometimes refer to as the "lead agency" concept ought to apply here. We ought to find out who the lead agency is.

Ms. SCHIFFER. Or at least when one agency takes the initiative, that another can defer to it as the lead agency even if there is no preordained lead agency.

Mr. ROSENTHAL. Also, I think that there is one element in Mr. Erlenborn's very thoughtful question in that in terms of physical harm or danger the Food and Drug Administration obviously has the expertise, the medical resources and capability, to make initial findings. If I were the Federal Trade Commission, I think I would defer to them and rely on those recommendations.

Ms. SCHIFFER. I do not want to discourage the Federal Trade Commission from taking its own initiative since the Food and Drug Administration is not always in the forefront of new movements. However, I think if the research has been done, certainly the Federal Trade Commission should rely on it.

Mr. ERLENBORN. I would like to yield to my colleague.

Mr. LEVITAS. I was just simply going to inquire whether either of these witnesses has made an inquiry as to existence of an interagency correspondence and agreement which, in fact, defines the particular roles between the two agencies.

Did you determine whether there was a group or an office within the Federal Trade Commission which specifically has responsibility for interface with the Food and Drug Administration?

Ms. CHARREN. In response to the first part of that question, ACT went to both regulatory agencies. We were sure that when it came to a trade regulation rule relating to one particular industry problem that was a Federal Trade Commission problem, but we thought perhaps the whole condition could be taken care of more easily by the Federal Communications Commission just eliminating or severely restricting advertising to children.

In 1970 we went first to the Federal Communications Commission with that petition, it took 4 years to have anything happen to it. What they, in fact, did was issue a policy statement at the end of 1974 leaving the petition open and not answering it fully. In fact, it was an-

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swered so badly, from ACT's point of view, that we have also sued the Federal Communications Commission for inappropriate response.

They said in their policy statement that they felt the advertising part of the problem was a Federal Trade Commission problem and that they wanted to have nothing to do with it.

Mr. LEVITAS. Thank you.

Ms. SCHIFFER. Just briefly as to the interface question, it is my understanding that there are agreements between Food and Drug and the Federal Trade Commission. We have not seen them. It is also my understanding they are a well-kept secret and that it would be hard for us to see them.

Mr. LEVITAS. The reason I asked the question is that I have seen them published in the CCH and other services. By looking at the index of those services, I think you might come across them.

Ms. SCHIFFER. OK. We will certainly take you up on that recommendation.

We filed our petition in January of 1975. In March of 1975, a few months later, the Food and Drug Administration issued its final rulemaking for labeling disclosures indicating that certain disclosures did have to be made in the labeling.

Our petition had indicated a possible rule for before that Food and Drug Administration regulation was issued and a possible rule for after it was issued.

Mr. ROSENTHAL. A rule dealing with advertising.

Ms. SCHIFFER. A rule dealing with advertising. That is correct.

The text would change depending on whether there was a final FDA regulation or not.

Despite this action by the FDA in March and despite the possibility of language for advertising disclosures even before that regulation was final, we heard nothing from the Federal Trade Commission.

We made periodic phone calls to the part of the agency which we understood to be holding our petition. We were told that they were working on it, but we heard nothing. In fact, we had absolutely no indication of any final action being taken until after this committee set its hearings.

I think it is not an excess of cynicism to believe that the fact that the committee set its hearings has something to do with the fact that we have now been invited by the Federal Trade Commission to a meeting next week to discuss the substance of the petition.

I think the delay of well over a year in an area where several years before a Federal agency had recognized a serious health hazard is really inexcusable. Beyond my frustrations with the delay, it creates a real health hazard for many millions of Americans which it is the purpose of the Federal Trade Commission to alleviate.

In addition, just from the point of view of consumer groups and their limited resources, as a result of the delay we are now being required to update substantially the work which we did on our petition. We have been asked to bring to the March 1 meeting a lot of new material just as a result of the year's delay.

Mr. ROSENTHAL. How do you know that 25 percent of the users of these products have sustained disability or injury as a result of use of the product?

Ms. SCHIFFER. I only know what I read in the literature.

Mr. ROSENTHAL. What literature? You have to identify the literature.

Ms. SCHIFFER. The literature is medical journals; it is the investigative press in Washington—there was an article in the Washington Monthly magazine on the subject; and to some extent it is material which was published in the preamble by the Food and Drug Administration.

My recollection of the 25-percent statistic is that it was in the Washington Monthly article.

Mr. ROSENTHAL. How long have you been practicing law?

Ms. SCHIFFER. I graduated from law school 6 years ago.

Mr. ROSENTHAL. If someone were injured as a result of their using this product, and if the court were to make a finding that the Federal Trade Commission had responsibility to issue a rule for prohibitive advertising, and if a person could prove their injuries; do you think that a cause of action would lie against the FTC Commissioners personally for damages?

Ms. SCHIFFER. There are a lot of steps in that chain of cause. I am not a torts lawyer, so I do not know a direct answer to it.

I think that certainly Federal officers have an obligation to execute the laws which they are charged with executing.

It is an attractive cause of action to say that a private person who is injured as a result of abuses of that authority should have a cause of action for damages. However, I do not know whether there are any cases which indicate that or not.

Mr. ROSENTHAL. It may be that the former dean of the Boston College Law School might have some insights into this.

I think it is an attractive area for consideration.

Mr. DRINAN. I agree with you, Mr. Chairman.

Ms. SCHIFFER. All the lawyers are agreed.

In addition, consumer groups are also harmed by the failure of the Trade Commission to act because they have to consider whether the failure to act is tantamount to denial and therefore requires court action.

I think that ACT's feeling that it was obliged to go to court at some time because of inaction is an indication of the problem. We have seriously considered doing it on this petition. To go to court because of inaction, is an enormous waste of resources for everyone concerned. Litigation is terribly expensive. In addition, we are well aware of everybody's belief that the courts are overclogged. This is certainly a kind of litigation which could easily be kept out of the courts if the agency were doing its job properly.

I will also note just in passing for the committee that one of my colleagues was involved in another petition to the Federal Trade Commission. One of the petitioners was Representative Rosenthal, in fact. It was seeking to change regulation of corporate image advertising, particularly environmental and energy ads. That petition was filed in January of 1974. The Commission did not take any action on it until the late spring of 1975. This delay of 14 or so months is another example of their failure to address these petitions.

Mr. ROSENTHAL. Let's try to summarize because I want to have Mr. Dixon start his testimony at 11 o'clock.

Do you have any recommendations or summary conclusions you would like to state for the record?

Ms. SCHIFFER. I think that some rule should be issued which requires that the agency address in some fashion consumer petitions within a certain period of time. If there is concern that some petitions may be enormously complicated and so a 60-day rule, for example, is overburdensome, the rule could have a mechanism for seeking extensions. This should really put the burden on the agency to show that it was not taking action by the 60 days because it was really, honestly working on the petition.

I think that a right to petition with an absolutely unlimited time for the agency to act seriously undercuts the provisions of the Administrative Procedure Act.

Mr. ROSENTHAL. Do you think delays of 2 years, 3 years, and 4 years are excessive?

Ms. SCHIFFER. I do.

Mr. ERLENBORN. Mr. Chairman?

Mr. ROSENTHAL. Mr. Erlenborn.

Mr. ERLENBORN. I know we all view things from our own vantage point, but I wonder if you could view your recommendation possibly without the bias that anyone would have in his or her own position. It seems to me what you are suggesting is that, though the Commission has several different ways of initiating action in particular cases, the priority be given to those that are initiated by petition from public interest groups. If there were sufficient numbers of those and complexity and so forth, it would appear that the priorities of the Commission, the assignment of their resources, would be determined not by the Commissioners but by the volume and the number and the complexity of petitions coming in from outside.

Would you not view this as in some way invading the rightful province of the Commissioners to determine what the Commission ought to be doing?

Ms. SCHIFFER. I have several responses to that question.

First of all, I would like to point out that in my understanding the right to petition is a general right. In fact, I suspect that only a small number of petitions are actually public interest petitions and a vast number of them come from people other than public interest groups—for example, from many of the regulated industries.

Second, I think when the time frame is established, whether it is 60 days, 90 days, or whatever is picked, that that would be selected with some eye toward the Commission's normal functioning and some eye toward establishing priorities and establishing a reasonable method of action.

Third, I think that we are not asking for absolute final action by the agency on the petition within this time frame, but that it take a look at the petition, decide what priority will be assigned it, make that known, and make some assessment of how much work is going to be required.

It is really more of a traffic control mechanism than it is a means of forcing the agency to final action within a limited period of time, which I think would be more difficult to do and would interfere with priorities.

Finally, I think that Congress has provided in the Administrative Procedure Act that people have a right to petition the agency. To say that their priorities mean that they are simply not going to handle those petitions for numbers of years effectively guts that entire mechanism.

Mr. ERLENBORN. Your observation that not all or even the majority of such petitions come from public interest groups but many come from the regulated industries themselves would, I think, reinforce my observation.

How would it be if the regulated industries had the authority through petitions to tie up the resources of the Commission to the point that the Commission could not do what they ought to be doing to regulate those industries?

You seem to put an awfully strong weapon in the hand of regulated industries.

Ms. SCHIFFER. I think before we make a decision on that some examination should be made on whether there is a difference in time of handling petitions that come from industries and petitions that come from public interest groups.

If, in fact, the petitions from industries are already being handled on an expeditious basis and it is the petitions from public interest groups only that we are talking about, it really is just asking for fair treatment and is not imposing an undue skewing of priorities——

Mr. ERLENBORN. Do you have an answer to that question?

Ms. SCHIFFER. I do not.

Mr. ERLENBORN. Thank you, Mr. Chairman.

Mr. ROSENTHAL. Ms. Collins.

Ms. COLLINS. No questions.

Mr. ROSENTHAL. Congressman Drinan.

Mr. DRINAN. Ms. Charren, I commend you upon everything that Action for Children's Television has done since its inception several years ago.

Let me come down to specifics.

Regarding the last petition that you filed on October 24, 1975—and I just saw the full complaint—have you received any acknowledgement at all from the FTC?

Ms. CHARREN. We have received nothing from the Federal Trade Commission about that complaint.

Mr. DRINAN. Have you bothered them and harassed them?

Ms. CHARREN. We have called them. I do not think it was harassment.

Mr. DRINAN. Is there anybody in charge of the case? Is there a lawyer that you can talk to about it?

Ms. CHARREN. I do not know if there is anybody in charge of the case. We have someone at the Commission who we end up talking to when we call. We assume that it is a problem for the Bureau of Consumer Protection, but we do not know who is dealing with Hudson.

Mr. DRINAN. I will try to get an answer from Mr. Dixon in a little while. I hope you will still be here.

I apologize to you for the horrendous way in which the FTC has treated you over the years.

Going back to 1972, was there any direct result of your petition to the FTC in that year?

Ms. CHARREN. Before Judith Cook, who was the nutritionist for the Federal Trade Commission, died in that tragic automobile accident, we had some communication from Miss Cook with the implication that our petition about the highly-sugared nature of children's food advertising was going to be part of the food labeling rule. Whenever we called up, that was the understanding which we had when we hung up the phone.

In fact, after she died we felt a significant lack of concern on the part of the Commission for our petition. When the food rule came out, that part of the food rule seemed to have disappeared.

Mr. DRINAN. Do they dispute whether or not they have the power to ban these ads for vitamins?

Ms. CHARREN. We do not know what they feel about the vitamin ads because they have never told us one word about their feeling about vitamins and children's television.

Mr. DRINAN. How about you, your lawyers and your colleagues? Do you have any doubt that these are unfair trade practices clearly within the jurisdiction of the FTC?

Ms. CHARREN. No doubt at all.

Mr. DRINAN. Tell me about the National Association of Broadcasters. They apparently did take a responsible position.

Ms. CHARREN. Finally, after the Federal Communications Commission issued a policy statement, the National Association of Broadcasters made some new rules about children's advertising, reducing the number of minutes on some of the programing of children's television but not all of it.

One of the rules was to say that vitamins could not be advertised on children's programs.

Since the National Association of Broadcasters code is not written clearly enough for the industry to know how to deal with it, what this permits is a vitamin company like Hudson to put the ad in a program that has 33 percent children and say that it is not a children's commercial.

In fact, to anyone who looks at the commercial—and we submitted the story board to the Commission and hope they feel the same about it—it is obvious that this is to reach children.

"Emergency" is a favorite children's program. It may not have been designed for children, but unfortunately they adore it.

Mr. DRINAN. Chewable Spiderman vitamin supplements are advertised regularly every day?

Ms. CHARREN. No. They were when we submitted that petition. It was a test market problem. We do not know if Hudson has decided to give it up. The test market procedure is over now. It has no longer been on.

Mr. DRINAN. Maybe you won.

Ms. CHARREN. Maybe we won, but never know. Nobody ever really tells us.

Mr. DRINAN. Would you tell me roughly how many vitamin supplement ads do go on for children? Is it still a very serious problem?

Ms. CHARREN. No. It is not a very serious problem. It is ACT's concern that it should not be our problem to monitor. We should not

have to keep reading the trade journals and keep two steps ahead of the vitamin industry.

I saw in Broadcasting magazine yesterday, the new issue this week, that Miles Laboratories was going to start a campaign to sell Flintstone vitamins starting in a couple of weeks. We do not know where those ads are going to be. For all I know, they are a resurgence of the same problem that we have been talking about.

Mr. DRINAN. Has anybody at the FTC ever indicated to you that they were negotiating privately with these pharmaceutical companies?

Ms. CHARREN. No, but the pharmaceutical company did.

Mr. DRINAN. It did?

Ms. CHARREN. Yes.

Mr. ROSENTHAL. Flintstone vitamins has something to do with the Flintstone television series?

Ms. CHARREN. They are based on that character. They presumably look like or are shaped like the Flintstones.

Mr. ROSENTHAL. What are they—A, B, C, D, or what?

Ms. CHARREN. Children's vitamins are generally all-purpose vitamins. They are either with or without iron. When they have iron in them, they must say, by law, on the back of the bottle and the package "Keep out of the reach of children." An overdose is so serious, it can put a child into the hospital in coma and shock.

In our filing we have one child to whom that happened in the Midwest. Even when it is not that serious, it is not desirable. It creates all kinds of peculiar problems for the child.

Mr. DRINAN. Has ACT gone to the Consumer Product Safety Commission?

Ms. CHARREN. No, we have not. We have not gone there because there is a limit to what a consumer group can manage. We are trying as hard as we can to handle what we see as significant problems. We are a little sick of this bureaucratic shell game where every time we go to an agency we hear that it is a problem for another agency.

This made us follow the progress of the Consumer Protection Agency with great interest, thinking maybe if that had happened, that would have been a chance to go talk to somebody about the problem of dealing with agencies separately.

Mr. ERLENBORN. Would the gentleman yield?

Mr. DRINAN. Yes.

Mr. ERLENBORN. Obviously there is a limit to how many different agencies you can go to, but there does not seem to be any limit to how many agencies the Congress can dream up to have concurrent jurisdiction.

Mr. ROSENTHAL. There is not concurrent jurisdiction. The Consumer Products Safety Commission has no jurisdiction over vitamins.

Ms. CHARREN. We have talked to them about toys.

Mr. ROSENTHAL. Toys, they have. If they swallow the toys, then you go to them.

Mr. DRINAN. Ms. Charren, on the scoreboard here—and I will ask counsel this—your petition in 1972 is apparently not noted.

Ms. CHARREN. I think what this indicates is something which is really our major concern with the Commission.

The Administrative Procedure Act goes into effect when you are accepted for a rulemaking. Where we are having a problem is that

there seems to be nothing to protect you when you are not accepted for a rulemaking and they can just let you go on forever without dealing with the petition.

Mr. DRINAN. These were announced by the FTC.

Mr. ROSENTHAL. These 21 were announced by the Federal Trade Commission with significant attendant publicity. Of the 21 that were announced, 1 rule resulted. Of the 21 that they announced, 2 voluntary guides resulted. That is the record of performance on the matters that the FTC themselves initiated. Of the hundreds of petitions that nobody ever got an answer from, there is no way that this committee or any other investigative body can determine where those petitions are or if, in fact, anybody acted on them.

Mr. DRINAN. Mr. Chairman, you say hundreds. They must have some type of a log at the FTC as they come in.

On a day in October 1975 they received one from ACT. I am going to ask the FTC this when they are here: How many hundreds are there? I assume that somebody is supposed to be following them up and acknowledging them.

What is the next step for ACT and the FTC?

Ms. CHARREN. Believe it or not, ACT is going to file another petition with the Federal Trade Commission. We can hope that as a result of these hearings we will hear from them within 60 days, even if they feel they have to turn it down.

Mr. DRINAN. Would it be substantially the same thing on vitamins?

Ms. CHARREN. No. This next petition will deal with the food advertised to children. We still have hope for the vitamin petition.

Mr. DRINAN. Is there anything in the material that you have kindly shared with us about the subsequent food petition?

Ms. CHARREN. I think that Jean Perwin has all our petitions to the Federal Trade Commission. I am sure she would be glad to share them.

Mr. DRINAN. I would be very interested—and I know the other members of the subcommittee would be, too—in following this. If it is part of our role, we will help you to nag the FTC to get an answer.

I do not have to get into the substantive questions such as: Do they have the power or should these ads be banned? However, they should at least process these petitions. That is what our function here is—to make certain that they are doing the rulemaking, doing the job that they are paid for by the taxpayer.

Thank you very much.

Mr. ROSENTHAL. Mr. Levitas.

Mr. LEVITAS. I know you are in a hurry, Mr. Chairman. I will be very brief. I have two questions.

Has the Food and Drug Administration taken the position that these vitamins are unsafe for children?

Ms. CHARREN. No, they have not and neither have we. It is our position that a single vitamin is not dangerous. That is the way they are sold—nobody is telling the child to ingest the whole bottle. Even if it is useless if they are eating proper foods, a single vitamin is not going to hurt them.

It is ACT's position that selling pills or a lot of other things to very young children—to 3-, 4-, 5-, 6,- 7-year-olds—is a different kind of thing than selling them to an adult. These are not reasonable men or

women by legal standards. You cannot make a contract with a 7-year-old.

We are concerned about trying to get them to eat a pill by television ads which equate the pill, for example, with chocolate chip cookies and chocolate sundaes. There was one for a product which looked exactly like an M&M. I often thought you could do a job on a whole dinner party with a platter of them. That is what we are concerned about.

Mr. LEVITAS. Let me be more specific with my question.

I think I am in sympathy with what you are trying to accomplish. I am trying to determine whether it is because the child is going to be brainwashed or motivated or conditioned to implore his or her parents to buy a useless item or if it is related to the health of the child.

Ms. CHARREN. The child will urge the parent to buy what for the child could be a dangerous item. To have a 30-second message talking to the child about delicious vitamin pills, which taste like candy, is an inappropriate ad mechanism.

Mr. LEVITAS. That is why I asked you the first question about whether the Food and Drug Administration had, in fact, determined whether these vitamins were dangerous.

Ms. CHARREN. Everybody has determined that an overdose of vitamins is dangerous.

The problem is a question of whether you think a child is an appropriate target for that kind of message in view of the fact that they tend to misuse the product. It is a question of use and misuse.

Mr. LEVITAS. The other question relates to the testimony concerning the recommendations that you made about some consideration.

I share Father Drinan's dismay that responses were not timely forthcoming by the Federal Trade Commission. Perhaps the U.S. Postal Service did not deliver it to begin with. That is about the only legitimate explanation.

Ms. SCHIFFER. We handed them ours though.

Mr. LEVITAS. One of the problems that your proposal to the chairman raises in my mind is partly what Mr. Erlenborn said. I can see any one of 200-and-something million Americans filing petitions with the Federal Trade Commission and effectively stop everything they are doing if they are subjected to some rigid time schedule requiring responses and all of them were treated alike.

Would you think that there should be some differentiation between those filed by John Smith on his own as compared to those filed by public interest groups or those filed by the one group of business competitors who are trying to get a rule which would give them a competitive advantage against other?

Ms. SCHIFFER. I think it is somewhat hard to make that distinction. The rule would require a hard look at the petition, which is really all we are asking to be done in that period of time to start out with.

In addition, I think that one of the things we have all learned over the years is that there are individuals who take on a particular cause who do very thorough work. Ralph Nader comes readily to mind. All of us would agree attention should be given to petitions by those people. A rule that separates out those people and puts them in a lower level of priority simply because of the fact that they are individuals and not groups is not a terribly appealing rule.

Mr. ROSENTHAL. If the gentleman would yield, just for the record, Chairman Dixon is going to testify in his prepared testimony that from 1973 to today the Commission has received 29 petitions. This is about 10 to 15 a year. That does not seem like an overwhelming number.

Ms. SCHIFFER. The other thing I was going to point out is that Congress certainly has put time limits for action into a large number of statutes. The Freedom of Information Act is one. It has a very strict, narrow time limit for agency action. In a vast number of other statutes there are requirements that agencies take some action within certain periods of time. It is not a novel concept.

Mr. LEVITAS. Thank you very much.

Mr. ROSENTHAL. Mr. Mezvinsky.

Mr. MEZVINSKY. I just have a few points.

I am interested in the title of the group, Action for Children's Television. Really the problem is not just children's television, but it is television advertising as it affects children.

As I understand your group, specifically in relation to vitamins, the problem is much deeper than just children's advertising. Is that not true?

I presume your group would be interested in a spot that runs for 30 seconds or a minute to which a child would be attracted or if you see something on a grocery store shelf that is advertised—something that could be dangerous such as mothballs.

I am concerned how you classify your organization.

Ms. CHARREN. ACT's concerns about children's television go much further than just what we have been talking about here today.

On the question you raise, though, we have a very conservative position, which is that it is difficult to make all of broadcasting reasonable for children. We do not think that that gives adults enough rights. So we have separated out what broadcasters call children's programs to ask for those particular hours of the day to be treated differently from the rest of television.

If children see ads for certain products that would be dangerous to children in daytime programming not designed for children or in late night programing, that has to be the responsibility of the parent and not the broadcaster or the advertiser.

We are talking about products where the advertising is designed to sell the children on the products. We think that is a very special problem.

It is only since 1955 that marketers discovered they had a market in children. They call children now the 2-to-11 market.

It is ACT's feeling that for certain kinds of things children are not an appropriate market and that we have to be careful in that area.

ACT's concerns about television go much further even than just advertising, but we have a significant concern for the first amendment. We feel that, except in certain instances, programing cannot be made perfect for children.

Mr. MEZVINSKY. We have talked about vitamins, chocolate, and sugar. Where do you draw the line?

For example, we are now finding that sugar has had an adverse effect, to some extent, on hyperactive children. If you take them off sugar, you may find fantastic results in their behavior patterns.

Where do you draw the line and where should the FTC draw the line?

Ms. CHARREN. We draw the line where it comes to advertising, except for certain drug advertising—which, in fact, the FTC and FCC announced yesterday they are going to have joint panel hearings on the problem of drug advertising on television—but ACT draws the line on programs designated for children.

These are programs that the broadcaster lists as children's programs in his log that he files with the FCC for license renewal. They have special regulations because of the special nature of children, who have different developmental levels and cannot handle certain messages. These generally are programs that have over 50 percent child audiences. We actually have a very conservative position in this area. The definition is almost left up to the broadcaster. If the audience level is over 50 percent children, the broadcasters consider it a children's program, and so do we.

Mr. MEZVINSKY. In sum total then, your greatest complaints with the FTC are one, access and, two, once you make the contact with the staff person, little, if anything, is done as a followthrough.

Ms. CHARREN. That is right.

We feel that there must be something wrong with the procedures if we can do all the work we are doing and get no response from the agency we are supposed to deal with.

Mr. ROSENTHAL. Thank you both very, very much.

[Ms. Charren's prepared statement follows:]

PREPARED STATEMENT OF PEGGY CHARREN, PRESIDENT, ACTION FOR CHILDREN'S TELEVISION

I am Peggy Charren, and I would like to thank you for the opportunity to appear before the House Subcommittee on Commerce, Consumer and Monetary Affairs.

I am here as a consumer...as the parent of a consumer...and as the president of what is called in the trade, a consumer activist organization.

I am here in an effort to focus attention once again on some of the injustices that continue to plague the specialized medium of children's television, and to make public the story of ACT's frustrating and unproductive relationship with the Federal Trade Commission.

Action for Children's Television, or ACT, began in 1968, when a group of teachers, physicians, child professionals, and parents met to discuss what could be done to make children's television a creative and constructive force and to eliminate the misleading and unfair commercial messages directed to young viewers as frequently as once every two minutes, on average, during children's programs. During the past seven years, we have talked to broadcasters and advertisers, filed petitions with the Federal Communications Commission and with the Federal Trade Commission, and testified before countless Congressional hearings. ACT has become a national advocate for children, with the support of thousands of consumer-conscious citizens throughout the

country, and the endorsements of major organizations concerned with children, such as the American Academy of Pediatrics, the American Public Health Association, the National Association for the Education of Young Children, the National Conference of Christians and Jews, the National Education Association, the National Health Council, and too many others to list here today.

The impact of television on the lives of our children is enormous. Statistically, children spend more time watching television than any other single activity except sleep. Children under the age of five watch television between 22 to 25 hours a week. By the time a child graduates from high school, she or he will have spent an average of 15,000 hours watching television and 11,000 hours in school.

The problem is that too often, television programming operates as a vehicle for developing audiences for the commercial message rather than as a source of delight and entertainment.

Everyone agrees that hazardous or dangerous products should not be sold on television. The main thrust of ACT's position is that danger and hazard are a question of degree, not kind. Many things can be dangerous when used without the judgment and experience normally attributed to a mature adult.

Although explosives are safe when used by demolition experts, even matches are dangerous in the hands of children.

An occasional candy bar after a meal can be a pleasant treat, but excessive use of candy in place of nutritious foods is a hazard to physical and dental health.

A single vitamin pill can be a supplement to a deficient diet, but ingestion of a whole bottle of chocolate-covered

vitamins leads to children hospitalized for coma and shock.

Some advertisers have suggested that television advertising serves an educational function in preparing children to become consumers and to make comparative judgments on products and prices. The question is, when should this part of the child's curriculum begin, and what kind of advertising has this educational value.

Of course, one can argue that a series of bitter disappointments will teach even a small child to be more careful. To carry this argument to an extreme would be to argue that the advertiser who is guilty of the grossest deception has made the greatest contribution to the child's education.

A child should not be thrown into the marketplace until he has the intellectual equipment to benefit from the experience. He does not have this capacity until at least the age of 10 or 11. It is the opinion of pediatricians and psychiatrists that the disappointments and frustrations resulting from television advertising do nothing but confuse and upset a small child and place an unhealthy emotional strain on his relations with his parents.

Moreover, many believe that premature exposure of children to the techniques of television advertisers leads to cynicism and distrust about all established institutions. Small children are very heavy television viewers. They have little personal contact with business and governmental institutions other than the school. Television is often their principal contact with American industry. It is most important that their contact with

television not be one of abuse leading to mistrust.[1]

Many different constituencies have voiced concern that some products advertised on children's television are counter-productive to the health and well-being of the child and the family. Dentists worry because the chocolate-coated caramel bar is likely to cause cavities; pediatricians worry because poor dietary habits learned during childhood are unlearned only with extreme difficulties; parents worry because the $20 toy their child thinks is essential for a happy holiday is too much for the family budget.

The dilemma of a low-income parent is particularly cruel because he must divert his limited resources to buy an undesired product, or risk being considered less generous or less successful than other children's parents. To him, the middle-class compromise of "giving-in" on expensive items is unavailable. The result is likely to be feelings of deprivation and inferiority.

Direct face-to-face solicitation of children did not exist to any substantial degree in the United States prior to the development of television following World War II. Thus, it is not surprising that there is no common law on the subject. However, there is extensive doctrine in many legal systems that sales agreements arrived at directly with children are voidable. Most countries in Western Europe have proscribed television selling to children. Accordingly, direct personal solicitation

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[1] "Because of the characteristic puffery and deception associated with advertising appeals, some critics feel that commercials may be causing youngsters to lose faith in business and society". ("Perceptions of Children's Television Advertising..." James D. Culley, 1973)

of children is well within the penumbra of established concepts of unfairness in many European countries.

In 1970, ACT petitioned the Federal Communications Commission to eliminate ads on children's television, and turned to the Federal Trade Commission during the following two years with petitions specifically urging Trade Regulation Rules to prohibit toy, vitamin, and food ads on children's programs. We knew that these petitions would not solve every aspect of the problem, and that children would still be exposed to ads on adult television and even on family programs. But at least commercials designed especially to appeal to the vulnerabilities of the youngest members of the audience would have been eliminated.

In 1971, ACT petitioned the FTC to eliminate all televised vitamin and drug advertising directed to children. Statistics on child poisonings had shown that after aspirin, vitamin pills were the second most commonly ingested poisin by children under five. This statistic was hardly cause for surprise, since so many vitamins had been misleadingly advertised to resemble candy or cookies, and several were shaped like cartoon characters.

Children had been duped into believing that vitamin pills were a device for joining a club and making friends; that chocolate-coated vitamin pills with iron are the same as chocolate chip cookies, and that vitamin pills provide all the nutrients children need if they don't eat right--an interesting approach when you consider that if children ate only what was advertised to them on TV, they would suffer from a form of malnutrition that vitamins alone could not cure.

In response to pressure from ACT and other consumer groups

and concerned individuals, Miles Laboratories, Bristol-Myers, and Hoffman-LaRoche announced in 1972 that they would discontinue their policy of advertising vitamin pills during children's programs.

What is the FTC doing now to insure that these socially responsible precedents are continued? In light of the fact that children who eat too many vitamin pills can develop symptoms of diarrhea, vomiting, irritability, poor appetite, structural bone changes, and even shock and coma, is it merely an oversight that since ACT's petition was filed four and a half years ago, the FTC has passed no regulation to date prohibiting the sale of these potentially dangerous substances on children's television programs?

The reason why FTC action is so important was highlighted by the action of another vitamin manufacturer in October of 1975. Hudson Pharmaceutical Corp. designed Spider-Man Vitamins for the children's market.

The Spider-Man Vitamin ads feature a popular and widely recognized comic book character and children's television hero, Spiderman, as the spokesman for the product, and have already been aired during programs for which children constitute up to one-third of the viewing audience.

The one million dollar campaign to promote these vitamins utilizes, according to the marketing director of Hudson, "The most popular personality among children today". The Spiderman character appears on the public television program, "The Electric Company" as "Spidey", a "viewer favorite."

Four years after its original petition to the Federal Trade

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Commission resulted in a voluntary withdrawal of televised vitamin advertisements directed to children. ACT has again sought regulatory relief from the recurring problem.

On October 24, ACT requested that the Commission bring suit to obtain a temporary injunction against Hudson Pharmaceutical Corp. to prohibit television commercials promoting Spider-Man Vitamins, a new children's chewable vitamin supplement.

How often does the government expect a citizens group to prepare petitions like this one (see appendix A) to point out the need for a particular rule?

At present, despite the fact that the labels of children's vitamins with iron must carry the warning, "Keep out of the reach of children," no enforced code exists today that would require even this minimal caution on televised vitamin and drug ads. Such a required warning would be a significant first step, but ACT has not abandoned its insistence that the FTC enforce a ban on any and all drug-related advertising that is aimed at a pre-adolescent audience.

How many more statistics on vitamin poisoning must be computed before the FTC issues an enforceable regulation banning this form of irresponsible manipulation forever.

ACT petitioned the FTC in 1971 to establish a Trade Regulation Rule that would eliminate all toy advertising from children's television programs. Toy manufacturers recognize that television has become their most persuasive advertising medium, since it is the only one that permits actual demonstration of their product. As a result, the criteria governing toy design

have succumbed to an emphasis on how toys will appear on the televised ads to their best advantage. The problem of how toys will function as valuable or creative stimuli to a child's learning process is often forgotten. Children are conned into nagging their parents for sophisticated and flashy toys with high price tags and a low level of performance and durability.

The Federal Trade Commission has not responded to this petition, even with a letter acknowledging receipt.

Another ACT petition to the FTC, filed in March, 1972, asked for the removal of all edibles advertised to children; a year later, we issued supplementary filing describing how the TV advertising of sugary foods directly to children could have devastating effects on the health and well being of America's youth.

We recognize in real life that our children are not sophisticated enough to plan the family's meals, and yet on television we expect them to show the most amazing degree of sophistication in coping with the barrage of demands from the most persuasive selling medium of all.

Despite the fact that the role of televised advertising in establishing a child's habitual diet has been recognized as a major one, the list of products sold to children via this medium continues to be dominated by the four most cariogenic (or cavity-producing) groups of foods produced in this country: caramel, chocolate, cookies, and pastry.

Unless there is vigorous action to prevent the continued exploitation and miseducation of our Nation's children via ads for highly sugared foods, we can expect a continued growth of heart disease, hypertension, and poor dental health - the diseases that result from poor eating habits established in childhood that can cripple and kill in adulthood. The most powerful and pervasive information source of the lives of low-income children, the television set, is systematically developing in them a taste for sugar-rich foods.

What has the Federal Trade Commissinn done to prevent what appears to be an all-out attempt by food manufacturers and advertisers to sabotage the development of the nation's youth of a sound nutrition regimen?

During his tenure as chairman of the FTC, Lewis Engman suggested to the American Advertising Federation that the interests of the youthful television viewers "demand substantive as well as procedural progress," but neither he nor any of the remaining commissioners has done anything to insure that real progress will take place.

After the tragic death in an automobile accident of the FTC's nutrition expert, Judith Cook, there was little indication of Commission concern about the effect of food advertising on children.

The 1972 petition to the Federal Trade Commission for a ban on food advertising was denied, without a public hearing, but not before ACT had filed suit against the Commission for its three-year delay. The FTC pointed its finger at the Food and Drug Administration as a rationale for its denial, pending the

outcome of research into the potential hazards of sugar-rich foods. And the FDA, no doubt, is trapped in suspended animation by the vocal rallying cries of the sugar lobby, whose interests countermand the nutritional and dental well-being of all future adults. If the federal regulatory agencies do not rule on this volatile issue, then each of you must answer to your constituents when they want to know the cost effectiveness of televised sugar-food advertising to children as a substitute for lower medical and dental bills in the decades to come.

ACT recently received a letter from Dr. Dale Roeck, Chairman of the Council on Dental Health of the American Dental Association, which states: "Exposing children to a barrage of high-powered advertising of sugar-rich products on television puts their dental health at risk and is also, of course, a deterrent to proper nutrition."

ACT will file another petition with the Federal Trade Commission, relating to advertising for heavily sugared foods on children's programs.

I wonder what the odds are on the initiation of a rule-making procedure by the FTC - or even on ACT's receiving an acknowledgement.

There exists in the rules of practice of the commission, in Section 1.15, under Initiation of Proceedings - petitions, this sentence:

> "Anyone whose petition is not deemed by the Commission sufficient to warrant the holding of a rulemaking proceeding will be promptly notified of that determination and given an opportunity to submit additional data".

In Webster's dictionary, "prompt" means "ready and quick

to act as the occasion demands." ACT submits that the petitions of a responsible consumer group demand a substantive response.

The Administrative Procedure Act is designed to ensure that one who petitions a federal regulatory agency will receive a due process hearing. The agency, once it reaches it's decision, i.e. produces a rule, must justify this decision by the record of testimony. The decision cannot be arbitrary or capricious - or it is subject to being overturned in court. But, for the Administrative Procedure Act to operate - for its due process guarantees to come into effect - one must be deemed to be involved in a rulemaking proceeding. Therefore, if one continually petitions an agency and receives no response from the agency - one is left with no recourse except for the extreme measure of suing the agency's administrator or chairman. This is expensive, taxes the court system, and could bring endless delay.

Prosecutorial and agency discretion is important for the efficient maintenance of the judicial and regulatory systems. This discretionary power should be used to deny frivolous claims; it should not be abused to negate claims which raise uncomfortable political or economic issues.

Members of the 2- to 11- year-old children's television market have become the victims of a bureaucratic shell game, while ACT and other consumer advocates take the stand in their defense. More than four years after ACT's Federal Communications Commission petition, countless pages of testimony, and innumerable and expensive ACT trips to the nation's capitol, the Federal Communications Commission issued its Children's Television Report and Policy Statement, whose principal message was an

apology for the agency's failure to take substantive action. While reiterating ACT's arguments in favor of the special protection of child viewers, the document treated the issue of children's advertising like a hot potato, and relegated that economically sensitive area to the domain of the Federal Trade Commission.

As a result of the inadequacy of the Commission's response, ACT has filed a petition for review of the policy statement with the U. S. Circuit Court of Appeals in Washington, and will continue to press for remedial action.

What are the economic effects of the rules proposed by ACT? Broadcasters and ad agencies would not be hard hit by the proposed restrictions, which apply mostly to children's television. The products they now promote to youngsters could reappear sprinkled throughout the adult programming menu.

How will advertising restrictions affect manufacturers? Competition is the name of their game. It is unrealistic to expect a concerned manufacturer to act responsibly while his competition is permitted to profit from his largess. The adoption of rules is necessary to protect responsible corporations from unfair competition.

ACT's position has been loudly extolled and supported by some of America's most prestigious professional organizations. The Board of Trustees of the American Pharmaceutical Association voted to support the elimination of advertising for vitamins and over-the-counter drugs on children's programs. Their decision to recognize a possible health hazard emphasizes the need for FTC action in this area.

It is not ACT's intention to interfere with the rights of manufacturers, broadcasters, and advertisers to function profitably within the American economic system. We seek only to secure and protect the rights of our children to be safe and healthy, and their freedom to learn how to make responsible choices based on an unclouded presentation of information.

The laws of the marketplace do not dictate that the rights of young children are subservient to corporate profitability.

Rather than trying to rewrite the Communications Act, consumer groups have tried to build a buffer zone between children and the Saturday morning salesmen who have access to a segment of the population which is powerless to defend itself against their seasoned wiles.

ACT affirms its support for the first amendment and reiterates its abhorrence of government interference in a broadcaster's programming content. Our proposals to the federal regulatory agencies do not require a violation of the sensitive boundaries of censorship.

ACT has advocated only reasonable advertising restrictions, for which there is substantial need and ample precedent.

It is not the consumer groups, however, who must bear the ultimate responsibility for the broadcasting industry's infringements on the rights of this nation's youngest citizens. Our role is merely to serve as a barometer of national concern about issues which have a direct effect on the continued health, safety, and happiness of developing children. ACT can generate attention, present evidence, and suggest the adoption of policies to secure special protection for young television viewers,

but we are powerless to enact and enforce legislation or regulations that would guarantee substantive improvement.

As elected representatives of the consumer constituency, Congress must take the responsibility for change, or conversely, the blame for inaction. It is your job, not ours, to monitor the activities of the federal regulatory agencies which have become detached observers of the scene they have been empowered to govern. That is why we are pleased to have been invited to participate in these proceedings and commend this committee for holding these hearings.

When I started ACT in 1968, my child was three years old... my daughter is now 11...and no longer a child in broadcasting and advertising terms. But fortunately we can ACT now, before it is too late for today's 3, 4 and 5-year olds.

Thank you.

Mr. ROSENTHAL. Mr. Dixon will be accompanied by Joan Z. Bernstein, Acting Director, Bureau of Consumer Protection.

We are very pleased to see you again, Commissioner.

STATEMENT OF PAUL RAND DIXON, ACTING CHAIRMAN, FEDERAL TRADE COMMISSION; ACCOMPANIED BY JOAN Z. BERNSTEIN, ACTING DIRECTOR, BUREAU OF CONSUMER PROTECTION; AND WILLIAM D. DIXON, SPECIAL ASSISTANT FOR RULEMAKING, BUREAU OF CONSUMER PROTECTION

Mr. DIXON. It is good to be here, Mr. Chairman.

Maybe I should have gone back to Tennessee, too, along with Mr. Engman.

I have a very detailed statement. I prefer to read it. It is not too long.

Before I get into this, I would like to say something based on what I have heard from these two ladies.

I think this oversight committee should understand the background of so-called rulemaking.

When I was appointed by President Kennedy in 1961, I had been at the Commission since 1938 with the exception of 4 years during World War II and 4 years on the Senate side of the Congress with Senator Kefauver.

We were primarily interested there in antitrust and monopoly work. However, it was there that the so-called drug hearings were held.

I went back to the Commission in 1961 knowing full well the tremendous responsibilities that the Federal Trade Commission Act itself had placed upon the Commission, plus the various special consumer acts that had been passed in the late 1930's and proceeding up through the 1950's.

I had a belief that we could more equitably carry out our functions if we undertook the development of what we call trade regulation rules.

The American Bar Association is a very influential group in this country. You just do not say what you are going to do unless you can pass the constitutional tests and the various court reviews.

We announced in our reorganizations of the early 1960's—"we" meaning the panel that was there then—that as part of our arsenal we were going to continue issuing guides and give notice of the proposed promulgation of a trade regulation rule as well as the individual law cases.

We get about 2,000 complaints, petitions, or whatever you call them, a month right now. If we tried 2,000 individual cases, we would have to be about 10 times or so larger than we are now.

We were trying to seek some way to get across-the-board relief. It had fairness in it. It had prospective guidance in it, but it had a bite in it. Once we had had a hearing and made a record where we could develop a basis and a purpose for the rule that would stand up on a court review and we put out the rule and made it final, then if a party violated that rule, we considered it to be as if they had violated a cease and desist order against a practice that we had challenged individually.

It meant that we could immediately go for penalties. There would be a bite in what we were doing.

It does not do any good to tell people to stop things unless you are going to see that they stop.

Our basic law up to that time had been amended to the point that we had a finality act. We could sue for civil penalties up to $10,000 a day for each violation.

So we were seeking a means of solving an industry-wide problem.

The first one of those rules that amounted to anything was the so-called cigarette advertising rule. I was very much a part of that, Mr. Chairman. When I went to the Commission we had been wrestling with the cigarette manufacturers for years over how much nicotine or this and that was in cigarettes. We had received all kinds of complaints that they were dangerous. Some individual damage suits were being filed around the country. Recoveries were being awarded by judges and courts.

When I went down there, I realized and knew full well that the Federal Trade Commission is not a body of scientific experts who can honestly judge what is the prevailing scientific opinion on a matter.

So I wrote a letter to then Surgeon General Luther Terry. I asked Dr. Terry why in the world he had not set up a blue ribbon committee of scientists to review all of this scientific information and give us the basis to move, if we believed it was in the public interest to do it. You will recall that the committee was set up.

I remember the Saturday that it was delivered to me. I had the staff heads there. A copy of it was brought over to me. I did not really believe my eyes. I did not believe that the doctors would ever have that much courage. But they did, and it was a unanimous decision that smoking of cigarettes was connected to lung cancer, emphysema, and all of the bad things that you have read about since.

Mr. ROSENTHAL. We have a problem. At 12 o'clock the bells ring and we react like mice.

Mr. DIXON. I understand that.

However, I think it is very important that you understand that we issued a trade regulation rule with the full knowledge that it was going to be contested all the way to the Supreme Court. We did not know at that date whether we could issue a trade regulation rule.

Mr. ROSENTHAL. I think we understand that.

Do you want to read your whole statement?

Mr. DIXON. I would be glad to do that.

Mr. ROSENTHAL. Do you prefer to do that or would you prefer to put it in the record?

Mr. DIXON. I will put it in the record, but there are a lot of things that you have talked about that I answered right here.

Mr. ROSENTHAL. Why don't you read it then.

Mr. DIXON. All right. I will read it quickly.

Mr. ROSENTHAL. That is all right. However, we do want to get to the question of why there is an overwhelming unexplainable delay in the matters that you, the Commission, announced—the 21 matters the Commission announced. That is very important.

Mr. DIXON. I will get to that.

My remarks briefly delineate procedures which the Commission's Bureau of Consumer Protection has adopted in initiating rulemaking

proceedings, with emphasis on issues raised in your recent letter and an analysis of the role of rulemaking in relation to the basic policy goals of the Commission.

At this time I shall highlight what I consider to be several salient factors considered by the Commission in its promulgation of trade regulation rules. Such discussion appears particularly appropriate since, as noted by Judge J. Skelly Wright, "Administrative law has entered an age of rulemaking."

Let me begin by stating that rulemaking is not new to the Federal Trade Commission. Indeed, as early as the 1930's the Commission solicited the views of industry members in a variety of areas with regard to certain practices and, after thoroughly considering such views, issued what were then called trade practice rules.

Trade practice rules were easy to enforce because, as a practical matter, they were self-enforced by the affected industries, although they were not legally binding.

One of their most desirable results was that they provided industry with well-defined standards which, once articulated, could be readily complied with by the business community.

Trade practice rules proved then to be an effective means of enforcement. They remain so today, although the format of such proceedings has been somewhat revised and later Commission statements of this type are usually formulated as guides.

How do we issue a guide? A guide is based upon our expertise that has accumulated from past actions. It says to the industry affected, "We have determined that if you engage in the following practices that the Commission is giving you notice that after a certain date we are going to look at them very carefully and more than likely challenge them."

That is a voluntary thing. It has no bite in it. If it is not followed, we have to bring an individual lawsuit.

Now these so-called trade rules remain so today, although the format of such proceedings has been somewhat revised and later Commission statements of this type are usually formulated as guides.

In any event, implementation of Commission policy through rulemaking proceedings is deeply rooted in a process involving the interchange of views between the Commission and industry as well as all other interested persons.

In 1963, the Commission issued its first trade regulation rule and continued to issue such TRR's occasionally throughout the 1960's.

I direct your committee's attention in this regard to the cigarette advertising rule wherein the Commission issued a detailed statement of basis and purpose analyzing the legal and factual bases for the rule and setting forth the support for its action found in the public proceedings involved therein.

Mr. ROSENTHAL. Could we just for the sake of time, without objection, include your whole statement in the record?

[See p. 58.]

Mr. ROSENTHAL. Maybe we could pass over, with your cooperation, some of the supporting legal doctrines that acknowledge that you have the right to make rules. There is no question about that. That is old hat.

We are interested in how you are performing today.

Mr. DIXON. Did you see that list of 21 there? Many of those actions were proposed prior to the time that the *Octane* decision, the review of the Octane rule, was made here in the District Court of Appeals, and we prevailed.

Mr. ROSENTHAL. The *Octane* decision was 1973.

Mr. DIXON. 1973.

Mr. ROSENTHAL. From 1973 until now it has been clearly affirmed you have the authority to make and enforce rules.

Mr. DIXON. Now you are coming to the crux of what happened.

I think you have to understand this. If you do not understand this, you will not understand why we have not moved many of those.

Mr. ROSENTHAL. I do not understand. That is what we want you to explain.

Of the 21 important investigations, half of which wound up on the front page of the New York Times, only 1 resulted in a rule. What happened? That is all we want to know. What happened?

Mr. DIXON. I will see if I can do something.

I will tell you this: When we were being challenged in the courts, we did not know then whether we were going to be sustained or not. In the meantime, the administration changed.

Mr. ROSENTHAL. You are going to "Tennessee" me now, right?

Mr. DIXON. I am going to tell you that three different chairmen have been there. I have sat with 15 different panels down there. Three out of five prevails.

I think it was a sad mistake that Miles Kirkpatrick, who was the second chairman, prevailed upon the Commission to seek the so-called Magnuson-Moss bill. We were doing very well. We were operating under the Administrative Procedure Act under section 4 instead of section 8. Now that is a heck of a lot of difference, I want to tell you.

When you hold a rulemaking meeting, you invite everybody in to make a statement, file papers, and everything else, but there is no cross-examination.

The constitutional fairness was there by keeping the record open and letting everybody have the last word they wanted.

However, it was the belief of the majority of the Commission that we ought to nail the thing down. So they sought an act by the Congress underwriting what we were about to win in court.

As a result of the passage of Magnuson-Moss, rulemaking is today basically put back into the arena of adversary-type proceedings.

During that period of time we were convinced that we had the right to make rules, but we were in court and we were not moving. We were practically standing. We were still receiving them and proposing some. With the passage of Magnuson-Moss there is no doubt that we are in business.

Mr. ROSENTHAL. We know that.

These are all of the 21 investigations announced since 1974. I did not announce them; you people did. Most of them received a lot of publicity and the public thought something was going to happen.

The detergent ingredient labeling investigation was announced January 20, 1971. Nothing has happened within the 5 years since then. Can you tell us why?

Mr. DIXON. There is no final rule yet.

On May 12, 1970, we asked the staff to report to the Commission as to the desirability of a rule requiring disclosure of phosphate content of detergents.

Do you remember the great scare that the consumer groups brought on phosphates?

Mr. ROSENTHAL. Commissioner, I did not announce this thing and the consumers did not. You people announced on January 20, 1971, with a front page story which made the newspapers around the country, that you were going to do something. Nothing has happened. All we want to know is a three-sentence answer as to why.

Were you short of help?

Mr. DIXON. I do not think you want me to read this, but I will file it because it answers those questions.

Mr. ROSENTHAL. OK. We will file that.

[The information referred to follows:]

CHRONOLOGY OF EVENTS RE DETERGENT INGREDIENT LISTING

May 12, 1970.—Commission minute: Staff directed to submit a rep't to Comm. as to desirability of TRR requiring disclosure of phosphate content of detergents (See McCoy Note April 1, 1971).

May 22, 1970.—Commission minute: Staff directed to consider Chmn. Weinberger's circulation of May 14, 1970, with May 12, 1970 matter citing House Conservation and Natural Resources Subcommittee report of April 14, 1970 (H. Rept. 91-1004) recommending FTC issue regulations requiring:

(*a*) Revelation of phosphate content on packages.

(*b*) An ingredient listing under FPLA for detergent products.

(*c*) A warning on packages of detergents as to use of phosphates in specific geographic areas.

January 8, 1971.—Memo from Division of Industry Guidance recommended TRR concerning the Labeling and Advertising of Synthetic Detergents.

January 20, 1971.—Authorized TRR and directed publication in Federal Register of proposed rule and provisions for public hearing.

April 26, 27, and 28, also June 16, 17, and 23, 1971.—Commission hearings held—record held open at request of several environmental groups until Nov. 16, 1971.

January 5, 1972.—Memo from Bureau gave brief interim report on impact of Administrative position re: Phosphates and N1A on phosphate proceeding under Division of Rules and Guides.

May 15, 1972.—Memo from Division of Rules and Guides recommended:

(*a*) TRR to require phosphorus disclosure on packages, use level on packages, and restrict use of biodegradable.

(*b*) Abandon that part of TRR requiring warning of phosphate use.

(*c*) Initiate rulemaking procedure under FPLA to require ingredient listing on detergent packages.

May 18, 1972.—Memo from BCP recommending voluntary rule of phosphorus disclosure but disagreeing with recommendation to initiate FPLA rule for ingredient listing.

June 6, 1972.—Commission minute: Directed Director, BCP to contact detergent manufacturers and explore possibility of voluntary compliance with disclosure concept recommended above.

June 16, 1972.—Memo from Division of Special Statutes recommending regulation be issued under FPLA requiring ingredient listing on detergent products.

September 19, 1972.—Commission minute: Directed staff to report when and if further info or data is developed by EPA and other groups to warrant warning regarding use of phosphates. In meantime, Commission will hold TRR record open but no further action or warning contemplated.

Directed staff to seek from detergent manufacturers a willingness to voluntarily make a clear and conspicuous standardized disclosure of phosphate content.

October 5, 1972.—Memo from BCP submitted plans and model form of agreement to be used for voluntary phosphate disclosure on packages.

October 11, 1972.—(1) approved the Agreement form, accepted letters of intention from Lever, Procter & Gamble and Colgate Palmolive, and authorized letter approach to balance of industry on voluntary disclosure plan.

(2) Approved press release concerning voluntary disclosure plan and announcing intention to withhold future action on warning until additional data developed.

(3) Recognized two petitions pertaining to ingredient listing and directed BCP to submit to Commission underlying facts based on the record.

January 26, 1973.—Memo from Division of Rules and Guides reported facts of record supporting ingredient listing and recommended holding FPLA proceedings in consideration of voluntary ingredient labeling being undertaken by industry.

February 28, 1973.—Commission minute: directed staff to determine the extent and effectiveness of voluntary ingredient labeling.

December 21, 1973.—Memo from Division of Rules and Guides reported evaluation of voluntary labeling and recommended publishing the proposed regulation under FPLA.

December 26, 1973.—Memo from BCP recommended publication.

January 22, 1974.—Commission minute: Directed publication of the proposed regulation under FPLA and directed staff to conduct a survey of consumer understanding of ingredient disclosures.

February 5, 1974.—Commission minute: Authorized BCP to go forward with FPLA regulation prior to reporting on survey of consumer understanding.

February 8, 1974.—Proposed rule published in Federal Register (30 F.R. 4837).

April 5, 1974.—Comment period extended until June 10, 1974 (30 F.R. 1236).

June 6, 1974.—Commission minute: Authorized extension of comment period until June 28, 1974.

November 15, 1974.—Memo from Division of Special Statutes recommending publication of a final regulation under FPLA requiring ingredient listing.

December 23, 1974.—Memo from BCP endorsing recommendation of intention.

December 27, 1974 and February 27, 1975.—Procter & Gamble submitted series of studies to staff on consumer understanding of detergent ingredient.

January 22, 1975.—Texize submitted study on consumer understanding.

March 3, 1975.—Director, BCP submitted alternative plan to allow manufacturer to give ingredient list upon mail request in lieu of labeling.

April 21, 1975.—Memo from BCP recommending reopening of public record to allow special studies to be entered for Commission viewing.

June 3, 1975.—Commission minute: Approving publication that public record be reopened until July 22, 1975 (40 F.R. 26283).

September 9, 1975.—Memo from Division of Special Statutes recommending publication of final regulation under FPLA.

February 20, 1976.—Memo from BCP returning division memo for review and update.

Mr. ROSENTHAL. Nothing has happened on that. No hearing has been held on it.

Mr. DIXON. We held hearings. We had all kinds of hearings on the phosphate rule. The Commission held them, too.

Mr. ROSENTHAL. Public open hearings?

Mr. DIXON. Yes.

Mr. ROSENTHAL. What dates were they?

Mr. DIXON. April 26 and 27, 1971, and also June 16, 17, and 23, Commission hearings were held and the record was held open at the request of several environmental——

Mr. ROSENTHAL. What year?

Mr. DIXON. 1971.

Mr. ROSENTHAL. That is 5 years ago.

Mr. DIXON. That is right.

Mr. ROSENTHAL. What has happened since then?

Mr. DIXON. We held more hearings on it also. Now I am told that EPA is involved in it. They are making studies, and we are waiting for one of theirs, I guess.

Mr. MEZVINSKY. Mr. Chairman?

Mr. ROSENTHAL. Mr. Mezvinsky.

Mr. MEZVINSKY. Five years have gone by. You held hearings in 1971 and now EPA is coming in in 1976?

Mr. DIXON. The industry came forward during these hearings with a voluntary disclosure plan on the phosphates, and that pretty much washed it out.

Mr. MEZVINSKY. I admire you personally and am a friend of the FTC, but don't you think that 5 years is a long time before anything is even done on this issue? Now you are back into hearings.

Mr. DIXON. Congressman, there is no one who despises delay and pussyfooting anymore than I do.

Ms. Bernstein is the head of our Consumer Protection Bureau. She has 150 attorneys to receive 2,000 letters a month, to handle them, and make recommendations to the Commission.

Mr. ROSENTHAL. We get 2,000 letters a week and we handle them with less than that.

Mr. DIXON. You send most of them to us.

Mr. ROSENTHAL. You really are going to "Tennessee" me today.

On September 28, 1971, you announced a mail order merchandise proposed rule and 4 years later you adopted a rule. It took you 4 years to adopt that rule.

Why did it take 4 years?

Mr. DIXON. Because in 1971 we did not know whether we were going to win the right to issue a trade regulation rule. That is the reason that octane ruling review by the court and the final denial of certiorari by the Supreme Court established that we could do this.

Mr. ROSENTHAL. When you made your first public announcement, did you say that you thought you had a weak case and did not want to proceed?

Mr. DIXON. No; we did not say that.

Mr. ROSENTHAL. Did you proceed for 2 years in the hope that you would get a favorable ruling?

Mr. DIXON. That is exactly right.

Mr. ROSENTHAL. Is that your excuse for everything until 1973?

Mr. DIXON. I can say it is a pretty good excuse for not moving them very fast.

Mr. ROSENTHAL. After the octane decision was announced in 1973, you had pending the health spa matter, the vocational home study, the mobile homes case, endorsement and testimonial guide, the flammability of cellular plastics, food and nutrition advertising, the law book guide. Up until that point in the chart you were waiting for the octane rule.

Now after the octane rule came in 1973, why has nothing happened for 3 years in any of those?

Mr. DIXON. We have to investigate these things.

Mr. ROSENTHAL. Did you do your preliminary investigating before the ruling?

Mr. DIXON. Before the announcement we would have had the preliminary investigation.

Mr. ROSENTHAL. Once this decision came down in 1973 you could have moved forthwith. Is that correct?

Once you had the affirmation of your authority in 1973 in the octane decision, you could have moved forthwith?

Mr. DIXON. In the meantime, we are up on Capitol Hill before the Commerce Committee, which ultimately resulted in Magnuson-Moss. No one knew exactly whether we were going to be sustained or not, reversed, or what kind of procedures were going to be imposed.

Mr. ROSENTHAL. In other words, your testimony is that all of these matters were held in abeyance for 2 years prior to the octane decision and after the octane decision for another 2 years waiting to see what happened in Magnuson-Moss?

Mr. DIXON. They were vested in the Bureau and they were working on them.

Mr. ROSENTHAL. Now after the octane decision, in November of 1973 you announced the child directed premium guide. Nothing has happened there for 3 years.

What is that all about?

Mr. DIXON. We have some differences of opinion. I am one of the differences.

Mr. ROSENTHAL. In other words, you do not have a rule because you cannot reach a decision in the Commission?

Mr. DIXON. A sensible kind of rule. One that would make sense.

You have heard these ladies talk here this morning. The first time I ever saw them was when they came down on some advertising hearings.

Mr. ROSENTHAL. This was announced in November of 1973. Can we expect that sometime in the future you will reach a decision?

Mr. DIXON. I have been informed that the staff is just about to reach the end of the road where they are going to forward it to the Commission for consideration. It ought to be there very shortly.

Mr. ROSENTHAL. If you had to engage in a prognosis as to when the rule would be enacted, what would you say?

Mr. DIXON. I do not know what they are going to propose.

I will tell you right now that what Mr. Engman said in his speech—he was speaking individually. He was not binding that Commission.

Mr. ROSENTHAL. We know that.

Now on February 28, 1974, 2 years ago, you published the announcement on funeral practices.

Have you had any hearings? What has happened since then?

Mr. DIXON. I will tell you everybody on Capitol Hill is sending us thousands of letters protesting about us moving into a State function there.

Mr. ROSENTHAL. Why aren't you calling it off?

Mr. DIXON. We are not going to call it off.

In less than a week the notice will be given that hearings are going to start.

Mr. ROSENTHAL. What day will the hearings be?

Mr. DIXON. In April.

Mr. KAHN. April 20.

Mr. ROSENTHAL. April 20?

Who are you?

Mr. KAHN. Jack Kahn, K-a-h-n.

Mr. ROSENTHAL. Have you been working on this for 2 years?

Mr. KAHN. No, sir; for 5 months.

Mr. ROSENTHAL. Is it very complicated?

Mr. KAHN. Highly.

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Mr. ROSENTHAL. On air-conditioning labeling you began in early 1974. What is happening on that?

Mr. DIXON. That was terminated because of the passage of the Energy Act.

Mr. ROSENTHAL. Did you issue a public statement to that effect?

Mr. DIXON. Yes, sir.

Mr. ROSENTHAL. The Energy Act requires labeling?

Mr. DIXON. Yes.

Mr. ROSENTHAL. So you got an easy out on that. We saved you there.

On May 22, 1974, you announced hearing aids. That was on the front page of the New York Times. What has happened since then?

Mr. DIXON. Hearings are now scheduled.

Mr. ROSENTHAL. Why does it take 2 years to schedule hearings on a matter like that? I do not understand it.

Ms. BERNSTEIN. The initial date indicates the opening of the investigation. As a matter of practice, we announce an industrywide investigation. Subsequently, after we investigate, there is an initial proposal. So that time period really does not indicate when we have made a proposal.

Mr. ROSENTHAL. Ms. Bernstein, according to your schedule, you announced this on May 22, 1974. There has been a lot of interest in the country on this and a lot of television stories in Washington about people being ripped off.

You now have hearings scheduled for April 12, 1976—2 years later. In other words, the preliminary investigation has taken 2 years.

If you were to take the most favorable prognosis in this case, when do you think the rule would be enacted?

Ms. BERNSTEIN. Following those hearings, I would think within 3 to 6 months.

Mr. ROSENTHAL. That would be the best track record you have so far.

Ms. BERNSTEIN. That is an estimate. It depends on how extensive the proceedings are and how extensive the record is.

Mr. ROSENTHAL. You know how extensive the proceedings are. You have had 2 years to prepare for them.

Ms. BERNSTEIN. Yes, but not the hearings. We do not know how extensive the hearings will be. I expect they will be fairly extensive. They are very comprehensive.

Mr. ROSENTHAL. Extensive means 2 weeks of testimony? Three weeks or a month?

Ms. BERNSTEIN. Mr. Dixon tells me that we contemplate 6 weeks of hearings.

Mr. LEVITAS. Mr. Chairman, the answers to your questions are very unsatisfactory to me. We seem to be just going down this list. I have not heard a good answer to the first question yet, and that is a very important question, in my opinion.

I believe that this is a demonstration that the FTC is a paper tiger, among other things, and is now being perceived as such by the public.

Can you give us any reason, whether lack of manpower——

Mr. DIXON. I do not agree with you. I have spent my life down there. We are described, I guess, as the biggest bunch of troublemakers in town.

Mr. LEVITAS. It is a paper tiger.

I have dealt with the FTC on the other side. I just enjoyed that because if you had a client whom the FTC was after, that was just fine because nothing was going to happen. You could keep the thing going on for a long time.

Mr. DIXON. At the same time——

Mr. LEVITAS. Please let me make my point, if I may.

There is a long period of delay—that is clear from the chart—between the announcement of proposed rulemaking and today.

The question that I have, that the chairman has, and I think that the other members of this committee have is this: Why is there such a delay? Is it because there are insufficient man-hours being devoted?

Do you have, for example, between 1972 and 1975 the number of man-hours that were actually put into a particular rule?

Mr. DIXON. We can develop that for you and give it to you.

Mr. LEVITAS. I want that.

Mr. ROSENTHAL. Without objection, that will be made a part of the record.

[The information referred to appears in app. 1, exhibit 2.]

Mr. LEVITAS. Were there procedural objections raised by persons who were aggrieved parties or interested parties that had to be resolved in court?

Was it because, as you indicated in one instance, you were waiting for a Supreme Court decision?

That seems to me to be rather strange because I do not understand why you announce the rulemaking to begin with if you have any doubt about it.

Mr. DIXON. We announced the beginning of the investigations in that first column over there.

Mr. LEVITAS. Can you tell us why there are these delays? That there are delays speaks for itself. But why?

Mr. DIXON. I know you are tired of hearing this from people in the vineyard, but the standard answer is that we do not have enough people.

Mr. DRINAN. Have you ever asked for more?

Mr. DIXON. We sure do. We are asking for $52 million next year. During the 1970's we were spending about 70 percent of our money in consumer work.

Mr. DRINAN. That is not responsive to the question.

Mr. ROSENTHAL. You made that same speech in front of me 7 years ago. It was almost word for word.

Mr. DIXON. Will you go with me when I come up here to the Appropriations Committee?

Mr. ROSENTHAL. That is a weak-kneed response.

I am sorry. Go ahead.

Mr. MAGUIRE. Would you yield to me?

Mr. LEVITAS. Yes.

Mr. MAGUIRE. Pursuing the question the gentleman from Georgia raised, I note that you have referred on page 10 to recently adopted internal procedures. I would like to find out a little bit more about those.

When were they adopted?

Mr. DIXON. November 1, 1975. Those are internal procedures that we have adopted to try to find the sources of why it is taking so long.

Mr. MAGUIRE. Presumably, as a preparation for adopting new procedures, you did some kind of a study of the delay problem. Did you not?

Do you have, for example, any average reply time?

Mr. DIXON. When I hear the ladies say here that they did not even get an acknowledgment, it disturbs the devil out of me.

Mr. DRINAN. It disturbs me, sir. They are my constituents. I would like to have an answer right now as to why ACT never got an answer in November of 1975.

Mr. DIXON. All I know, sir, is that we operate by delegation down to the staff. When the material came in, something should have been prepared acknowledging it at least. I have no alibi or excuse for it not happening. I do not know why.

Mr. DRINAN. If you have no alibi or excuse, then all we can say is that your staff is totally incompetent. I feel outraged on behalf of ACT, Action for Children's Television.

You are sitting here as the Acting Chairman saying you do not know what is going on in your own shop.

Are you going to find out by tomorrow morning? Are you going to find out who blew the ACT thing?

Is it just sitting there some place on a desk?

Mr. DIXON. I am going to take this chart that you prepared, and I guess which we have down there, and I am going to have a blow-by-blow report and send it up here in writing.

Mr. ROSENTHAL. That is what we want.

Without objection, that will be made a part of this record.

[The information referred to appears in app. 1.]

Mr. DRINAN. Do you have a log of when things come in? I would like to know who put it down and what happened to it.

Mr. MAGUIRE. Who has the floor?

Mr. ROSENTHAL. I think Mrs. Collins is really entitled to the floor.

Mr. MAGUIRE. Mr. Levitas yielded to me.

Mr. ROSENTHAL. He was down the line. Let's go with Mrs. Collins first.

Mrs. COLLINS. I know you have things you want to go on the record.

First of all, I am appalled and outraged at the things I have heard here today. I have sat here and not asked questions, but I wanted to hear what everybody had to say.

If this is indicative of the job the FTC has been doing, something must be done, and must be done right now, to see that they are more responsive to the needs of consumers and to the job they are supposed to do.

With that, I will yield.

Mr. ROSENTHAL. Mr. Maguire.

Mr. MAGUIRE. I would like to followup on the question I started to ask.

Mr. ROSENTHAL. You do not keep a log down there. How are you going to find out about the petition?

Mr. DIXON. There are logs down there all over the place.

Mr. MAGUIRE. May I just ask: What are the outside time limits, specifically, that have been established by the November 1975 new rules or procedures?

Mr. DIXON. Day one, the receipt of the petition by the Secretary's office. That is the response timetable. The second day, referral by the Secretary to the Commission and to the Bureau of Consumer Protection. The assignment of a member of the Director's staff to monitor the petition response. The sixth day, a referral by the Bureau of Consumer Protection to the Director's office to the operating division for assigning response and notification by division of assignment. The 15th day, informal prediction by the division of action to be taken if the petition is to be denied because information is insufficient for Commission determination, either because facts or legal basis of petition is insufficient.

Then the following schedule would apply: That would be on the 25th day the petition answer is due to the Director of the Bureau of Consumer Protection. By 30th day a petition answer is due to the Commission.

Mr. MAGUIRE. Thank you. I wonder if you could supply a copy of that for the record.

Mr. ROSENTHAL. Without objection, that will be made a part of the record.

[The information referred to appears in app. 1, exhibit 4.]

Mr. MAGUIRE. Have you treated any petitions since November 1975 when this new procedure went into effect?

Mr. DIXON. They are in the process.

Mr. MAGUIRE. How are you doing with your new procedures? What is your track record since November?

Ms. BERNSTEIN. I do not know how many have come in since November. The reasons for instituting these procedures were your concerns and ours.

Mr. MAGUIRE. Wait a minute. You have instituted new procedures and you do not know how your performance is under the new procedures?

Ms. BERNSTEIN. We are meeting those requirements.

Mr. MAGUIRE. So it is simply that you do not know how many petitions you have actually dealt with since then. Roughly speaking, how many?

Ms. BERNSTEIN. I think not more than half a dozen.

Mr. MAGUIRE. All of them are on schedule?

Ms. BERNSTEIN. Yes; they are.

Mr. MAGUIRE. Thank you, Mr. Chairman.

Mr. ROSENTHAL. Congressman Drinan.

Mr. DRINAN. Mr. Chairman, on July 25, 1975, I wrote to Chairman Engman with a copy to you. I want to make this a graphic case of how you brush off even Members of Congress.

Dear Chairman Engman:

I am writing to urge you and the other members of the FTC to act favorably upon and implement the recent proposals of Action on Smoking and Health, ASH, relating to certain cigarette advertising and promotional practices. The Commission clearly has the statutory authority to act against cigarette advertising that tends to neglect the congressionally-mandated health warnings.

And then I go on to make the case of why they should.

Again I urge the Commission to take prompt and forceful action in this matter.

On August 14, 1975, I received a letter from David O. Bickart.

Chairman Engman has referred to me your letter of July 25th concerning the recent recommendations of ASH.

The ASH recommendations relating to cigarette advertising and other promotional activities are being considered by the Commission staff in connection with the Commission's responsibility regarding cigarettes. You will, of course, be informed of any Commission action in this state.

And I have never heard another word.

This is very important to me because I have a bill in that would ban smoking or would segregate smokers, so to speak, or protect the rights of nonsmokers.

Do you have any information on what happened to this?

Mr. DIXON. We have a civil penalty suit now that is pending. It is being held by the Department of Justice under the basic law. I assume that we will eventually come to the end of that.

We worked out an agreement, a cease and desist order, with the cigarette industry in 1972.

In checking the compliance record of the industry, the staff came up with some deviations from the requirements of that order. They have certified it over for penalties. That is where it is now.

Mr. DRINAN. How many more years will it take?

I have the whole documentation here. It is a year now.

You say it is with the Justice Department. Do you just sit back and let the thing drift in another agency?

You people have exclusive or prime jurisdiction, principal jurisdiction.

Mr. DIXON. Not to bring a penalty suit. I think we should have it, but we have to go to Justice. Justice is our lawyer in court.

Mr. DRINAN. Coming back to the more essential question, no one here is satisfied with the performance of FTC. You made a little bit of noise that you need more lawyers. The chairman said he heard that 7 years ago.

What is wrong?

As Mrs. Collins said, this is just so disheartening.

Mr. DIXON. We could take the 150 in this bureau and let them do nothing but that and try to stay current.

Mr. DRINAN. Do you have a plan?

If I were in your situation, I would really try to protect my own reputation and say, "I have asked for more personnel of this kind and this quantity. Here is the record, and it is the Congress fault." But I do not hear any facts coming out.

Mr. ROSENTHAL. If the gentleman would yield, they canceled an investigation on condominiums on a vote of the Commission. I had to go to the Appropriations Committee, with the cooperation of Mr. Smith of Iowa. Over their objections, we got $75,000 put back in their appropriation. Then they agreed to carry on the investigation.

So it is not really a question of their being short of cash.

Mr. DRINAN. How much money and how many people do we have to give you in order that you will act on ACT?

Mr. DIXON. You might give us $10 million and we may not act on ACT the way these ladies want us to act.

If you will listen to me, I will try to explain the problem.

Mr. DRINAN. You do not have to get into the merits. All I want is that you say yes, no, or maybe to them and do it within a reasonable time.

The same thing on ASH. How much do we have to pay you to act on ASH?

If it is $10 million on ACT, maybe it is $20 million for ASH.

Mr. DIXON. It is not a question of money. It is a question of decision-making, whether it is in the public interest and whether we have the jurisdiction or responsibility to do it.

Mr. DRINAN. I know all about that. All that we are asking is that you do your thing. If you come out and say, "We don't have this jurisdiction," OK. I am coming to the conclusion that the Commission is drifting—that the Commission is unwilling or unable to face up to the task of running an agency.

My time has expired, but you should answer.

Mr. DIXON. I do not think we are doing that bad a job, sir. I do not agree with you.

Mr. ROSENTHAL. Mr. Mezvinsky.

Mr. MEZVINSKY. Commissioner Dixon, I will tell you why this is disturbing to me. I have traditionally wanted to have faith in the FTC. As a matter of fact, I drafted some legislation giving the FTC authority to conduct a study of the food industry.

Unfortunately, what we are hearing today does not bode well for the future of the FTC. I think it is clear that the members here are almost uniformly telling you—if you did not get a message—that we are worried about the effect of the long delays on the public interest and consumers. We are disturbed, also, that it takes 5 or 10 years after filing a complaint to get it resolved. There is something wrong.

It is our job to try to understand why it is going wrong. It appears by the presentation this morning that we do not have the answers.

Really this testimony has left a tarnish upon the FTC. It leaves me with a very embarrassed feeling as a Member of Congress who is trying to go to bat for the FTC. I am embarrassed not only for you, but I am embarrassed for the public, let alone those that are affected who have just testified. It is terribly disturbing.

Ultimately, the FTC is supposed to represent the consumer and the free enterprise system. It is clear by the testimony we have heard that that feeling of disillusionment is fully justified. I personally am terribly disillusioned with what I have heard this morning. I do not like it. It bothers me tremendously.

Mr. DIXON. As I understand it, you are saying that there is just too much delay—that it takes too long.

Mr. MEZVINSKY. You know the public's view about bureaucracy and delay.

This hearing today epitomizes the frustration of industry, of a consumer, and of John Doe, whether in New York or Iowa, who feels that your agency should be uppermost in representing the public.

It is disgraceful. It is really disgraceful.

I am troubled by the fact that I have had faith in your agency. You have worked in it for years.

We are really in a quagmire of inefficiency, waste, and delay that is pretty hard to justify, whichever side you are on.

Mr. DIXON. Maybe I am not as well prepared as I ought to be. I am sitting in here for a fellow who just left who had this responsibility.

Mr. MEZVINSKY. I know that.

Mr. DIXON. I had it for 10 years. I am not running from my share of it. What I am trying to tell you is that by necessity we come to

the Congress and we ask for the money in our two basic enforcement fronts: antitrust and the consumer field.

Now as to whether or not we are managing that in the the public interest, that relates to selectivity. Do not select more than you can digest. Those are hard decisions—which ones of these things you are going to turn down and which one you are going to go forward with.

Mr. MEZVINSKY. Have you cut back on your requests?

Mr. DIXON. On requests for money?

Mr. MEZVINSKY. Yes.

Mr. DIXON. No, sir.

Mr. MEZVINSKY. When I see this chart and chairman's song and dance down there—which was good—I am disturbed with the fact that: If we give the FTC a penny to look at flammability, plastics, the funeral industry, franchises, or whatever it is, I am not sure we are getting our money's worth.

Mr. DIXON. I will tell you this: Basically rulemaking is quasi-legislative. Legislating is not an easy trick. I think you are all experts at that. It does take some time; it does take basic hearings; it does take a record; it does take competent people to summarize and recommend to the Commission. We five Commissioners sit up there at the top and make the final decisions. That is all we do.

Mr. MEZVINSKY. If there is any message from this hearing, it is that you are in trouble. You are in trouble with the committee that has FTC oversight jurisdiction. You are in trouble with your friends—those who want to back you, who want you to act in the public interest, who see chaos and inefficiency that I cannot defend. It troubles me.

Mr. DIXON. I think some of the chaos came about—and it is the reason I haltingly started out the way I did—because we were caught between a court review to determine whether we actually had power and a new request of Congress to give us the power.

Mr. ROSENTHAL. Mr. Levitas.

Mr. LEVITAS. Thank you, Mr. Chairman.

I have a number of questions.

First of all, Mr. Dixon, I would like to associate myself with the remarks of my colleague from Iowa.

The concern that I have is that the Federal Trade Commission ought to be a No. 1, consumer protection agency in the Federal Government. Its jurisdiction is such that it is given the opportunity. And that opportunity has been expanded by court decision. I think it has been a lost opportunity for too long. I see a great waste of resources.

You are correct, Mr. Dixon, the legislative process is not an easy one. However, at some point you have got to cut the puppy's tail off and make a decision, even if it is not the best decision in the world.

I concede that the problems of the funeral directors' situation for example, have complexity. But at some point you have got to make that decision. Either you do it, or you do not do it.

The Congress has to deal with issues such as energy. This is a most complex, far-reaching, multibillion dollar problem. We had to make a decision. We may not have made the best decision, but we came to a conclusion.

What we are saying is this: In the rulemaking process of the Federal Trade Commission, the evidence before us stands starkly to prove

everything bad that the public believes about the bureaucracy. Either it just cannot work or it does not work.

I have a couple of specific questions.

First of all, I would like to know about these guidelines that you are talking about. I am concerned that they may be used as a circumvention of the rulemaking process.

If the Federal Trade Commission announces that a guideline exists on a particular trade practice, one which has been promulgated without going through the Administrative Procedure Act requirements—notice and the like—you say that it is voluntary but you are going to bring an action if somebody does not——

Mr. DIXON. We cannot prejudge the matter. That is the reason it can be no more than a guide. All we can say to a party is:

> Look, based on our expertise and past experience in similar matters such as this, we say to you that, if you do not change this practice on or before a future date, we will take a real close look at this from the standpoint of whether you should be challenged under law or not.

Now if you can get somebody to change their practice that way, that is just as effective as a cease-and-desist order is.

Mr. LEVITAS. That is what concerns me.

Mr. DIXON. But it is purely voluntary.

Mr. LEVITAS. It may be voluntary, but you say if you do not do it we are going to come after you.

Mr. DIXON. It does not mean that if we go after them we can prove the case. We still have to carry the burden.

Mr. LEVITAS. You would have to prove the case if you alleged somebody violated a rule that you adopted.

Mr. DIXON. No.

Mr. LEVITAS. You still have to prove they violated the rule.

Mr. DIXON. That is right. We do not have to go back and reconstitute the basis for the rule because the basis has been established.

Mr. LEVITAS. You are satisfied that the issuance of guidelines is not an effort to pervert the rulemaking process?

Mr. DIXON. Of course not. I think it is just another way of getting results.

Mr. LEVITAS. Before you make an announcement that you intend to go into rulemaking, how much preparation is done in terms of time that leads up to the announcement that you intend to make a rule? Do you have any data on that?

Mr. DIXON. If it is an industrywide investigation, we would announce that we were going to.

Mr. LEVITAS. Somebody does not come into work one day and say, "I think we ought to have an industrywide investigation of pricing in the food industry." Somebody has been thinking about it for a while.

We have only seen the delays that begin with the public announcement. I would like to go back before that and find out when the seed was planted and how long it took to get to the point of public announcement.

Mr. DIXON. It would vary. Each one of those would vary. It may come from my Bureau of Economics that has engaged in some kind of a study or research. It might come from outside, from the public.

Mr. LEVITAS. Or it might come from you?

Mr. DIXON. Or it may come from within or from the Congress.

Mr. LEVITAS. May I ask this just to give us some guidance and assistance: When you give us this blow-by-blow report on why these delays took place—how many man-hours were involved, what obstacles were placed in your path, what changes in personnel, what stop and startup time was involved—would you also go back before and look at the file to see where the germination began? Tell us how long a period of time separated that germination from the announcement of the intention to begin an investigation.

Could you provide that information?

Mr. DIXON. We sure can.

[The information appears in app. 1.]

Mr. DIXON. In the initial consideration you are looking at a problem. Under our procedures that problem can be resolved in several ways. It can be by individual lawsuit.

If there are too many and it would seem to be fair to try to do it all at once, it is more equitable to bring everybody in under a canopy instead of one at a time. The first guy you sue will say that is not fair. "Why did you sue me when all of my competitors are doing this?"

So we developed this kind of a procedure to try to be fairer.

Mr. LEVITAS. Are you talking about proposed rules?

Mr. DIXON. Yes.

Mr. LEVITAS. I understand that.

While I have great reservations about the method and results of the Federal rulemaking process and have introduced legislation specifically dealing with that, nevertheless I accept the need for rulemaking. The fact is that, if there is a need, the Federal Trade Commission is doing a very poor job of filling that need. That is what we are trying to say to you today.

Mr. DIXON. What that chart indicates is this transition period. I think what we did was stand still waiting too long for what was going to happen in the court. About the time that we won, then it was up here on the Hill and there was a lot of waiting then.

Mr. LEVITAS. Let me tell you this, Mr. Dixon: In all my experience with any Federal agency, that is the first time I have ever heard a Federal rulemaker or a regulatory agency person say that they held back doing something because they thought they did not know what the outcome of a suit might be on another matter.

The presumption is that laws passed by the Congress are constitutional until held otherwise. The presumption is that the assertion of authority under laws of Congress by an administrative or regulatory agency is a valid exercise of that authority. The burden of proving otherwise lies upon the persons who are affected by it.

I think it is a miserably feeble excuse to say that you waited from 1971 until 1973 because you were wondering about the outcome of another lawsuit.

The traditional approach is that regulatory agencies make their decisions and enforce them, as long as they are acting in good faith believing they are doing their job, and wait until somebody says you cannot do that, whether it is the Congress or the court.

Mr. DIXON. Under our basic setup that is the responsibility of the chairman to see that we are carrying out those responsibilities, whoever is designated as chairman.

I wish that the three chairmen were here. Mr. Weinberger, Mr. Kirkpatrick, and Mr. Engman should be answering you, not me.

Mr. LEVITAS. We are not talking about Mr. Dixon. We are talking about the agency.

Let me make my point in another way.

Suppose someone challenges the power of the Consumer Products Safety Commission to issue the type of standards that they issue. Yet, at the same time, the Consumer Products Safety Commission believes that there are hazardous toys on the market.

Do you think it would be appropriate for the Consumer Products Safety Commissioner to do nothing about trying to get those hazardous toys off the market?

Mr. DIXON. No.

Mr. LEVITAS. Obviously not.

Now if you really believe that it is a sufficiently important consumer concern in the first place to propose rulemaking on law books, or any one of those, it is unacceptable to me to understand how you can sit back and wait for an *Octane* decision. Either you should not have been concerned about it to begin with or you should have pursued it once you got started on it.

Mr. DIXON. I agree with you, sir. I do not think we should propose anything that is not going to flow orderly. I agree with that.

Mr. LEVITAS. I am sure it sounds as if this committee is antagonistic toward the Federal Trade Commission. I think that only stems from the fact that we believe in the work that you have been designated to do and we wish you would carry it out.

It is not that we disapprove. We are not fighting you as being excessive in your regulatory efforts. It is because you have not been doing them.

Mr. DIXON. Part of the answer to this is all of the other things that we are doing. This same Bureau has to do——

Mr. LEVITAS. How much has your budget request been cut back in the last 3 fiscal years?

Mr. DIXON. We have been getting increases. We have more increases, but we have had no increase in consumer protection.

Mr. LEVITAS. How much did you ask for that you did not get? I would like to know that.

Mr. DIXON. We would have to talk about our current budget, and it is not up here yet.

Mr. LEVITAS. The President of the United States says that we do not need another consumer agency because the existing consumer agencies are capable of doing their jobs if they are properly funded.

I voted against the proposed new consumer agency because of that reason. I hope that he has not told me that he is going to fund your agency and failed to do it.

How much did vou request that you did not get last year?

Mr. DIXON. I will have to give you the figure. I will give it to you.

Mr. LEVITAS. If the problem is that you need more people, then certainly that is something that is the responsibility of Congress to provide.

Mr. DIXON. Under the Budget Act we go down to OMB and ask for money. They decide what we can come up here and ask Congress for.

The Director historically writes a letter to the agency which says, "All you can talk about is what we have given you."

Mr. LEVITAS. Do you mean OMB?

Mr. DIXON. That is right.

Mr. LEVITAS. But you have to submit a request to OMB.

Mr. DIXON. That is right.

Mr. LEVITAS. I would like to know what you requested and what they gave you.

Mr. DIXON. You want to know what we requested, what they gave us, and what we got out of Congress.

Mr. LEVITAS. Precisely.

Mr. DRINAN. Would the gentleman yield?

Mr. Chairman, I have the last annual report of the Federal Trade Commission. It is 1972. There has apparently been no annual report since that time.

At that time you had a budget of $25 million; $12,300,000 went to consumer protection.

I am certain a member of your staff could tell us right now what the total budget is and what consumer protection is.

Mr. DIXON. I do not think they know that exact figure.

Mr. DRINAN. It is unbelievable if you do not know.

Mr. DIXON. I can give it to you, sir, in correct form. I think you would want it that way.

[The information appears in app. 1, exhibit 3.]

Mr. DRINAN. Would you want to comment on why no annual reports have been coming out?

Mr. DIXON. I discovered that just recently.

Mr. DRINAN. Did you raise a lot of hell?

Mr. DIXON. I raised a lot of hell with my then Chairman. I said, "I demand that that be done."

We are working on two of them to bring them up to date now.

Mr. DRINAN. We are going to have three on the same date?

Mr. DIXON. You might have it.

I do not answer for the failure of my predecessor Chairman to see that that report was rendered to Congress.

All I can tell you is that from 1961 through 1970, every year you got them on time.

Mr. DRINAN. I yield back to Mr. Levitas.

Mr. LEVITAS. Mr. Dixon, when I see from time to time some of what I consider to be—and this is subjective—harebrained, arbitrary, nonsensible regulations that pour out from some of the regulatory agencies—I believe in 1974 there were over 7,000 rules and regulations published in the Federal Register. Some of the agencies just grind out these things on very little investigation. They are arbitrary, idiotic, and counterproductive rules and regulations. Then I see the Federal Trade Commission, which has been around a lot longer than some of these other agencies, sort of stumbling slowly and lethargically through a process that takes from 1971 to 1976 on important consumer concerns. I wonder what type of zeal it is in these other agencies. I would like to see some of them cool down a little bit, but I would like to see you people get started a little bit.

Mr. DIXON. We are law enforcement. There is a lot of difference between regulating and enforcing the law.

Mr. LEVITAS. That is rulemaking. That is not your enforcement.

Mr. DIXON. But since Magnuson-Moss has been passed, a record is going to have to be developed within the confines of semiadversary procedures. It is not going to be easy.

If you put 100 lawyers in a room representing 100 different affected parties, then everyone is going to insist upon examining everybody who appears.

Mr. LEVITAS. Under the rules you have the right to provide for expeditious hearings provided you——

Mr. DIXON. Pass the constitutional test of due process. You have to be fair.

Mr. LEVITAS. I have asked my major questions, but the message that I want to leave is this: I am waiting anxiously to see the reasons why the Federal Trade Commission has taken the time and the delays that it has taken, as evidenced by that chart.

I think you, Mr. Dixon, are going to be shocked. I predict that you are going to find that there were files which were put aside and forgotten.

Mr. DIXON. If there were, you are going to be told.

Mr. LEVITAS. I can give you some examples. I know about things in your own Commission.

Mr. DRINAN. Mr. Chairman, I have one last point, if I may.

I had several questions here that were prepared by counsel and by others. With the permission of the chairman, I would like to submit them at this time in the record of the hearing. Virtually none of them have been answered in a satisfactory way. I think they should be in the record as a testimony to this morning, which I am afraid has been rather shocking to a lot of us.

Thank you.

Mr. ROSENTHAL. Without objection, that will be made part of the record.

[The information referred to appears in app. 2.]

Mr. DIXON. I would say this, Mr. Chairman: Had you given me that chart and notice of how you were going to proceed, I would have given you a lot better answers than I have been able to do reaching back in the back of my mind saying, "What is the answer for that?"

I am going back to the Commission. I am going to have the details of each one of those listed matters, blow by blow, to find out just exactly what did happen; why did it take so long; and when are we going to get off dead center.

Mr. ROSENTHAL. When can we expect that response—in 5 years?

Mr. DIXON. I would say you can have it no later than 2 weeks. If you want it before that, we will give it to you before that.

Mr. ROSENTHAL. I think 2 weeks is a reasonable time.

[Mr. Dixon's prepared statement follows:]

PREPARED STATEMENT OF PAUL RAND DIXON, ACTING CHAIRMAN, FEDERAL TRADE COMMISSION

Mr. Chairman, Committee Members, and Staff, I very much appreciate the opportunity which you have provided in inviting me to testify on the rulemaking process of the Federal Trade Commission's Bureau of Consumer Protection. Ms. Joan Z. Bernstein, Acting Director, Bureau of Consumer Protection, and Mr. William D. Dixon, Special Assistant for Rulemaking, Bureau of Consumer Protection, have accompanied me to assist in answering any inquiries which your Committee may have.

My remarks herein briefly delineate procedures which the Commission's Bureau of Consumer Protection has adopted in initiating rulemaking proceedings, with emphasis on issues raised in your recent letter 1/ and an analysis of the role of rulemaking in relation to the basic policy goals of the Commission. At this time, I shall highlight what I consider to be several salient factors considered by the Commission in its promulgation of trade regulation rules. Such a dis-

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1/ Letter of February 4, 1976, to Paul Rand Dixon, Acting Chairman, Federal Trade Commission, and Joan Z. Bernstein, Acting Director, Bureau of Consumer Protection, Federal Trade Commission.

cussion appears particularly appropriate since, as noted by Judge J. Skelly Wright, "administrative law has entered an age of rulemaking".2/

Let me begin by stating that rulemaking is not new to the Federal Trade Commission. Indeed, as early as the 1930's, the Commission solicited the views of industry members in a variety of areas with regard to certain practices, and after thoroughly considering such views issued what were then called Trade Practice Rules. Trade Practice Rules were easy to enforce because as a practical matter they were self-enforced by the affected industries, although they were not legally binding. One of their most desirable results was that they provided industry with well-defined standards, which once articulated, could be readily complied with by the business community. Trade Practice Rules proved then to be an effective means of enforcement. They remain so today, although the format of such proceedings has been somewhat revised and later Commission statements of this type are usually formulated as Guides. In any event, implementation of Commission policy through rulemaking proceedings is deeply rooted in a process involving the interchange of views

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2/ Wright, The Courts And The Rulemaking Process: The Limits Of Judicial Review, 59 Cornell L.Rev. 375 (1974).

between the Commission and industry, as well as all other interested persons.

In 1963, the Commission issued its first Trade Regulation Rule and continued to issue such "TRR's" occasionally throughout the 1960's. I direct your Committee's attention in this regard to the cigarette advertising rule 3/ wherein the Commission issued a detailed statement of basis and purpose analyzing the legal and factual bases for the rule and setting forth the support for its action found in the public proceedings involved therein. In 1973, in the Octane Case,4/ the Court of Appeals for the District of Columbia Circuit affirmed the Commission's authority to make rules having the force and effect of law. Denial of certiorari clarified the Commission's authority to make rules having the force and effect of law. The Magnuson-Moss Warranty-Federal Trade Commission Improvement Act,5/ recently adopted by the Congress, is a legislative affirmation of that authority in the consumer protection area. Title II of this legislation, particularly

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3/ Trade Regulation Rule For The Prevention Of Unfair Or Deceptive Advertising And Labeling Of Cigarettes In Relation To The Health Hazards Of Smoking, 29 Fed.Reg. 8324 (July 2, 1964).

4/ National Petroleum Refiners Association et al. v. FTC et al., 482 F.2d 672 (D.C. Cir. 1973), cert. denied, 415 U.S. 951 (1974).

5/ P.L. 93-637

§202, establishes procedural safeguards for Commission rulemaking not found in the Administrative Procedure Act -- nor in any other law of which I am aware.

But if the language of §202 is novel, its thrust is not. In fact, all of the procedures mandated by §202--notice, opportunity for comment, opportunity for an informal hearing including limited cross-examination, and a statement of basis and purpose--have long been familiar institutions at the Commission.

In short, I firmly believe that the Magnuson-Moss Act provides reasonable and not unnecessarily burdensome safeguards. In this context, I anticipate that rulemaking hearings will proceed expeditiously while affording interested persons the carefully controlled opportunity to present their views and cross-examine witnesses.

In its own regulations governing the conduct of rulemaking proceedings, the Commission has provided for selective and meaningful use of cross-examination. Everything is filtered through the presiding officer. In addition to determining whether cross-examination is appropriate and necessary to clarify or establish material facts, the presiding officer has been authorized to exert additional procedural controls.

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For example, the presiding officer may require groups of persons with the same or similar interests to select a single representative to conduct examination. If such persons cannot agree on a representative, the presiding officer selects one for them.

Such procedures encourage Commission rulemaking in a setting which minimizes delay and which in many instances provides for a broader and more efficient base for civil penalties and consumer redress than case-by-case litigation. With clear and prompt sanctions now directly available for rule violations, without the necessity for intervening adjudication, rulemaking becomes an even more effective tool for law enforcement.

The interrelationship of the Magnuson-Moss provisions has led the Commission to replace much of its traditional case-by-case litigation in the area of consumer protection with public rulemaking proceedings. In determining whether to initiate a rulemaking proceeding--as in deciding whether to bring a case--the Commission considers a number of criteria. While flexible and not designed as routinized parts of Commission decision-making, these criteria are useful as guides to Commission rulemaking decisions.

First, for example, the Commission examines the extent or breadth of the alleged unfair act or practice in question--

i.e., the number of persons it affects and the geographical area in which it is occurring. In this regard, the Commission also weighs the perceived economic and social utility of the act or practice and attempts to determine whether regulation is "worth the cost" of any social benefits derived thereby--e.g., whether the unfair act or practice unfairly affects a particularly vulnerable group, such as the poor or the elderly, or a particularly vital national policy goal, such as energy conservation. The Commission also looks to the deterrent effect of a rule versus that of a case and in so doing examines related law enforcement programs of other federal, state, and local agencies. These considerations, while only guidelines, aid the Commission in promulgating rules which effectively prohibit unfair and deceptive practices and which at the same time complement, rather than disturb, effective regulation on the part of other law enforcement bodies.

Under the authority conferred by the Magnuson-Moss Act, the Commission has proposed trade regulation rules in a number of areas including among others: prescription drugs, prescription eyeglasses, food advertising, vocational schools, credit practices, protein supplement advertising, health spas, funeral industry practices, over the counter drugs, hearing aids, and mobile homes. These rules supplement previous Commission TRR's and in

addition complement the Commission's cease-and-desist order proceedings. As a general point, rulemaking has in my view been effectively used by the Commission as a means of deciding what type of business conduct violates the statutes which it enforces and for deciding which remedy for that conduct is most appropriate. More specifically, rulemaking has allowed the Commission to effectively marshall its enforcement resources as for example by protecting consumers through required disclosure of material facts. The disclosure aspects of Commission rules recognize that the marketplace is ideally the best regulator of all--so long as the consumer is aware of the choices available to him.

Indeed, the best evidence that rulemaking is not always the same as regulation is the Commission's proposed prescription drug advertising rule. By making it an unfair practice to restrict or prohibit the advertising of prescription drug prices, this rule--if adopted--represents concrete proof that government is capable of self-generated deregulation.

Most importantly, such regulatory proposals are defined in a rulemaking process which involves public participation at every stage. This public participation aspect of rulemaking underscores its utility as a means of agency policy formulation, since it represents an important check on any tendency to overregulate. An examination of recent proposed rules demonstrates that the

Commission is determined to encourage as much enlightened comment and participation as possible, and thereby to regulate only where regulation is clearly necessary and desirable.

First, much of the staff research material underlying the proposed rules has been made public. For example, a 600 page staff memorandum on creditors' remedies was made public when the proposed rule was announced in order to encourage informed public comment. Similar reports involving a significant investment of staff time and resources have been made available to the public for almost every rule which the Commission has recently proposed under the Magnuson-Moss Act. Another technique designed to encourage public participation has been the publication of alternative provisions. For example, as part of the unfair credit practices rule, the Commission has proposed prohibiting contractual provisions providing for the assignment of wages or, in the alternative, limiting the use of wage assignments to transactions involving three hundred dollars or less where no other security is reserved by the creditor. Similarly, in publishing the nutrition advertising rule, the Commission published an unendorsed staff recommendation requiring affirmative

disclosure in order to generate suggested alternative approaches.

The Commission also often publishes a series of questions along with its proposed rules in order to elicit specific comment from interested persons on issues which it believes particularly significant to the rulemaking--the prescription drug rule and the prescription eyeglasses rule being examples in point.

Thus far, I have stressed the importance of public participation in rulemaking at the notice and hearing stages of that process. However, public participation in rulemaking is evident in the very initiation of a number of such proceedings, through the filing of a petition for proposed rulemaking by an interested person.6/ Such a petition may accompany Commission regulatory activity in a particular area or be unrelated to current Commission actions. In either event, Commission review of a petition of this type may lead to the commencement of a rulemaking proceeding through publication of a proposed rule in the Federal Register.

From 1973 to date, the Commission has received twenty-nine petitions requesting the initiation of rulemaking proceedings. While half of these petitions have been

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6/ Commission Rules Of Practice And Procedure, §1.9.

formally denied by the Commission, others have served as part of the primary source material from which Commission Guides, TRR's, or litigation activities have been proposed. Still others are under active consideration in the Bureau of Consumer Protection.

In order to effectively review and respond to such petitions, the Commission's Bureau of Consumer Protection has recently adopted internal procedures which establish "outside" time limits for Bureau response to the Commission concerning the viability of specific petitions. These procedures include close monitoring of petitions by members of the Bureau Director's Staff along with assignment of staff attorneys and legal support facilities. I believe these procedures permit careful Commission analysis of petitions and at the same time provide petitioners with a timely response to their specific requests for Commission rulemaking.

The length and complexity of such petitions often result in the need to commit a substantial amount of staff resources to their evaluation. Characteristic of much of the rulemaking process, staff must investigate both the legal and factual bases upon which such petitions are founded. This investigation phase of Commission review often involves examination of industries and trade practices with which the Staff has had relatively little contact. Frequently proper evaluation of a petition

necessitates the production of information which can only be obtained by compulsory process from industry members. Further, such petitions often involve complex issues requiring special expertise, which in turn calls for consultation with outside experts and other federal, state, and local governmental authorities. Petitions dealing with the energy conservation area, for example, require concentrated staff analysis of extremely technical scientific issues, and while in some instances resulting in valuable insights, serve to delay the rulemaking process.

In addition to the internal procedures adopted by the Bureau of Consumer Protection, the Commission has directed its Management Division to undertake a rulemaking assistance project, in order to minimize any delay which might arise in the rulemaking process. This Project involves the proposed development of a number of document indexing and retrieval procedures along with other managerial support to help ensure that Commission rulemaking proceedings are run as expeditiously as possible. Further, the Commission has already put into operation a Case-Project Tracking System which provides rulemaking staff with data concerning the status of critical aspects of each particular rulemaking, and which allows for more precise tracking of Commission manpower utilization in the

rulemaking area. As such information procedures and analytical tools continue to be developed within the rulemaking process, I believe that the expeditious handling of rulemaking activities including petitions will be further ensured.

The Commission well recognizes the utility of rulemaking as a tool of formulating agency policy in an open, informed, reasoned, and candid manner. The rulemaking authority delegated to the Commission under Title II of the Magnuson-Moss Act provides it with a mechanism by which to pursue effective rulemaking in a manner which should maximize consumer benefit while minimizing the expenditure of tax dollars.

In order to achieve such a result, however, the Commission realizes that it must carefully select its rules and cases. Such a deliberative process involves consideration of a number of factors, outside petitions for rulemaking being one such important source. The Commission therefore stands firmly committed to ensuring that interested persons have an open means of access to it through such petitions for rulemaking (as in the other aspects of the process itself), and has attempted to structure its rulemaking activities to ensure that the process is expeditiously carried out.

Mr. ROSENTHAL. Our next hearing will deal with advertising and your responsibilities thereunder.

The subcommittee stands adjourned.

[Whereupon, at 12:18 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

OVERSIGHT HEARINGS INTO THE FEDERAL TRADE COMMISSION—BUREAU OF CONSUMER PROTECTION

(Delays in Rulemaking—Regulation of Advertising)

TUESDAY, JUNE 22, 1976

HOUSE OF REPRESENTATIVES,
COMMERCE, CONSUMER,
AND MONETARY AFFAIRS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2247, Rayburn House Office Building, Hon. Benjamin S. Rosenthal (chairman of the subcommittee) presiding.

Present: Representatives Benjamin S. Rosenthal, Elliott H. Levitas, Edward Mezvinsky, and Garry Brown.

Also present: Peter Barash, staff director; Jean S. Perwin, counsel; Eleanor M. Vanyo, assistant clerk; and Henry C. Ruempler, minority professional staff, Committee on Government Operations.

Mr. ROSENTHAL. The subcommittee will be in order.

The Commerce, Consumer, and Monetary Affairs Subcommittee today continues its oversight hearings into the operations of the Federal Trade Commission. Today and Thursday we will be examining the state of advertising and the effectiveness of the FTC's activities in eliminating unfair and deceptive advertising practices.

American advertisers spend $25 billion annually to promote their products to consumers. This fiscal year, the FTC will spend approximately $3 million to prevent advertising abuses—an amount approximately equal to that spent during each of the 2 last years. The subcommittee is concerned over the state of advertising and over evidence that the Commission's activities in the advertising area have been experiencing a decline. For example, it appears as though there has been a decline over the last 3 years in the numbers of Commission requests for substantiation of advertising claims and in the numbers of cases brought as a result of the ad substantiation program—a program described in the Commission's budget justification as "the cutting edge of its advertising programs." We will also examine Commission activities in the areas of corrective advertising, suits against national advertisers, affirmative disclosure, and the FTC's response to consumer complaints.

We cannot assess the performance of the FTC in the area of advertising without also examining the state of advertising in terms of its truthfulness, objectivity, and informational value and the success of the advertising industry's attempts at self-regulation. If the industry's efforts at self-regulation, primarily through the Council of Better

Business Bureau's National Advertising Division and the National Advertising Review Board, are working, then the FTC's advertising activities should take account of this success. If, however, self-regulation is ineffective in whole or in part, then an expansion of the Commission's efforts would be indicated.

Advertising can be a valuable way to get information to consumers. Unfair and deceptive advertising is both economically unsound and unfair to competitors and consumers. Since the FTC is the only Federal agency empowered to regulate advertising, that regulation must be vigorous, responsible, and fair.

Our witnesses today are from the public interest and consumer community. They will be commenting on the current state of advertising and the FTC's performance in the advertising area. In addition, a former public member and a present public member of the National Advertising Review Board will evaluate the success of advertising self-regulation and its relationship to the Federal Trade Commission.

We had set tomorrow aside and had offered an opportunity to the advertising industry trade associations and individuals and groups therein to appear and present testimony in support of their views in this area.

We had asked the American Association of Advertising Agencies, the Association of National Advertisers, and the American Advertising Federation, together with the National Advertising Review Board, to appear and testify. The American Association of Advertising Agencies represents the advertising agencies; the Association of National Advertisers represents the large national advertisers; and, the American Advertising Federation represents the various elements of advertising agencies, including the media. All have refused to testify.

In addition, the National Advertising Review Board has indicated a willingness to cooperate and asked for more time to compile the requested material.

Our initial witnesses this morning will be Mr. Mark Silbergeld, of Consumers Union; Mr. Tom Ryan, of the Missouri Public Interest Research Group; and Mr. Tracy Westen, of communications law program, University of California at Los Angeles.

Mr. Westen, I understand that you are to be our first speaker. You may proceed.

STATEMENT OF TRACY A. WESTEN, DIRECTOR, COMMUNICATIONS LAW PROGRAM, UCLA LAW SCHOOL, LOS ANGELES, CALIF.

Mr. WESTEN. Thank you, Mr. Chairman. I have a prepared statement which I will attempt to summarize.

This year, 1976, marks the bicentennial of a little-known, yet highly significant event—the publication by Adam Smith of "The Wealth of Nations" in 1776. In this work, Adam Smith outlined the classic economic philosophy that is thought to underlie our society. In his theory, consumers exercise ultimate sovereignty in a capitalistic society. So long as consumers had two things—the power to bargain for price, and information about goods and services—their informed purchases in the marketplace would ultimately control the production of goods.

Two hundred years later, the U.S. Supreme Court has symbolically

marked the bicentennial of The Wealth of Nations in its recent decision establishing the first amendment right of consumers to receive accurate consumer information. In this decision, the Supreme Court has effectively held that the need for accurate, truthful, and undeceptive consumer information is essential to the functioning of our economy.

Yet paradoxically, we must now confront the fact that modern consumers have lost the two essential things that Adam Smith felt were necessary for consumer sovereignty. Clearly the day has long since passed when consumers had the power to bargain for price—as the manager of a local Safeway store would be quick to point out should a consumer attempt to dicker over the price of Kleenex.

More significantly, the day has also long since passed when consumers had the information they needed to make intelligent consumer choices. Indeed, many modern consumers undoubtedly make purchasing decisions with a greater degree of ignorance than at any prior point in history.

Some of the reasons for consumer ignorance are obvious. The quantity, variety, and complexity of modern products have multiplied astronomically. There was, perhaps, a simpler time when consumers could squeeze, taste, or smell fruits and vegetables in the market square, or even kick the tires of a carriage or automobile—and presumably make a relatively informed judgment concerning the quality of the product they sought to buy.

Today, the colors, aromas, and even the tastes of many food products are artificial; and it is doubtful what one could learn from kicking the tires of a 1976 Ford or Chevrolet. Indeed, it is often impossible even to pronounce the ingredients and additives in many food products, much less understand what they are. And even if consumers could make such judgments, most products are packaged in plastic, cardboard, or tin containers in ways that make simple inspection impossible.

A more significant reason for our lack of consumer information, however, is our increased dependence on advertiser supported mass media—and in particular, television. The average television set in this country is now turned on over 7 hours a day. There are more homes with television sets than with refrigerators or indoor plumbing. A majority of Americans now report that television is their principal source of news and information. Although less than a majority of all adults in the world can identify a picture of their national leader by photography, 90 percent of the 3-year-olds in the United States can identify a picture of Fred Flintstone.

At times, over 25 percent of all television time is devoted to commercials—highly sophisticated, and carefully contrived messages designed to supply us with selected information—or misinformation—about goods and services. Yet, although American consumers are virtually flooded with product information, much of it is either useless to informed decisionmaking, or affirmatively deceptive.

The makers of Excedrin, for example, have spent millions of dollars and many years of advertising to assure consumers that Excedrin is the "extra strength pain reliever." Yet they have failed to reveal the fact that Excedrin uses a combination of analgesic ingredients that are less effective than plain aspirin; and, therefore, each Excedrin tablet has

an extra amount of pain relievers to compensate for the lower effectiveness. The makers of Excedrin also cite the fabled "hospital studies" that prove Excedrin's effectiveness—failing to state, however, that those studies were on postbirth pain, not headaches; and that the results were so skewed that at one point a single tablet of Excedrin was shown to be more effective than two tablets.

These, of course, are standard, garden-variety deceptions. More troublesome are advertisements that deceive by failing to tell the whole truth. Anacin's advertisements are classics. For decades, Anacin has spent sometimes more than $26 million a year on television advertising which claims that Anacin has the "ingredient doctors recommend most." Yet not once has it revealed the dark secret that this mystery ingredient is plain aspirin—often available at 39 cents per 100 tablets instead of $1.79.

What, then, has been the role of the Federal Trade Commission in increasing the flow of accurate information to consumers? In recent years, the FTC has stressed four techniques. All have some value, although they should be strengthened. Yet all are deficient in truly maximizing consumer information.

The FTC's first and traditional technique is to file complaints against false or deceptive advertising claims. In part, this remedy needs to be strengthened in several ways.

First, a surprisingly small number of national advertising complaints have been filed by the FTC over the past few years—only a handful in 1976, for example. The number of complaints should be increased. Without this, the deterrent effect of the FTC's power is lost.

Second, consumers should be informed when an FTC complaint is pending against an advertisement. For example, national television advertisements against which an FTC complaint is outstanding might be required to disclose that fact in visible letters across the screen: "Under Pending FTC Complaint." Consumers could then proceed at their own risk or take further steps to inform themselves.

Third, many advertising campaigns last only a few weeks. By the time the FTC has filed a complaint, the campaign is over and the damage is done. The advertiser moves on to another version of the campaign while the FTC plays catchup ball. The FTC must move faster and more decisively against deceptive ads. It has, in the past, seemed strangely reluctant to use its newly acquired injunctive powers. This reticence should be reversed.

Most importantly, however, even successful deceptive advertising complaints do not solve the underlying consumer problem. They may eliminate false or misleading information, but they do not supply the consumer with the necessary positive information. In this sense, inaccurate information is the same as no information. In both cases, the consumer is unable to make intelligent decisions. Moreover, many recent advertisements are not deceptive in traditional terms. It may not be deceptive for Eddie Albert to stand up in front of a television camera and simply state that he feeds his dog Alpo. This may be true, but it totally fails to inform the consumer what the ingredients of Alpo are, whether they are overpriced, or whether they are safe. The FTC could theoretically eliminate all deceptive advertising, and still not provide consumers with the information they really need.

Another FTC program is advertiser substantiation. Again, while valuable, this program needs improvement. First, it should be used

more often. Although the FTC invoked this procedure frequently in 1973 and 1974, it has apparently only been used once in 1975, and not once in 1976. Second, if the FTC lacks the resources to analyze and compile the substantiation data in a usable form, it should contract with consumer groups to perform this task for it. Finally, the FTC might consider requiring advertisers to furnish substantiation data before the advertisements are used. For example, advertisers might submit substantiation together with the story boards for each ad when they are submitted to the FTC, and not years after the ad is run.

A third FTC technique is to encourage comparative advertising, in which the manufacturer of one product compares his product to his competitor's. Again, although this technique may frequently be useful, in some cases it exposes the consumer to competing claims which are both inadequate; that is, neither claim gives the consumer all the information needed to make an intelligent purchase.

Fourth, the FTC has, on a few occasions, required the advertiser who made deceptive statements to "correct" the deceptive statement by publishing or broadcasting the truth about the misleading claim. This technique is one of the few that forces the advertiser to tell the consumer accurate and relevant product information—for example, that Profile bread does not have fewer calories than other breads, or that Listerine does not help prevent colds. Unfortunately, this technique has not been used frequently by the FTC. And more importantly, it has not been used when the advertiser has merely said something truthful, but uninformative—for example, that Eddie Albert feeds his dog Alpo.

New approaches must be explored. In the last year or two, the FTC has tentatively begun to develop new affirmative disclosure requirements, by trade regulation rule, particularly in the field of nutrition and food advertising. This is one of the first direct attempts to use advertising affirmatively to provide consumers with useful product information. Its development, however, has been slow to date, and strongly resisted by the industry. Yet it holds out the promise of being a major breakthrough in consumer protection.

In December 1972, the FTC filed a landmark series of comments in a proceeding initiated by the Federal Communications Commission. In that proceeding, the FCC asked whether there should be a right of access to the broadcast media, whereby individuals and consumer organizations would be allowed to purchase, or obtain free, spot announcement time for countercommercial or consumer messages. The FTC at that time filed comments strongly supporting such a right of access.

In mid-1974, the FCC rejected the FTC's approach. Many consumer organizations have appealed this decision to the courts. Yet strangely, the Federal Trade Commission has failed to participate in that appeal. The FTC should be asked why it was willing to file strongly worded comments before the FCC, yet not seek to vindicate its position in the courts.

The FTC might also be asked to consider a trade regulation rule stating that any broadcast station refusing to sell time for countercommercial or consumer advertisements is guilty of an unfair trade practice. Such a ruling might open the broadcast media to information currently in the hands of Consumers Union and other similar organizations, yet currently unavailable for broadcast.

Finally, the FTC should propose or support legislation to Congress which would give public representatives of consumer organizations the standing to file deceptive advertising, corrective advertising, and other complaints with the FTC. At present, members of the public can file complaints with the FTC, but there is no clear requirement that the FTC respond. Moreover, if the citizens' complaint is rejected—or simply ignored, as has happened to me and many other consumer groups—the petitioner lacks the standing to pursue court appeals that might reverse the FTC's action. A right of standing in such instances would allow citizens to prod the FTC into action in specific cases, and might create greater citizen oversight of FTC actions.

Thank you, Mr. Chairman. That concludes my remarks.

[Mr. Westen's prepared statement follows:]

PREPARED STATEMENT OF TRACY A. WESTEN, DIRECTOR, COMMUNICATIONS LAW PROGRAM, UCLA LAW SCHOOL, LOS ANGELES, CALIF.

> "[T]he particular consumer's interest in the free flow of commercial information . . . may be as keen, if not keener by far, than his interest in the day's most urgent political debate. . . . [S]ociety also may have a strong interest in the free flow of commercial information. . . .
>
> "So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be made through numerous private economic decisions. It is a matter of public interest that those decisions, in the aggregate, be intelligent and well informed. To this end, the free flow of commercial information is indispensable.
>
> "[However], [u]ntruthful speech, commercial or otherwise, has never been protected for its own sake. . . . The First Amendment . . . does not prohibit the State from insuring that the stream of commercial information flows cleanly as well as freely."
>
> -- Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council (United States Supreme Court, May 24, 1976)

This year, 1976, marks the bicentennial of a little-known, yet highly significant event -- the publication by Adam Smith of The Wealth of Nations (1776). In this work, Adam Smith outlined the classic economic philosophy that consumers exercise ultimate sovereignty in a capitalistic society. So long as consumers had two things -- the power to bargain for price, and information about goods and services -- their informed

purchases in the marketplace would ultimately control the production of goods.

Two hundred years later, the United States Supreme Court has symbolically marked by bicentennial of The Wealth of Nations in its recent decision establishing the First Amendment right of consumers to receive accurate consumer information. (See Virginia Citizens Consumer Council, quoted above.) In this decision, the Supreme Court has effectively held that the need for accurate, truthful and undeceptive consumer information is essential to the functioning of our economy.

Yet paradoxically, we must now confront the fact that modern consumers have lost the two essential things that Adam Smith felt were necessary for consumer sovereignty. Clearly the day has long since passed when consumers had the power to bargain for price -- as the manager of a local Safeway store would be quick to point out should a consumer attempt to dicker over the price of Kleenex.

More significantly, the day has also long since passed when consumers had the information they needed to make intelligent consumer choices. Indeed, many modern consumers undoubtedly make purchasing decisions with a greater degree of ignorance than at any prior point in history.

Some of the reasons for consumer ignorance are obvious. The quantity, variety and complexity of modern products have multiplied astronomically. There was, perhaps, a simpler time when consumers could squeeze, taste or smell fruits and vegetables in the market square, or even kick the tires of a carriage or automobile -- and presumably make a relatively informed judgment

concerning the quality of the product they sought to buy. Today, the colors, aromas, and even the tastes of many food products are artificial, and it is doubtful what one could learn from kicking the tires of a 1976 Ford or Chevrolet. Indeed, it is often impossible even to pronounce the ingredients and additives in many food products, much less understand what they are. And even if consumers could make such judgments, most products are packaged in plastic, cardboard or tin containers in ways that make simple inspection impossible.

A more significant reason for our lack of consumer information, however, is our increased dependence on advertiser-supported mass media -- and in particular, television. The average television set in this country is now turned on over 7 hours a day. There are more homes with television sets than with refrigerators or indoor plumbing. A majority of Americans now report that television is their principal source of news and information. Although less than a majority of all adults in the world can identify a picture of their national leader by photography, 90 percent of the three-year-olds in the United States can identify a picture of Fred Flintstone.

At times, over 25 percent of all television time is devoted to commercials -- highly sophisticated, and carefully contrived messages designed to supply us with selected information -- or misinformation -- about goods and services. Yet, although American consumers are virtually flooded with product "information," much of it is either useless to informed decision-making, or affirmatively deceptive.

The makers of Excedrin, for example, have spent millions of dollars and many years of advertising to assure consumers that Excedrin is the "extra strength pain reliever." Yet they have failed to reveal the fact that Excedrin uses a combination of analgesic ingredients that are less effective than plain aspirin, and therefore each Excedrin tablet has an extra amount of pain relievers to compensate for the lower effectiveness. The makers of Excedrin also cite the fabled "hospital studies" that prove Excedrin's effectiveness -- failing to state, however, that those studies were on post-birth pain (not headaches), and that the results were so skewed that at one point a single tablet of Excedrin was more effective than two tablets.

These, of course, are standard, garden-variety deceptions. More troublesome are advertisements that deceive by failing to tell the whole truth. Anacin's advertisements are classics. For decades, Anacin has spent sometimes more than $26 million a year on television advertising which claims that Anacin has the "ingredient doctors recommend most." Yet not one advertisement has revealed the dark secret that this mystery ingredient is plain aspirin -- often available at $0.39 per 100 tablets instead of $1.79.

American consumers spend hundreds of millions of dollars each year on products like Excedrin, Anacin, Empirin, Vanquish, Cope and Bufferin. Yet the American Medical Association's Drug Evaluation Study has concluded that simple, plain aspirin -- often available at one-sixth the cost -- is equally, or more, effective and often safer. Only the lack of information keeps American

consumers wasting millions of dollars annually.

One may conclude, therefore, that a major role of the Federal Trade Commission is not just to screen out deceptive advertising, but to increase the flow of accurate information to the public. Economists have estimated that consumers could increase their satisfaction by some 50 percent if they only had access to existing information about goods and services. (See Oxenfeld, "Consumer Knowledge: Its Measurement and Extent, 22 Review of Economics and Statistics 300 [1950].)

In desperation, many consumers fall back on the hopeful assumption that one can measure quality by price -- if it costs more, it must be better. Yet studies have shown that in many product areas -- such as automobile tires, color television sets, detergents and upright freezers -- there is an inverse correlation between quality and price. In some cases, the best cost the least, and the worst cost the most. (See Morris & Bronson, "The Chaos of Competition Indicated by Consumer Reports," 33 J. of Marketing #3 [July 1969].)

What, then, has been the role of the Federal Trade Commission in increasing the flow of accurate information to consumers? In recent years, the FTC has stressed four techniques. All have some value, although they should be strengthened. Yet all are deficient in maximizing consumer information.

1. Deceptive advertising complaints. Traditionally, the FTC's major weapon is to file complaints against false or deceptive advertising claims. In part, this remedy needs to be

strengthened in several ways.

First, a surprisingly small number of national advertising complaints have been filed by the FTC over the past few years (only a handful in 1976, for example). The number of complaints should be increased. Without this, the deterrant effect of the FTC's power is lost.

Second, consumers should be informed when an FTC complaint is pending against an advertisement. For example, national television advertisements against which an FTC complaint is outstanding might be required to disclose, in visible letters across the screen: "UNDER PENDING FTC COMPLAINT." Consumers could then proceed at their own risk, or take further steps to inform themselves.

Third, many advertising campaigns last only a few weeks. By the time the FTC has filed a complaint, the campaign is over and the damage is done. The advertiser moves on to another version of the campaign while the FTC plays "catch up ball." The FTC must move faster and more decisively against deceptive ads. It has, in the past, seemed strangely reluctant to use its newly-acquired injunctive powers. This reticent tendency should be reversed.

Most importantly, however, even successful deceptive advertising complaints do not solve the underlying consumer problem. They may eliminate false or misleading information, but they do not supply the consumer with the necessary information. In this sense, inaccurate information is the same as no information in both cases the consumer is unable to make intelligent decisions. Moreover, many recent advertisements are not deceptive in

traditional terms . It may not be deceptive for Eddie Albert to stand up in front of a television camera and simply state that he feeds his dog "Alpo.". This may be true, but it totally fails to inform the consumer what the ingredients of Alpo are, whether they are overpriced, or whether they are healthy for dogs. The FTC could theoretically eliminate all deceptive advertising, and still not provide consumers with the information they really need.

2. Advertising substantiation. The FTC has also embarked on an "ad substantiation program," whereby selected advertisers (or entire industries) are asked to "substantiate" the claims made in their advertisements. Again, while valuable, this program needs improvement. First, it should be used more often. Although the FTC invoked this proceedure frequently in 1973 and 1974, it has apparently only been used once in 1975 and not once in 1976. Second, if the FTC lacks the resources to analyze and compile the substantiation data in a useable form, it should contract with consumer groups to perform this task for it. Finally, the FTC might consider requiring advertisers to furnish substantiation data before the advertisements are used. For example, advertisers might submit substantiation together with the "story boards" for each ad when they are submitted to the FTC, and not years after the ad is run.

3. Comparative advertising. The FTC has encouraged advertisers to engage in "comparative" advertising -- in which the manufacturer of one product "compares" his product to his competitor's in the advertising itself, and presumably lists the reasons why his product is superior. Once again, although this

technique may frequently be useful, in some cases it exposes the consumer to competing claims which are both inadequate -- that is, neither claim gives the consumer all the information needed to make an intelligent purchase.

4. Corrective advertisements. The FTC has, on a few occasions, required the advertiser who made deceptive statements to "correct" them by publishing or broadcasting the "truth" about the misleading claim. This technique is one of the few that forces the advertiser to tell the consumer accurate and relevant product information -- for example, that Profile Bread does not have fewer calories than other breads, or that Listerine does not help prevent colds. Unfortunately, this technique has not been used frequently by the FTC. More importantly, it is only invoked when the principal advertisement is deceptive. It cannot be used when the advertiser has merely said something truthful, but uninformative -- for example, that Eddie Albert uses Alpo.

* * * * *

New approaches must be explored. In the last year or two, the FTC has tentatively begun to develop new affirmative disclosure requirements, by trade regulation rule, particularly in the field of nutrition and food advertising. This is one of the first direct attempts to use the vehicle of advertising to provide consumers with useful and relevant product information. Its development has been slow to date, and strongly resisted by the advertising industry. Yet it holds out the promise of a

major breakthrough in consumer protection.

In December 1972, the FTC filed a landmark series of comments in a proceeding initiated by the Federal Communications Commission. In that proceeding, the FCC asked whether there should be a "right of access" to the broadcast media, whereby individuals and consumer organizations would be allowed to purchase, or obtain free, spot announcement time for "counter-commercial" or "consumer" messages. The FTC filed comments strongly supporting that right of "access." In its comments, the FTC contended that consumers were not being supplied with sufficient information through most advertising, and only by allowing consumer organizations to supplement advertisements would viewers and listeners be adequately informed.

In mid-1974, the FCC rejected the FTC's approach, and held that product commercials (such as the now-prohibited cigarette commercials) did not require rebuttals under the FCC's fairness doctrine. Many consumer organizations have filed notices of appeal from this decision, and are currently preparing briefs for the U.S. Court of Appeal for the District of Columbia Circuit. Strangely, the FTC has failed to indicate its willingness to participate in that appeal. The FTC should be asked why it was willing to file strongly-worded comments before the FCC, yet not seek to vindicate its position in the courts. Moreover, the FTC should be asked to consider a trade regulation rule stating that any broadcast station refusing to sell time for "counter-commercial" or "consumer" advertisements is guilty of an "unfair" trade practice. Such a ruling might open up the broadcast media to information currently in the hands of Consumers Union and other similar organizations, yet currently unavailable for broadcast.

Finally, the FTC should propose legislation to Congress which would give public representatives of consumer organizations the "standing" to file deceptive advertising, corrective advertising and other complaints with the FTC, and then file further judicial appeals should the FTC's response be unsatisfactory. At present, members of the public can file complaints with the FTC, but there is no clear requirement that the FTC respond. Moreover, if the citizens' complaint is rejected -- or simply ignored -- the petitioner lacks the standing to pursue court appeals that might reverse the FTC's action. A right of "standing" in such instances would allow citizens to prod- the FTC into action in specific cases, and would create greater citizen "oversight" of FTC actions.

Mr. ROSENTHAL. Thank you very much. Mr. Silbergeld, you may proceed.

STATEMENT OF MARK SILBERGELD, CONSUMERS UNION

Mr. SILBERGELD. Thank you, Mr. Chairman.

I thought it might be helpful to the committee if I were to review five or six areas in which I have over the past 5 years, been critical or questioning of the Federal Trade Commission's performance, and then were to take a look at where they have gone, what they have improved, and what they have not improved. Also, I will point out areas where I think they have performed satisfactorily and where they have not, not necessarily in direct response to my criticism, but in response to changes within the Commission and a whole variety of pressures from without.

I would say that the thing which I have been most critical about over the last 5 years, and that which many committees of Congress have been most critical about, most especially budget committees, is the effectiveness of the Commission's case selection in the advertising area. We must look at that from two premises. One is that the Congress is never going to give the Commission the kind of money it needs to effectively enforce the prescription against false and misleading advertising. The second is, from a managerial standpoint, that there is a limit to how much money the Commission could effectively administer in this area in terms of having the management skills to keep X or Y number of cases going at one time.

From these two premises, I draw the conclusion that within the universe of claims that could be challenged as false and deceptive, there are some that are much more important than others. The Commission ought to have standards for finding out which ones those are.

It seems to me that the rationale to be used in selecting these cases includes the economic importance of the case. Is it a product for which consumers spend a lot of money for a single purchase; is it a product for which consumers spend a small amount of money for a single purchase, but make repeated purchases throughout the year? Is it a product that is essential, or is it a product that is not essential? Is it a product that can do a great deal of physical harm or injury and thereby cause consequential damages of significant dollar or human value?

Second, can the Commission correct the practice? Is the particular claim involved important to the reasons that the consumer chooses that product; or, is it a deception which, if eliminated, would make no difference in the consumer's decision to buy that product? That may have to do with a lot of other questions, including whether all of the competing products are promoted in a similar fashion or whether it is a fairly noncompetitive industry in which the consumer has very little choice in what brands they buy or from which manufacturer they buy.

Third, can the Commission effectively shape an order which will clean up the practice? A well-known former official of the Federal Trade Commission once said, "We have only one way to swing and they have a hundred ways to duck." And if the Commission can issue an order against an ad that is deceptive, but within 6 months the advertiser will be back with another ad that is also deceptive in a new

fashion, but not covered by the order, how effective is it? It is difficult for the Commission to fashion an order in such a way that the advertiser does not just come back and fool the consumer in another way and get the same money out of your pocket for the same goods. In that case, it has not done the Commission much good nor has it done the consumer much good to have spent the public's money on that case.

So we have been critical of the Commission over the past few years in the way they have selected their cases. I would specifically refer to the Profile bread case which Professor Westen just mentioned. In my opinion, that was a terrible case to spend money on. The reason is simply that we are talking about a bread that claimed to have fewer calories when in fact it had fewer calories because it was sliced thinner. There is at least a substantial argument that customers got exactly what they wanted for their money from that bread. They wanted two pieces of bread from which they could make a sandwich, when they were on a diet which enabled them to consume fewer calories from the bread in that sandwich.

The Commission spent tens of thousands of dollars to stop them from deceiving people. But the customers may well have been getting what they wanted. I think the Commission should have spent the money on another product. That is the kind of criticism which I have been throwing at the Commission over the past few years.

Let me quickly take a look at what I think they have done. They have done two things at the staff level which are very important. They now have an informal staff policy guideline, which is a public document and can be obtained upon request from the Commission. It takes a series of questions similar to those I have just gone into. It goes into more detail and runs about six or eight pages. This helps them to decide whether two or three cases, out of possibly six or seven, are better than any other two or three cases, since the amount of money the Commission has to spend on bringing national advertising cases is limited. I have looked over the guidelines and I think they ask these kinds of questions pretty well.

The other thing which I think has improved at the staff level is that the National Advertising Division has hired a marketing expert as an assistant to the Assistant Director. I think this is very important because one of the very valid criticisms which has been directed toward the Commission over the past few years is that everybody at the Commission level is a lawyer. Every Commissioner, at least according to my recollection, has been a lawyer since the Commission was created. And they have been trying to interpret ads, write corrective orders, and do all of the kinds of things the Commission does with advertising. But none of them are trained in advertising, marketing, consumer research, or behavioral psychology. So I think that now that there is somebody who is trained in that area is a very hopeful sign. He is advising the Assistant Director who makes the final decision on advertising matters.

But I do question whether that is going to have any effect upon the five Commissioners. The Commission frequently bypasses staff advice or tries to exercise its own will on the staff's proposed work products. And the turnover of Commissioners at the Federal Trade Commission hinders them in this respect. Usually, at least three Commissioners

are there for no more than 2 or 3 years out of a 7-year term. This hinders the Commission from developing the kind of long-term expertise that would enable them to look at some of the technical details that go into deciding what kinds of advertising cases they should be bringing and what kinds of advertising cases they should not be bringing.

Let me now move to a couple of other areas. The ad substantiation program is one of those areas. The criticism which I have directed at that program over the last few years has been quite the opposite of what your opening statement suggests, Mr. Chairman. I think they have been too scattered. And, most especially, the Commission has not looked carefully at which kinds of claims for products are the kinds that a product industry traditionally uses over and over again. Some claims are used either constantly or recurringly because that kind of claim is needed to sell the product.

I have said in the past that the Commission should be issuing fewer, but more carefully selected, substantiation demands. And those demands should select the kinds of product claims which will be recurring, which will be used again and again by the industry—even if the particular claim happens to go off the air and does not recur for another 2 or 3 years. The Commission should know that that kind of claim will be used again in the next few years because it is associated by consumers with the performance of that product. The Commission has, in fact, issued fewer claim substantiation orders because it is doing a better job at just that.

But I do not think the Commission is doing a very good job of analyzing these in a systematic way and making the analyses available to the public as a sort of consumer guide to what advertised characteristics you should pay attention to and what advertised characteristics you should not rely upon when shopping for that kind of product.

The corrective advertising area is another in which the Commission has been subject to very just criticism. Had these hearings been held 1 year ago and had I been a witness at these hearings, I would have looked at the Wonder Bread case and would have have said, "My God, they really do not know what they are talking about."

I think they have self-corrected to some extent, if the Listerine case is any indication. But I do not know to what extent the Commission is going to be consistent in this area.

There are two other areas which I find extremely troublesome, especially in view of my previously stated preference for selecting cases and areas to explore which have real economic impact on the consumer. The Commission has not self-corrected in these areas since the Wonder Bread case. These are the areas of product uniqueness and product differentiation. I think it is extremely important that the Commission begin to explore the legality of advertising designed to create the impression that a product which, in its basic performance characteristics, just like its competitors' is different, is distinct, and is a product that has much better performance characteristics. In the Wonder Bread case, particularly, the bread was baked to a Federal standard, as were all other competing enriched white breads.

Now there may be some other things such as freshness for which there is no standard, and which they might claim as unique. But that is not what they focused their ads on. They focused on the nutritional aspect, with no ability on their part to substantiate their image re-

garding those aspects. And I really think the Commission has been remiss in not exploring the questions of whether it is false, misleading, or deceptive to create that impression of uniqueness or differentiation of your product when in fact it is, in the aspects focused on in the advertising, just like that of the competition.

The final area I want to address very briefly is that of product information. I agree with Professor Westen completely that we could remove all of the false claims from advertising and it still would not help many people do much shopping. It is extremely important that the Commission develop even further its efforts to get information into product and service advertising.

The Commission has taken some very important steps in the right direction in their rulemaking proceedings. The octane rule is still tied up in court, and that is not the Commission's fault. And I should disclose that we are an intervener in that case.

The automobile mileage claims rule, the funeral rule, the nutritional advertising rule, which has taken a long time because it is very complicated, and several other pending rules, which focus on advertising or have advertising as a component issue along with other marketing practices, focus on getting some positive and objectively measureable and useful information to the consumer. Also, I should mention the vocational schools are because this has been a very serious area of misinformation and false advertising.

It is in this area where the Commission has probably improved its performance the most. They need further encouragement. I would like to see some informational rules in the area of expensive consumer hard goods with regard to their performance characteristics as well. This is a fruitful area and the Commission should be urged to develop even further its activities in this area.

In summary, Mr. Chairman, I would say that there have been some improvements; but, there are also areas where the Commission has a lot more room for improvement. The area of the economics of advertising is one of those areas for more improvement.

Mr. ROSENTHAL. Thank you very much.

Mr. Ryan, you may proceed.

STATEMENT OF TOM W. RYAN, JR., RESEARCH ASSOCIATE, MISSOURI PUBLIC INTEREST RESEARCH GROUP

Mr. RYAN. Thank you, Mr. Chairman. I have two prepared statements which I would like to submit for the record. One relates to the Federal Trade Commission and one relates to the National Advertising Review Board, which, as you know, is the industry's self-regulation program. And I will attempt to summarize my research over the years relating to the NARB and, if I have time, make some comments about the Federal Trade Commission.

Mr. ROSENTHAL. Without objection, your statement will be made a part of the record.

[See p. 95.]

Mr. RYAN. Though the self-regulation program is operating in the public interest, we must put it in perspective. The self-regulatory program is severely limited by its very nature: It is dependent upon voluntary cooperation; peer pressure is its only enforcement tool;

publicity is its only deterrent; standards and guidelines, even if promulgated, would bind no one; it cannot impose any sanctions; if it fails to resolve a matter, its only recourse is to turn it over to the Government. Its bite on advertisers is more like a gummed grasp.

The power to publicize its actions is the heart of the NARB program, yet it appears that the news media is giving little attention to the decisions of the NARB and even less to the day-to-day decisions of the NAD which is its investigative staff. That is the National Advertising Division of the Council of Better Business Bureau.

There are severe practical limitations imposed on the program by limited staff resources. NARB spokesmen admit that they presently do not have the staff to open up the floodgates for consumer complaints. In its first 4½ years, the NARB received only 161 complaints from individual consumers. Until the NARB has the consumer visibility of the Federal Trade Commission, claims for successful self-regulation must be carefully circumscribed.

In addition, the NARB should be a complement to, rather than a substitute for a strong Federal program.

In the Missouri public interest research group study of the NARB, we have submitted 118 complaints. In reviewing 52 complaints, which were filed in 1972, we found that 26 had still been pending at the time of our tabulation. They had been pending for an average of 14.94 months.

Of the 26 completed investigations, it took the staff an average of 5.58 months to do the investigations. The overall average for the processing of individual complaints was 10.26 months.

Even though this is much faster than the complaint process of the Federal Trade Commission, it is not a good record.

In the fall of 1975, we reviewed 34 additional complaints. We found that 7 cases were still pending for an average of 13.83 months; that the average for the 27 completed cases was 4.8 months; and that the overall average was 6.67 months. This is on the low side considering the 7 pending cases averaged 13.83 months.

The above tabulations are for the NAD staff investigations only. They do not include the NARB, which is the appeals panel for the investigative staff. In one case, it took the NARB 8 months from the date of complaint to final panel review. In another case, it took them 21.63 months—close to 2 years.

Self-regulation, to be truly effective, must be able to nip advertising while it is still running its scheduled campaign. The average ad campaign lasts about 13 weeks. So there is much improvement that has to be made by self-regulators if self-regulation is to be effective.

The NAD has had a history of secrecy surrounding its work. Often NAD would not report the basis for its decisions or release details of substantiation which the advertisers provided it.

For example, the following is a complete report by the NAD concerning one of our early complaints: "Our trade practices division has reviewed the claims in the original ad submitted with your complaint and the substantiation received from the advertiser adequately supports the claims."

Investigative reports like that make a mockery of the appeals process. In such a case, a complainant is either forced to accept what might be a dubious decision by the NAD or blindly appeal the case to the

NARB without being able to make a cogent argument for convening a review panel. Complainants need to have a full summary of the substantiation and a complete explanation of the staff reasoning to make an intelligent use of the appeals process.

The NAD has improved its performance, but it still shows a great deal of reluctance in providing complaints with all the information that is necessary to make the appeals process function as it should.

In the decisionmaking process, we found in our earlier study a lack of thoroughness, superficial reasoning, narrow applications of definitions of truth and accuracy. And in one case, we found that the NAD even contradicted itself by denying a complaint which fell within a guiding statement published in Advertising Age.

The NAD's performance has improved since the beginning of its operation in 1971, but it still leaves much to be desired. For instance, an Avon claim of "she has pride and confidence because she knows she has the best products available" was dismissed by NAD as "legally permissible subjective superlative and recognized as trade puffery."

But how is the NARB going to raise the standards of truth and accuracy in advertising if the self-regulators use as their benchmark the overly broad legal and trade standards of an era gone by?

In a Beneficial Finance case where the ad claimed: "At Beneficial you are good for more," the NAD held that the claim was supportable since the company demonstrated that it was company policy to lend customers the full amount they had in mind and since the company provided many ancillary services which justified the expression of "good for more."

The NAD accepted the rationale of the advertiser without requiring the company to provide comparative information concerning the practices of competing lending firms. An NARB panel agreed with Mopirg that the consumer would interpret the claim as meaning that he could get more money from Beneficial than at its competitors. The NARB rebuffed the NAD reasoning and required the advertiser to come forth with additional substantiation. The NARB panel subsequently found the claim to be supportable, but its final report did not disclose the substantiation upon which it relied.

Mopirg believes that the NARB has displayed better judgment than the NAD in reviewing questioned claims. But in its first 4½ years, the NARB convened only 26 review panels. Thus the vast majority of cases are terminated at the NAD staff level. In tough cases, the NAD appears to give the benefit of the doubt to advertisers. The NAD staff is not as tough on advertisers as the staff of the FTC seems to be.

We would like to see 10 additional public members on the National Advertising Review Board so that 2 public members could sit with 4 industry representatives for panel reviews.

But a more serious problem is the matter of pseudo-public representation. Two previous public members were closely alined with the business community. One was a business professor who had represented an advertiser in a deceptive advertising case before the Federal Trade Commission. Another member was dean of a graduate school of business, had been a paid consultant to a corporation, and had proclaimed: "I am part of American business. I have grown up in it; I am committed to it."

Mopirg does not believe that these two types of individuals are the type of public representatives that we would like to see on the National Advertising Review Board.

Early NARB spokespersons promised a House subcommittee that public members would be "true representatives of the public with no industry connections whatsoever." This promise was not fulfilled.

Mopirg has continually criticized the NARB for this. In May we submitted a proposal to the National Advertising Review Council asking that business professors not be picked for the next selections to the NARB. And even though this proposal was never answered—all we received was an acknowledgment that the proposal was received—the National Advertising Review Council (NARC) did make four good selections this time around. One person is a director of a consumer group; another is a foundation head; another is a former director of the California Department of Consumer Affairs; and the fourth is a lawyer. So it seems that the NARC is at least becoming more sensitive to the problem of true representation of the public in the selection of public members.

Early NARB representatives promised a House subcommittee that the NARB would develop standards and guidelines. Except for initial guidelines established by the children's review unit and two special panel reports, the NAD/NARB has stood mute before the advertising industry in its first 5 years.

An early NARB spokesperson noted that standards and guides are one of the "essential elements" of a self-regulatory program. If the NARB is to have any meaningful prophylactic effect on the advertising practices, it must develop standards and guides and distribute them widely among the advertisers.

In addition, the NARB and NAD have failed to codify the many decisions which have been made. There is virtually no practical access for advertising copy writers to the wisdom contained in the many NAD staff decisions.

The NARB has a self-imposed low profile. The self-regulators admit that they fear that they would not be able to handle a deluge of complaints. Because of continued pressure, the NARB has hired a public relations firm to expose itself. Though the NARB is finally coming out of the closet, most people probably do not know of its existence.

As previously noted, in its first 4½ years of operation, the NARB received only 161 complaints from individual consumers. Much more has to be done before industry claims that business is taking care of itself can be taken with less than a shaker of salt.

The NARB has shown a lack of aggressive leadership in tackling the tough problem areas. Part of this problem is that the NARB members are volunteers and can only devote a limited amount of time to the NARB program. In addition, the NAD staff, even though they are full time, do not see themselves as out-front leaders. The limited NAD staff, as is understandable, devotes its energies to the burdens of the investigative caseload.

In spite of weaknesses, the NARB and the NAD are worthwhile and much in the public interest. However, the present clamor for deregulation and the climate to restrain Government intervention into the spheres of private decisions gives me fear that the reform rhetoric

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will cloud the facts of specific issues. In the area of advertising, we need more Government intervention, not less. We need the passage of the Moss-McGovern Truth in Advertising Act; we need an expanded use of FTC rulemaking authority to deal with the problem areas of advertising. And we need this subcommittee's effort to see that both are done.

Mr. Chairman, I would also like to make a couple of remarks about the Federal Trade Commission. I think the problem with the Federal Trade Commission is that there is a misallocation of resources. I think the Federal Trade Commission is more concerned about protecting consumers from being misled than in protecting consumers who are being ripped off.

In the past, the Federal Trade Commission has investigated dishwasher claims, dental product claims, TV set claims, deodorants, automobiles, air-conditioners, tires, household cleaning products, and shavers. These have all come within the ad substantial program. But are these the real problem areas of advertising? Are these the areas where there is a history of deception? I do not think so.

To its credit, the Federal Trade Commission has gotten involved in some problem areas. For instance, Mopirg supports its recent trade regulation proposal concerning OTC drug advertising. Mopirg has submitted a formal statement, which I can submit for the record.

To its credit, the FTC has also gotten involved in the vocational school advertising problem.

But on a comparative basis, too little of FTC's resources have been expended in problem areas. And there is a reluctance of FTC to use its powerful trade regulation authority to clean up the problem areas.

For instance, mail order advertising, in general, is the category of business which receives the most complaints, according to a Council of Better Business Bureau's report. It outranks auto dealers by three to one. And everybody knows how many complaints there are about auto dealers.

Other problems occur in the advertising areas of physical culture and beauty, bust developers, weight reducers, miracle products—for example, magic pendants—mail order health insurance, land sales, et cetera.

I have brought with me, and will submit to the subcommittee for your own personal inspection, many of these back-of-the-book ads. For example, we have ads from Who's Who in Movies and TV, True Secrets, Motion Picture, and the National Enquirer.

I would like to read you a couple of the claims in order to show you some of the real problems which are out there, and to which the Federal Trade Commission is not devoting very many resources. In fact, a petition which we filed in 1972, relating to physical culture advertising, was never heard by the Commission. Former Director of the Bureau of Consumer Protection, Mr. Tom Rosch, told us that the Postal Service is the more appropriate agency to deal with it. And yet, the Federal Trade Commission has broad and flexible rulemaking authority. And Mr. Cotter, Assistant Postmaster General and Chief Inspector, said that when using the law that they have to deal with, an operator can continue indefinitely with only a modicum of inconvenience by simply changing his name and address. So the post office is severely limited in the kind of action it can take.

Here are some of the claims that are going on today:

An amazing new supercharged vitamin E pill has recently been developed that reportedly makes both men and women of all ages feel healthier and more youthful.

He showed them how to short-circuit ACC (Appetite Control Center) so that they could eat all they wanted, yet lose pound after pound of ugly fat.

How to command your pituitary gland to order up to 756 times its own weight in fat to leave your body every single day.

My blindness, paralysis and epilepsy—and all pain—vanished with this amazing secret you can use to cure yourself of any ailment and astound your doctor.

If you have ever tried expensive gadgets and lotions that were supposed to enlarge your bust size, you've probably found out what we have known all along: that most of them simply do not work and are a waste of your hard-earned money. There is however, a proven, no-nonsense, inexpensive way to naturally attain the beautiful bosom you've always wanted.

And this particular ad is playing upon all of those people who have bought bust developers from previous advertisers in these same types of magazines and have found that they are a waste of money. They vowed never to buy them again. But this ad comes out and says, "We know that those do not work, but we have the one that does." And it is playing upon the eternal hope of many young women who are unsophisticated consumers and who, unfortunately, do not know better than to purchase these items and spend their money foolishly.

Result of the latest scientific research. . . . The magnet-Jewel-Pendant MICRON-3 can in fact transform a colorless life into an oasis of happiness.

New Apostate Exotic Love Potion lets you . . . make love to anyone you desire.

New British discovery adds inches to your bust during sleep.

Money, love, power, friends, everything you want! The amazing miracle of Psycho-Command Power can automatically bring you the things you most desire.

Mr. ROSENTHAL. In what publications do those ads appear?

Mr. RYAN. True Secrets, Who's Who in Movies and TV, National Enquirer, and Motion Picture. And these are just a few of probably 30 or 40 of these types of pulp magazines which can be found on any newsstand. But as far as we have been able to determine, the Federal Trade Commission has taken an almost hands-off policy.

In the past, they have brought some cases. But in a comparative sense, most of their resources, as I have mentioned, are going toward investigating claims of air-conditioners, electric shavers, automobiles, dental products, et cetera.

But in these particular cases, people are getting ripped off. We think the Federal Trade Commission should be devoting much more of its resources to these particular problem areas.

[Mr. Ryan's prepared statement follows:]

PREPARED STATEMENT OF TOM W. RYAN, JR., RESEARCH ASSOCIATE, MISSOURI PUBLIC INTEREST RESEARCH GROUP

Mr. Chairman, members of the subcommittee, I am addressing my prepared testimony to concerns I have relating to the Federal Trade Commission, but would be happy to answer questions concerning the National Advertising Review Board which I have monitored and studied since January 1972.

In 1970 Ralph Nader's Center for the Study of Responsive Law found that 33 of 58 companies failed to provide individual consumers with documentation for advertised claims. Mr. Nader then petitioned the FTC to require national advertisers to pre-file copies of their substantiation in a public file with the Commission so that such documentation would be available for public inspection. The Commission denied the Nader petition and as an alternative established the "ad substantiation program". One of the original purposes of the

program was to provide the public with access to the documentation for advertised claims.

Former Federal Trade Commission Chairman Miles W. Kirkpatrick suggested during testimony before the Subcommittee for Consumers of the Senate Commerce Committee that the need for the Moss-McGovern Truth in Advertising Act, which would simply mold into law lofty ad association principles that advertisers should have substantiation for their claims and be willing to make it available to consumers, should be evaluated after reviewing the results of the ad substantiation program.

Today we can review those results. It is clear to me that the ad substantiation program as a means of providing consumers with substantiating documentation for advertised claims to enable them to make better purchase decisions is a failure, a waste of the taxpayers' money, and an unacceptable substitute for the Moss-McGovern Truth in Advertising Act. The Moss-McGovern proposal is much better suited for that purpose and only involves the expenditure of taxpayer funds in its enforcement. The cost of the Truth in Advertising Act would be minimal, but the benefits to consumers would be great.

But though the ad substantiation program is a failure as a means of providing consumers with timely and useful information to aid in specific purchase decisions, I think the program is worthwhile as an investigative tool with an attendant deterrent value. The broad industry sweeps have produced evidence that the problem of misrepresentation in the marketplace is serious. For example, the FTC and other organizations reviewing the collected data found that 20 percent of air conditioner claims were of "questionable sufficiency," that 11 of 25 electric shaver claims were "open to question," that two-thirds of 54 auto claims were unproven, that one-half of 59 TV set claims were "unsubstantiated generally," and that perhaps a quarter of tire claims were not substantiated. These findings have formed the basis of complaints against some advertisers, such as Block Drug, Ford Mortor Company and General Electric, and the news accounts of these investigatory findings have served to both educate and warn the public.

However, I think the ad substantiation program as an investigative tool should be redirected. Over the past few years a variety of product claims have been swept into the FTC ad substantiation program: dishwashers, dental products, TV sets, deodorants, autos, air conditioners, tires, household cleaning products, and shavers. But do these advertised products represent the pernicious areas of misleading advertising which are in need of aggressive and innovative government action? And though these sweeps have uncovered much misrepresentation, isn't the Moss-McGovern Truth in Advertising Act a better and more efficient way to deal with the more reputable advertisers within the marketplace?

It upsets me when I read that 20 percent of the air conditioner claims were backed by data of "questionable sufficiency", but it upsets me even more when the FTC piddles around with air conditioner claims and the like at the expense of devoting much more of its limtied resources to the real problem areas of advertising.

To its credit the FTC has proposed an over-the-counter drug ad rule to remedy the persistent ad problems in the o-t-c drug field. This trade regulation would require o-t-c drug advertising claims to meet the label standards set by the Food and Drug Administration. Also, the FTC has proposed a trade regulation rule for the vocational school industry which has had a history of flagrant misrepresentation.

But on a comparative basis too little of the FTC's resources have been expended in problem areas which have had a history of deception. In March 1975 the FTC brought complaints against two national land sale firms for misleading practices. The proposed orders would include candid affirmative disclosures in print ads: "You should consider the purchase of our land to be very risky" and "The future value of this land is very uncertain—Do not count on an increase in its value * * * Purchasers usually have been unable to resell the land at all." I think it would have been a better expenditure of taxpayer funds to have brought the land sales industry within the sweep of the ad substantiation program rather than, for example, the electric shaving industry. In addition, the FTC should be devoting resources to develop prescriptive trade regulation rules for the land sales industry. But if it is tieing up precious staff resources to review whether electric shaver claims are truthful, it can't utilize those same staffers to deal with the problems of land sale advertisements and selling practices. We need to realign Commission priorities so that the major problem areas are dealt with before the minor ones.

Instead of requesting substantiation from, for example, t.v. set makers, the FTC should have swept through the "back-of-the-book" mail order ads in so-called "pulp" (low grade paper) publications. To its credit the FTC last October brought complaints against four mail order firms, but the Commission is not giving, nor has it given, the mail order misrepresentation problem the attention it deserves. The Winter 1976 issue of the Council of Better Business Bureaus' News & Views reports that the BBB system "again" received more complaints about mail order companies than any other business grouping. In fact, mail order complaints outnumbered second place auto dealers nearly three to one (and we all know how frequent complaints about autos and auto dealers have been over the years). There is a major problem here and the FTC should be committing substantial resources to protect consumers and to remedy the situation with both case by case administrative proceedings and innovative trade regulation proposals. But where is the FTC putting its resources?

In April of this year the FTC subpoenaed major advertising agencies requiring them to submit huge quantities of materials produced since May 1975 as part of a pilot program to set the stage for court tests of expanded FTC remedial powers provided for under the Moss-Magnuson FTC Improvement Act of 1975 which provides that a business can be brought to court and fined $10,000 for each knowing violation of previously litigated cases. Earlier the FTC had sent these agencies copies of selected FTC decisions concerning false product demonstrations, misleading testimonials, and so forth. FTC attorney Dave Bickert said one purpose of the program was to fill gaps in FTC monitoring files. To me it seems as if the FTC is more interested in protecting people from being misled than protecting those who are being "ripped off" through outright deception or other unfair practices such as those found in the mail order industry. I support FTC action aimed at misleading product demonstrations and testimonials, but not at the expense of devoting necessary resources to areas demonstrably in need of substantial government intervention.

One only has to page through the great variety of celebrity, romance, and other "pulp" publications to see the misrepresentational problems of which I speak. To demonstrate my point I have brought with me today a number of ads recently clipped from Motion Picture, True Secrets, Who's Who in Movies and TV and the National Enquirer. I would like the subcommittee to personally review these ads in detail so as to better understand the context of my concerns. And with your permission, Mr. Chairman, I would like your staff to select a sample of these ads to be included in the record.

Here are just a few of the many claims being made:

"It's the most powerful reducing aid ever released without a prescription."

"An amazing new 'supercharged' vitamin E-Pill has recently been developed that reportedly 'makes both men and women of all ages feel healthier and more youthful.' "

"German medical discovery offers new hope for men and women who are losing their hair."

"Learn how to have Instant Memory . . . Nothing is forgotten."

"He showed them how to short-circuit ACC (Appetite Control Center) so that they could eat all they wanted, yet lose pound after pound of ugly fat."

"Truly a remarkable and workable way to grow rich."

"Burn away fat by the hour . . . Turn it into fluid that your body flushes away."

"How to command your pituitary gland to order up to 756 times its own weight in fat to leave your body every single day."

"My blindness, paralysis and epilepsy—and all pain—vanished with this amazing secret you can use to cure yourself of any ailment and astound your doctor."

"If you have ever tried expensive gadgets and lotions that were supposed to enlarge your bust size, you've probably found out what we have known all along: that most of them simply do not work and are a waste of your hard-earned money. There is however, a proven, no-nonsense, inexpensive way to naturally attain the beautiful, full bosom you've always wanted."

"Lose fat forever! Lose 10 to 100 pounds in the fastest time possible."

"Result of the latest scientific research . . . The magnet-Jewel Pendant MICON-3 can in fact transform a colorless life into an oasis of happiness."

"Thermo-Dynamics allows you the widest possible selection of foods, there is no need to cut out those well-loved starches, fats and sugars."

"Sauna suits melts away pounds and inches."

"New Apostate Exotic Love Potion lets you . . . make love to anyone you desire."

"Lose 5 full pounds overnight."

"Is it true the amazing secret of Telecult Power automatically brings you anything you desire . . . and in 10 seconds starts to draw Riches, Love, Fine Possessions, Friends, Power, Secret Knowledge, and much more into your life? . . . Yes, a staggering miracle has happened: A brilliant psychic researcher has discovered a secret—so powerful that it is said to bring your desires to you, from the invisible world, like a blazing streak of lightning!"

"Longer, thicker hair in just 5 to 7 days! . . . Looks like 3 months growth."

"With the Slim Life weight reduction plan you will never again have to try any more diets . . ."

"Lose up to 9 lbs. in only two days."

The following four claims were found earlier.

"New British discovery adds inches to your bust during sleep."

". . . you can literally look ten to twenty years younger than your real age . . . erase wrinkles, blemishes and coarseness . . . and do it all using nothing more than such simple ingredients as water, soap, and (especially) salt! . . . you may actually reverse the dreaded aging process, and grow younger-looking, not older."

". . . you can instantly slap on 4 inches to your chest and 3 inches to each arm. . . ."

"Money, love, power, friends, everything you want! The amazing miracle of Psycho-Command Power can automatically bring you the things you most desire."

These and many other claims from similar sources raise more questions as to their truth and accuracy than any number of electric shaver or air conditioner claims.

To the FTC's credit it has brought complaints against some "back-of-the-book" firms as has the Postal Service. But the problems still exist because it appears that the FTC has made the matter a low priority. When staffers are reviewing dishwasher claims for "possible" misrepresentation, they can't be devoting that same time and energy to eliminate the pernicious deception of which I speak.

The reason that much of this misrepresentation is injurious is that there is a greater consumer reliance on advertised claims for mail order items of the type we have here than for claims made for such consumer items as automobiles and dishwashers. In addition, the product claims in question often prey upon personal psychological pressures or the lack of consumer sophistication. For example, the bust developer ad previously alluded to candidly admitted that most bust developers are a waste of money. But then, in an effort to reach those who have wasted their money on other products and have vowed not to be "ripped off" again, the ad pitches "a proven, no-nonsense" way to increase bust size and stirs new hope for interested consumers. Senator Warren Magnuson has aptly termed these unscrupulous hucksters as the "masters of the light touch."

The misrepresentation found in the physical culture "back-of-the-book" ads spills over to more legitimate advertisers as well. Dr. Belford Shelmire, Jr., a practicing dermatologist for 20 years and author of two books, has stated that "The cosmetic industry is one of the biggest consumer ripoffs today because never have so many paid so much to get so little." He adds, "The beauty business is where the drug business was years ago when snake oil and baloney like that were foisted on the public." He claims that the so-called back-to-nature products have no therapeutic value and that elements such as Vitamin E cannot be absorbed past the skin's surface, thus oil containing it is of no use. Dr. Shelmire says that it is deceptive to say that moisturizers will add moisture to the skin. "The underlayers of the skin create their own moisture. Moisturizers of oil or grease merely act as a barrier to retard the rate of evaporation from skin into the air." Also, nothing applied externally can firm or tighten the skin. "These qualities are determined by the skin's inner portion and there is no cosmetic product or manipulation that has the least influence on this part of the skin. Facial exercises and massage can also be more harmful than helpful."

The Missouri Public Interest Research Group has unsuccessfully attempted to gain the Commission's attention with respect to this matter. In October 1972 I filed a petition requesting an investigation and rulemaking proceeding concerning the flagrant consumer abuse in the advertisting of physical culture products. Despite the personal assurances of then Commissioner Mary Gardiner Jones that our petition would be reviewed by the Commission, it was never heard—as far as we are able to determine. On January 9, 1975, Senator Thomas

F. Eagleton wrote to Chairman Lewis Engman inquiring as to the status of our 1972 petition. Mr. J. Thomas Rosch, then Director of the Bureau of Consumer Protection, responded that it was the Commission's view that the Postal Service was a more appropriate law enforcement agency to deal with our concerns. On March 29th, 1975, I wrote Mr. Rosch asking him whether the Commission actually reviewed our petition and to explain why the Postal Service was to be preferred given the FTC's flexible and potent rulemaking authority. No response was received. I sent him a follow up letter in June of 1975; no response was received. In October 1975 Ms. Marian Bender, Assistant to the Director, called and asked for a copy of the March 29th letter. I complied, but no one responded. In April of this year I again sent Ms. Bender a letter and still I have not received a response.

The FTC has apparently thrown in the rulemaking towel before it has been tried, and I can't understand why it hasn't been tried. The continued appearance of these exaggerated claims is ample evidence that the limited case by case approach of the Postal Service and infrequent complaints by the Commission is inadequate consumer protection.

I can't believe that the innovative staffers of the FTC, who have created the new remedy of corrective advertising and far reaching affirmative disclosures in individual cases, would be any less creative in dealing with the problems to which I have alluded. Much can be done. For example, in the bust development field, one provision of a broad trade regulation rule could require the advertisers of exercise devices to conspicuously disclose that such a device can only increase surrounding muscle tissue and will not increase actual breast size. And in the weight reduction field, a trade regulation could include affirmative disclosures concerning the facts relating to natural overnight weight loss and temporary loss of body fluids for ads promising quick and easy weight reduction. Also, regulations could be issued governing claims referring to medical or scientific discoveries. The disclosures mentioned here are presently unheard of, and the lack of them is the root of much injurious deception.

Or, the FTC could promulgate a trade regulation rule requiring the pre-filing and prior approval of substantiating data for all claims of a particular problem product area. This would be an extreme measure, but if traditional methods of consumer protection fail, are we to limit our concern for those being deceived? And traditional measures are failing. Mr. William J. Cotter, Assistant Postmaster General and Chief Inspector, responded as follows to a letter of mine concerning the problems the Postal Service has in dealing with "back-of-the-book" ads:

"It will be obvious to you that the application of 39 U.S.C. 3005 (the statute authorizing an administrative proceeding which could result in an order for the non-delivery of mail in cases of false representation by mail order firms) is not a total remedy inasmuch as a separate proceeding is necessary each time the operator changes address, name and product label. Thus a determined operator can continue *indefinitely* with only a modicum of inconvenience." (Emphasis added.)

Furthermore, the FTC should not hesitate to test the limits of its regulatory muscle when an exceptional situation demands it. To effectively deal with the "back-of-the-book" advertisers, the Commission may be required to test its remedial powers by trying to hold publishers liable for printing ads which they know to be in violation of FTC regulations or decisions. If the FTC were to try and fail, its experience would provide a springboard for necessary legislation to deal with the more vexatious problems of misrepresentation.

But unless this subcommittee exercises its influence, it does not appear that the FTC will make aggressive use of its trade regulation powers to deal with misrepresentation where traditional case by case administrative proceedings prove fruitless. Ms. Joan Z. Bernstein, Acting Director of the Bureau of Consumer Protection, told businessmen at a CBBB Forum on Regulatory Reform held this past March that the FTC has shown a persistent interest in keeping regulations to a minimum. And for what purpose? I am fearful that the present clamor for government deregulation and regulatory reform to pull back on governmental intrusions will result in even greater reluctance on the part of the FTC to promulgate necessary trade regulations to curb on-going deception.

And lastly I would like to mention the problem area of mail order supplemental health insurance which has been called a "national scandal" by former Pennsylvania Insurance Commissioner Herbert S. Denenberg. Ads lead one to believe that

the policies are "low cost," but on a comparative basis with other health insurance plans the mail order policies are often very expensive in terms of what one gets for what he is paying. For the unsophisticated the ads mislead people into believing that the policies provide sufficient coverage in themselves. Ads may promise small daily insurance benefits without disclosing the average cost per hospital stay to give the unsophisticated consumer an indication of the adequacy of the coverage. Some claims make negative drawbacks sound like positive features. For example, some ads boldly state that payments begin after the 5th day in the hospital without disclosing that the average hospital stay is around 6 days.

There is a crying need for prescriptive trade regulation rules in this area. It bothers me when I read that automotive manufacturers have made misleading claims, but I am even more upset by the fact that the FTC gives a higher priority to areas of lesser importance than to those such as the mail order insurance field which is rampant with consumer abuses.

Without prodding by this subcommittee, I am not hopeful of changes at FTC. With respect to developing trade regulation proposals, Chairman Calvin Collier was quoted in the May 24th issue of Advertising Age as saying: "We have a full plate of consumer protection right now. The pipeline is full, and we have more than enough to keep our people busy." This statement disturbs me. Mr. Collier did, however, indicate that the FTC will continue industry-wide investigations which could lead to the issuance of individual complaints. It is imperative that the FTC focus its investigations on the major problem areas which it has substantially ignored, and this subcommittee must act as the catalyst.

If the FTC does not do it, who will? Mr. Norm Gottlieb, General Counsel for the CBBB and the National Advertising Review Board, told me: ". . . let's face it; the people who advertise in the 'back-of-the-book' . . . are generally not amenable to self-regulation. . . . much of [their advertising] is deceptive, some of it may border on fraud. . . . Law enforcement agencies really are a more appropriate mechanism to deal with them."

As to the oversight responsibilities of this subcommittee, I would like to make a proposal. As I have stated, I think the FTC needs to be prodded into realigning its priorities to reflect a substantial involvement in the major problem areas of advertising misrepresentation. Failure to redirect the FTC resources will only further waste taxpayer funds. To assist the subcommittee in its continued review, I think you should request an annual report of the Commission outlining its views as to the wide variety of advertising problems which it faces and their relative importance, and detailing the resource commitment to each area of concern. By doing this I think the subcommittee might be able to perform a more effective oversight function and prevent the misallocation of resources into areas of lesser importance, such as electric shaver and air conditioner claims, at the expense of problem areas in need of acute attention, such as the physical culture and mail order fields.

Thank you for the opportunity to express my views and for your concern.

Additional Statement of Tom W. Ryan, Jr.

Mr. Chairman, members of the subcommittee, I appreciate this opportunity to provide you with the benefit of my research and study of the National Advertising Review Board which was established by the advertising industry in the latter half of 1971 to meet the demands for greater truth and accuracy in advertising.

The NARB is composed of 50 members: 30 representing advertisers, 10 representing advertising agencies, and 10 representing the public. The National Advertising Division of the Council of Better Business acts as the investigative arm of the NARB. The NARB acts as an appeals panel, handling those matters which can't be resolved by the NAD staff and appeals of NAD staff decisions by the complainant.

The NARB limits itself to reviewing individual ads for truth and accuracy and only national and regional advertising is within its scope. Matters of taste and social responsibility are dealt with in the form of "White Papers." These are developed by special panels appointed by the Chairman. To date two major reports have been published, one dealing with advertising and product safety and the other with advertising directed at or portraying women. Another major report concerning comparative advertising is being developed.

If the matter can't be resolved by the NARB, it turns the case over to the appropriate government agency. But to date, no case has remained unresolved at the NARB level.

The NAD has a substantive staff of 9 (this includes three who work primarily as part of the NAD Children's Review Unit which was established in 1974 in response to the growing clamor over children's advertising.) Through December 31, 1975, NAD had received or initiated 964 complaints, half of which were from internal NAD monitoring or from local BBBs. The Missouri Public Interest Research Group filed 118 complaints with NARB. Of the total 964 complaints the NAD found 338 to be adequately substantiated; in 292 cases the advertiser modified or discounted the questioned claims (a number of claims were discontinued before NAD requested copy change); 263 cases were administratively closed (pre-emptive government action, matters of taste and so forth); 11 were referred to the NARB; and 60 cases were pending. In 1975 30 percent of the caseload involved comparative ads, up from 10 percent. Through 1975 there have been 26 NARB panel reviews, 12 resulting in a decision for the advertiser and 14 going against the advertiser.

The Children's Review Unit monitored over 2000 commercials and announcements in its first year and received over 500 commercials submitted to them by advertisers for evaluation during the same period. Since 1971 the NAD has logged a total of 49 reviews regarding children's advertising. Of these 40 were the result of internal monitoring and 29 investigations occurred during 1975.

Though the self-regulation program is operating in the public interest, we must put it in perspective. The self-regulatory program is severely limited by its very nature:

It is dependent upon voluntary cooperation;
peer pressure is its only enforcement tool;
publicity is its only deterrent;
standards and guidelines, even if promulgated, would bind no one;
it cannot impose any sanctions; and
if it fails to resolve a matter, its only recourse is to turn it over to the government.

Its bite on advertisers is more like a gummed grasp!

The power to publicize its actions is the heart of the NARB program, yet it appears that the news media is giving little attention to the decisions of the NARB and even less to the day to day decisions of the NAD which are released monthly to the press.

There are severe practical limitations imposed on the program by limited staff resources. NARB spokesmen admit that they presently don't have the staff to "open up the floodgates" for consumer complaints. In its first four and one-half years, the NARB received only 161 complaints from individual consumers. Until the NARB has the consumer visibility of the Federal Trade Commission, claims for "successful self-regulation" must be carefully circumscribed.

In addition, the NARB should be a complement to rather than a substitute for a strong federal program.

TIME

In January 1974 MoPIRG released a comprehensive study of the NARB, a copy of which has been provided the staff of the subcommittee. In analyzing 52 complaints filed in 1972 we found that 26 were still pending with an average time of 14.94 months, that the 26 completed investigations took an average of 5.58 months. The average for all 52 complaints was 10.26 months (which was on the low side considering the 26 which were still pending at the time of tabulation which had an overall average of nearly 15 months.

In the fall of 1975 we reviewed the results of 34 complaints filed since the results of our earlier tabulation. We found that 7 cases were still pending for an average of 13.83 months, that the average for 27 completed cases was 4.8 months, and that the overall average was 6.67 (which again is on the low side considering the 7 pending cases averaging 13.83 months).

The above tabulations are for NAD staff investigations only. NARB denies some appeals promptly, but with others, it lets them languish. In one case, it took the NARB 4 months to grant an appeal and in another 3.3 months. In one case, it took 8 months from date of complaint to final panel review, but in another it took 21.63 months.

The number of long standing pending cases should be reduced in the future as a result of new administrative controls put into effect by Robert F. Gertenbach, NAD Director.

Self-regulation to be effective must be able to nip advertising while it is still running its scheduled campaign since there are no sanctions which can be imposed after the fact as with the FTC. Considering that the average ad campaign lasts only 13 weeks, there is still much improvement which can be made.

SECRECY

NAD has had a history of secrecy surrounding its work. At first it would not even disclose its decisions except where an advertiser failed to comply with its decision. Advertising Age and consumer spokespersons criticized the secrecy and the self-regulators began to report all decisions. But often the NAD would not report the basis for its decision or release details of the substantiation which the advertiser provided it.

For example, the following is a complete report by the NAD concerning one of our early complaints: "Our Trade Practices Division has reviewed the claims in the original ad submitted with your complaint and the substantiation received from the advertiser adequately supports the claims."

Investigative reports like that make a mockery of the appeals process. In such a case a complainant is either forced to accept what might be a dubious decision by the NAD or blindly appeal the case to the NARB without being able to make a cogent argument for convening a review panel. To make an intelligent use of the appeals process, complainants need to have a full summary of the substantiation and a complete explanation of the staff reasoning.

The NAD has improved its performance, but it still shows a great deal of reluctance in providing complainants with all the information that is necessary to make the appeals process function as it would.

In 1974 the NARB announced that it would release advertiser substantiation to complainants if the advertiser agreed. This change in policy was the result of continuing pressure on the NARB to open up its decisionmaking process. This policy was announced by Mr. Edwin D. Etherington who resigned shortly thereafter due to health reasons. This policy was never implemented. We immediately filed requests for advertisers' substantiation concerning a number of our complaints and none of them were granted. Since then Mr. Robert Gertenbach, NAD Director, informed me that the NAD will release substantiation if it feels some worthwhile purpose will be served. In only one case have we been able to gain copies of advertiser substantiation, and that was after our appeal for NARB review was granted.

Both MoPIRG and Advertising Age believe that the self-regulation program has to become more open if it is to command the respect of the public.

DECISION-MAKING PROCESS

We found in our earlier study a lack of thoroughness, superficial reasoning, narrow applications of definitions of truth and accuracy, and in one case we found that the NAD even contradicted itself by denying a complaint which fell within a guiding statement published in Advertising Age. The NAD's performance has improved, but still leaves much to be desired.

Action Lure: "haul in limit catches when others aren't even getting a nibble." Dismissed as puffery, but NAD admitted that advertiser provides "no technical substantation for the claims."

Avon: "She has pride and confidence because she knows she has the best products available." NAD dismissed it as "legally permissible subjective superlative and recognized as trade puffery." But how is the NARB going to raise the standards of truth and accuracy in advertising if the self-regulators use as their benchmark the overly broad legal and trade standards of an era gone by?

Beneficial Finance: "At Beneficial you are good for more." NAD held the claim was supportable since the company demonstrated that it was company policy to lend customers the full amount they had in mind and since the company provided many ancillary services which justified the expression "good for more." The NAD accepted the rationale of the advertiser without requiring the company to provide comparative information concerning the practices of competing lending firms. An NARB panel agreed with MoPIRG that the consumer would interpret the claim as meaning that he could get more from Beneficial than at its competiors. The NARB rebuffed the NAD reasoning and required the advertiser to come forth with additional substantiation. The NARB panel subsequently found the claim to be supportable, but its final report did not disclose the substantiation upon which it relied.

MoPIRG believes that the NARB has displayed better judgment than the NAD in reviewing questioned claims. But in its first four and one-half years, the NARB convened only 26 review panels. Thus the vast majority of cases are terminated at NAD staff level. In tough cases the NAD appears to give the benefit of the doubt to advertisers; the NAD staff is not as tough on advertisers as the staff of the FTC.

PUBLIC REPRESENTATION

We would like to see an additional 10 public members added to the Board so that two public members could sit with 4 industry representatives for panel reviews.

A more serious problem is the matter of pseudo-public representation. Two previous public members were closely aligned with the business community. One was a business professor who had represented an advertiser in a deceptive advertising case before the Federal Trade Commission. Another member was Dean of a graduate school of business, had been a paid consultant to a corporation, and had proclaimed: "I am part of American Business. I have grown up in it, I am committed to it."

Early NARB spokesperson promised a House subcommittee that public members would be "true representatives of the public with no industry connections whatsoever." This promise was not fulfilled.

In May 1975 MoPIRG submitted a proposal to the National Advertising Review Council, the parent body of the NARB, asking it to make a public commitment to choose "true representatives of the public" and to make it policy not to choose business professors unless such an individual has shown by past activity to represent consumer interests. The NARC has never responded to us except to acknowledge receipt of our proposal. This lack of response disturbs me. But to its credit, the NARC made good selections this past November to fill expired public member terms: 1. a director of a consumer group, 2. a foundation head, 3. former director of the California Dept. of Consumer Affairs, and 4. a lawyer.

GUIDELINES AND STANDARDS

Early NARB representatives promised a House subcommittee that the NARB would develop standards and guidelines. Except for initial guidelines established by the Children's Review Unit, the NAD/NARB has stood mute before the advertising industry.

As early NARB spokespersons noted, standards and guides are one of the "essential elements" of a self-regulatory program. If the NARB is to have any meaningful prophylactic effect on advertising practices, it must develop standards and guides and distribute them widely among advertisers.

The National Association of Broadcaster's Code Authority has established written standards which are distributed widely and used daily by advertising practitioners to conform their advertising copy with the requirements of the Code. The CBBB has an advertising "Dos" and "Don'ts" service which could be used as the distribution vehicle for NARB guides.

In addition, the NARB and NAD have failed to codify the many decisions which have been made. There is virtually no practical access for advertising copy writers to the wisdom contained in the many NAD staff decisions.

The NARB and NAD have limited their preventive role to issuing monthly activity reports, panel decisions, and special "White Papers" on matters of social concern. Though the two special panel reports previously alluded to are much to the credit of the NARB, they alone do not fill the void.

PUBLICITY

The NARB has had a self-imposed low profile. The self-regulators admit that they fear that they would not be able to handle a deluge of complaints. Because of continued pressure the NARB has hired a public relations firm to expose itself. Though the NARB is finally coming out of the closet, most people probably do not know of its existence.

As previously noted, in its first four and one-half years of operation, the NARB received only 161 complaints from individual consumers. Much more has to be done before industry claims that business is taking care of itself can be taken with less than a shaker of salt.

LEADERSHIP

NARB has shown a lack of aggressive leadership in tackling tough problem areas. Only after growing pressure was the Children's Review Unit established.

The NARB panel on energy could mount only a press release; nothing has been done to help mediate differences between over-the-counter drug makers and government regulators who have been in a continual battle over the years; no action has been taken to clean up particular pernicious problem areas such as mail order health insurance or physical culture advertising. (The self-regulators admit that "back-of-the-book" advertisers are not amenable to self-regulation, but in the interest of protecting consumers the NAD could investigate the seriousness of the matter and bring it to the attention of the FTC and the Congress. The NARB rejected a MoPIRG proposal, first suggested by former NARB Deputy Chairman, Mr. William H. Ewen, that it convene a special panel on "back-of-the-book" advertising.)

Part of the problem with leadership is that all NARB members are volunteers who can only devote a limited amount of time to the self-regulation program. The NAD staff, on the other hand, do not see themselves as "out front" leaders. Also, the limited NAD staff, as is understandable, devotes its energies to the burdens of its investigative caseload.

But whatever the reasons, the question of leadership must be evaluated. If the NARB program is understaffed to handle its responsibilities in "taking care of business," then let the judgment be made. The success of the self-regulation program must not be judged in light of its own limitations, but in light of the problems which confront it.

CONCLUSION

In spite of its weaknesses the NARB and NAD are worthwhile and much in the public interest. They are the only national organization which will handle individual complaints, even the Federal Trade Commission won't do that! The self-regulation program provides peer leadership within the industry; it heightens industry self-awareness of advertising problems; and it serves as industry's ear to public concern. The NARB should be continued, supported, and strengthened.

However, the present clamor for deregulation and the climate to restrain government intervention into spheres of private decisions gives me fear that the reform rhetoric will cloud the facts of specific issues. In the area of advertising, we need more government intervention, not less. We need the passage of the Moss-McGovern Truth in Advertising Act; we need expanded use of FTC rulemaking authority to deal with the problem areas of advertising; and we need this subcommittee's effort to see that both are done.

Mr. ROSENTHAL. Thank you very much. If we could, I would like us to try to sum this up.

How serious, Mr. Silbergeld, is the public's interest in the question of the Federal Government's doing anything about deceptive or false advertising or product information?

I do not sense an overwhelming congressional or public interest in doing anything.

Is the public being hurt? Or is this just a matter that a few consumer advocates have gotten agitated about?

What is the net effect of it? What impact does it have? Why should anybody really be concerned?

The Federal Trade Commission obviously relates to this inquiry by programing only $3 million a year to it.

Why should we be concerned about it?

Mr. SILBERGELD. There are two or three reasons why I think the public should be, and in many cases is, interested in it.

Whether the public is interested in it or not depends upon whether you are talking about a general public interest in the general subject. This, I think, varies from person to person. A lot of people get upset anytime they see anything that they think is probably false and they want the Commission to do something about it. But that is only one reason people get upset. And I do not think that is enough of a reason for the Commission to spend the public's money.

But if you look at such very specific things as, for instance, the funeral practices rule there are literally thousands of letters from members of the public which relate their experiences and ask the Commission to do something about the fact that there is not enough information provided by the suppliers' side of the marketplace to help them make a wise decision in the circumstances in which those particular services are sold.

If you were to go out and ask the general public if the Commission should spend $30 million a year of tax dollars to clean up advertising, I think you would get some people who would feel very strongly that they should. And there are a lot more people who really do not care.

But if you were to go out and ask if the Federal Trade Commission should spend $750,000 or $1.5 million of public tax money to see that you get the information you need when you need to go and purchase funeral services for a member of your family, I think that the answer would be "Yes."

And if you ask that same question with regard to the practices that are going on in the hearing aid industry, the answer would be "Yes."

So I think it all depends upon how you ask the question. When you get down to specifics, I think the people care a lot about these particular kinds of things.

Mr. ROSENTHAL. Let me restate the question. Is there an economic loss to the general public? If so, what is it? And if the public is really concerned, is it a legitimate concern?

Mr. SILBERGELD. Yes; there is an economic loss from certain kinds of advertising. There is not from others. The *Profile Bread* case which we previously discussed is my idea of a case in which there is no significant economic loss to the public. And the public should not be concerned about the situation where somebody tells you a bread has fewer calories without telling you that it is because it is sliced thinner.

But again, with the proposed regulations of the hearing aid or funeral industry, the staff of the Commission indicates, as its reason for proposing these rules, that a tremendous number of people, for instance, spend $50 or $150 or $250—two or three times at least—in attempting to find a hearing aid, for example, when they may not need a hearing aid at all. Maybe their hearing cannot be improved with a hearing aid. Or maybe they need the $50 model instead of the one for $250. That is the economic loss.

Mr. ROSENTHAL. The industry is spending $25 billion a year in advertising. What impact is that having on our society—economically or otherwise?

Mr. SILBERGELD. The societal impacts are tremendous. What they are is a different question.

Mr. ROSENTHAL. Are they negative?

Mr. SILBERGELD. Some of them are negative; some of them are positive.

Mr. ROSENTHAL. I am trying to get some kind of an evaluation of how serious the problem is.

Mr. SILBERGELD. I do not know how to evaluate that in the absence of very carefully controlled studies. We also get into the question of values. That is something which I do not think the Federal Trade Commission or Government regulation is necessarily equipped to deal with.

For example, let's look at children's advertising. If you want to talk about whether an advertisement is deceptive and makes kids think they are going to get something which they do not get when they get the toy, that is one thing. But if you want to talk about whether the collection of all of these Saturday morning ads for toys teaches children that they can have happiness if only they get their parents to buy this, that, and the other toy, and that they have a constant pattern of purchasing new toys every week or every month as a source of their entertainment and as a source of things to play with, you are getting into a lot of value and cultural questions to which I do not have an answer. And I am not sure of the exact extent to which Government should be concerned with that.

Mr. ROSENTHAL. Professor Westen, did you wish to respond to that?

Mr. WESTEN. My answer to your question would be that advertising has an absolutely staggering impact upon many facets of our lives. Some of them are hidden, but are, nonetheless, very important.

First of all, in an economic sense, some economists have concluded that consumer decisions made on the basis of advertising costs consumers half of their purchasing power. If consumers had access only to existing information, without developing new information about products, they would increase their purchasing power by about 50 percent. So all you have to do is calculate the billions and billions of dollars that are wasted every year by consumers making decisions on faulty information and you have some sense of the economic impact.

Mr. ROSENTHAL. Has anybody calculated that?

Mr. WESTEN. I do not know that anybody has calculated it. Obviously, that is a difficult calculation to make. But let me give you an example. In my statement, I cited Anacin. It is just aspirin with a little irrelevant caffeine, and often costs $1.75 or $2.00 per hundred. Yet you can obtain exactly the same thing for 29 or 30 cents. The cost/saving ratio there is 6 to 1. And over $100 million a year is spent in purchasing Anacin. So five-sixths the amount that is spent on Anacin alone could be saved.

Mr. ROSENTHAL. Has anybody made that kind of projection about the whole economy?

Mr. WESTEN. I am not aware of it; it is possible that it could have been done.

There are many other examples of hidden costs. The Trade Commission has argued, and I think correctly, that advertisting creates barriers to entry. It tends to create brand identifications, making it more difficult for new, competing products to enter the market. It tends to entrench monopolies.

Advertising often changes the nature of products. In the old days, products were developed and ads evolved to describe them. Today, advertising campaigns are developed and then industry creates a product to fit the campaign.

Mr. ROSENTHAL. So what? Is this a serious problem?

Mr. WESTEN. My opinion is that it is a serious problem.

Mr. ROSENTHAL. How serious is it?

Mr. WESTEN. Let me put it this way. I think that if consumers are wasting half of their purchasing power, that ranks pretty high among the list of serious problems.

Mr. ROSENTHAL. What is the total consumer purchasing power in the United States?

Mr. WESTEN. I do not have the figure; but, obviously it is in the hundreds of billions of dollars.

Mr. ROSENTHAL. Is advertising causing us to waste hundreds of billions of dollars?

Mr. WESTEN. I think that it is certainly causing the waste of significant percentages of that, based on the studies I have seen.

And I think there are other hidden costs, such as the impact of television advertising's shaping our values and our culture.

Mr. ROSENTHAL. I understand that. But I am trying to define this in a basic way. What are the negative impacts of that $25 billion-a-year advertising budget? Is it economic waste, cultural deprivation—anything you would like to call it? But I would like somebody to tell us for the record what his views are.

Mr. WESTEN. Those are two of the major areas.

Mr. RYAN. I do not have any figures relating to the economic costs of misleading advertising, but you also asked if consumers were concerned. I do have a study here which directs itself to that question. In a 68,000-response survey by the Better Business Bureaus, which is the largest consumer poll taken by anybody, advertising that misleads or claims too much ranked second in a poll of the most annoying business practices.

Taking the No. 1 spot was a category related to advertising: Products that do not perform as represented: 57 percent of 9,000 college students felt that more Government regulation in advertising was needed; 47 percent of the men and 43 percent of the women maintained that most advertising now tries to deceive people rather than inform them.

And in 1966, 21 percent of the public had a great deal of confidence in advertising. In 1972, it dropped to 13 percent.

Mr. ROSENTHAL. From what we read in the newspapers, the public is against big Government. Why are they not against big advertising—or are they?

Has the public itself been seduced by advertising into a position of neutrality?

Mr. SILBERGELD. I think those same polls also show that the public has very little more trust in big business than it does in big Government, and that it does not believe that most of the advertising it gets is true. So the short answer to your question is that they do not like advertising much more than they like big Government. But I do not know what that says about what they want big Government to do about regulating advertising.

What we do not know is what that distrust or disbelief, which is expressed when somebody goes out and takes an opinion poll, does to people's shopping habits. I do not think there is any short answer to that. I think that we have not looked at that question. It is not that we have not looked at the answer carefully enough, but that we have not looked at the question to try to develop some information about what difference it does make.

Mr. ROSENTHAL. Is it the role of Government to correct these deficiencies?

Mr. SILBERGELD. I think we have to look at the specific deficiencies. Frankly, if the deficiency we are talking about is a lack of information about how long the various brands of product X will last if you spend certain amounts of money for them, in my opinion that is a valid role for Government to play.

I think you have more serious problems if the question comes down to the public's being annoyed that television urges children to get their parents to spend money on certain foods or certain toys that are advertised on Saturday mornings. Then I think we have a much more serious question of values. And I am not sure that I want Rand Dixon, Cal Collier and Elizabeth Dole to make that decision by themselves.

Mr. ROSENTHAL. If the Government, through any one of a series of devices, such as the Internal Revenue Service or some other device, forced a reduction in the U.S. advertising budget from $25 billion to $10 billion, what would be the effect on either the economy or society?

Mr. SILBERGELD. I can give you an indication of the kinds of effects it would have. And more importantly, I can probably tell you what the effect would not be even though that is what the advertising industry would claim it would be. It would not be that the economy would grind to a halt.

Every study that has ever been done shows that in good times and bad, people tend to save about 7 percent of their disposable income and spend the rest. So advertising does not cause people to buy and, therefore, keep people employed and economy running. It determines how they spend it in terms of kinds of products and brands. So that is one of the effects that it would not have.

Although I cannot predict how, an advertising reduction probably would change people's preferences as far as the kinds of items they buy. They might buy fewer commercial leisure time items and spend more on services provided along the way when they go out into the woods for the weekend. That is the kind of shift that one might predict.

Mr. ROSENTHAL. Mr. Westen, do you have a view on that?

Mr. WESTEN. If advertising were significantly reduced, I agree with Mark that that would not affect the economy. For example, cigaette advertising was, I think, the fourth largest advertising expenditure on television for many years. It was banned altogether. Obviously it has not hurt the cigarette industry and it obviously has not hurt the television industry. Profits in both fields are going up. So I do not see that reducing advertising expenditures would hurt the economy.

Mr. ROSENTHAL. Does advertising contribute or in any way influence inflationary forces in the economy?

Mr. WESTEN. I do not have specific figures on that. All I can do is give you an off-the-cuff opinion. My off-the-cuff opinion is yes. I would say this is so to the extent that advertising increases the desire for products. In low-income families, it may tend to increase demand pressure on the market. But I do not have specific figures.

Mr. ROSENTHAL. Mr. Silbergeld, you may comment and then I want to yield to Mr. Brown.

Mr. SILBERGELD. My answer would be that it does create inflation, but not for that reason. That family is going to spend the same proportion of its income anyway. The reason it adds to inflation is that it permits those companies which are successful at creating a product

image which is disproportionate to the quality of the product to demand a premium price. And therefore, you pay more for exactly the same thing that you might have had for less. The amount you would have saved by purchasing the cheaper product could have been spent on something else, thus adding to total goals produced for the same dollars expended.

Mr. ROSENTHAL. Congressman Brown.

Mr. BROWN. Thank you, Mr. Chairman.

Is it the opinion of any of you on the panel that we should make distinctions between types of ads—TV, radio, newspaper, et cetera? I think one of you suggested that there is a disproportionate amount of influence exercised by TV ads.

Mr. RYAN. I think that we do have to differentiate ads. For instance, with television and radio, we have the NAB Code Authority, a self-regulation unit which does prevent some misleading advertising from getting on the air. However, there has been criticism that their threshhold level of investigation is too high.

In the area of print advertising, in newspapers and in some of these pulp magazines which I have brought with me which just proliferate on the newsstands, there is not that type of self-regulatory organization to keep advertisers straight. And these types of publishers are not interested in regulation of themselves.

Mr. BROWN. Let me pursue that with you a little. Does the person who reads a magazine of that nature give the same credence, or is he expected to give the same credence, to the ads in those magazines as he would to the ads in a magazine such as Time?

Is there a relationship between the authenticity and the credibility of the reporting in those magazines and the ads that are displayed in them?

Mr. RYAN. I think your assessment is true to an extent. Any sophisticated consumers, such as you and myself and many other people, when we see ads in these particular magazines, will not even purchase the products that are advertised in them because they have so little credibility.

However, the mere fact that these ads appear month after month after month lead us to conclude that people are purchasing these products and are actually believing these claims. These advertisers are paying thousands of dollars to put ads in, for instance, the National Enquirer, which has the largest circulation of a newspaper in the United States—according to its own advertising anyway.

Now, the types of products that are advertised here are different from automobiles and so forth. There is a direct consumer reliance on the advertised claims for the back-of-the-book mail-order-type advertising.

For example, when you see an ad for an automobile, you do not go out and buy the product because of that ad. Or you do not buy a different make of car because of some possible misrepresentation relating to the quietness thereof. But in these particular ads, when it says: "Learn how to command your pituitary gland to order up to 756 times its own weight to leave your body every single day," those people who are concerned about weight loss and who have tried other methods and failed rely on that claim and say, "I am going to purchase that product and see if it will help."

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Mr. BROWN. Does that same person who relies upon that ad accept, with the same degree of reliance, the content of the magazine?

Mr. RYAN. Most probably those people believe many of the true secrets and true romance stories that are published in those magazines which you nor I would.

Mr. BROWN. The National Enquirer and some of the others you have mentioned are magazines that are not dealing in fiction, but which are supposedly dealing in truth.

Mr. RYAN. That is right. "CBS News" and "Sixty Minutes" did an investigation of the National Enquirer, and it came out that many of the authorities had been used over and over again in different stories and that they did not have the same sort of professional journalism as does Time or Newsweek or some others.

But I think that most people who do read these do believe what they are reading. That is why they buy them.

Mr. BROWN. How are you going to deal with a consumer who would accept the representations of the National Enquirer and still have simon pure ads in it?

Mr. RYAN. This is my point. We have these ads which consumers are believing and by which they are being deceived. And because of that, there is greater need for Government intervention in these types of ads to protect these types of consumers who are unsophisticated, who are gullible, and who are getting ripped off by these kinds of advertisers.

And that is why the Federal Trade Commission should devote more of its resources into investigating these back-of-the-book ads. They should be less reticent to use their trade regulation-making authority, especially the expanded authority giving FTC the prescriptive type of prophylactic rules, under the Moss-Magnuson FTC Improvement Act of 1975, to deal with this problem.

For the most part, according to Mr. Rosch, they think the Postal Service is the more appropriate law enforcement agency to deal with this particular problem because they can stop the mails. But Mr. Cotter, who, when I had written to him, was Assistant Postmaster General and Chief Inspector, gave this reply:

> It will be obvious to you that the application of 39 U.S.C. 3005 [the statute authorizing an administrative proceeding which could result in an order for the non-delivery of mail in cases of false representation by mail order firms] is not a total remedy inasmuch as a separate proceeding is necessary each time the operator changes address, name and product label. Thus a determined operator can continue indefinitely with only a modicum of inconvenience.

And that is exactly what is happening with many of these advertisers. The National Advertising Division of the Council of Better Business Bureaus has investigated a number of these ads at my suggestion. And many of these cases have been closed administratively because of preemptive Government action. The Postal Service has gone after some of these ads, but they continue to appear month after month after month. Six months later, they are under a different name.

There was a study done by a consumer magazine called Caveat Emptor which showed that about four different firms were operating under different names, but selling the same product. Excuse me, it was actually the same firm, but was operating under four different names, and advertising in a number of these magazines. The article talked about

the enforcement actions the Government agencies had taken against them and which were unsuccessful.

Mr. BROWN. I would like the comments of the other panel members on this.

Mr. WESTEN. I might make two points in response to your question. I am reluctant to overgeneralize, but there are studies which indicate that television advertising has a greater impact than the advertising of other media.

For instance, I have a TV Guide article here, one which is about 2 years old, which tells of the handing out of coupons in a shopping area, which allowed them to redeem those coupons for certain products.

Some coupons were handed out without comment. In other cases, the women were invited into a trailer and shown magazine ads for the various products. And in a third category, women in that trailer were exposed to television ads.

At the end of the day, the groups were studied to find out what percentage of them redeemed these coupons for products. I think it turned out that 29 out of 100 who were unexposed to any advertising turned in their coupons; 43 out of 100 who had seen magazine ads turned in their coupons; and 58 out of 100 who had seen color television commercials redeemed their coupons.

Mr. BROWN. Have there been studies and polls done which substantiate what you are saying beyond that coupon test; that there is a greater reliance upon TV ads?

Mr. WESTEN. There seem to be. The only reason I qualify that is that television advertising, and often radio advertising, is not greatly suited to the conveyance of information. The time is too limited.

So people who purchase make purchasing decisions on the basis of information. For example, someone who might want to buy a hi-fi amplifier may be more inclined to rely on a magazine ad than a television ad—if that is the case. And there may be other complications. But in general, the television industry at least will tell you that television has the greatest impact by far.

The second point I would like to make is that there are obviously many magazines that have a very unique viewpoint. The National Enquirer has one political viewpoint; Esquire Magazine has another viewpoint; the New Republic has a third; Nation has a fourth; and so on.

The essential problem with consumer information is that consumers do not have access to different sources of information that is on their side. The environment of information, for example, in the political sphere is pretty good. A citizen wanting to get conservative or liberal information can find it. But a consumer wanting to find good, accurate consumer information has a great deal of trouble.

I will give you an example to illustrate that. A couple of years ago an organization I was connected with decided to produce consumer advertisements for radio and television in an attempt to communicate important information. We picked the largest engine mount recall in history: 6.7 million Chevrolets were recalled for a potentially deadly defect. And the problem was that many people were not aware of it.

We thought that if we produced a 30-second television public service announcement warning them of this defect that many lives might potentially be saved.

We went to the networks and said, "Will you broadcast this 30-second television commercial?" Incidentally, Burt Lancaster was the narrator and it was professionally produced. We asked to have it broadcast free of charge as a public service announcement. And all the PSA did was to communicate information which General Motors had conceded, so there was nothing inaccurate about it. The three networks refused.

We then went to local Washington, D.C., stations and made the same request. All of the stations refused to broadcast it as a free PSA.

We then offered to buy the time. They still refused. Now that may be a small example, but it does show the difficulty in inserting consumer information into the media stream.

So you find that although political information may be relatively balanced in that all shades of opinion tend to be expressed, consumers do not have access to information on their side in television and radio. This is in part because those media are commercially supported and paid for by advertising.

Mr. BROWN. Is it your contention that the ad was refused solely on the basis that it might interfere with their access to revenue?

Mr. WESTEN. Yes.

Mr. BROWN. Was that their reason for refusing?

Mr. WESTEN. They are more careful than to state that.

Mr. BROWN. Do they have a right to refuse?

Mr. WESTEN. My feeling is that once a broadcast station makes a decision to sell time to outside individuals, they should not discriminate in the sale of that time, based on their evaluation of the views. That is my own position.

I do not think they should have that right—just as I do not think that a television station ought to be able to make the decision to sell time to whites but not blacks, for example, on the basis of their views.

Mr. BROWN. I think you directed some of your testimony toward the problem of pursuing an advertising case after it has left the air.

What is your remedy?

Mr. WESTEN. I have several suggestions. The first is a suggestion that before a national ad is aired, the advertiser usually submits a story board to the FTC.

Mr. BROWN. Are you saying they do this in every case?

Mr. WESTEN. It is my understanding. I have never seen the requirement, but my understanding is that in most, if not every case, national advertising is submitted to the FTC prior to airing or at least simultaneously with airing. So the Trade Commission receives the text and the photographs of the ad.

It seems to me, since the advertiser has the factual information, presumably, on which the ad is based, it would be a comparatively simple matter to attach to the story board a 1-page description of the source of the information.

Mr. BROWN. Would you in a similar way advocate that political ads should be submitted to the Federal Elections Commission before they can run to make sure that the political consumer is not being misled or deceived?

Mr. WESTEN. No. It is my belief that in the political sphere you have a fairly balanced system.

Mr. BROWN. It is better to deceive the consumer with respect to political matters than with respect to products?

Mr. WESTEN. My answer is that in the political sphere there are usually opposing candidates who will step forward and point out the deception. And we have placed our trust at least in a marketplace of ideas in which the viewer or the listener has competing views and can sort them out.

In the consumer marketplace, there is no true marketplace of ideas. Consumers are exposed to one viewpoint, but not the others. And they have no ability to choose between competing viewpoints.

Mr. BROWN. There are more and more comparative ads now. It sometimes astonishes me to see names named.

Mr. WESTEN. But you are not exposed, for example, to the viewpoint that you should not buy either of those products or that you should purchase less.

Mr. BROWN. I have never seen a political candidate get up in a political ad and say, "Neither one of us should be elected."

Mr. WESTEN. No; but I have heard Governor Brown of my State argue for lowered expectations. But my basic point is that if I thought all kinds of information were available to consumers, I would rest more easily and let them make up their own minds.

My fear is that there are serious omissions in the consumer marketplace. And even the consumer who wants to inform himself or herself has difficulty in gaining access to that information.

Mr. BROWN. Thank you very much.

Mr. ROSENTHAL. Congressman Levitas.

Mr. LEVITAS. Thank you, Mr. Chairman.

You, Mr. Weston, make reference in your testimony to the recent Supreme Court decision regarding extension of the first amendment protection to commercial speech area. And you also quote the perhaps obvious dictum that untruthful speech is not protected.

If we extend the first amendment protection to commercial speech, do we not also raise the problem of protecting this type of speech from prior restraint?

Mr. WESTEN. First of all, the Supreme Court was very careful to say that it was not trying to resolve all of these questions at the same time. Second, at the end of its opinion, it made clear that certain other first amendment techniques—like time, place, and manner restrictions and so forth—might apply differently to commercial advertising.

Also, there is one other basic point in the area of political speech to which Congressman Brown referred. The classic first amendment test is that speech cannot be suppressed absent a showing of a compelling, very strong justification.

What the Court has suggested in the advertising case, however, is that advertising, although entitled to some protection, may not be entitled to as much as other forms of speech. Therefore, the Supreme Court seems to be creating a balancing test in which speech can be regulated if the State interest outweighs the private, commercial interest.

So I do not see a prior restraint problem. The Supreme Court has left that door open. It may or may not arise.

Mr. LEVITAS. The other aspects which you commented on do not really deal with the prior restraint question in which I am most interested.

Untruthful speech is in fact protected in the case of political speech. The newspaper can lie about a politician all it wants. A political candidate can, and some frequently do, lie constantly in speeches. And that is protected.

Now the first amendment has traditionally been one of the most absolute and unconditional rights protected by the Constitution. Except in clear and present danger of certain situations, there have been very few exceptions carved out as to what is free speech.

Once you extend the cloak of first amendment protection to commercial speech, as the Supreme Court has done and as several courts of appeal have done, what will be the situation concerning prior restraint?

Now I am talking about accountability for having published something or having advertised something falsely. I do not mean holding the person accountable if it is in fact false. But I gather that you and Mr. Ryan are suggesting some type of prior restraint. Isn't that somewhat inconsistent with the first amendment?

Wouldn't you, as a member of the legal profession, have some concern that first amendment protections not be honored and that prior restraints would be created?

Mr. WESTEN. No. In the political speech area, the courts have struck down prior restraints by citing the philosophy that it is better to let an idea out and then let other people criticize it. The public will then make up its mind by listening to the competing arguments. Thus the best test of truth is the marketplace, not a prior restraint.

In the commercial field, there is no opposing viewpoint. There are no major institutions in our society that are set up to tell us through the mass media, for example, what is in our foods and drugs and cosmetics, and which cars are better and whether or not they are safe.

If there were that institution, I would tend to oppose prior restraints because I would place my faith in that marketplace. But in fact, we have a system in which most of the commercial speakers are on one side. Therefore, the only alternative that I see is to adopt a stricter prior restraint philosophy.

If, for example, consumers had all the information they needed about poisons, we would not need to regulate them. We would leave it to them to make their own decisions. But, unfortunately, they do not. So the Government or some institution has to protect them.

Mr. LEVITAS. Let me give a personal observation. I get very nervous and queasy when people start wanting to cut back on first amendment protections. I would be much more inclined to favor strict sanctions against ineffective products, dangerous products, or hazardous materials, and going after the product than, once having announced the doctrine that the first amendment protects an area of speech, then coming back with a prior restraint position.

I understand the argument that you are making, but the first amendment has just served us too well, it seems to me.

Let me move to another area, if I may. Mr. Ryan, you make the point, I think accurately, that the FTC is faced with a possible problem of allocating its resources. We have some information which raises the question of whether they are allocating them properly in terms of getting expertise or doing travel and things like that.

But nevertheless, they do and will always have to allocate their resources. There are not enough people, and I am sure Congress would not provide enough people, to regulate every single aspect of every advertising material that comes to the marketplace. So there has to be an allocation of resources.

Do you have any figures on the relative economic marketplaces that are covered by what you referred to as the back-of-the book advertising as opposed to the dishwashers and razors and so forth? If it is a question of economic protection, where is the greatest marketplace?

Mr. RYAN. I do not have any specific economic figures; I am not an economist. I really do not know if those figures are available. I have not seen any figures in the trade press, Advertising Age, relating to that particular concern of yours.

Mr. LEVITAS. Would that not be an appropriate judgment for the FTC to make—that they have to devote their resources to those areas where the greatest economic impact would be felt?

Mr. RYAN. I think that that particular line of reasoning can be misleading. If, for instance, you look at automobiles and dishwashers—high volume and lots of dollars—as opposed to the area of physical culture advertising, with weight reducer gadgets, bust developers, et cetera—relatively low volume and low dollars—the question which must be asked is: Is the type of misrepresentation in the automobile industry the type of misrepresentation that is causing a direct consumer reliance to buy the product?

If you simply put up the figures and say, "We have x millions of dollars in this area and x dollars in this area; therefore, we should be going after the area which has more dollars," that, I think is misleading. As I mentioned previously, people do not buy automobiles on the basis of one misleading statement.

Let me give you an example. In 1966, Ford ran an ad relating to the quietness of the LTD as compared to European luxury cars. The FTC substantiation program uncovered the fact that in those particular tests, Ford used European luxury cars. Some, I think, had up to 30,000 miles on them. To me, that is misleading.

However, I do not think that somebody, because of that ad, bought a Ford as opposed to a Chevrolet.

But in the area of physical culture advertising and these beauty advertisers, et cetera, people would not be buying the product but for the misrepresentations in those ads. Therefore, we have to analyze the type of misrepresentation and the pernicious nature of the particular type of misrepresentation to really give an accurate assessment of what is the best area for the FTC to get into. Now that cannot be limited to just the best area because FTC has to be involved in a wide variety of areas. But my criticism is that on a comparative basis, too little resources have been devoted to these types of pulp magazines which contain ads which have flagrant misrepresentations.

Mr. LEVITAS. Again, conceding the perniciousness of these advertisements and their falsity, the FTC in making its decision on the allocation of resources must look at, among other things, the market area they are dealing with. One of the major purposes of regulation in this area is to protect this tremendous dollar ripoff of the American public wherever it is found.

So it seems to me that in deciding where to target their resources, while they cannot just exclusively go after the high-volume area, that has to be one of their considerations. If it were not, I think this committee would have the FTC back up here and say, "You are going after a $100 million market over here and you are leaving a $2 billion market out there simply because the advertising although deceptive is not as pernicious."

So I think you have to focus on that. Do you not agree?

Mr. RYAN. I would like to respond to that. And these are some views by former Commissioner Mayo Thompson. You have certain types of products that the FTC is going after, such as Polident and Dry Ban—dental products and deodorants. The Commission finally threw out the *Dry Ban* case.

And Mayo Thompson said that these are the types of things that do not deserve the public expenditure of funds because the consumer is equipped to self-police himself.

Number one, it is a small ticket item. And if, for instance, as in the claim of Polident that it cleans 50 percent better than the "tiny blue tablet," the consumer finds that that is not true, then he does not buy that particular product. And of course the makers of Polident are not interested in just one sale; they are interested in a long-term buying by the particular consumer.

Therefore, the consumer is able, after spending 74 cents or whatever for one box, to find out whether that claim is true and to determine whether or not to buy it again. And he is getting good value for that type of product.

But in the back-of-the-book type of advertisers, many are not after long-term product purchasers. They are after the single shot; they are out to milk the campaign and get as much money as they can out of it. So there is a greater need for Government intervention.

Finally, I would like to point out that even though I have criticized the National Advertising Review Board, the self-regulators are effective in dealing with reputable advertisers. In 4½ years, they had 964 complaints. They found, I believe, that 338 of those were substantiated. And with about one-third of those complaints, 292, either the advertising was discontinued or they obtained a modification by the advertiser.

So here we have an organization that can deal with ads such as Dry Ban and Polident. And in some cases they have dealt with them very effectively.

For example, in the *Schick Shaver* case, which dealt with the comparisons of the Flexomatic razor with Norelco and some of the other brands, the FTC said, "We are not going to deal with it; we will let the self-regulatory organizations work the problem out." Here the NARB was really tough. They noted that even though the substantiation supported Schick's claim to some extent, there were some tests that were run which did not show that Flexomatic was superior in all instances with all types of beards.

Therefore, NARB said, "Shick, this is it. It is misleading; your substantiation did not document your claims. Therefore, you are going to have to change your ad."

And Schick complied because the reputable advertisers realize that if they do not cooperate with the National Advertising Review Board that there is going to be a greater impetus in the consumer's move-

ment and in the Congress to pass legislation such as the Moss-McGovern Truth in Advertising Act and other such measures which would bring about a greater intervention in the advertising industry.

Mr. LEVITAS. Mr. Silbergeld, would you also address yourself to that question dealing with the allocation of resources?

Mr. SILBERGELD. I will be glad to do so. I have to disagree with Mr. Ryan on the back-of-the-book pulp ads for a couple of reasons.

In part of my testimony, prior to your being present, I emphasized the guidelines now being used by the National Advertising Division at FTC for case selection. And a series of the questions they ask is: How much does the product cost? What is the frequency of purchase? Would the consumer purchase the product at all if they did not believe the ad? How much of the total value of the product is lost because of deception? Maybe it is not a premium product as claimed, but perhaps it has average performance so you will only have a 10-percent or a 20-percent loss of purchase price.

If you applied all of those criteria to those ads, how significant is it? For example, let's look at a bust developer. Some person may even go three times before deciding the whole category of products is worthless. So if the product costs $8, then there is a loss of $24.

On the other hand, over a 9-year life expectancy of a refrigerator, the difference in energy efficiency alone, disregarding purchase price, can exceed $24 between the best and worst models.

So it seems to me that if I were the Director of the National Advertising Division and I had to decide whether to get on the stick and get some information out about energy efficiency in refrigerators or air-conditioners, or prevent the sale of bust developers, I would be inclined to look at refrigerators.

And furthermore, there is another consideration. People who make three purchases of those things are obviously indulging their fantasies, in my view, rather than being misled. And there is real question as to whether the FTC can effectively prevent people from indulging their fantasies.

Mr. BROWN. Will the gentleman yield?

Mr. LEVITAS. Yes.

Mr. BROWN. That is exactly the point I was attempting to make earlier.

Mr. SILBERGELD. If they started spending their resources on companies along $100,000 or even $500,000 in sales a year, this committee might possibly be sitting up here saying, "That is what the Nader report said Rand Dixon's Commission was doing in the 1960's and now you are doing it again. Why are you not getting some information into the marketplace and why are you not looking at big corporations? Why are you not looking at problems that cost people more than a lifetime expenditure of $24—to take an extreme example—when you have something over here which within only 9 years of the consumer's life is likely to cost more than $24?"

I have to agree that a more sophisticated cost/benefit analysis is one thing that has to be done. Another thing is that you have to take a look at the consumers' motivations. Third, you have to try and predict whether any change in consumer behavior would come as a result of the long-lasting effects of the Commission's order.

Mr. LEVITAS. I am in favor, as I am sure most people are, of having public representation on groups that make decisions in this area. I think Mr. Ryan made some reference to that.

But the problem I have when we talk about public representation and representing the public interest is, What is the public interest?

Now I am not speaking of the type of individual whom you have identified, Mr. Ryan, and who you suggest is not interested and does not really have the public interest at heart. I do not accept that; but for the moment, let us assume that that is the case.

But the difficulty I always have when people are appointed to represent the public interest is one of definition. What is the "public interest"? How catholic is that? How do you bring into one mortal the sensitivities to represent all aspects of the public interest? What type of criteria do you go out and look for when you want to get a public interest representative on one of these groups or committees?

My guess is that even if you get a "public interest" individual, you are getting someone who represents one aspect of public interest, as he or she conceives it.

So how can we, in a sincere effort to get the public representation on these committees, get someone who does not just speak to your public interest or to mine?

Mr. RYAN. That is a difficult problem, of course. In the National Advertising Review Board case at least, I think the term "public representative" is a bad term to use.

The purpose of the public representative, from the earliest proponents and developers of the program, was to find somebody who could bring to the board a view not found within the industry; or somebody who by virtue of lifestyle, background, et cetera, was not enmeshed in the daily life of a businessman or an advertiser. The purpose was to find somebody who could bring some fresh views to those who had been running around together in the same business circles.

Therefore, with respect to the National Advertising Review Board, it is, I think, fairly easy to pick people who are in walks of life that are not involved in the business community.

For example, they had Benny Kass, who is a Washington lawyer and who is very much involved in the public interest scene, from my awareness of him. And that is the type of person who can bring some fresh views to those businessmen who are concerned with self-regulation.

Also, they had the former Governor of Florida as one of their early public representatives.

The choices they have made recently, I think, are good. They include a former head of the Department of Consumer Affairs for California, a foundation head, another lawyer, and a director of a consumer group. And these people bring with them points of view which are different from those people who are involved in the day-to-day operations of American business.

And in the case of the National Review Board, those individuals are not hard to find. I am disturbed that they have not always sought out those types of members in the past, after having promised the Subcommittee on Small Business that they would have true representatives of the public who had no industry connections whatsoever.

I can provide you with copies of the interchange between Congressman Dingell and the NARB spokesman.

Mr. ROSENTHAL. We thank you all very, very much for a very thoughtful and enlightening colloquy and presentation. There may be some questions which we will want to send to each of you for the record. Time does not permit us to continue because we have two very distinguished witnesses from whom we also want to hear this morning.

Again, thank you very, very much.

Our next two witnesses, who will sit as a panel, are Mr. Benny Kass, an attorney and former National Advertising Review Board member; and Prof. Carolyn Shaw Bell, who is presently a public member of the National Advertising Review Board.

Professor Bell, we will ask you to go first. I note that you have been listening very intently to some of the testimony of your predecessors this morning. I am sure you have some remarks which you feel ought to be included in the record.

You may proceed.

STATEMENT OF CAROLYN SHAW BELL, PUBLIC MEMBER, NATIONAL ADVERTISING REVIEW BOARD

Ms. BELL. Thank you, Mr. Chairman.

I would like to comment on a couple of points before presenting my statement. First of all, you raised the question of the total size of consumer spending power. Personal income currently is $1.3 trillion. After taxes and savings, total personal consumption expenditures would therefore be around $1 trillion.

Not all of that, of course, is spent on advertised products. Rent, for instance, and local transportation, and such would not be advertised. But if you wanted to get some global measure of consumption expenditures where advertising plays a part, you might take the figure for total retail sales, which is approximately $750 billion.

Next, in answer to your question that if the U.S. Government wanted to reduce the $25 billion currently spent in advertising what impact it would have, I would like to point out that the U.S. Government is itself among the top 10 or 15 advertisers in terms of total expenditure. Therefore, this action would have a significant impact on Government programs, particularly with recruitment for the Armed Forces. That might be a good way to find out what the real impact of advertising is—just turn off the Federal advertising expenditures.

Finally, I would like to suggest that if advertising does contribute to inflationary pressures, it does not do so via the demand route, as was suggested by one of the previous speakers. Rather, it does so through providing large firms with market power and, therefore, the ability, through administered prices, to raise prices.

Your last discussant raised the question of who are the public members and are they good enough for the National Advertising Review Board. I am completing the second of two 2-year terms as a public member, and I am also completing a 2-year term as a member of the steering committee of that board.

It is my considered opinion, which quite frankly was not formed before I sat on the board, that self-regulation can play a substantive role in reducing advertising abuses.

The position of the public member has not, I think, been fully explained. I would like to make a couple of remarks on that. The board operates to hear specific complaints about advertising by setting up specific panels of five members. Each panel must have one public member serving on it. But there are no particular duties that are assigned to the public members and they are not differentiated in the way they function. Two public members are designated to serve on the steering committee.

It is also correct that none of us can claim any special expertise at representing the public. And, Mr. Levitas, I agree with you that it is impossible for anyone to represent "the" consumer interests.

It has been my experience in the panels on which I have sat, and as a member of the steering committee, that all of the members of the board have acted as representatives of the public, rather than as representatives of advertising. One reason for this is that on any specific panel, no advertiser or advertising representative may be selected if there is a conflict of interest. For example, nobody from an advertising agency that carries toothpaste accounts would hear a case on a toothpaste claim. That being so, then the advertiser or the industry representatives have to adopt the stance of representing the public because there is not anything else for them to represent.

The position of a representative of "the" consumer interest, however, I have always found highly suspect. In my experience, my own research in the areas of income, consumption expenditure patterns, and marketing, consumers do not have a monolithic stance. Consumers disagree on their judgments; they disagree as to what they want to spend their money on. And it follows that if you have these wide differences among consumers, no one can claim any particular insight into what "the" consumer interest would be.

If you refer, however, to the position of consumer advocate, then I think you can say that the board members need to be consumer advocates themselves. And again, in my opinion they are.

So I conclude that the chief function of any public member is to keep the self-regulators honest. And this is a function which I have fulfilled elsewhere as a public member of various other committees.

The various backgrounds of the public members have included economics. I am an economist. And in my view, and in that of most reputable economic theory, advertising plays two roles. First, it is a source of information to consumers. In the search for products or services the consumer gains information, yet there is a cost to the consumer for obtaining that information.

If we look upon advertising as one source of information, then, to answer Mr. Rosenthal's earlier question about the economic waste of advertising, to the extent that advertising is false and misleading, there is a very clear waste of economic resources, both on the part of the purveyor of such information and on the part of the consumer.

If the purchaser spends time absorbing the information that is false, he is obviously misusing time. If the consumer acts on the basis of false and misleading information, it may be, although it is not necessarily so, that this action is different from one that would have been taken with more accurate information.

So there is a real potential gain from increasing the accuracy and the information in advertising. You can call this an increase in consumer efficiency or an increase in advertising productivity.

But having said that, it is not any particular help in giving us guidance as to how to deal with questions either of deception or accuracy. And this, I think, is something I would like the committee to take notice of.

The law refers to false and misleading advertising. The National Advertising Review Board was set up to promote "high standards of truth and accuracy." But there is a real difference between these two. It is much easier to say about an ad, "That is misleading and deceptive," than it is to say, "This will make it truthful and accurate." This is so even when you are dealing with the same ad. This is so because there is a difference between the truth, and the whole truth or nothing but the truth.

If we think for a moment about that distinction, then it is perfectly obvious that no consumer wants, in the sense of being willing to pay for it, the whole truth and nothing but the truth. The cost of acquiring all of the technical information about how the product is manufactured, the technical and engineering attributes of the product, and all of the information about every single outlet in which that product is sold, as well as the prices and terms of sale, is too great. No consumer would be willing to spend the rest of his or her life—which is what it would take—to acquire that kind of information.

I would argue, therefore, that consumers are clearly satisfied with something that is less than the whole truth. But it is precisely these sorts of philosophical debates of drawing the line between deception and increasing accuracy that have caused the endless delays, to which there has been reference, which exist not only in the NARB procedures, but in those of the FTC and in the court cases and litigation which frequently follow.

I haven't any magic solution to these questions because I regard them as basically insoluble. But I would refer to the very healthy process of competition. And it is for that reason that I support the efforts of the NARB to reduce false and deceptive advertising. And I would support the efforts of any other organization that attempted to set up a similar policing body.

Economists also recognize, however, that advertising does have another role. That is as a source of market power. In the case of concentrated industries which distribute in national markets, there is a very heavy reliance on brand advertising. And brand advertising is necessary simply to maintain consumer acceptance and continued sales of a familiar brand name.

As a result, there may be effective barriers to entry for new firms who seek to enter that market simply because of the very heavy costs of mounting an effective advertising campaign to penetrate the market. But I would point out that if you look at advertising as a source of market power, then it does not matter very much whether the advertising is accurate or deceptive. It is a barrier to entry in either case.

It is also very difficult to determine just how much advertising constitutes a real barrier. But, clearly, this aspect of advertising is no place for self-regulation. It is, instead, an area that should be regulated by the Federal Trade Commission and by the Antitrust Division of the Department of Justice. It belongs in the overall policy to promote competition.

In the letter asking me to appear here, I was asked to comment on the National Advertising Review Board's achievements in promoting informative and competitive advertising practices. My answer to that would be to remind us that all advertising is in some way informative. And exactly what information it carries can only be described by the consumer who is receiving the information.

I was amused this morning to hear the very, very old argument that there are many branded products that are really absolutely identical to the unbranded items that sell for a much lower price and that, therefore, consumers are being deceived.

This argument and many critics of advertising and of excess product differentiation overlook the fact that it is consumer perception that determines the demand. I have found in my own arguments on this point that a very simple example sometimes helps. I will give you the case of the color-blind consumer purchasing green peas. He is confronted with two boxes of frozen green peas. And he can read that they are frozen green peas. In fact, one of them is really green; and the other is less green, but he cannot perceive the difference. I would argue, therefore, that his choice is made on the basis of his perception, rather than on what differences really exist.

Therefore, much of the argument that the advertising agencies should be pushed to provide what some critics regard as more informative advertising is one that cannot be put into effect. And, therefore, I do not believe that NARB has any significant role to play in promoting informative advertising per se. It is a review board set up to provide high standards of truth and accuracy.

If we turn to the question of increasing competition in advertising, then, as an economist, I find other difficulties. You have already been made aware that over the past 2 years there has been a significant rise in the number and proportion of complaints to the NAD/NARB procedure which have originated with sellers.

The volume of consumer complaints, as initiators, has dropped off markedly, and now form only a small fraction of the total.

There are some complaints that also originate with the monitoring procedures of the NAD staff itself, particularly with its program that monitors children's television. But advertisers themselves have discovered that the NAD/NARB procedure is a highly effective way of complaining about what their competitors are doing.

It has been over this same period, while sellers have been increasingly complaining to the NARB, that we have found an increase in comparative advertising, with more naming of competitors by particular firms. I am quite sure that the two phenomena are related. I have not been able to figure out how they are related, which way the cause and effect runs, or whether they are both reflective of something else.

I would argue, however, that if claims and counterclaims represent competition, they do not necessarily provide additional useful information to the consumer. And, of course, competition can and, in my opinion, should take many other forms besides competitive advertising and besides comparative advertising. We can have competition in advertising if sellers emphasize different types of information, whether or not they engage in comparative advertising.

I do not think there exists any strong public interest in promoting competition in advertising per se. I would argue that competition in product improvement or price reduction might be preferable—or at least that we might know if it were preferable if we tried it a little bit more.

And so I conclude again that the NARB has at most a limited role in promoting competition in advertising.

As to the effectiveness of the board in dealing with controversial advertising issues, the board uses, for these matters, the consultive panel approach. There have been three major issues considered and a report on comparative advertising is in process at the moment.

I have criticized, in board meetings and elsewhere, the procedures used for several reasons. In the first place, when a panel is appointed, the subject matter is determined by the steering committee and by the chairman. But when the panel makes its report, it does not get issued until the full board approves the report. So it seems to me just plain logical, and probably, efficient, to have the full board vote on whether or not the panel on that particular subject should be set up in the first place. As it is, you get the possibility of board members voting against releasing a report because they do not think the board should have investigated the topic at all. And this is not particularly useful.

Second, each panel has in effect established its own procedures. None of them have done what I, as an old academic researcher, would instinctively do, which is to begin with a search of the literature. This means that in many cases the attempt of panel members to educate themselves is inefficient and repetitive.

However, if you look at the policy recommendations or the general stance on the social issues that have been considered, I would characterize the board's opinions as conservative and not in the least innovative. I think this is an appropriate description of the report on women and that on product safety.

It may be of some interest to note that the question of political advertising has been frequently raised as a possible topic for NARB action, although none has ever been taken. It is my opinion that an innovative, public-spirited body would presumably find some format for dealing with this for analyzing what the responsibilities of the advertising industry are with respect to political advertising, whether or not the consultive-panel technique were used. On the other hand, the advertising industry has other organizations which hold meetings and discuss controversial issues.

Finally, if we look at self-regulation and compare it to Government regulation, we have to compare, of course, the sanctions that are available and the resources that are devoted to these two efforts. The sanctions of the NARB consist solely of peer pressure. The procedures have been more rapidly applied than the legal sanctions at the FTC. I believe that peer pressure is significantly effective for larger firms or those with a national reputation. It is probably not so effective for the smaller firms. I believe, however, that self-regulation could operate at the local level, and I wish that there were more local advertising review boards than exist at present.

But the chief difference between self-regulation and Government regulation lies in the resources available to do the job—the $3 million of the FTC as opposed to the few hundred thousands of the NAD/NARB effort.

One reason that self-regulation is small is that the procedures are not known to many people in the country. NARB has not advertised itself and its usefulness is therefore limited. If you look at NARB itself as a kind of new product, then you might say that the marketing of self-regulation is in the pretakeoff period. If you were a seller marketing a new product, you would advertise heavily. You would get people to try your new product—namely, the self-regulating process; and you would work for that point where you achieved repeat sales—namely, people who were satisfied with the settlement of their complaints and who were coming back with another complaint. And you would hope that eventually the product would catch on and that further use of your product would take place by word of mouth advertising.

It is perfectly obvious that the NAD/NARB procedure has not followed this marketing strategy because we are a long way from even advertising our existence, let alone urging people to "Try it; you might like it."

But I would like to point out that there is a very clear explanation for the amount of effort that the advertising industry gives to its self-regulating process. The commitment of the industry to self-regulation is a direct function of the industry's fear of increased Government regulation.

The NARB was first set up in an effort to forestall congressional action that would require preclearance of advertising or some other stringent regulations. As congressional interest in tightening controls over advertising has waned, so the advertising industry's financial support has also waned.

It is true that the financial question is complicated because of the organizational links between NARB and the Council of Better Business Bureaus; and it is also true that we have had a depression for 2 years. And one way in which many people have economized during a depression is by cutting down their contributions to good causes.

I would suggest, however, that if self-regulation is to be fully developed, it should be substantially expanded. In particular, consumers must be far more aware of the complaint process and should be able to turn to it freely and fully.

I recognize that if this is done, several dangers may occur. First of all, if consumers require a greatly expanded operation, NAD/NARB may find itself in many unresolved controversies. So far, the NARB has not had to refer any advertiser to the FTC, which is the ultimate sanction. But it would be my hunch that a widely expanded volume of operation would lead to such an occurrence.

It would also be my hunch that the volume of consumer complaints about NAD/NARB itself would grow if the organizational expansion which I suggest resulted in bureaucratic procedures.

I think, therefore, that the self-regulation process has a natural limit in size. But I have no way of predicting what that size may be. I believe, however, that present efforts could easily be multiplied, that

NAD and NARB could be expanded; and that it would be useful to do all of those things.

That concludes my prepared statement. I thank you for listening.

Mr. ROSENTHAL. Thank you very, very much.

Mr. Kass, you may proceed.

STATEMENT OF BENNY KASS, ATTORNEY, FORMER NATIONAL ADVERTISING REVIEW BOARD MEMBER

Mr. KASS. For the record, my name is Benny Kass. I am an attorney, practicing law in the District of Columbia. And with all respect to the committee, I presently have about 12 people sitting in my office waiting for a deposition at 12 o'clock. So if I could, I would like to be brief. And I certainly will submit to questions; and if there are questions afterward, I would be happy to answer them.

I served as one of the orginal public members on the National Advertising Review Board. I represent no advertisers; I represent no corporations that have national advertising. I guess I was one of the natural persons to fit as one of the public members.

I would like to turn quickly to why I personnally supported the concept of the NARB, and why I still support it, because it was a concern expressed by Congressmen Levitas. That reason is that I am personally an absolutist on the first amendment. And I am personally delighted that the Supreme Court is moving away from the restrictions on commercial advertising to allow advertising under the first amendment—commercial as well as political or any other kind of speech. Hopefully, we lawyers will also be able to advertise one day.

But because I am an absolutist on the first amendment, I was troubled when the Congress and the Federal Trade Commission were getting into the area of cigarette advertising and were getting into other types of advertising, and which were saying to an advertiser, "You cannot communicate your views to the public."

I recognize that I am alone in this concept. Justice Black and Justice Douglas were my only supporters on the Supreme Court for a number of years; and, unfortunately, they are no longer with the Court. But perhaps the Supreme Court is moving in a direction that I would like to see.

Because of my concern for the absolute concept of the first amendment, I was troubled with any governmental interference or regulation, whether it be congressional or administrative. That does not mean that all advertising is good and it does not mean that all advertising that goes out over the public airways or in the media should be there. And for that reason, I actively participated in the formative stages of the National Advertising Review Board.

Clearly, as my colleague Carolyn Bell indicated, there is no question that the reason for the creation of the National Advertising Review Board was to avoid the then Moss-McGovern Trade Act, and the Federal Trade Commission's then expanding campaign in advertising. This was more of a public relations campaign than an actual campaign. But, as you will recall, in the early seventies, the Federal Trade Commission was issuing a barrage of public relations literature as to what they were going to do or were doing. But in my opinion, and in the opinion of a lot of people, the public relations campaign far ex-

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ceeded the actual limits of what they were doing. They were puffing. In fact, they were involved to some extent in a little deceptive advertising themselves.

Be that as it may, the advertising industry, the four fraternities, so to speak, set up the National Advertising Review Board. There were hearings before Congressman Dingell's Committee on Small Business and there were promises to put public members on the National Advertising Review Board.

I might add that very few regulatory bodies in fact have public members on them. In fact, the concept of a self-regulatory body is an antithesis to putting public members on it. But be that as it may, the National Advertising Review Board reluctantly put 10 public members on. So there were 50 NARB members, 20 of whom were industry, and 20 of whom were advertisers; and then there was a stray group of 10—Carolyn Bell, myself, the former Governor of Florida, the former Chairman of the Product Safety Commission, and others. Some were good and, in my opinion, some had conflicts of interest.

One was a professor at Harvard who, while he was supposedly a public member and was in fact operating as a public member, also was testifying in behalf of industry before the Federal Trade Commission.

Now I can support and differentiate the idea that there is no such thing as a "public member." I do not represent the public; I represent my view of what the public should be. I, too, was troubled by some of these inherent conflicts that existed.

But be that as it may, as we moved forward, I was concerned during the first 2 years with the internal process of the National Advertising Review Board. And we had a lot of fights—fights that hit the pages of Advertising Age; fights that hit the pages of the Washington Post and the Wall Street Journal and the New York Times. And the industry is terribly concerned about those kinds of adverse publicity. But as I kept pointing out, nobody reads the Advertising Age or the New York Times in that section except those who are in fact in the industry.

But they are terribly troubled, and I regret, Congressman Rosenthal, that they did not see fit to come to your hearings.

Mr. ROSENTHAL. Of whom are you speaking?

Mr. KASS. The National Advertising Review Board members. It is my understanding that they are not planning on being here. I am not with the NARB any more, but I do regret that they, at least according to Advertising Age, are not planning to be here at this point.

After 2 years of pushing and prodding, it was my impression that we had gone a long way. We had opened up the secrecy that had existed within the NARB. They were terribly troubled with the publicity aspect of it, and we opened up the process. And after 2 years, they put some public members on the steering committee, which had a lot of influence and impact as to where the policies would go.

I have been off the National Advertising Review Board for about 1½ years now; but from my experience, I think the concept works very strongly. And yes; I think it is very important. But there are very serious limitations which I urge this committee to consider as it moves forward in its concern about advertising, and especially with the relationship of the Federal Trade Commission.

First, there is a total lack of public relations on the part of the National Advertising Review Board. As Ms. Bell indicated, there is no campaign to let the public know that it exists. If indeed the National Advertising Review Board is to be an action line to allow the public to complain about ads, why don't we let it let the people know about it.

Stanley Tannenbaum and myself and others were on a committee to spend a lot of money and time and effort to advertise it and to try test markets; but, unfortunately, as of this date, I have not yet seen that kind of concentrated public relations campaign.

In my opinion, there has been very weak leadership on the National Advertising Review Board, as well as in the Council of Better Business Bureaus that is in effect the parent of the NARB.

The public members are still to some extent, from my conversations and when I was there, considered outsiders. It is quite true, as Carolyn Bell indicated, that every advertiser and every industry member who serves on the panel of five in fact acts as a public member. They have no ax to grind. And if an ad is deceptive or wrong, I think they act as public members. I was very impressed with that.

Except for the fact that they still treated the public members as outsiders. I was impressed in this area. The public members were not in their fraternity. Therefore, things were done without our concurrence or without letting us know about it. And I think to some extent, without appearing to be paranoid about the subject, I had the feeling that the public members were being left out of the decisionmaking process.

Indeed, if they wanted public members on the board, they should have let us participate.

There is no creativity; there is no innovation on the part of the National Advertising Review Board. We have always been told we were, and we have always explained ourselves to be, a court of last resort. It seems to me that there have been and can be many instances when the NARB could have been a court of first resort. It could have been an innovator; it could have moved forward.

Now I do not believe Mr. Westen is correct when he says that all advertisers submit the copy boards or the story boards to the Federal Trade Commission. We tried to get them to do that for the staff of the NARB in the event they had questions. And they said that this was too difficult and they did not want to do that.

One major concern that I had and still have about the NARB is that it has no enforcement power. I do not mean the enforcement power of a court of law or an administrative tribunal or even a legislative tribunal. But the enforcement power is the power of the publicity—the white spotlight of publicity on a deceptive or misleading ad.

All too often, by the time an advertising campaign is investigated by the NARB in its operation, the ad campaign is over. So the advertiser is just slapped on the wrist and told not to do this again. I think this has defeated the purpose to a large extent. All too often the advertiser says, "Why should I worry about what the NARB is going to do. We have gotten our message over for 6 or 8 months and the campaign is over."

Then the NARB or the NAD comes down and says, "That is wrong; that is deceptive; take it off."

We have expedited the process. I complained about Dristan. It took 2½ years to get a response. I do understand that now they are not that slow. But even then, the cumbersome procedures do tend to tell an advertiser that we are not really going to worry about it.

Finally, I am troubled about what Mr. Ryan indicated as the junk products that are in the backs of the pulp magazines or in the insert pages of national supplements and things like that. They are national advertising. The NARB has really never taken a concentrated effort to do something about it. They have not made an effort to call in the advertisers, to call in the media, to call in others—to be creative again—and to say, "Look, these are problems. We are not the FTC, but try to do something about those ads."

I remember all too well a time when I complained about a cigarette product. I felt it was deceptive and I felt that something had to be done about it. I got back an answer from the steering committee saying, "That is a matter for the Food and Drug Administration to look at."

I wrote back and said:

> That is not the concept of self-regulation. If you are relying on Government, why are we here at all? The NARB is designed to try to be a stopgap, to try to do something before the Federal Trade Commission or the Food and Drug Administration takes over.

But the answer of the National Advertising Review Board's Steering Committee was always:

> There are difficult areas that we do not want to get into. Let us rely in certain areas on Government. They will tell us what to do. They will set the standards. And we will live with them and that will be fine for us.

On balance, I very strongly support the concept of an NARB. It is a very unique concept. I serve on the Homeowners Warranty Council only as an adviser. They are afraid to put public members on the panel. Other such regulatory bodies are afraid to put advisers on the panel itself, rather than just as outsiders.

So I commend it. I commend the fathers of the NARB, so to speak, for what they have done.

On the other hand, it seems to me that until Congress and the FTC start reviewing or upping its concern, I detect about a 2-year lethargy on the part of the NARB. And I commend this committee for looking into the advertising problems.

The NARB sits back. They accomplish what they do and they pat themselves on their backs, but there has been no congressional pressure and no FTC pressure to make them do more. Maybe now that this committee is back in the field, the FTC will go back in the field. And maybe NARB will strengthen itself. Unfortunately it is cyclical. And maybe that is the fact of life.

Thank you very much.

Mr. ROSENTHAL. Mr. Brown.

Mr. BROWN. Mr. Kass, I appreciatel your testimony here this morning, as I have appreciated it in the past. It is good to have you with us again.

You were speaking about the public members always being outsiders. When you speak of industry representatives, are you speaking about the advertising industry?

Mr. KASS. Yes.

Mr. BROWN. And then you speak of 20 others who are from industry—in other words, advertisers?

Mr. KASS. Yes; advertisers.

Mr. BROWN. So I would presume that the five-member panels consist of two from the advertising industry, two advertisers, and one public representative.

Mr. KASS. That is right.

Mr. BROWN. Do they never reach an impasse where the public member is the decisive vote and, therefore, must be considered to be a participant rather than an outsider?

Mr. KASS. When I talked about the "outsider," I was talking about the 50 as a group. When it came to the panel, it was different.

Two or 3 years ago the public members had a private meeting with the then Chairman Ted Etherington, who was a marvelous and dynamic individual. He was a former head of the American Stock Exchange. And we all came to the same conclusion—that when it came to the panels themselves, all members, advertisers as well as industry, as well as public members, acted as public members because we had no ax to grind. All of us were dedicated in trying to make this self-regulatory concept work.

And surely there have been impasses. But I do not think those impasses have been 4 to 1.

Mr. BROWN. I was thinking in terms of 2 to 2—with industry versus advertisers.

Mr. KASS. No; it really has not been. I think they have either been 3 to 2 or, for the most part, 4 to 1. But most of them have been unanimous.

Mr. BROWN. Under what circumstances would the industry representatives and the advertisers get into an impasse?

Mr. KASS. I do not know. I served on four or five panels, and my recollection is that we were all very strong. As I recall, all were unanimous.

Maybe Ms. Bell could answer.

Ms. BELL. I served on four. There has not been the kind of impasse to which you refer, Congressman Brown. Again, the public members don't have any ax to grind; there is no stance for them to take except to represent the public as best they can.

I have heard all of them saying: "I am worried about what the typical consumer thinks of this ad." And that is what the industry representative is thinking.

Mr. BROWN. But if you are an industry representative I would presume that you are a person who provides the ads. Are those people included in the industry people, or are they only media people?

Mr. KASS. No, sir; they are as you describe.

Mr. BROWN. Would there be an occasion where the industry people would think that an ad had been properly laid out, that it doesn't do anything bad, and that it does have a high standard of quality and so on?

Mr. KASS. Surely. We are not saying, incidentally, that all of the panels always came out against the advertiser. In fact, I was on several panels where the panel was unanimous in saying that we did not think the ad was misleading. It has gone both ways.

I would point out that when you are dealing with an automobile industry executive, he or she may be very defensive about the auto industry. But when you put them in a setting of dealing with insurance problems, they will be the strongest, most vocal consumer advocate because they too feel that they have been ripped off by the insurance company—or vice versa.

So in our experience, I think they have gone out of their way to select high-caliber individuals who have been concerned and dedicated.

Mr. BROWN. Do they attempt to assign to these panels individuals who are not involved in the subject matter of that panel's discussion?

Mr. KASS. Yes, sir.

Mr. BROWN. In other words you would not assign an advertising person who has a Ford or GM account to a panel on automobiles; and likewise you would not assign an industry man from Ford or General Motors or Chrysler to a panel where you are engaged in the discussion of an automobile ad.

Ms. BELL. That is the point I tried to make, Mr. Brown. Every member of the board is given a checklist. I think there are something like 50 products or industries listed on it. And each member of the board—the 50 members—is supposed to check all areas in which he or she might have a conflict of interest.

I always look at it whenever it comes my way and wonder whether I should check educational institutions.

Mr. BROWN. I know you are in a hurry, Mr. Kass, so I will ask no further questions at this time.

Mr. ROSENTHAL. Mr. Levitas, do you have questions?

Mr. LEVITAS. I have one question for you, Mr. Kass. First of all, let me assure you that you are not alone in your absolutism when it comes to the first amendment. I feel very strongly about that and I am concerned about the types of answers I get of that sort that the gentleman from California indicated.

My question is this. You referred to the fact that there has been no promotion of the NARB's availability and that this is a great shortcoming in making it a useful tool in dealing with advertising problems.

Can you describe for the subcommittee what efforts were made by you and others on the NARB to get publicity and notoriety and marketing of that program? Also, who frustrated it and what reasons did they give for frustrating it?

Mr. KASS. To answer the last question, I think part of the frustration was the recession. Industry was not supporting the Better Business Bureau; the Better Business Bureau had to cut down on the activities of the NARB and all of its other activity. The first thing in the budget to cut is the NARB—especially when the FTC and Congress were not bearing down on their heads at that point.

Stanley Tannenbaum, who is chairman of Kenyon and Echert in New York, a very large advertising agency, came up with an idea and in fact became chairman of a publicity committee. I and two other people were on that committee. But he came up with an excellent proposal for a concentrated media saturation in selected cities—local radio and television spots, billboards, press conferences, and so forth.

We had two products—women's panel advertising and product safety panel advertising. And at least it was a vehicle to move. Every-

body was concerned about women's rights at that point. And here was a vehicle. It was no different from the Action Line that starts in a particular city when they go on a media blitz to let the public know about it.

I worked on the Hill for a number of years. And as we know, the public is looking for assistance. They turn to their Congressmen for assistance.

The same is true in the advertising field. I think one of the concerns, and one from which I was never able to dissuade the NARB leadership, was that we would get too many complaints and, as a result, would be inundated with paperwork. But I happen to feel that if you start something, you have to do it right; and if you can't do it right, then don't do it at all. But as a practical matter, there was the fear of the money and the fear that there would be too many requests.

Mr. LEVITAS. Ms. Bell has indicated that the whole thrust of the NARB program is defensive in nature. They are in effect doing just what needs to be done in order to avoid Congress and FTC's swooping down on them with something worse. Therefore, there would be no strong motivation to drum up business for this NARB program. The fact that it exists seems to be a sufficient palliative to the Congress.

Was there, or did you detect, a lack of desire on the part of the NARB to promote its product; namely, availability of its services?

Mr. KASS. When you talk about NARB, I am not sure we are talking about the same group. I think the major shortfall of the concept of the NARB is that there is over the NARB an NARC—the National Advertising Review Council—that is composed of the major advertisers' fraternity, consisting of the Better Business Bureau, the ANA, the AAF, et cetera. It is an alphabet game.

But our fate was determined by them. In fact, what became one big issue at one of the board meetings was whether we could overrule them or whether they had veto power.

I think at the 50-person level of the NARB that there was a serious concern to promulgate the concept and to let the public know that we existed. At the NARC level, there was, in my opinion, a terrible fear. Now some of the members of the NARC also served on the NARB. But I think that to a large extent there was a terrible fear on the part of the NARC of "Don't rock the boat; let's do just what is necessary to keep Congressman Rosenthal and Senator Moss and others happy and to keep the Federal Trade Commission happy. We are doing our job so let's see how it works."

But in fairness, I also have to point out that at that time 2 years ago when they were really seriously going to gear up to an advertising campaign, money became very tight.

Mr. BROWN. Would the gentleman yield?

Mr. LEVITAS. Yes.

Mr. BROWN. Of whom does the NARC consist?

Mr. KASS. If Ms. Bell does not know, I will have to submit it for the record.

Mr. BROWN. Is it only advertisers?

Ms. BELL. No. There are four major trade associations. One is the Association of National Advertisers; one is the Advertising Agency Federation; another is the 4A's—the American Association of Ad-

vertising Agencies; and the last is the Council of Better Business Bureaus.

These four groups set up a body called the National Advertising Review Council.

Mr. BROWN. What are the prerogatives of the NARC? If the NARB has not effectively leveled peer pressure, can they decide to refer it to the NARC? Can the NARC overrule the NARB?

Ms. BELL. No. The NARC established the whole NARB/NAD procedure in the first place. The NARB is the court of last appeal. If the NARB rules that an ad is misleading and must be stopped and the advertiser continues, then the NARB will refer it to the FTC. That has never happened.

The NARC, the parent body, sets overall policy. It wrote the constitution and the charter. The NARC has, as Mr. Kass has suggested, fears of publicity. But the NARC sets policy within which the NARB operates. But it does not get involved in the operations.

Mr. KASS. One of the big fights that we had in the first year was whether we could go public with a complaint once it was received. I think there was just about unanimity on the part of the board of the NARB that we should go public because the public deserves to know what we are doing.

We had to take this up to the NARC. And fortunately, after a big fight, they granted us the permission to do so.

This is the dilemma which I think the NARB is faced with.

Mr. BROWN. When you spoke of going public, are you saying that you would publicize that the NARB criticized an ad that X company was using instead of using peer pressure?

Mr. KASS. The press, the public, Congress, and others wanted to know if we ruled that the GM product was good or was not that good. This is the kind of publicity I am talking about.

Now they issue a monthly newsletter as to what products were determined to be effective and what products they challenged. It was this fight that I am talking about.

But they just wanted to close the whole lid of secrecy over everything and be an internal fraternity. If somebody complained, they wanted to inform them that "Yes, your complaint is taken care of and wo found your complaint legitimate; or we find your complaint not legitimate."

But what we wanted to do, and what we succeeded in doing after a battle of 1½ years, was to let the public and the person complaining and everybody else know what we are doing.

Mr. ROSENTHAL. We are very grateful for your appearance, Mr. Kass. It is a pleasure to see you again. You may be excused.

Mr. KASS. Thank you very much.

Mr. ROSENTHAL. Mr. Levitas.

Mr. LEVITAS. Thank you.

I have several questions I want to explore in terms of your testimony, Ms. Bell. I am not sure I understand the distinction you drew, and which was referred to earlier, between competition in advertising as opposed to what you called competition in product development.

Could you delineate that a little?

Ms. BELL. I was attempting, Mr Levitas, to be responsive to the question in the letter from Mr. Rosenthal. I was asked to comment on NARB's efforts to "promote competition in advertising."

I am not sure what competition in advertising means myself. It obviously concerns more than the new growth of comparative advertising; that is, that competitors are making competitive claims, if you like.

Mr. LEVITAS. They are making competitive claims, presumably, about the differences in their products.

Ms. BELL. That is correct.

Mr. LEVITAS. So it is not competitive advertising.

Mr. ROSENTHAL. If you would yield for a second, I think what we meant was counteradvertising by competitors of similar products.

Ms. BELL. That would be, then, what I have been talking about as comparative advertising.

I do not have anything much to add to the whole question of comparative advertising except that it is clearly a very controversial area. The reason that NARB has not yet released its panel report on that subject is that it is so difficult to say anything substantive that is useful and that there can be general agreement about.

In general, I think one could argue that advertising is a form of competition, that firms should be encouraged, and if necessary, regulated, to compete in terms of product improvement and price reduction rather than in advertising per se.

Mr. LEVITAS. In your prepared statement, you referred to the point that it is consumer perception that determines consumer demand. You cited the example of the colorblind customer and the green pea situation.

This may be beside the point, but there are identical products. And I do mean identical products. They are differently priced, with the branded product being the more expensive of the two. And yet they are the same.

Green peas are a good example. Packers of green peas frequently will do a run and wrap around some label for a well-known branded trademark product that is advertised, and then they will just stick another set of labels in there for the unbranded product. And when they get to the supermarket, one is selling for 10 or 15 cents more than the other.

Does NARB play any role, or can they or should they, in that type of situation?

Ms. BELL. I do not think that NARB has played any role in that type of situation because, Mr. Levitas, if a package is labeled "Libby's" it is a different package than if it is labeled "Snowcrop." And it is not deceptive to call the identical green pea "Libby's green peas" if they are processed by Libbys' specifications.

I would go farther, and I am on record in my own writings on this subject, to argue that this is not a case where Congress or anybody else should try to protect the consumer. In the first place, I would be perfectly willing to bet, although I have not any empirical data on it, that most of the people who buy Bayer aspirin know perfectly well that Bayer aspirin is identical to nonbranded aspirin. That information has been around for years.

I do not agree with the very elitist thrust of the previous witnesses who implied over and over again that the gullible, unsophisticated consumers have to be protected. I do not think consumers are dumb. And I think that if the consumer comes by his or her income honestly, it is up to the consumer to dispose of his or her income.

I obviously believe that consumers should have accurate information. But if, after having been told that Bayer aspirin and Rexall aspirin are identical, people choose to purchase Bayer aspirin, I do not think it is any business of mine or of Congress to prevent them from doing this. Maybe it is first amendment.

Mr. LEVITAS. It may be. There is an interesting, and as yet untested, antitrust theory in that area and which I think may be explored some day. I think it is similar to the Chicken Delight series of cases where the only differential was the promotion of the particular branded item. Everything else was identical. But that is for the courts to decide.

Ms. BELL. If I may add, I have one tiny piece of empirical evidence which was given to me by a New England manufacturer of dairy products, who had a very good selling brand of ice cream. They changed their container from plastic to paper to save costs. And they got consumer complaints that it tasted funny.

They tested it under every conceivable situation. Their laboratory technicians could not find anything. But the consumers would not buy it because it tasted different.

Mr. LEVITAS. The last point I would like you to comment on, if you would, is this. I favor the concept of self-regulation in industry, advertising, or otherwise.

But in your testimony, you seem to make the point that if self-regulation is a result of industry's defensive action to threatened or contemplated governmental action, it is somehow or other not as good. It seems to me that that is a very happy working relationship. If it takes the feeling in industry that if they do not move that Congress is going to move, that is fine. Whatever motivates them is fine.

It is not their reasons or purposes or motives that I am interested in. It is what they are doing. And if they are responding because they are concerned that Congressman Rosenthal will take up the cudgel once again if they do not, that is great. That is an important function of Congressman Rosenthal.

Ms. BELL. I would agree with you, Mr. Levitas. I did not mean to imply that in my testimony. However, the support for the NARB has dropped off. So some way or other, there would presumably have to be a renewed pressure from Congress to get it back up again.

Mr. LEVITAS. Thank you.

Mr. ROSENTHAL. Mr. Brown.

Mr. BROWN. Dr. Bell, does the NARB use the same kind of criteria as the FTC for enforcement selection?

For example, the FTC says that it deals with the cost of the product, the frequency of purchase, the degree of deception, et cetera.

Ms. BELL. No. The NARB does not have this option because it is set up to deal with complaints. Therefore, when a complain comes in, it gets handled.

Now the actual procedure is that the NAD of the Council of Better Business Bureaus is the investigative arm. If you were to complain to the NARB, the office would turn the complaint over to the NAD, which would then ask the advertiser to substantiate the claim.

And if the NAD ruled that the claim had been substantiated you and the advertiser would be so informed. Then either you or the advertiser could appeal the case.

If the NAD decided against the advertiser, then the advertiser could either stop advertising or change the advertising and resubmit it or make some other effort.

But it follows, therefore, that the NARB has no control over the cases that come to it because they are all appeal cases. And the NAD is obligated to deal with every complaint that comes before it.

Mr. BROWN. Every complaint?

Ms. BELL. Yes.

Mr. BROWN. This means that the same significance is given by the NAD to a complaint, irrespective of the cost of the product, of the frequency of purchase. The only thing it deals with is the accuracy of the ad.

Ms. BELL. That is right; it deals with the truth and accuracy of the ad.

Mr. BROWN. It seems to me that somewhere you must apply a de minimis rule. Otherwise, you would have all kinds of little, insignificant complaints on which the NAD would be spending its time.

Ms. BELL. But you see, Congressman Brown. I think you have to remember that the volume of complaints is not all that great because the procedure is not all that well known.

I think that this is perhaps one of the issues that would come up if the operation were expanded.

Mr. BROWN. How would you describe the relationship between the NARB and the NARC with the FTC?

Ms. BELL. The NARB has no relationship at all with the FTC.

Mr. BROWN. I recognize that there is no official relationship.

Ms. BELL. Then you would have to ask about the individual members of the board and their particular dealings with the FTC.

Mr. BROWN. Do you perceive that the FTC views you as a useful mechanism in the control of good advertising?

Ms. BELL. At the board meeting 2 years ago, the luncheon speaker was the Chairman of the Federal Trade Commission at the time. And he certainly said so. He said that he far preferred having the board do a good job to taking over the cases that the board was not handling properly.

Mr. BROWN. That is the Chairman of the FTC. What about the staff of personnel in the FTC who are in the operating divisions?

Ms. BELL. I am sorry; I do not have any knowledge on that.

Mr. BROWN. Would you briefly describe the enforcement procedures—the so-called peer pressure?

If NAD makes a determination that the ad doesn't come up to the high standards that are anticipated, and the case goes to the NARB for appeal and the NARB upholds the NAD——

Ms. BELL. Or in some cases it reverses it, as was true in the Beneficial Finance Co.

Mr. BROWN. But let us assume that the NAD says that the ad is bad, and the NARB supports it. Yet the advertiser still says that he thinks that the NARB is wrong. What is the enforcement procedure then?

Ms. BELL. The chairperson of the panel draws up a letter that explains the action and why this complaint was upheld. The letter is sent to the advertiser, who has 10 days in which to draft a reply.

Then both the letter telling the advertiser to stop advertising or to change his advertising and the reasons why the panel finds this to be

false and deceptive are released to the press. There is a press release and considerable attention given to the fact that this action has been taken.

The advertiser's comment is released to the press at the same time so that the advertiser has a chance to say, "Well, we will go along with it, but we think they are all wrong."

Now the only thing I can say is that in every case to my knowledge, the advertising has stopped.

Mr. BROWN. You have not gone to the brink where you each have issued your letters?

Ms. BELL. There has so far not been a case of an advertiser continuing advertising that the board has found to be untruthful and inaccurate.

Mr. BROWN. The prior witnesses testified to the length of time which it takes to have a case. The FTC comes in after the fact because by the time they get around to coming in with a procedure to enforce the determination, the ad has been removed anyway.

How often was the ad still running when you finally came up with that determination?

Ms. BELL. It has still been running in some cases. In fact, one of the panels on which I sat told the advertiser to discontinue the ad. He did. And then I spotted the same ad 2 months later in another magazine.

I sent it to the NARB, saying, "Here is a clear violation of this order."

But in fact what had happened was that the magazine in question had slipped up in running it when it should not have been running it. So it was not a purposive violation.

It is true that in some cases the advertising campaign has been over, but the particular theme of an advertising campaign has been changed because of NARB findings.

Mr. BROWN. Does the National Advertising Review Board ever consider the question of excessive advertising, unrelated to the issue of quality of advertising?

Ms. BELL. Do you mean too much advertising?

Mr. BROWN. Yes.

Ms. BELL. No. Again, that is because the protocols for the organization lie in the review area.

Mr. BROWN. But you would recognize that that can be a fault as well, wouldn't you?

Ms. BELL. Surely. I would say that that is one of the social questions that might be considered.

Mr. BROWN. Thank you, Mr. Chairman.

Mr. ROSENTHAL. Thank you very much, Professor Bell, for a very, very thoughtful and very enlightening presentation.

The subcommittee stands adjourned.

[Whereupon, at 12:55 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

OVERSIGHT HEARINGS INTO THE FEDERAL TRADE COMMISSION—BUREAU OF CONSUMER PROTECTION

(Delays in Rulemaking—Regulation of Advertising)

THURSDAY, JUNE 24, 1976

HOUSE OF REPRESENTATIVES,
COMMERCE, CONSUMER,
AND MONETARY AFFAIRS SUBCOMMITTEE,
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:30 a.m., in room 2247, Rayburn House Office Building, Hon. Benjamin S. Rosenthal (chairman of the subcommittee) presiding.

Present: Representatives Benjamin S. Rosenthal, Robert F. Drinan, Anthony Moffett, Edward Mezvinsky, and Garry Brown.

Also present: Peter Barash, staff director; Jean S. Perwin, counsel; Doris Faye Taylor, clerk; and Henry C. Ruempler, minority professional staff, Committee on Government Operations.

Mr. ROSENTHAL. The subcommittee will come to order.

Today's hearing of the Commerce, Consumer, and Monetary Affairs Subcommittee continues our examination of the adequacy and effectiveness of the Federal Trade Commission's activities in eliminating unfair and deceptive advertising practices.

This year the FTC will spend approximately $3 million to regulate advertising. The advertising industry spends over 100 times that much annually just to advertise to children on Saturday morning.

I am concerned that the Commission's efforts in this important area may be inadequate in the face of the staggering economic and social consequences of advertising's $25 billion annual expenditure.

For example, the Commission has sought corrective advertising only five times in the past 2½ years. Corrective advertising is probably the FTC's most effective tool for deterring future advertising abuses.

Requests for substantiation of advertising claims have declined over the past 3 years.

In 1973 the FTC requested substantiation from four major industries. In 1975 two industries were asked to submit substantiating data. Thus far in 1976, there has been only one request for substantiation.

I am concerned that of the current litigation involving advertising, only one case involves ads alleged to be deceptive; the others involve a failure to substantiate claims,

Certainly, all blatantly deceptive ads—as for example those directed against children—have not disappeared. And yet the FTC, which has the power to prevent unfair and misleading advertising as well as unsubstantiated claims, has not done so.

The subcommittee will also examine today Commission activity in the areas of cosmetics advertising, comparative advertising, and efforts to require affirmative disclosure. In addition, we will examine the impact of the recent Supreme Court decision on prescription drug advertising on FTC advertising disclosure programs.

On Tuesday we heard from a panel of consumer and public witnesses that the effect of advertising on our society is "staggering."

The FTC has often described its mission in the consumer protection area as the elimination of unfair or deceptive practices, especially those which inhibit or restrict the free exercise of informed choice.

However, members of the panel testified that the FTC could significantly expand its role to assure not only that advertising is not misleading, but that it actually provides the information which consumers need to make intelligent choices.

The Commission should do more to see that advertising discloses greater price and product performance information and to discourage advertising which artificially differentiates, on a brand-name basis, between identical products.

Since the FTC cannot generally act against ads while they are run in the media, much of its function in the advertising area is deterrence.

If requests for substantiation decline, unsubstantiated claims will increase. If national advertisers are allowed to say: "I'm sorry; I'll never do it again," rather than engage in costly corrective advertising, misleading advertising will continue.

Advertising deserves a high priority at the FTC. We hope to find out today whether it is getting the attention it deserves.

We are very pleased that the new Chairman of the Federal Trade Commission, the Honorable Calvin Collier, is with us today. With him is Commissioner Elizabeth Hanford Dole and Commissioner, and former Chairman, Paul Rand Dixon.

We are delighted that all of you could join us today.

Chairman Collier, we would be very pleased to hear your statement.

STATEMENT OF CALVIN J. COLLIER, CHAIRMAN, FEDERAL TRADE COMMISSION; ACCOMPANIED BY ELIZABETH HANFORD DOLE, COMMISSIONER; AND PAUL RAND DIXON, COMMISSIONER

Mr. COLLIER. We were guided in the preparation of our statement by your letter of invitation. We hope we have covered the ground which was charted in your letter.

A number of the areas you asked about concerned statistics. The request gave us some problems in pulling together this information.

Certain of the questions of interest to the committee involve the number of formal investigations or complaints against national advertisers which have commenced since the beginning of 1973.

As to those questions, we are limiting our response to matters conducted by the Division of National Advertising, which is the principal organizational unit within the Commission which deals with these questions.

There are additional investigations and cases involving national advertisers which have been conducted by other divisions within the Bureau of Consumer Protection and individual regional offices.

Although our computerized case information system does code our cases and investigations, according to whether or not they involve advertising, it does not include the refinement as to whether the firm being investigated is a national advertiser or whether the particular campaign was a national advertising campaign.

Since the beginning of 1973, approximately 80 formal investigations have been commenced by the Division of National Advertising; virtually all of these have involved national advertisers.

Some of these investigations were directed at several advertisers or an entire industry; others involved a single company.

Also, during this period, there were approximately 70 additional informal investigations that either did not or have not yet developed into formal investigations or cases.

With respect to cases against national advertisers since the beginning of 1973, and again confining our response to cases conducted by the Division of National Advertising, the Commission has issued 41 complaints against national advertisers or their advertising agencies.

Of these 41 complaints, 25 were settled prior to the commencement of pretrial proceedings. Another 8 were settled after a formal complaint had been issued and substantial pretrial proceedings—including discovery—had been conducted.

You have inquired as to how many cases against national advertisers have been litigated since 1973. Such cases would include not only matters originating after January 1, 1973, but also matters originating before, but litigated after, that date.

There have been 15 matters litigated since January 1, 1973, against national advertisers, brought by the National Advertising Division.

The Commission found that the advertiser had violated the Federal Trade Commission Act in seven of these matters, as follows:

ITT Continental Baking Co., Inc., et al. (Wonder Bread), docket 8860, 83 F.T.C. 865 (1973), aff'd, 532 F. 2d 207 (2d Cir. 1976);

Warner-Lambert Co. (Listerine), docket 8891 (December 9, 1975);

Chrysler Corp., docket 8995 (April 13, 1976);

Sun Oil Co., et al., docket 8889 (August 19, 1974);

Fedders Corp., docket 8932 (January 14, 1975), 3 CCH Trade Reg. Rep. section 20,825, aff'd, 529 F. 2d 1398 (2d Cir. 1976);

Standard Oil Co. of California, docket 8827 (November 26, 1974), appeal pending in ninth circuit; and

Crown Central Petroleum Corp., docket 8851 (November 26, 1974), aff'd, F. 2d (D.C. Cir. No. 75–1124, March 4, 1976).

In the three instances so far in which the Commission's decision has been reviewed by a U.S. court of appeals, the decision was affirmed. For example:

I.T.T. Continental Baking Co., Inc., et al. (Wonder Bread); *Fedders Corp.;* and *Crown Central Petroleum Corp.*

Appeals are currently pending in two of these matters: *Standard Oil Co. of California* and *Warner-Lambert Co.* (Listerine), appeal pending in the District of Columbia Circuit Court.

In another litigated matter, the Commission recently granted partial summary judgment, upon motion of counsel supporting the complaint, and remanded the remainder of the case for trial before an administrative law judge.

This was in the *Ford Motor Co.* case, docket 9001; initial decision filed August 1, 1975, aff'd in part and remanded in part, April 13, 1976.

In another matter, the administrative law judge found that the respondent had violated the act, and that matter has been appealed to the Commission.

This was in regard to the *National Commission on Egg Nutrition* case, docket 8987; initial decision filed November 24, 1975.

The Commission dismissed 2 of the 15 complaints: *Coca-Cola Co.* (Hi-C), 83 F.T.C. 746 (1973); and *Bristol-Myers Co., et al.*, docket 8897 (April 22, 1975).

Four more are currently in pretrial: *Block Drug Co., Inc., et al.*, docket 9050, complaint issued July 29, 1975; *Bristol-Myers Co., et al.*, docket 8917; *American Home Products Corp., et al.*, docket 8918; and *Sterling Drug, Inc., et al.*, docket 8919, complaint issued February 23, 1973.

Of the remaining formal investigations initiated within the Division of National Advertising after January 1, 1973, about half are no longer active; and the remainder are still pending.

You asked, Mr. Chairman, about citizen complaints; and the role they play in Commission activities.

Since January 1, 1975, the Division of National Advertising has received approximately 4,300 advertising-related citizen complaint letters.

Additionally there have been, since January 1, 1975, approximately eight national advertising-related public interest group petitions. And between 10 and 15 national advertising-related complaints from competitors.

Numerous of these letters and several of these complaints and petitions have coincided with staff actions concerning the matters that were the subject of the complaint.

In such instances, the letter or complaints are made part of the ongoing investigation or rulemaking proceedings.

In no instance, can we recall, since January 1, 1975, has a complaint letter, public interest petition, or complaint from a competitor resulted in the opening of an entirely new investigation into a matter that was not already a subject of interest to the staff.

It should be noted that several of the broad strategic innovations of recent years, as distinguished from particular cases, have risen from petitions initiated by consumer groups. Among these is the ad substantiation program itself and corrective advertising.

With respect to the procedure for responding to outside petitions, the Commission recently decided to amend the staff operating manual to require the staff to forward recommended responses to petitions for rulemaking within 90 days after receipt of those petitions.

The manual will also specify a number of policy-planning considerations that the staff is to address in formulating its recommendations.

I would like the press release announcing this Commission action to be made a part of the record.

Complaint letters are handled by the Correspondence Section of the Secretary's Office and the Division of National Advertising.

Responses vary depending on the information contained in the letter and consideration of the complaint in light of our policy-

planning protocol and comparison of other matters already going on within the division.

In some instances, the response is not prepared until some preliminary investigation has been undertaken to develop aspects of the matter not developed in the complaining letter. Most responses are reviewed by a deputy assistant director or the assistant director of the division.

Until recently, local and regional advertising was monitored exclusively by the regional offices.

Although practices in this regard are not uniform, regional offices regularly review local print media advertising.

Monitoring of broadcast advertising at the local level has, in the past, been complicated by the fact that, unlike network broadcast advertising, the so-called story boards are not prepared by or for local stations or local advertisers.

The Division of National Advertising has, however, recently purchased a subscription to a commercial service which will provide the names of firms using local and regional television advertising in 10 market areas, the brand names advertised, the advertising volume for each brand, and the time and place of broadcast for each advertisement during the monitoring periods. This information will allow the staff to identify users of local and regional television in order to request particular scripts for evaluation.

As a result of monitoring of local and regional advertising, approximately 50 percent of all of the Commission's docketed advertising cases—national, regional, and local being used as the base—are brought by regional offices.

My prepared statement explains other caveats with regard to that statistical estimate.

For purposes of this figure, we do not include cases solely involving deceptive pricing, nonavailability of advertised specials, truth-in-lending, bait and switch, business opportunities, warranties, and various other generally definable subject areas that may have significant advertising components.

The committee has expressed interest in the status of the analgesics cases currently pending. As those cases are in formal adjudicatory status, it would not be appropriate for the Commission to discuss them. Accordingly, I have in attachment C, a statement prepared by the staff which should answer the questions you have put, which I would like made a part of the record.

The attachment is not intended to express the views of the Commission or of any individual Commissioner.

You have inquired whether the standard enunciated in the *Dry Ban* decision—*Bristol-Myers*, docket 8897—has been used in deciding or dismissing subsequent cases.

In that case, the Commission had to decide whether to remand for a second trial, after rejecting the theory on which the case had been tried.

The Commission said that a number of factors led it to the conclusion that a remand would not be in the public interest, quoted as follows:

> Those persons affected do not constitute a particularly vulnerable group. There is no health or safety consideration which might legitimately demand further

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expenditure of public funds, nor is there significant economic harm. The advertising in question was terminated over 4 years ago. There is no indication on this record that competition was adversely affected by whatever deception might be proved on remand; nor are we dealing here with intentional wrongdoers.

Those are the words of the commission in the *Dry Ban* case.

The Commission has not had occasion to apply that language in deciding a subsequent case.

Considerations mentioned in *Dry Ban* are reflected in some of the questions that comprise the policy-planning protocol for deceptive and unsubstantiated claims, which is attachment D, and which I would like made a part of the record.

As the preface to the protocol indicates, in many instances, action against advertisements involving low ticket items could be appropriate.

You have also inquired as to the origins and status of pending guides on advertising techniques, including comparatives, endorsements, and testimonials.

The concern with comparatives grew out of the staff's monitoring and enforcement activities with respect to advertising. These came into sharper focus with the advent of the ad substantiation program in instances where claims, whose express content was in a comparative form, were said by the advertiser to convey a considerably narrower meaning than that perceived by the staff.

Certain types of comparative claims appeared with some frequency, were sources of dispute between the staff and the advertisers as to the meaning of the claims, and appeared to be amenable to across-the-board rules that would resolve significant issues concerning the meaning of such claims.

Currently the staff is evaluating the question of whether, in fact, satisfactory rules can be developed on certain kinds of comparative claims, including dangling comparatives, false superlatives, and uniqueness claims.

Endorsements and testimonials have long been a subject of Commission interest, and there are litigated cases going back to the 1920's.

After publishing proposed guides dealing with certain aspects of endorsement and testimonial advertising and receiving extensive written comments, two guides were issued in final form in May of 1975. These deal with endorsements by experts and by organizations.

At the same time, the Commission proposed several additional guides and invited written comments on them.

The staff is currently analyzing those written comments and will be making recommendations to the Commission.

At the same time, with respect to those guides that are already final, the staff has commenced several investigations looking toward possible enforcement actions. Some of these investigations have been made part of the Commission's program for enforcement against nonrespondents under section 205 of the Magnuson-Moss amendments.

As you know, under those amendments, the Commission may recover penalties against an advertiser who engaged in an act or practice that the Commission has previously determined to be deceptive or unfair, when the advertiser does so with actual knowledge that the act or practice is deceptive or unfair and unlawful under section 5 of the Federal Trade Commission Act.

In the fall, as part of its implementation of that new authority, the Commission served on numerous advertisers and advertising agencies synopses of certain of its prior decisions concerning endorsement and testimonial advertising. These synopses were intended to provide advertisers and ad agencies with notice of the Commission's description of the behavior previously determined to be deceptive or unfair.

More recently, the Commission subpenaed the advertising of those who had been served, and the staff will soon be analyzing the advertising to determine whether it comprises action that the Commission had previously determined to be deceptive or unfair.

In addition to advertising techniques, including endorsements and testimonials, the committee has expressed interest in several other advertising programs, including children's advertising, nutrition advertising, cosmetics advertising, and affirmative disclosure of material product information.

The Commission has designated the Division of Special Projects to investigate possible section 5 violations resulting from children's exposure to advertising.

The staff has made final recommendations on the proposed premium guide, which has been out for comment, which would prohibit advertisers from directing televised premium offers to children. That matter is now before the Commission.

On May 20 and 21 of this year, the staffs of the FTC and FCC conducted joint panels to consider evidence about the possible effects of OTC drug advertising on children. Written comments from the public will be received until July 21, 1976. The FTC staff is also gathering information independently on the effects of OTC drug and vitamin advertising on children.

The food and drug advertising investigation by the children's advertising staff may be useful in connection with the current food and OTC drug rulemaking proceedings in the Division of National Advertising.

In an effort to obtain basic information about the television viewing patterns of children, the staff has acquired special television audience data from the Arbitron and Nielsen firms. Also, the staff is acting in an advisory capacity to several National Science Foundation projects bearing on the effects of television advertising on children.

With respect to nutrition in advertising, the main Commission activity is, of course, the proposed trade regulation rule on food advertising which was first published in November of 1974 and then republished in May of 1975 to accord with certain notice requirements of the new Magnuson-Moss amendments.

This is a very large and complex proceeding.

Hearings on the first phase are scheduled to begin on July 12, 1976, in San Francisco.

Subsequent hearings on the first phase will be held in Chicago, Dallas, and Washington, D.C.

However, the record already contains thousands of pages of exhibits and submissions.

The presiding officer has determined to hold the hearings in three phases.

The first phase will deal with nutrition claims other than those having to do primarily with vitamins and minerals. These include

claims of certain health benefits from foods, characterizations of foods by such terms as "natural" and "organic," energy and calorie claims, fat, fatty acid, and cholesterol content claims, as well as certain issues involving the form and method of making certain disclosures.

The second phase will involve primarily nutrition claims concerning vitamins and minerals, including so-called emphatic nutrition claims—for example, "Chock Full of Vitamin C"—nutrient comparison claims, nourishment claims, and nutrition claims for foods intended to be combined with other foods.

The third phase will involve the issue of mandatory affirmative disclosure of nutrition information in food advertising.

With respect to cosmetics, the Commission has determined to focus initially on two areas: hair dyes and moisturizers.

With respect to moisturizers, the questions of interest concerned certain performance and efficacy claims.

With the passage of the Magnuson-Moss amendments, the moisturizer investigation has become part of our program for enforcement against nonrespondents, to which I earlier made reference, under section 205 of those amendments.

Service was made in the fall of certain decisions involving moisturizers in which the Commission had made determinations of deception and unfairness in the advertising of cosmetics. Subsequently, subpenas were served on a number of companies. The staff is currently reviewing those returns to see if there are instances of noncompliance.

With respect to hair dyes, the staff investigated certain advertisements to determine whether they negated or substantially detracted from the label warnings for those products. But those did not result in recommendations for action.

The staff also considered requiring manufacturers of hair dyes to maintain a 24-hour telephone service whereby they would make available to doctors ingredient information required to treat patients having adverse reactions.

That project was mooted, both by the voluntary action of major advertisers to maintain such a service and by the advent of ingredient labeling for hair dyes.

Finally, the staff is considering whether to attempt to require changes in the label warning information for hair dyes and possibly to require certain warning information in advertising for those products.

In addition to these investigations, the Commission obtained three consent orders involving acne claims growing out of one of the early ad substantiation rounds, which was for acne products.

The Commission also obtained a consent decree involving an eyelash darkener, under which the company is required to disclose that the product can cause severe pain to the eye for a substantial period of time.

Regional offices have obtained within the past 2 years several additional consent agreements involving hair straightener products advertised to black consumers. These decrees require disclosures concerning possible skin and scalp irritation, hair breakage, and eye injury.

With respect to the status of the Commission's affirmative disclosure of product information program, you will recall that a major portion

of this program contemplated disclosures of the energy efficiency of appliances.

The Commission had, in fact, proposed a rule in August 1975 that would have required disclosures of the energy efficiency of air-conditioners and would have dealt as well with certain advertising questions concerning energy claims for those products.

As you know, in late 1975 Congress passed the Energy Policy and Conservation Act. Under that act, the Commission is given the responsibility of developing labeling requirements for the disclosure of energy efficiency information, based upon tests to measure energy efficiency that are to be developed by the Federal Energy Administration.

This new statute contemplates, within the next 2 years, the promulgation of labeling rules for at least 13 categories of appliances, some of which themselves consist of more than 1 subcategory.

Because of the magnitude of this undertaking and because it involves responsibilities under a new statute, the Commission has established a separate program for energy efficiency labeling under the new act.

In furtherance of its responsibilities under this act, the Commission sought and obtained from Congress a supplemental appropriation for its fiscal year 1976 budget. The Commission has also submitted a budget amendment for its fiscal year 1977 budget.

To date, the staff, recognizing the importance of developing information and a label format that will effectively communicate to consumers, has published a request for proposals from independent research organizations to design and conduct several phases of consumer research concerning difficult practical issues involved in the communication of energy consumption and efficiency information on labels and the testing of the effectiveness of a number of prototype labels.

This research, it should be noted, will be used not only in the direct performance of our statutory mandate but also as baseline data against which to evaluate the effectiveness of the program in the years after the labeling requirements are in effect.

Moreover, the staff has begun factual investigation of a number of issues which must be resolved in the development of labels under the new authority. Proposed rules are expected in the fall for the first seven of the listed appliances.

With respect to the affirmative disclosure of aspects of product performance, other than energy, substantial difficulties have been encountered.

Fundamentally, the program has not been able to proceed on the scale originally contemplated because the technical difficulties in developing valid measures of performance have proven to be substantial, with the result that if the Commission were to undertake the development of such technical tests itself, the amounts of contract funds required would be enormous.

Outside standard setting, organizations have not been able to develop test measures within the time periods originally contemplated, so that the staff has been unable to rely on such tests as the basis for its own proposals.

Accordingly, it has been determined to concentrate efforts for the immediate future on two products—one a durable and one a low price, frequently purchased, packaged good.

With respect to the packaged good, substantial analysis of formulations and product performance testing has already been conducted, and consumer testing is about to begin.

With respect to the durable, staff has been working closely with the American Society for Testing and Materials, monitoring and participating in their efforts to develop a comparative performance standard on key aspects of product performance.

Moreover, in September 1975, the Commission issued a guide for fuel economy claims for automobiles. This guide required disclosure of the city and highway numbers derived by the mileage tests of the Environmental Protection Agency whenever fuel economy claims appear in advertising.

Since its effective date in October, compliance with the guide has been very good.

The advertising substantiation program, which you mentioned in your opening remarks, Mr. Chairman, commenced by the Commission in July 1971, arose out of two related concerns:

The first concern involved law enforcement under section 5 of the FTC act. Since claims made in advertising consumer products typically lead the consuming public to believe that the claims have been substantiated, the Commission resolved to conduct investigations to determine whether violations of section 5 had occurred by reason of the failure of certain companies to have the adequate substantiation implied in advertising.

Additionally, the Commission was aware that companies rarely provided their substantiating material to consumers. By requiring that such material be submitted to the Commission and by making the material available to consumers, the Commission believed it would aid consumers in evaluating for themselves the validity of the advertising claim.

Since 1973, the number of ad substantiation requests has declined, but the number of ad substantiation cases generated per round has increased.

This changing ratio reflects, in part, the use of outside experts in analyzing and selecting industries and particular ads for ad substantiation requests.

Since the beginning of that year, the following industries have been asked to substantiate advertising claims as part of an ad substantiation "round" in which formal investigative demands are served on an industrywide basis. and the responses are placed on the public record:

Automobiles, March 20, 1973; antiperspirants/deodorants, May 24, 1973; shampoos, June 18, 1973; acne preparations, November 2, 1973; automobiles, March 5 and April 4, 1974; tires, April 4, 1974; color televisions, July 30, 1974, and January 10, 1975; dental products, September 4, 1974; and dishwashers, July 10, 1975.

In connection with the Commission's general monitoring and law enforcement effort, many other advertisers have been asked to substantiate claims as part of nonpublic investigations commenced with respect to individual advertisers. Those, too, are part of the ad substantiation program, involving as they do the enforcement of the Commission's Pfizer requirement that an advertiser, at the time of first dissemination of a claim, possess and rely upon a reasonable basis for it.

As the requests are individual, however, they do not amount to a so-called "round" in which a number of current claims in advertising, involving the same product or technique, are simultaneously the subject of a request for substantiation.

All the companies and all the industries that have received substantiation requests have submitted materials. The materials in each of these rounds are now on the public record.

Responses to an additional round have recently been received and are being given a preliminary evaluation and being prepared for placement on the public record.

Realizing that it is important that note be taken of the fact that an ad substantiation round is just one part of our ad substantiation program, I ask the staff for some information with regard to the number of requests for information from advertisers in addition to rounds. I was told there were two dozen such requests from the division in 1975, and there were already 14 this year.

Upon review of substantiating materials received from ad substantiation rounds, complaints alleging violations of law have been issued against the following companies:

Ford Motor Co., Docket 9001;
Chrysler Corp., Docket 8995;
Matsushita Electric Corp., Docket 9048;
General Electric Corp., Docket 9049; and
Block Drug, Docket 9050.

Recently, the Commission sustained the complaint in the Chrysler matter, and granted partial summary judgment on the motion of counsel in support of the complaint in the Ford matter, remanding the remainder of that case for a trial.

In Matsushita and General Electric, after extensive pretrial proceedings, complaint counsel and the respondents agreed upon consent decrees in those matters.

Accordingly, those matters have been withdrawn from adjudication and the consent decrees are now before the Commission.

Consent orders stemming from the ad substantiation rounds have also been obtained since January 1, 1973, against the following companies:

Ford Motor Co., C–2582, and J. Walter Thompson Co., C–2595. The validity of these orders has been challenged by Ford and Thompson in a matter now pending in the U.S. Court of Appeals for the Sixth Circuit.

American Image Corp., C–2787;
Organic Masque, C–2645;
Savoy Chemical Co., C–2743;
General Motors Corp., C–2564;
D'Arcy McManus, C–2767;
Bridgestone Tire Co., C–2734; and
Parker Advertising, C–2778.

Additionally, on June 24, 1975, the Commission proposed a trade regulation rule for the hearing aid industry. Certain elements of this proposal grew out of matters which were the subject of an earlier advertising substantiation round for this industry.

With respect to formal actions resulting from ad substantiation requests made during the relevant time period and as part of an ad

substantiation round—rather than a nonpublic investigation directed at an individual advertiser—no formal actions, other than the cases and rule described above, have been commenced. Several matters arising out of the dishwasher round are, however, currently under active investigation.

Between 1971 and 1973, 15 ad substantiation rounds were issued. Seven rounds have been commenced since January 1, 1974, compared with five rounds in 1971, six in 1972, and four in 1973.

The number of cases commenced each year arising out of ad substantiation rounds has not, however, decreased.

One complaint, arising out of an ad substantiation round was issued each in 1972 and 1973; nine such complaints were issued in 1974; and 14 complaints in 1975. Two complaints have been issued so far in 1976.

The increase in the number of complaints since 1973 is consistent with the Commission's decision in December of 1973 to emphasize the law enforcement aspect of the ad substantiation program.

The increased number of cases has been accompanied by a similar increase in the percentage of ad substantiation requests that ultimately result in law enforcement action.

Of the approximately 200 separate ad substantiation orders issued between 1971 and 1973, 18—or about 10 percent—resulted in cases.

In contrast, the 30 ad substantiation orders issued since January 1974 have already resulted in 9 cases—a rate of 30 percent, or 3 times that in the pre-1974 period.

Moreover, since a number of the more recently requested substantiation materials are now under analysis, both the numbers of cases and percentage of cases per request may ultimately turn out to be greater.

The staff expects to maintain the recent level of activity in subsequent ad substantiation rounds.

The relatively smaller number of ad substantiation rounds since 1973 resulted from a number of factors.

First, the number of industries that appear appropriate for industrywide advertising substantiation requests has decreased since 1973.

For example, the food and OTC drug industries which account for a large portion of overall national advertising expenditures and for a major part of the traditional law enforcement activity of the Division of National Advertising—indeed, the Division was once called the Division of Food and Drug Advertising—are presently the subject of industrywide rulemaking proceedings which seek, in part, to establish rules for permissible advertising claims.

Although monitoring of these areas continues and individual requests for substantiation have been made, it would be difficult to develop an industrywide ad substantiation round that would not involve duplication with the rulemaking proceedings.

Similarly, fuel economy advertising is now subject to a Commission guide, and significant remedial action has already been accomplished with respect to a major portion of this industry.

Energy consumption claims for major appliances, which had been the subject of previous ad substantiation requests with respect to air-conditioners, are now subjects of rulemaking proceedings under the Energy Policy and Conservation Act.

In addition to the above factors, it should be noted that in December of 1973 the Commission approved of a more careful focus of the ad substantiation program for the development of cases.

Ad substantiation requests are now being selected on the basis of the appropriateness of actually instituting law enforcement action should the questioned claims be unsubstantiated.

Previously, many claims had been questioned, in part, so that the substantiating material could be made public, without regard to the likely impact these claims had on the public or on competition.

Our experience with making this material public was that it was not much news to the consumers, as evidenced by the fact that very few people asked to see it or come to our offices to review it.

Moreover, application of the policy-planning protocols, approved by the Commission in December of 1975, has enabled the staff to focus more carefully on the public benefit of bringing specific cases.

As noted previously, this more careful selection of claims for substantiation has not decreased the number of cases brought under the program. It has, however, meant that a great deal more preparation has gone into the development of each series of requests.

Each round since 1974 has been the product of extensive preliminary analysis and screening by Commission staff, in conjunction with an independent consulting organization.

All formally docketed matters now active in the division, either arose out of the ad substantiation program or involve enforcement of the Pfizer principle that there be a "reasonable basis" for affirmative product claims.

The three analgesic cases, however, for programmatic purposes, are being programed elsewhere than under the program No. I03—OTC Drug Advertising and National Commission on Egg Nutrition, under I02. Food Advertising, rather than under I01, Advertising Substantiation.

My understanding is that with three exceptions other matters within the division of national advertising in which the staff has recommended, or may be recommending, a complaint has arisen out of individual ad substantiation requests that do not separately constitute a round although they are included in the ad substantiation program.

The remaining three matters involve alleged falsity, deception, or unfairness not involving the adequacy of claim substantiation.

All formal substantiation rounds have resulted from staff monitoring and recommendation.

The questions that are asked in the process of choosing advertisements to be the subject of ad substantiation requests are contained in the policy-planning protocol to which I earlier made reference and which is my attachment D.

These are not "criteria" for case selection.

As the preamble to the protocol states, the questions are not cumulative, so that the answers to less than all of them may indicate the need for action.

The protocol was designed to include questions capable of eliciting every reason for proceeding or not proceeding in a given matter.

Thus, the protocol aids in maximizing the awareness, both of the staff and of the Commission, of all of the factors that might bear upon

the question whether a proceeding might be an appropriate expenditure of public resources.

As part of the development of ad substantiation rounds, the staff has, under the ad substantiation program as revised in late 1973, utilized outside experts in choosing products and claims for ad substantiation requests, as well as for evaluating all the data once it is received.

Previously, outside experts were utilized only to evaluate the data, and this outside expert evaluation of data was undertaken only for certain of the many claims for which substantiation had been requested.

By obtaining outside expert help in choosing the subjects of requests and in the actual development of the technical questions to be directed to the advertiser in the 6(b) order itself, the sophistication and, therefore, the fruitfulness, of the requests has been, in our judgment, greatly enhanced.

Your letter notes that it appears from the fiscal year 1977 budget justification for ad substantiation that the travel budget has been doubled while the program contracts budget has been halved.

I hope what we have here, Mr. Chairman, is an accounting convention problem. I have attached a table which explains the figures.

In fact, however, the program contracts have not been halved. In the past, the Commission has had two accounts for ad substantiation. One was program I01—Ad Substantiation and Monitoring. The other, X01—Other Direct Resources, also contained support moneys for the ad substantiation and monitoring program.

This accounting convention was used during the Commission's transition to a program budget, but is in the process of being phased out. This phased transition has resulted in the following treatment of funds for travel and program contracts:

(1) Travel. In February of 1976, travel funds which were used for litigating cases were transferred from X01 into I01, thus increasing the total congressional budget submission for fiscal year 1976 to $53,000 for I01.

The increase in travel funds is for litigation that has grown out of previous ad substantiation rounds. Since the Commission has now fully moved to a program budget, the fiscal year 1977 request reflects the total commitment of travel funds to the ad substantiation program.

(2) Program Contracts. The X01 account was not completely eliminated for all program contracts at the time the fiscal year 1977 congressional budget was prepared.

Accordingly, the actual number for program contracts for both fiscal year 1976 and fiscal year 1977 is the combination of the X01—Other Direct Resources and I01—Ad Substantiation programs.

As you can see from my attachment E, the total travel funds used for ad monitoring and substantiation has increased between fiscal year 1976 and fiscal year 1977 from $27,900 to $67,000. Total contract funds available for the same programs were planned at $79,200 for fiscal year 1976 and $82,000 for fiscal year 1977.

Hence, there is an increase in program contract funds between the 2 years and travel funds are now shown on a complete cost basis for the program.

Since January of 1973, corrective advertising has been sought in 10 cases.

Of these cases, seven final orders containing corrective advertising provisions have been issued by the Commission—six through consent orders and one after full hearings.

The remaining three matters are the analgesic cases which are currently pending in pretrial status.

The first litigated corrective advertising order in a national advertising case arose out of a complaint issued prior to January 1, 1973, in Warner Lambert, docket 8891.

An appeal has been taken by the respondent in this matter which is pending in the U.S. Court of Appeals for the District of Columbia Circuit.

Since corrective advertising orders rest upon the existence of erroneous consumer beliefs about the advertised product that are likely to continue after advertising containing the deceptive or unfair representation has stopped, it is difficult to predict with what frequency corrective advertising orders will be issued in the future.

With respect to comparative advertising, the Commission as a body has never formally expressed a policy concerning such advertising.

Comparative advertising that is truthful and fair can be a very useful source of information to consumers. Such advertising can reduce search costs by providing in one place and at one time comparative information that otherwise would take a substantial amount of time and effort for the consumer to obtain, if indeed a consumer could obtain it at all.

Of course, comparative advertising, like any other advertising, is subject to abuse. Comparative advertising that is deceptive or unfair is certainly not immune from Commission action.

The industrywide investigation concerning restraints on comparative advertising, announced by the Commission in February of this year, is not yet complete.

The staff has prepared an interim status report, which I believe has been provided to the staff of the committee. That report should be coming to the Commission shortly. So you have something which, formally at least, the Commissioners have not yet seen.

Accordingly, it would be premature to say whether the Commission is planning to issue any guides or rules with respect to the use of comparative advertising.

Your final questions concerned contract spending with respect to advertising law enforcement but not including ad substantiation.

For the 12 months prior to April 1, 1976, approximately $217,000 was spent on program contracts in the advertising area by the Division of National Advertising in matters other than ad substantiation. Of the amount spent in the Division of National Advertising in the 12-month period, $144,000 was spent on consumer research in such areas as OTC drug advertising, nutrition advertising, and general research concerning consumer behavior and beliefs that is of use in making policy planning and determinations.

Another $73,500 was spent on technical assistance on such matters as the development of measures of comparative performance for certain products, data analysis and gathering in the area of nutrition,

consultations concerning ad techniques, and the Commission's cigarette testing program.

In addition, the National Advertising Division is considering additional contract research projects for the coming months in several of its program areas.

With respect to the adequacy of the research that we are able to conduct, it is extremely difficult to assess what various outcomes in negotiations or litigation might have been had some additional research been available.

With respect to rulemaking, as hearings in rulemaking proceedings involving national advertisers have not yet begun, it cannot yet be said on the basis of experience whether staff research will prove to be sufficient in light of research available to the advertising industry.

I should note that the amounts spent on technical and consumer research by the Bureau of Consumer Protection, including the Division of National Advertising, have increased in recent years in recognition of the importance of such research to the law enforcement work of the Commission.

Mr. Chairman, I hope that I have covered the questions which were asked of us in the letter of invitation.

We will be pleased to respond to any questions you or the committee might have.

Mr. ROSENTHAL. Thank you, Mr. Collier.

I do want to comment, for the record, that your statement is obviously all-inclusive, thorough and substantially responsive to the invitation to appear which the committee sent you.

I want to commend you on your thoroughness. A good deal of attention went into the preparation of this statement.

At this point, without objection, your attachments A through E will be included in the record.

[The material referred to follows:]

ATTACHMENT A

BENJAMIN S. ROSENTHAL, N.Y., CHAIRMAN
CARDISS COLLINS, ILL.
ROBERT F. DRINAN, MASS.
ELLIOTT H. LEVITAS, GA.
DAVID W. EVANS, IND.
ANTHONY MOFFETT, CONN.
ANDREW MAGUIRE, N.J.
DAVID NEWSWAY, IOWA

GARRY BROWN, MICH.
WILLIS D. GRADISON, JR., OHIO
JOHN N. ERLENBORN, ILL.

(202) 225-4407

NINETY-FOURTH CONGRESS

Congress of the United States

House of Representatives

COMMERCE, CONSUMER, AND
MONETARY AFFAIRS SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-350-A-B
WASHINGTON, D.C. 20515

37

June 1, 1976

FEDERAL TRADE COMMISSION
RECEIVED
JUN 3 1976
CHAIRMAN

Hon. Calvin Collier, Chairman
Federal Trade Commission
6th & Pennsylvania Avenue, N.W.
Washington, D. C. 20580

Dear Mr. Chairman:

The Subcommittee on Commerce, Consumer and Monetary Affairs, pursuant to its oversight responsibilities under the Rules of the House, is reviewing the activities of the Federal Trade Commission's Division of National Advertising.

To assist us in our review, we would appreciate your appearance before the subcommittee on Thursday, June 24, 1976, at 10 A.M. in Room 2247 of the Rayburn House Office Building. I have asked Commissioner Dole and Commissioner Dixon to appear with you. Your appearance should include testimony on the following aspects of Federal Trade Commission advertising programs:

(1) How many (a) formal investigations have been initiated and (b) complaints issued against national advertisers since January 1, 1973? How many cases against national advertisers have been actually litigated since 1973? What was the disposition of each such investigation, complaint and case?

(2) How many advertising-related citizen complaint letters, public interest group petitions, or complaints from competitors has the FTC received since January 1, 1975? How many of these letters, petitions, etc., have resulted in (a) formal investigations, (b) complaints or (c) cases? Describe the procedure for responding to outside complaints and petitions.

(3) What action has been taken to monitor local and regional advertising? What percentage of advertising cases are generated by or litigated in the regional offices?

(4) Explain the origin and give the status of the analgesics cases.

(5) Has the standard enunciated in the Dry Ban decision been used in deciding or dismissing subsequent cases?

(6) Please trace the origins and give the status of pending guides on advertising techniques including comparatives, endorsements and testimonials.

(7) What is the status of Commission programs and activities in the areas of (a) children's television, (b) nutritional, (c) cosmetics advertising and (d) affirmative disclosure requirements?

(8) Advertising Substantiation Program

(a) Please explain briefly the genesis and purpose of the program.

(b) Since 1973 the numbers of ad substantiation requests and cases have declined. Please list, since January 1, 1973, to date, the requests and cases and their status. Explain the reasons for this decline.

(c) What percentage of active Division cases are a result of the advertising substantiation program?

(d) What percentage of requests for substantiation are a result of 1) monitoring, 2) citizen complaint letters and 3) staff recommendation?

(e) What is the criteria for ad substantiation case selection? Please discuss the use of the policy planning protocol and the use of outside contractors for purposes of evaluating data.

(f) The 1977 Budget Justification indicates that the travel budget for the program has been doubled while the program contracts budget has been halved. Please explain.

(9) Corrective Advertising

(a) In how many cases has corrective advertising been sought since January 1, 1973? What is the status of each such case?

(b) Since a standard for corrective advertising has been delineated in Warner-Lambert, does the Commission anticipate significant use of corrective advertising in the future?

(10) Comparative Advertising

(a) What is the Commission's present policy with respect to the value to consumers of comparative advertising?

(b) What are the results of the investigation recommended by OPPE in the 1976 Midyear Budget review into comparative ad restrictions by the advertising industry?

(c) Is the Commission planning to issue any guidelines with respect to the use of comparative advertising? If so, when?

(11) Program Contracts

(a) Other than for ad substantiation, how much money is spent, and for what areas and purpose, on program contracts in the advertising area? How much of that is spent on consumer research? How much is spent on technical assistance?

(b) Has the research proved adequate compared to the ability of the advertising industry to amass data?

The Rules of the House of Representatives and this committee require that a copy of a witness's prepared statement be delivered to the subcommittee at least 24 hours prior to the presentation of testimony. If you have any questions regarding these hearings, please contact Jean Perwin of the subcommittee staff.

Sincerely,

Benjamin S. Rosenthal
Chairman

BSR:pt

ATTACHMENT B

FTC news

Federal Trade Commission *Washington, D.C. 20580*

FOR RELEASE 6:00p.m., EDT, Friday, June 18, 1976

FTC ANNOUNCES PROCEDURES FOR RESPONDING TO PETITIONS TO INITIATE TRADE REGULATION RULEMAKING PROCEEDINGS

The Federal Trade Commission has determined to amend its Operating Manual to provide that recommended responses to petitions to initiate trade regulation rulemaking proceedings be provided to the Commission within 90 days of receipt of the petitions. The Commission also provided its staff with guidelines for making such recommendations.

Under the new procedures, the Secretary of the Commission will forward petitions to initiate rulemaking proceedings to the appropriate Bureau or Office. Within 90 days of receipt, the Bureau or Office must recommend to the Commission that the petition be granted or denied, after considering, among other things --

- whether the requested rule is within the Commission's jurisdiction;
- whether the rule would have greater beneficial than detrimental effects;
- whether the Commission has the resources to enforce the rule adequately;
- whether the requested rulemaking proceeding could be undertaken in view of the Commission's resources and other duties and commitments; and
- whether it is possible to make the above determinations given the Commission's resources, commitments and need to respond expeditiously to petitions.

The action was announced in response to petitions from several public interest groups seeking a change in the Commission's Rules of Practice which would establish a specific time frame within which to act on petitions to initiate rulemaking proceedings. In denying the petitions, the Commission emphasized the need for prompt responses to petitions for rulemaking, but stated that this could be accomplished administratively without the necessity for a formal amendment to the Commission's Rules. The text of one of the Commission's notification letters follows. (The enclosure referred to may be obtained from Public Reference Branch, Room 130, Federal Trade Commission, Washington, D.C. 20580).

(more)

F013-TRRPET

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE $300

POSTAGE AND FEES PAID
U. S. FEDERAL TRADE COMMISSION

June 15, 1976

Mr. Tom W. Ryan, Jr.
Research Associate
Missouri Public Interest Research Group
P. O. Box 8276
St. Louis, Missouri 63156

Dear Mr. Ryan:

This is in response to the Petition for Rulemaking submitted by the Missouri Public Interest Research Group seeking amendment of the Commission's Rules to require that all petitions to initiate rulemaking proceedings be either granted or denied within 120 days.

After careful consideration, the Commission has determined to deny the petition. Although petitions for rulemaking should be acted upon as promptly as possible, a 120-day or other fixed time limitation incorporated into the Commission's Rules would be too inflexible to allow the Commission to properly address in all instances the variety of problems which may be presented by rulemaking petitions. A petition for rulemaking may require extensive investigation before a final determination can be made whether or not to proceed with a rulemaking proceeeding. Depending on the existing workload and the complexity of the factual and legal issues involved in determining whether to undertake a rulemaking proceeding, it could take more than 120 days for the Commission to reach a well-formulated position on the petition. Therefore, the Commission does not consider it wise to attempt to force the process to fit within a formal inflexible timetable.

Although the Commission has determined to deny the MoPIRG petition, it recognizes the desirability of responding to rulemaking petitions as quickly as possible. Accordingly, the Commission has voted to incorporate in its Operating Manual a provision designed to provide it with recommended responses to petitions for trade regulation rulemaking proceedings within 90 days of their receipt. A copy of this provision is enclosed for your information. The Commission believes that experience with this provision should be evaluated before further consideration is given to a more formal solution.

In maintaining a flexible standard, the Commission's Rules are consistent with the Administrative Procedure Act. The "prompt notice" requirement of 5 U.S.C. § 555(e). and the provision in 5 U.S.C. § 555(b) that an agency conclude a matter presented to it within a reasonable time, allow for flexible standards which take into account such things as the workload of the agency and the complexity of the matter before it. Cf. FTC v. J. Weingarten, Inc., 336 F.2d 687 (5th Cir. 1964), cert. denied, 380 U.S. 908 (1965); Chromcraft Corp. v. EEOC, 465 F.2d 745 (5th Cir. 1972).

The 120-day provision of the Consumer Product Safety Act, 15 U.S.C. § 2059(d), is not precedent for a general time limitation on all petitions made to the Federal Trade Commission. A reading of section 2059 in its entirety reveals that a court may compel the CPSC to act only if the petitioner can demonstrate that the consumer product presents an unreasonable risk of injury and that the failure of the CPSC to initiate a rulemaking proceeding unreasonably exposes the petitioner or other consumers to that risk. Thus, this provision is limited in its application to a specified area where the need for prompt action is great. In contrast, the proposed amendment submitted by MoPIRG would apply to all petitions regardless of any demonstrated need for expedited action.

Additionally, the Administrative Procedure Act, 5 U.S.C. § 555(e) does not require that a "full explanation in writing" accompany each preliminary or final denial. It requires only a "brief statement of the grounds for denial." The Commission strives to give petitioners as complete an explanation as possible and will continue to do so.

By direction of the Commission.

Charles A. Tobin
Secretary

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PRESS CONTACT: Office of Public Information (202) 523-3830

ATTACHMENT C

In 1961, the Commission issued complaints against four of the largest producers of internal analgesics: American Home Products Corp. (Anacin), Bristol-Myers Co. (Bufferin and Excedrin), Sterling Drug, Inc. (Bayer Aspirin), and Plough, Inc. (St. Joseph). These complaints charged that advertising by each of these companies, primarily relating to speed of relief, was false. In 1965, the Commission withdrew these cases from adjudication and ultimately broadened its investigation by issuing compulsory process to 20 analgesic manufacturers.

In 1967, a proposed trade regulation rule proceeding relating to non-prescriptional analgesics was commenced. The proposed rule would, among other things, have prohibited certain claims relating to comparative speed or strength unless such claims had been established or demonstrated. This proceeding was the subject of collateral court litigation, which was ultimately terminated in 1970. In 1970, the Commission terminated the rulemaking proceeding and commenced a separate industrywide investigation. This latter investigation culminated in the issuance of proposed complaints against American Home Products, Bristol-Myers, and Sterling Drug in March 1972, and formal administrative complaints, seeking relief,

including corrective advertising, in February 1973. Pretrial proceedings in these matters have been extensive, involving well over 100 separate motions since commencement of the proceedings, and over 11,000 attorney hours in this fiscal year alone, as of the end of May. Complaint counsel's discovery commenced in 1974 and involved production of more than 30 file drawers of documents. Such discovery was substantially complete by the end of 1975. Respondents were not required to commence their discovery until 1976 and their discovery, which involves many third-party subpoenas, is now in progress. The hearings in these cases are scheduled to begin toward the end of calendar year 1976.

ATTACHMENT D

POLICY PLANNING PROTOCOL

DECEPTIVE AND UNSUBSTANTIATED CLAIMS

These questions are not cumulative. The answers to less than all of them may indicate the need for action. Moreover, answers to certain of these questions will frequently not be available at all, or may not be available except at considerable cost and delay. Answers to these questions therefore should not be required where obtaining the answers would be unduly burdensome or speculative, or where the answers to other of the questions indicate that the action proposed is a particularly good one, or, of course, where the answers could be obtained only by compulsory process and the action which the Commission is being asked to take is to authorize such process.

A. Consumer Interpretations of the Claim

1. List the main interpretations that consumers may place on the claim recommended for challenge, including those that might render the claim true/substantiated as well as those that might render the claim false/unsubstantiated.

2. Indicate which of these interpretations would be alleged to be implications of the claim for purposes of substantiation or litigation. For each interpretation so indicated, state the reasons, if any, for believing that the claim so interpreted would be false/unsubstantiated.

B. Scale of the Deception or Lack of Substantiation

3. What is known about the relative proportions of consumers adhering to each of the interpretations listed above in response to Question 1?

4. What was the approximate advertising budget for the claim during the past year or during any other period of time that would reflect the number of consumers actually exposed to the claim? Is there more direct information on the number of consumers exposed to the claim?

C. Materiality

5. If consumers do interpret the claim in the ways that would be alleged to be implications, what reasons are there for supposing that these interpretations would influence purchase decisions?

6. During the past year, approximately how many consumers purchased the product*/ about which the claim was made?

7. Approximately what price did they pay?

8. Estimate, if possible, the proportion of consumers who would have purchased the product only at some price lower than they did pay, if at all, were they informed that the interpretations identified in response to Question 2 were false.

9. Estimate, if possible, what the advertised product would be worth to the consumers identified by Question 8 if they knew that the product did not have the positive (or unique) attributes suggested by the claim. If the claim can cause consumers to disregard some negative attribute, such as a risk to health and safety, to their possible physical or economic injury, so specify. If so, estimate, if possible, the annual number of such injuries attributable to the claim.

D. Adequacy of Corrective Market Forces

10. If the product to which the claim relates is a low-ticket item, can consumers ordinarily determine prior to purchase whether the claim, as interpreted, is true;

*/ Throughout, "product" refers to the particular brand advertised.

or invest a small amount in purchase and then by experience with the product determine whether or not the claim is true? Does the claim relate to a credence quality, that is, a quality of the product that consumers ordinarily cannot evaluate during normal use of the product without acquiring costly information from some source other than their own evaluative faculties?

11. Is the product to which the claim relates one that a consumer would typically purchase frequently? Have product sales increased or decreased substantially since the claim was made?

12. Are there sources of information about the subject matter of the claim in addition to the claim itself? If so, are they likely to be recalled by consumers when they purchase or use the product? Are they likely to be used by consumers who are not aggressive, effective shoppers? If not, why not?

E. Effect on the Flow of Truthful Information

13. Will the standard of truth/substantiation that would be applied to the claim under the recommendation to initiate proceedings make it extremely difficult as a practical matter to make the type of claim? Is this result reasonable?

14. What are the consequences to consumers of an erroneous determination by the Commission that the claim is false/unsubstantiated? What are the consequences to consumers of an erroneous determination by the Commission that the claim is true/substantiated?

F. Deterrence

15. Is there a possibility of getting significant relief with broad product or claim coverage? What relief is possible? Why would it be significant?

16. Do the facts of the matter recommended present an opportunity to elaborate a rule of law that would be applicable to claims or advertisers other than those that would be directly challenged by the recommended action? If so, describe this rule of law as you would wish the advertising community to understand it. If this rule of law would be a significant precedent, explain why.

17. Does the claim violate a Guide or is it inconsistent with relevant principles embodied in a Guide?

18. Is the fact of a violation so evident to other industry members that, if we do not act, our credibility and deterrence might be adversely affected?

19. Is there any aspect of the advertisement -- e.g., the nature of the advertiser, the product, the theme, the

volume of the advertising, the memorableness of the ad, the blatancy of the violation -- which indicates that an enforcement action would have substantial impact on the advertising community?

20. What, if anything, do we know about the role advertising plays (as against other promotional techniques and other sources of information) in the decision to purchase the product?

21. What is the aggregate dollar volume spent on advertising by the advertiser to be joined in the recommended action?

22. What is the aggregate volume of sales of the advertised product and of products of the same type?

G. Law Enforcement Efficiency

23. Has another agency taken action or does another agency have expertise with respect to the claim or its subject matter? Are there reasons why the Commission should defer? What is the position of this other agency? If coordination is planned, what form would it take?

24. How difficult would it be to litigate a case challenging the claim? Would the theory of the proceeding recommended place the Commission in a position of resolving issues that are better left to other modes of resolution,

for instance, debate among scientists? If so, explain. Is there a substantial possibility of whole or partial summary judgment?

25. Can the problem seen in the ad be handled by way of a rule? Are the violations widespread? Should they be handled by way of a rule?

H. Additional Considerations

26. What is the ratio of the advertiser's advertising expense to sales revenues? How, if at all, is this ratio relevant to the public interest in proceeding as recommended?

27. Does the claim specially affect a vulnerable group?

28. Does the advertising use deception or unfairness to offend important values or to exploit legitimate concerns of a substantial segment of the population, whether or not there is direct injury to person or pocketbook, e.g., minority hiring or environmental protection?

29. Are there additional considerations not elicited by previous questions that would affect the public interest in proceeding?

ATTACHMENT E

TRAVEL FUNDS

PROGRAM	FISCAL YEAR 1976 COMMISSION ALLOCATION	COMMISSION REQUEST TO CONGRESS FOR FISCAL YEAR 1977
I01-Ad Monitoring and Substantiation	$15,900	$53,000
X01-Other Direct Resources	$12,000	$14,000
TOTALS	$27,900	$67,000

CONTRACT FUNDS

PROGRAM	FISCAL YEAR 1976 COMMISSION ALLOCATION	COMMISSION REQUEST TO CONGRESS FOR FISCAL YEAR 1977
I01-Ad Monitoring and Substantiation	$77,500	$39,000
X01-Other Direct Resources	$ 2,700	$43,000
TOTALS	$79,200	$82,000

Mr. ROSENTHAL. Does the Commission anticipate more corrective advertising cases as the result of the *Listerine* decision?

Mr. COLLIER. I don't know that we have in the pipeline cases I could identify for you or this committee that would say, "this is a candidate for that type of order."

I think that the decision is helpful in the sense that it communicates to the staff the legal standards and proof standards which are going to be required in these cases.

It should aid significantly in the investigation of advertising in the future.

Let me say also that I think a decision of that kind, given the consequence that a company might perceive with regard to corrective advertising, would be of some use in deterrence.

Now that we have established standards that the companies can see what might trigger this kind of relief, it is, of course, our hope in any situation of that kind that there will be a deterrent effect.

But I don't know that I could put a number on which matters might be subject to that. I think that might depend on proof of the requirements that are set forth in the standard enunciated in that case.

Mr. ROSENTHAL. I have to conclude that the Commission has been somewhat reluctant to order corrective advertising in the past. Isn't this a principal weapon against future deceptive advertising?

Mr. COLLIER. It's a very strong weapon where we can demonstrate that there is this lingering effect which needs to be cleared up in the public mind. It is one I have no hesitation to invoke, but one it would be difficult to make a quantitative prediction about.

Mr. ROSENTHAL. Can you describe recent Commission efforts in the area of children's advertising?

Mr. COLLIER. I named three in my statement which I will summarize now which are quite active at this point in the Commission.

The first is the Premium Guide which was published for public comment and which, as I indicated in my statement, will be before the Commission very soon.

The staff has made their recommendations but the Commission has not yet acted on those.

That guide, in brief, addresses the question whether it is unfair or deceptive to advertise on television the availability of a premium in connection with a product.

The second area in which children's advertising has been a matter of specific and immediate interest to the Commission in a broad manner, analagous to the first, is in the food and nutrition inquiry. Because there we have questions that relate to advertising of food and nutrition characteristics or the failure to advertise in some cases those characteristics.

We have, as I indicated, been following closely the research and have been working with the National Science Foundation. In addition, we have participated recently in a hearing which the FCC and the Commission cohosted. It related to OTC drugs and the advertising's effect on children. Those hearings also probed the question of possible drug abuse that might arise.

Mr. ROSENTHAL. Were there any FTC Commissioners present at that hearing?

Mr. COLLIER. I don't think there were. Our staff was represented. We were all provided with transcripts on the hearing. I, for one, am about halfway through the transcript. I am finding it very useful.

Mr. ROSENTHAL. Was the FCC represented only by staff too?

Mr. COLLIER. I think the Commissioners kicked it off, but I don't know whether they were present for the entire proceeding.

Chairman Wiley was the principal host, and I know he had some introductory remarks, but I don't know whether the members of that Commission stayed through the whole thing.

My schedule was such that it was necessary for me to rely on the transcript. I find that very useful. Also, public comments will be forthcoming.

Mr. ROSENTHAL. I just want to make the point that following the Washington bureaucratic phenomena—the fact that there were no commissioners there—establishes it as a low-level concern of the Commission which I think is in error.

Mr. COLLIER. I think that's unfortunate when that kind of symbolism is inferred.

Mr. ROSENTHAL. But it's true here.

Mr. COLLIER. It derives essentially from a schedule that didn't permit me to be there.

Mr. ROSENTHAL. No, I'm not criticizing you. But none of your Commissioners were there. I assume they all have busy schedules as we all do, but the net effect of it is that the industry perceives it as a low-level interest.

Mr. COLLIER. That is unfortunate.

Mr. ROSENTHAL. Has there been any significant self-regulation of children's advertising? Has self-regulation had any effect at all?

Mr. COLLIER. It's hard to put your finger on exactly what effect it might have had, but I would say that I have had the impression that the code authorities—and in particular the broadcast code authorities and the broadcast screening operation which goes on within each network in particular—have tended to tighten standards in the last several years. This includes advertising to children.

This is a subjective reaction, Mr. Chairman, and we are all entitled to ours, but I occasionally join my children during children's times. I have noticed in the last few years some improvement from a personal standpoint in the quality of television that they are exposed to. On the other hand, I don't have any statistics to back up those kinds of impressions.

I think, particularly in the broadcast sector, there is a lot of work being done on this.

Mr. ROSENTHAL. Do you mean by the industry?

Mr. COLLIER. This would be by the networks in particular.

Mr. ROSENTHAL. Can they be trusted? Do you think self-regulation has any validity or efficaciousness?

Mr. COLLIER. It has up to a limit, but I would not rely on self-regulation exclusively, for two reasons: One, because it seems to me the exercise of these responsibilities are essentially governmental in nature and the Government should be there. Second, self-regulation turned loose can produce anticompetitive abuses.

I don't think the Government could stand by and allow that to occur.

So my feeling about self-regulation is that, yes, it has a place. It has to be watched. In particular, it has to be watched on both sides—both as to whether it satisfies the need to prevent abuses on the advertising side and from the standpoint of potential abuses on the competitive side.

Mr. ROSENTHAL. Are there any affirmative disclosure programs underway or any contemplated?

Mr. COLLIER. We have a series of activities that relate to affirmative disclosure of a broad programmatic nature that would include such things as the energy efficiency area that I mentioned.

We have something I would regard as affirmative disclosure in connection with the requirements under the Warranty Act where we are requiring more disclosure in connection with the use of warranties.

I mentioned that we have guides on disclosure with regard to fuel economy claims by automobile manufacturers. We think those are all very important areas of affirmative disclosure.

In addition, of course, you often wind up in a situation where affirmative disclosure is a necessary means of eliminating a deception or a misleading statement where, as part of the correction, an affirmative disclosure is required. That's a routine part of our enforcement in a whole host of matters.

In the vocational schools, for example, we are exploring a trade regulation rule, what affirmative disclosure ought to be required with regard to the record of the school in placement.

Mr. ROSENTHAL. How long have you been working on that?

Mr. COLLIER. The vocational schools?

Mr. ROSENTHAL. Yes.

Mr. COLLIER. The vocational schools matter has gone through a couple of phases. We have a number of cases which were brought against individual schools.

In part, based upon what we have learned in the development of those cases, the rulemaking proceeding was initiated. The rulemaking proceeding has been pending for some time and it has——

Mr. ROSENTHAL. When was it initiated?

Mr. COLLIER. The rule would have been published again since the Magnuson-Moss act. So at least since January of 1975 it would have been required by law to be republished, and we would have been required to start new hearings.

Mr. ROSENTHAL. I know, but when did it first start?

Mr. COLLIER. May of 1972 was when the investigation was announced. As I indicated there were a number of cases: In August of 1974 the trade regulation rule was proposed; it was republished under the Magnuson-Moss act in May of 1975; and the final notice was in September of 1975. We are expecting a staff report very soon on that; that is, the staff report based upon the hearings and the record which has been accumulated.

Mr. ROSENTHAL. Can we anticipate a rule in this area before the end of the 20th century?

Mr. COLLIER. Yes, clearly.

We have not been sitting still while waiting for the rule. We have had a number of cases where individual violations have come to our attention. We have a number of consent orders which have been issued in this industry against individual firms.

Mr. ROSENTHAL. How many consent orders?

Mr. COLLIER. I don't know the exact number, but I do know that there are a number.

Mr. ROSENTHAL. Three or four?

Mr. COLLIER. Four.

Mr. ROSENTHAL. That's enough.

Mr. COLLIER. Eight in litigation.

Mr. ROSENTHAL. Eight in 8 years is not bad. It's been going on for 8 years.

Mr. COLLIER. Since 1972.

Mr. ROSENTHAL. It started in 1969.

Has an effort been made to make public the substantiation materials submitted to the Commission? Has there been an effort made to publicize those instances in which ads have not been substantiated?

Mr. COLLIER. In my statement, I think I said that in all cases we have received substantiating materials. That's not to say that in all cases there has been substantiation. Indeed, rather than publicity when there is no substantiation, we sue. So in connection with the failure to substantiate, yes. That's all made public, and it is usually in the form of a complaint.

On the question of whether we make the information available, yes, we routinely make it available. Respondents are notified in advance that that is our policy, and we do make it available.

The difficulty, of course, which you would recognize is that much of this material is of a technical and scientific nature and is difficult to comprehend. We have to hire experts to do that. And often those questions are not very simple.

So, almost inherently, there is a limitation on how effective it is to the general consuming public.

We had hoped initially, when the program was adopted, that there would be institutions, such as publications or other trade organizations, which would pick up this material and make an effort to make it available in a more comprehensible form. Apparently, that has not proven feasible, given the substantial cost which attends each such effort.

Yet another problem: If we invest a lot of effort, cash, people, and resources, and we substantiate a claim which happens to be current in one particular year, the next year they may be selling that product with a whole new theme. So how much effort do you want to put into that to translate into simple consumer language something with which it is hard to keep up. Short of prohibiting them from making new products or advertising new features of the products which consumers may demand at a particular time, it is very difficult to keep up with that.

Mr. ROSENTHAL. So they know they can always stay one step ahead of you.

Mr. COLLIER. They can do that only to the extent that the consumers are interested in the features they are advertising.

In my testimony, I underscored the difference between the rounds and the individual claims where we asked for substantiation.

One of the reasons the rounds are limited is because you not only go to industry, but you have to have one or two claims which tend to be pervasive throughout the industry. For example, the kind of thing

we saw on fuel claims in automobiles, where everybody seemed to be targeting on the same consumer interest. Then we call it a round.

If it's something short of that—if one company is just using one characteristic—then we will proceed against that company. That accounts perhaps for part of the reason why we have many more individual requests of firms than we have so-called ad substantiation rounds.

Mr. ROSENTHAL. In the past few years, has the Commission ever used its injunctive powers to stop advertising while it is still running?

Mr. COLLIER. We have used it but not in national advertising cases based upon the Pfizer principle which underpins the ad substantiation program.

You will recall that that principle says: Whether or not an ad is truthful, it is unfair and in violation of our act if at the time the ad is made, there was not adequate substantiation for it.

So if it turns out by chance to be true, that is still a law violation under the Pfizer doctrine.

The difficulty on the injunction side in these cases can be twofold.

One, of course, is the technical side on the backup. You have to have that technical support that the claim is unsubstantiated when you go in.

Second, in these cases, it is not a simple question what the ad says. Often the claim we derive from the ad is a claim which is not there in so many black and white words. It is an implied claim or a suggested claim. It's the net impression which we have. Those, it seems to me, are difficult questions to drop in the lap of a district judge as a de novo matter.

Mr. ROSENTHAL. So the answer to my question is what?

Mr. COLLIER. It is that it is very difficult. We have brought injunction cases but not in connection with the Pfizer principle. We have done it in advertising cases.

Mr. ROSENTHAL. How many injunction cases have you brought in the last 3 years, for example?

Mr. COLLIER. We have brought about three or four injunction cases under either the amended pipeline act authority or the sections 12 and 15 authority in connection with foods and drugs.

We had a case involving psychic surgery tours to the Philippines a few years ago. That was the first under the new act. We had a case involving egg nutrition. We had claims by an alleged trade association. We have had a case involving a weight reduction clinic in connection with the use of a particular drug. We did not win that case. Indeed, some of these other cases have been appealed.

We had an injunction issued against a company which made eyeglasses. We had another loss in connection with a business promotion operation.

I think we have provided the committee a list on all injunctions. I count nine matters, of which two are on the antitrust side.

Mr. ROSENTHAL. Mr. Mezvinsky?

Mr. MEZVINSKY. In your opinion, how big is the problem of misleading advertising? Is it a major problem?

Mr. COLLIER. I can't put a number on it. I think it can be a problem——

Mr. MEZVINSKY. Is it a significant problem from your perspective? Is it something which should have a high priority as far as the FTC is concerned?

Mr. COLLIER. I would say it is. And I would say it always has been.

Mr. MEZVINSKY. What is the area of most abuse? How would you pinpoint it?

Mr. COLLIER. We have attempted in our processes to target on the areas of abuse where certain factors might be present. Economic injury to the people who rely on the advertising is one, but not an exclusive, indicia to us. Health and safety is another. Those are problems we target on most.

So within the general area of abusive advertising, those are the areas where we tend to target our primary activity.

Mr. MEZVINSKY. Let's be specific if we can: what areas receive the highest priorities and focus? What about advertising's effect on children. Is that a major area?

Mr. COLLIER. That is an area we have devoted major attention to lately.

Mr. MEZVINSKY. Where is the abuse there?

You point out in your testimony your cooperation with the National Science Foundation on the effects of television advertising on children. Where should we look?

Mr. COLLIER. There are three areas that we are looking at within that area. The first is in connection with the use of promotions for premiums.

In the past, we have reviewed such questions as use of hero figures and the like on which there has been some movement of a voluntary nature on the private side. Limits exist in connection with the host figure in the program in terms of what he does on the advertising side.

That's one area, and our interest in it has been specifically in connection with the premium question.

We have looked at food and nutrition. We have looked in a related area in connection with vitamins and such for children.

And another area, which we are now looking at jointly with the FCC, has to do with the effect of drug advertising on television as to what effects it might have on children.

Those are three, within the larger area, which have come to our specific attention.

Mr. MEZVINSKY. What's your most valuable tool to handle the misleading advertising?

Mr. COLLIER. At this point?

Mr. MEZVINSKY. Yes.

Mr. COLLIER. The cease-and-desist order.

That is the most basic tool we have. I mentioned some others which I think are coming up to speed. We have the penalty provisions of the Magnuson-Moss Act which are new but which require the laying of a foundation to proceed. The laying of that foundation can be in one of two ways: It can be the development of an order which can be served and which sets down a rule of law, the violation of which doesn't result in a cease and desist order but results in penalties. It can be in connection with a trade regulation rule. It lays the same type of predicate for much swifter Commission action with much higher sanctions.

I wouldn't rule out the old-fashioned cease-and-desist order. The reason is that to the extent that those orders cover more than the specific conduct that was involved, and cover broad practices and

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broad ranges of products, to the extent that they deal with techniques and not just with a particular claim, the deterrent that results from an individual violation is much broader. The effect on the operations of that company, including its screening processes, is much more effective in our view.

Mr. MEZVINSKY. Do you need any more tools? Do you have enough now to do the job?

Mr. COLLIER. I cannot propose an additional tool I think I could support and say we need. If I ever detect it, I will come back to you.

Mr. MEZVINSKY. You mean you have the adequate means now to do it? Is that right?

Mr. COLLIER. From the standpoint of those enforcement tools, yes.

We do have one problem, and I'm not sure the extent to which it is a problem for this committee, but I can't pass up the opportunity to mention it.

We do have legislation we have supported which relates to improving the procedure for the obtaining of information through compulsory process. That bill is in the latter and favorable stages of consideration within the Commerce Committee on the House side. It's already passed the Senate. We are hopeful that some of those general enforcement authorities will be made available to us in this session of Congress.

Mr. MEZVINSKY. Do you ever do psychological studies on the impact of advertising? I know you have all kinds of studies on children, but what about the psychological impact? What does the FTC do as far as advertising is concerned?

Mr. COLLIER. I would like to answer that in two parts, and then ask Commissioner Dixon to comment.

First, we do review the literature. We do try to stay up to date on all those issues.

Second, I noticed that these kinds of "effects" questions on children are part of the center of the controversy on some of those issues I discussed earlier, and particularly in connection with drug abuse and the effect of advertising.

There is a wide variety of opinion in the testimony of the experts at those hearings with regard to whether there is any relation and whether it is positive or negative.

The point is that that is a legitimate subject for inquiry and one that is being inquired into.

In 1971 the Commission held some extensive hearings on advertising. Neither Commissioner Dole nor myself were members of the Commission at that time. Commissioner Dixon was and perhaps he has a note or two to add on what those hearings revealed.

Mr. DIXON. I think the most interesting thing the hearings revealed was on the question of children's advertising.

Many prominent psychiatrists were invited to come and testify. The Commissioners sat on those hearings; the staff did not.

It illustrated one of the difficulties of regulating children-advertising. These prominent psychiatrists pretty well testified to the effect that in the early ages of a child's life—up until the age of probably 10 to 12—no value judgments could be made by a child.

Many of the groups before us were urging us to proceed under the unfairness doctrine to say it was unfair to have any program directed

to children where you're advertising any product together with a premium because a child could not make a value judgment.

We have wrestled with that for a long time. It involves some constitutional questions. We never have been able to resolve that problem.

I, myself, have a very serious doubt whether we are empowered, as a statutory agency, to move into that area. Because children really don't buy things; parents buy them. Theoretically the value judgment is made there, although there are many prominent members of both the House and the Senate who feel that we should deal directly with the problem.

We have not hesitated to deal with the problem when it had to do with the very advertising statements which are made which fall traditionally within the statute where we can challenge as false, misleading, or deceptive statements.

We are now coming into the use of the word "unfair." That word has been in the statute since 1938 when the Wheeler-Lee amendment was passed. We have been challenged by the court to develop that word more fully.

Then we have the latest Supreme Court decision made the other day in the *Virginia pharmacists* case which takes us back. I don't know where we go or what effect that truly has.

Mr. MEZVINSKY. When we talk about advertising related to children, I am concerned that we view it as children's advertising. It's not advertising for children. It's the effect of advertising on children which may not be directly related to them as a specific audience.

So the ramifications—and that's why I question the psychological effect—are really what Chairman Collier was saying: That the study should be done on the effect of television advertising or radio advertising on children which may be totally unrelated to them as an audience. That's what I am concerned about.

Mr. DIXON. I remember in those hearings I became aware of a statement I had read publicly which was made, I believe, by the head of the National Science Foundation which was sitting in review on many of these things. He made the statement, as I read it, that he thought much of the hard drug problem was traceable to the amount of drug advertising on television and radio.

We sought to get him to testify, but we could never get that gentleman to testify during those hearings.

It is an interesting question, and it is a question that has been mentioned here this morning, whether or not maybe some of the hard drug problem we have in this country may be traceable to the cumulative effect upon children seeing every kind of pill advertised on television and radio.

Mr. MEZVINSKY. Thank you, Mr. Chairman.

Mr. ROSENTHAL. Mr. Drinan?

Mr. DRINAN. I will reserve my time if I may, Mr. Chairman, and yield to the others.

Mr. ROSENTHAL. Mr. Moffett?

Mr. MOFFETT. Thank you, Mr. Chairman.

Mr. Collier, how do you view the agency's relationship with outside consumer groups at this point?

Mr. COLLIER. I would like to think it's good. I don't think it's perfect. I think that I would worry if they weren't pushing us to higher levels.

Mr. MOFFETT. What's being done to improve it?

Mr. COLLIER. I have met with these people from time to time. I think each member of the Commission stands ready to do that. We try to address ourselves to matters that they demonstrate to us are important. It's an ongoing kind of thing. I don't know of any formal, easy answer to that type of question.

Mr. MOFFETT. They're involved in that NARB process. It that correct?

Mr. COLLIER. Yes.

There is one area, which I don't mean to slide over because I think it is very important. Congress did this, and I for one, am pleased about it. It has to do with the provision in the Magnuson-Moss Act which allows us to grant payment assistance to people who otherwise could not afford to participate in our proceedings and to do so meaningfully. This includes the public interest and consumer groups.

Under that statutory authority, we have now virtually committed our fiscal year 1976 appropriations of $500,000 to these groups for participation in our rulemaking proceedings.

I think that kind of support will improve our proceedings, and I think it will improve their understanding of the agency.

Mr. MOFFETT. What do you see happening in the future, given the resource gap between these groups and the major industries. I am referring to the amount of money that is spent by the industry as opposed to the Consumers Union, for example.

Mr. COLLIER. Without commenting upon how good individual groups are within this broad range of public interest effort, I think that this is a problem which ought to be addressed. There are a lot of decisions being made among and by Federal agencies which affect people, and where the people who are best able to make the case—representatives of the groups themselves—are de facto excluded.

Our kind of program, I think, is a constructive response to that problem. I would like to think it is a model that others will be able to follow and that perhaps Congress will be able to rely upon.

Mr. MOFFETT. Is it fair to say that your agency sits in a quasi-judicial capacity?

Mr. COLLIER. On many matters.

Mr. MOFFETT. Is it fair to sav that on many matters the industry is represented and, leaving the Commission staff out of it, there is no one on the other side?

Mr. COLLIER. In the adjudicated matters that is very generally the case. It is very seldom you have representation on the other side.

The provision I spoke to related to the rulemaking area and not the adjudications.

Mr. MOFFETT. With regard to adjudications, then, if in fact we do have a quasi-judicial setting here with the Commission sitting basically as the judge and with industry on one side and an empty chair on the other side, what can be done to fill that empty chair?

Mr. COLLIER. We put a prosecutor in the empty chair. That's in the form of a complaint counsel on the staff. They assume the role of advocate, counsel in support of the complaint. They are very much, in all respects, like a prosecutor.

They assume that chair and prosecute the alleged violation.

Mr. MOFFETT. Without suggesting that there is one consumer interest involved, because we know there are in many cases more than one, but also recognizing that the consumer interest may be different from the industry interest, are you saying that all bases are basically covered in those proceedings?

Mr. COLLIER. There is a question which I think has to be determined on the facts of each proceeding whether some form of intervention or participation or comment or amicus role in the individual proceeding would improve the quality of the decision or have the tendency to improve it, and that it would meet the standards for that kind of intervention.

That should be considered on a case-by-case basis on the adjudicated side. However, I can see no situation in which on the rulemaking side that kind of participation wouldn't be essential.

Mr. MOFFETT. I just wonder if a consumer agency is an important entity or not with regard to that.

Mr. COLLIER. I think Congress has to make up its mind.

Without commenting on the consumer agency, because that has other responsibilities as well, I don't think that our program is in derogation of that. I think that what our program does is to get at the core of the problem with regard to rulemaking proceedings. It is providing assistance to a group to say what they believe.

Mr. MOFFETT. Is it safe to say that everyone performs better, generally, if you have that kind of substantive intervention?

Mr. COLLIER. I think that's right. I think the risk is that you sometimes perform a little slower.

Mr. MOFFETT. That may be true.

Mr. COLLIER. I think when you're done, you probably perform better.

Mr. MOFFETT. One more question of a more or less philosophical nature.

Mr. DIXON. Before we leave that, may I add this to what Mr. Collier has said?

Since the very inception of the Commission, the Commission has had the broadest type of investigatory powers. Before we issue a complaint, we have the broadest investigatory tools, the subpena and formal hearings, to satisfy ourselves that the law has been violated and to answer the question whether a complaint is in the public interest.

The trade regulation rule came into vogue even before Magnuson-Moss. We believe we had the authority and had used it.

We brought it into play because we could see that a problem we were confronted with was a violation involving more than one person or one party. What if a violation had permeated a whole group: a whole line of commerce, for instance. We wanted to proceed more fairly than against one respondent at a time. So the rule approach was the obvious answer.

When we pursue a trade regulation rule, we must develop a basis and purpose for that rule.

If you just say, this is the rule we want, and invite everybody to come, you may just get one side. That's what you are talking about.

But it is our fault if we are in that position, because before we adopt a proposed rule, we can have a public or a private investigation and make that a part of the record. And there is the basis for it right there.

Mr. MOFFETT. Thank you. That is helpful.

A philosophical question: Do you have any idea what the American people really think of all these ads that they see? Is there any idea?

Mr. COLLIER. There have been some polls. Some are rather celebrated.

Mr. MOFFETT. Just on advertising in general and the credibility of advertising.

Mr. COLLIER. I think that the polls I have seen which many of you have seen indicated that among the institutions that is not held in universally high regard is advertising. Among the credibility gaps that many institutions have, advertising has a big one.

Mr. MOFFETT. How essential do you think advertising is in our society?

Mr. COLLIER. I think it's essential. I think it is essential to free markets.

Not all of it. There is nothing essential about unfair, deceptive advertising. It seems to me advertising itself is essential to the market system.

Mr. MOFFETT. Given the amount of money that is spent; given the fact that it finds its way into consumer bills; given the amount of junk that is peddled at a time when we hardly need to have more junk peddled and be more consumption-oriented in our society; and given the fact that many people are talking about whether small is beautiful—a lot of people are talking about the fact that we need a period of limited growth and less consumption—I just don't see anything but the need for a radical change in this whole situation.

I would feel better if someone at the Commission felt that way.

Mr. COLLIER. I think those are essentially political questions.

Mr. MOFFETT. Well, political with a small "p" and philosophical.

Mr. COLLIER. Of course. But they are the kind of questions with regard, for example, to making judgments about people's consumptive habits and desires and the extent to which the Government should dampen them. Those are the kinds of questions that we don't address.

Mr. DIXON. I would commend the hearings we held several years ago on the open question of advertising.

Industry went to great lengths to appear and develop that theme. I think it would be interesting to you to read it if you find the time.

Also, I would say as the chairman said, using $25 billion a year being spent for advertising, that it is a terrible waste if it is not productive. I would be terribly worried——

Mr. MOFFETT. What is your definition of "productive"?

Mr. DIXON. Moving goods.

For instance, we are the greatest Nation in the world at mass production. Someone has to sell it. It used to be a salesman sold it to you. Now you go into a shop because somebody triggered something in your mind that brings you in. The ad is terribly important in our society.

Mr. MOFFETT. It may be important for General Motors, but I'm not sure that what's good for General Motors——

Mr. DIXON. It would be interesting if you developed that new car in opposition to GM and it was superior, how would you sell it if you couldn't advertise it?

Mr. MOFFETT. Well, there is little chance of that.

Thank you.

Mr. ROSENTHAL. There are two vacancies on the Commission now I understand. Is that correct? Is that impeding the work of the Commission?

Mr. COLLIER. It is putting quite a burden on us, and we are working very hard.

Mr. ROSENTHAL. You mean you three are working harder than you ordinarily would?

Mr. COLLIER. There are more matters that each of us has to go into in depth. One of the things that the collegial body does, as you know, is that it relies on the efforts of its members to make the whole work.

Mr. ROSENTHAL. How long have these vacancies been in being?

Mr. COLLIER. The Commission has been off and on at a three-member level since the first of the year. There was a short period of time when there were four, and then it was back down to three.

Mr. ROSENTHAL. Is there any movement toward filling these vacancies that you know about which you could discuss?

Mr. COLLIER. I am not sure what the White House's current plans are with regard to nominations. There are no nominations pending, I don't think, at this point.

Mr. DIXON. As a practical problem, one of the vacancies is for a term that ends in September of this year. The other vacancy is for a term that ends in September of next year. You would have a hard time finding someone who is worth $100,000 on the outside to come in here for 2 or 3 months with a national election coming. I think we're going to be three for quite awhile.

Mr. ROSENTHAL. So you think Congress should act and eliminate those positions? How would you suggest we solve that problem?

Mr. COLLIER. I assure you we are not spending the money for the salary of those commissioners at this point.

Mr. ROSENTHAL. Mr. Brown?

Mr. BROWN. As a practical matter hasn't it been informally intimated by the Senate Commerce Committee that it doesn't intend to confirm any of those positions until after the election?

Mr. COLLIER. I am not aware of that.

Mr. BROWN. It has been so suggested to me.

I am interested in what appears to me to be a switch in focus in FTC enforcement. I realize it is legislatively established to a certain extent by the Magnuson-Moss Act. You are moving away from dealing with individual cases of unfair or deceptive advertising to rulemaking, where you get into affirmative disclosure situations.

Mr. COLLIER. There is a lot more effort, but it is focused effort, in connection with affirmative disclosure requirements which would be made in connection with the sale of a product, whether on the advertising or labeling or some other method. Yes, that is picking up.

We do still have a lot of litigation that identifies individual problems. In that area, we have stronger deterrents than we've had before as well.

Mr. BROWN. I have particular reference to the proposed food nutrition rule. This proposes, as I understand, that an ad would have to state affirmatively the nutritional content of the product in the ad, rather than on the label of the product.

Mr. DIXON. We are following here our relationship with food and drug. We pretty well have a liaison arrangement with them that they deal with the label, and we deal with the after-market.

They had worked out a proposed rule to require on the label of any product which said it was enriched or fortified. We have a problem, and we knew then we would have a problem: Within the time limit and the time frame of the use of television and radio whether you could duplicate all that or whether there is some way to call attention to the public to read the label.

Mr. BROWN. Isn't that a more sensible approach?

Mr. DIXON. We have not shut that door, because that would be involved.

Mr. BROWN. As a practical matter, you have been in this rulemaking process since 1972 haven't you? Wasn't that when you first decided to investigate?

Mr. DIXON. When we first decided to become involved, we proposed a rule. What that record is going to be, I don't know. What should the rule be: That's what our judgment will finally——

Mr. COLLIER. That rule was proposed first in 1974, in fact, in November of that year. Then it was republished again in May of 1975.

That rule emerges from a long generation of individual litigation involving deceptive claims and so forth in connection with some of these products. The rule has several features to it.

One feature concerns the affirmative disclosure obligations. The other aspects concern what is disclosed in terms of truthfulness and accuracy.

Mr. BROWN. In your statement you said that there will be a hearing in San Francisco in July of this year. When do you anticipate that you will reach a conclusion on this?

Mr. COLLIER. The hearings are going to be in three parts on the food rule. The first part will be held this summer. We divided the rule because it is a very long rule, and it has three natural parts.

The first part includes food claims—claims you run into with use of the words "natural, organic, calorie claims," and so forth.

The second phase is going to concern the vitamin-mineral type of issue. Again, this would be in the followup.

The third phase would be the area on affirmative disclosure.

What has not been determined yet is whether those portions are severable for purposes of Commission action, or whether the Commission is going to wait until the end of the process. It is quite possible that we could consider taking action after the first phase is done as to those aspects of it, and then dealing with another. But that is a tactical decision we have not yet made.

Mr. BROWN. What policing of advertising are you doing while you're in this rulemaking procedure?

Mr. COLLIER. We are monitoring it. There is a lot of ongoing work, but we also have material coming into the record as a result. I would think there is a much higher level of awareness among people who are making claims of the kind of legal standards we are thinking about. So there might be an effect, as Congress sometimes sees, simply from the noise itself.

Mr. BROWN. Have you brought any enforcement action during this period of time?

Mr. DIXON. We have complaints outstanding and have brought complaints in the past dealing with some of the same problems that are being considered in the rule. It depends on the nature——

Mr. COLLIER. I am reminded of an example in the egg nutrition case which was brought after that rule was first developed by the Commission in proposed form. There have been other cases which have come up since the rule was first proposed.

Mr. BROWN. I would like to touch upon another matter I am sure you won't want to discuss.

It is disturbing to me, representing the Third District in Michigan where the Kellogg Co. is located, to hear some of the things which have been said by former staff of the FTC concerning the monopoly case against the cereal industry.

I have questioned from the very beginning when the action was first commenced the authority of the FTC to get into the shared monopoly question.

A former staff attorney, who was involved in the initiation of that case, said: "I didn't pick the auto or petroleum industries, because they have too much political clout. The cereal industry didn't have the political muscle to muddy the water."

I am not going to ask you if there is any truth to that statement.

Mr. COLLIER. I have no idea. I assume that it is not however.

Mr. BROWN. No doubt you recently saw last week or the week before in Newsweek an anonymous FTC official saying: "We are taking the law and stretching it a bit."

In that same article, the same former staff attorney for the FTC said: "If the cereal case is successful, the FTC will, in effect, be declaring about one-third of the economy to be illegal."

To date, what has that action cost the FTC? Do you have any idea?

Mr. COLLIER. I do not have figures with me, but I would be glad to provide them for the record.

Mr. BROWN. I would appreciate it if you would.

[The information follows:]

Summary of direct expenses for Kellogg

Total salary expenses	$1,919,071
Total operating expenses	92,715
Total expenses	2,011,786

Mr. BROWN. I have no further questions.

Mr. ROSENTHAL. Congressman Drinan?

Mr. DRINAN. Thank you, Mr. Chairman.

I wonder if you would want to talk about cigarettes? Do you feel the Cigarette Labeling Act of 1965 gives the FTC the power to regulate cigarette advertising more carefully? Do you feel the FTC would have the power to require the advertisers to indicate the level of the tar or nicotine on every cigarette ad and even on every cigarette package?

Mr. COLLIER. They are doing it voluntarily, and we are involved in a review of that material. They do that in cooperation with our laboratory——

Mr. DRINAN. They don't do it in ads?

Mr. COLLIER. No; not in ads.

Mr. DRINAN. Do you have the power to regulate ads?

Mr. COLLIER. Excuse me, I am advised that they do do it on the ads; at least in the print ads and they don't run the others any more.

Mr. DRINAN. Is it informative? Does the average person under-

stand the implications of the tar and nicotine content or is it just numbers?

Mr. COLLIER. I think people understand that there is more in one brand than another. And people who do have a concern about the consumption of those ingredients probably at one time or another pick a cigarette where they do make that kind of an analysis. Whether they do it every time they buy a cigarette or every time they see the ad, I doubt it. But as to people who smoke, I suspect——

Mr. DRINAN. Therefore, it is not effective. And the FTC has not monitored this?

Mr. COLLIER. I think it would be effective——

Mr. DRINAN. It has not cut down the number of smokers.

Mr. COLLIER. No; but it would be effective, I think, in the smoker's brand selection. In other words, I would think he would search that out. But he would only do it once.

Mr. DRINAN. Is this just an assumption? Are there any statistics that the voluntary disclosure of the tar and nicotine does, in fact, inform the smoker; and that they prefer those with less tar and nicotine?

Mr. COLLIER. Statistics indicate that the market shares have changed dramatically toward low tar and nicotine cigarettes since those disclosures have been made.

Mr. DRINAN. On the advertising by the oil industry, the FTC has charges against the "seven sisters" that they are price fixing and have a monopoly. Is there any monitoring of their ads as to the political content? What, if any, action has the FTC taken on the outrageously political ads of Mobil?

Today they have a big ad in the newspapers, spending millions of dollars, with an open political statement against the divestiture of the oil companies.

Mr. COLLIER. We are taking no action against that.

Mr. DRINAN. Why not?

Mr. COLLIER. We think the free-speech guarantee affects that advertising.

Mr. DRINAN. Do you think they're deceptive?

Mr. COLLIER. I don't know whether they are, in fact, deceptive.

Mr. DRINAN. Why not?

Mr. COLLIER. We have not investigated it. We think that in some of these areas the investigation itself might adversely influence the exercise of free speech.

I feel very reluctant to challenge with governmental authority somebody who says he doesn't agree with me.

Mr. DRINAN. What relationship do these ads have to the price of gasoline? They are supposed to advertise to inform us about their product, but they are not informing us at all. They are just saying: Please don't have any divestiture in any way of the big seven sisters against whom the FTC has filed suit.

Mr. COLLIER. They would affect the price of gasoline perhaps directly in the sense that an advertisement might affect the costs of the company and may affect the price. With regard to the indirect effect they might have on the price of gasoline, through the action of the political branches of the Government, I think it takes you right into the first amendment area.

Mr. DRINAN. Have the commissioners ever brought up this problem?

Mr. COLLIER. Yes, sir. And we advised and wrote a letter which I think was made available to the staff, about 1½ years ago, declining to pursue ads by companies relating to political issues and so-called image ads.

Mr. DRINAN. I know you have an action also for monopoly and price fixing against the auto rental units. I have reason to use those rather regularly in my congressional district. I am certain that I get overcharged as do millions of people.

They don't give you information about the nature of the different contracts that you can take, whether you pay for the mileage or not. I have asked for information, and they have no information. It is a policy of deliberate deception.

Is there any way by which the FTC could say that, in order to allow the consumer to know the nature of the contract, these companies have to have some written information available about the options for the customer?

Mr. COLLIER. We do do that in many areas. We do it on either an industry-by-industry basis or a case-by-case basis.

Mr. DRINAN. What about the auto rental industry?

Mr. COLLIER. In terms of general disclosure requirements, no; we have not done that in the auto industry.

Mr. DRINAN. Why not? Because you have an action saying that they have, in fact, fixed prices. They have, regularly. And there are only three of them allowed in all of the airports. I welcome the action. I don't know what, if anything, has happened; but why can't the FTC follow up and say that, as an essential service to the consumer, he should know what are the options available to him.

Mr. COLLIER. With regard to the auto rental matter first, just to bring you up to date: That matter was removed from adjudication for consideration of a consent settlement. That will be completed soon.

Mr. DRINAN. The prices have not come down.

Mr. COLLIER. They have in some areas, according to our staff report. Some airports, for reasons about which we are not fully certain, have gone to bringing in some of the economy car operations and have begun to bring in competitors and allow them on airports indirectly—say, by limousine service to and from a nearby operations which they previously may have prevented. So there has been some action in the industry recently.

Mr. DRINAN. Is there any way for me, as a consumer and as an attorney, to know whether the consent decree that you're going to get from them is satisfactory?

Mr. COLLIER. What we are going to do, if we accept the consent decree, we will publish it for public comment. It will be available for public comment for 60 days. Due to your interest in it, we will make sure we send you the statement with an explanation which will, hopefully, be in layman's language what the decree provides for. We will wait for that public comment prior to the time of taking final action on whether to accept or reject it.

Mr. DRINAN. I will be very interested in receiving that.

That brings me to a related question. I am sure that all of the Commissioners and the staff are under pressure from the advertisers and so on. I wonder if any records are kept of the contacts and the com-

munications and phone conversations and even the lunches between the industry representatives and members of the staff of the FTC?

Mr. COLLIER. There are some recordkeeping requirements; and I keep records. I think the Commissioners keep records. The staff also does.

I can imagine a few exceptions. If you were in constant litigation perhaps with representatives or counsel from the other side, you may be on the phone 30 times a week with them. I am not sure how much detail goes into each one of those notes and records. In other words, you may be constantly dealing with the attorney on the other side in connection with negotiations or whatever. But I think the staff does keep records.

There are more limited situations in which they are required to keep records. The Commissioners do keep records.

Mr. DRINAN. If I wanted to really pursue the auto rental could I get a day-by-day log of all the contacts of the FTC up to the date when you finally said: "We're not going to go to court. We'll just settle this thing for a compromise judgment."

Mr. COLLIER. You can get all the records of contacts with the Commissioners and with personal staffs of the Commissioners——

Mr. DRINAN. They didn't settle this. It was settled at the staff level.

Mr. COLLIER [continuing]. You can get those because they are in the public record.

Mr. DRINAN. I have no knowledge of the options that were available to the FTC. In other words, all I am given, and I am supposed to be glad—for 60 days, I can look at a statement which is really incomprehensible because I have looked at them before.

I don't know what you could have done to Avis and National and Hertz; but I know that I will go on paying exorbitant prices at rates that are not disclosed to me.

Can you give me any guarantee that I as a consumer am going to have any satisfaction after you put this agreement into effect?

Mr. COLLIER. We try, as best we can, not only——

Mr. DRINAN. I don't know how hard you try. Like Avis you should try harder.

Mr. COLLIER. We try not only to put out the consent settlement which you are quite correct is often impossible to comprehend for a layman—and even for a lawyer sometimes. But we try to provide a summary of that written in layman's language as to what the effect of it is. I think those summaries are pretty good. Any suggestions we can get for improvements, we would gobble up. Because we make a concerted effort, not only in the press release but in the summary of the consent agreement, to write it so that people can react to it and can provide useful comment to us.

Mr. DRINAN. As you know, we had the consumer representatives here yesterday. They weren't jumping with joy at FTC's performance. They raised the question whether the FTC could require an advertiser to put on the national and local advertisement in visible letters something like this: "This claim is under pending FTC scrutiny."

Consumers during all of these years, didn't know that the analgesics have been under scrutiny for these last several years.

Could you require that national television advertisements be required to disclose that they are under investigation?

Mr. COLLIER. That would take another lawsuit to get there, and even then you would be suing——

Mr. DRINAN. Congress could give you the power to do it. Do you think it's worthwhile?

Mr. COLLIER. Legislatively it could be done.

To the extent that they are not guilty of the violation, I have some concern about making them put in their ads that they are under study, as if there is some implication that they are guilty, when they haven't been proven guilty.

Mr. DRINAN. You can put it in a way that informs me, the consumer, that this ad has been challenged by the agency that we have to challenge all of the complaints.

Mr. COLLIER. But that agency hasn't yet reached a final judgment. That would be the next line you would have to put on there.

Mr. DRINAN. Well, you could hurry up with the final judgment.

Thank you.

Mr. ROSENTHAL. Commissioner Dole, in a speech on June 11 to—I think the Cosmetic Trade Association—you said that in some circumstances the FTC might require the same warning disclosure in advertising that FDA requires in labeling. Has the Commission taken any action in this regard at all? Would the initiative have to come from FDA?

Ms. DOLE. No; it wouldn't. There have been a number of cases where FTC has required warnings in advertising.

In referring to my speech, specifically, you are talking about situations where the FDA has already determined that a warning is needed on the label and the Commission would then require a similar warning in the advertising. In several cases, that has been done by the Commission already. There, it is premised on the FDA taking action first; and then after the label determination has been made, the FTC has followed through so far as the advertising.

One area I might point out which is pending is in over-the-counter drugs—the antacid rulemaking.

In that particular matter, the Commission is taking a look at the warnings which have been required by the FDA to be placed on the labels of antacid products. The idea is to determine whether or not any or all or some of the warnings might be required in the advertising as well as on the label.

There will be other over-the-counter drug monographs following.

Mr. ROSENTHAL. Has the Commission sued any cosmetic advertisers for failure to put these warnings on or for safety or efficacious claims?

Ms. DOLE. There have been a number of cases in the health and safety area. The orders imposed by the FTC, either through a negotiated or a litigated order, have required the companies to place warnings in their advertising. Some of them concern hair straighteners, where the use of lye is involved.

Mr. ROSENTHAL. How many cases have there been where you required the manufacturer to put this information in advertising.

Ms. DOLE. I don't know the specific number. There was one recent case involving eyebrow darkeners. There have been some, as I mentioned, in the area of hair straighteners. Hair replacement is another area which, strictly speaking, may not be regarded as a cosmetic where

disclosures have been required and where there were health and safety factors involved.

I would have to supply for the record the actual number, but certainly the Commission has acted in this area.

To follow up on the antacid trade regulation rulemaking, which is now before the Commission, there will be other monographs from the FDA in the area of over-the-counter drugs.

The Commission will be following up after those monographs are completed by the FDA and it is conceivable that some warnings may be required in advertising.

[See p. 189.]

Mr. ROSENTHAL. Have any small advertisers been sued to dispel what you refer to as the small firm fallacy?

Ms. DOLE. Yes. There have been cases which involve small advertisers.

An overwhelming number of cases involves small firms. In particular, many of our regional advertising cases have involved fairly small companies.

Mr. COLLIER. This is particularly true where we wind up with a health and safety problem of some sort, a failure to make a disclosure, a failure to warn them, whether the company is small or not.

Mr. ROSENTHAL. What impact do you think the *Virginia Pharmacy* case might have on the Commission's orders for affirmative disclosure, if any?

Mr. COLLIER. I believe at this point that no impact is necessarily implied by that decision. The court did not address itself specifically to a number of questions. Indeed, it used some language that was unenlightening in certain areas with regard to that.

Mr. ROSENTHAL. It seems to impose a duty on advertisers to verify claims.

Mr. COLLIER. That is true. And they indicated that that is what differentiated the advertising from certain other forms of speech and why Government regulation is more appropriate in that area. That language has not escaped our attention.

There are other situations where the question that arises is whether you can require somebody to say something when what he has said is not untruthful.

If it were a political speech, the analogy would be to the Government requiring somebody to make a political speech. But of course it is not a political speech; yet the Supreme Court was not definitive in dealing with this factual situation. It may take some time before that situation is decisively dealt with.

On the other hand, I think, as you do, there is enough language and reasoning in there not to cause us to discontinue to go forward with these programs.

Mr. ROSENTHAL. Commissioner Dixon, in your testimony before the Appropriations Committee, you related that the Commission has required affirmative disclosure of vital aspects of product performances.

Could you tell us the number of cases where that has happened?

Mr. DIXON. I would rather have the records researched and furnish that to you.

But I think the outstanding example there was our trade regulation rule on the advertising of cigarettes.

When the Wheeler-Lee amendment was passed, in defining what was misleading, the statute said that the failure to reveal a material fact also transgressed the statute. We have taken that same principle outside of the food and drug devices when we got involved in cigarette advertising.

Cigarettes have been determined not to be a drug. That's the reason that "hot potato" landed at the FTC.

Mr. ROSENTHAL. I don't think we're saying the same thing. I appreciate what you are telling me.

Cigarettes are really a highly visible issue. The Surgeon General of the United States was involved. I think in that case there certainly was a public interest—public awareness and acute awareness—for affirmative disclosure.

I am interested in knowing whether in any other areas there have been affirmative disclosures required of product performance?

Mr. COLLIER. Would the octane requirement——

Mr. ROSENTHAL. Commissioner Dixon did testify before the Appropriations Committee.

Mr. DIXON. We have had such cases.

Mr. ROSENTHAL. I would like to know what they are and how many. The octane thing is an example.

Mr. COLLIER. It would qualify?

Mr. ROSENTHAL. Yes, it would.

Mr. COLLIER. And the light bulb disclosure for how long they last and how much light they give off?

Mr. ROSENTHAL. Those are two good examples.

Mr. COLLIER. We have care-labeling requirements which we put on textiles and fuel economy guides for automobiles.

Mr. ROSENTHAL. I don't know how many consumer products there are which require affirmative disclosure.

Mr. COLLIER. There are areas where we do it when we can make the technical judgments and the judgments with regard to how significant it is. You have to make those two preliminary judgments.

Mr. DIXON. You have to first establish that it is material and that the failure to reveal it is deceptive, then that it would be in the public interest to require its disclosure.

Mr. ROSENTHAL. What is the Commission's total budget?

Mr. COLLIER. $46 million this year.

Mr. ROSENTHAL. And $3 million is going for advertising.

Mr. COLLIER. $3 million I believe for the Division of National Advertising. But the regional offices do some advertising work. We have affirmative disclosure programs throughout the Bureau of Consumer Protection. I don't know that I could take all those dollars and tell you what was for advertising or affirmative disclosure versus something in the credit practices area.

Mr. ROSENTHAL. The national advertising, of course, is the big phenomena even with attributing some responsibility to the regional offices.

You are spending about 7 or 8 percent of your budget in the surveillance or review of national advertising. It does seem to me a very modest sum.

Mr. COLLIER. And the bulk of that, as we indicated, is in the ad substantiation area; because we think that enforcement tool has great leverage.

Mr. ROSENTHAL. How high a priority do you give the advertising problem phenomena?

The industry is spending $25 billion. You're spending $3 million to monitor it. It seems to me that it is out of whack.

Mr. COLLIER. Those figures are not comparable are they?

On the other hand, within our Bureau and the Division, we have full-time people on it.

Mr. ROSENTHAL. How many?

Mr. COLLIER. We have 27 attorneys now in the Division. And a total of 59 people in the Division.

Mr. ROSENTHAL. Are there any marketing-specialist types?

Mr. COLLIER. We do have nonattorney professionals in the Bureau.

Mr. ROSENTHAL. How many people with professional marketing backgrounds?

Mr. COLLIER. Two.

Mr. ROSENTHAL. Two? In the whole FTC?

Mr. COLLIER. No, in the Division.

Mr. ROSENTHAL. Do you get the feeling that the advertising thing is getting away from you?

Mr. COLLIER. I don't personally have that feeling. I'm not sure we are getting ahead of it, but I don't feel that it is getting ahead of us either.

Mr. ROSENTHAL. Since I have been in Congress, I have seen this increase enormously. I don't see any comparative bulk increase in the governmental surveillance or governmental interest in this area.

Mr. COLLIER. Volume has been increasing on the advertising side year to year, but I don't know the dollars——

Mr. ROSENTHAL. How else would you assess your performance?

Mr. COLLIER. We're getting greater leverage out of some of these programs. For example, in the rulemaking area, there is a lot more leverage with one of the rules that speaks to the fuel economy area or——

Mr. ROSENTHAL. It takes 5 to 6 years to get off center on a rulemaking proceeding.

Mr. COLLIER. In the fuel economy claim, it didn't take us nearly that long. It took us 10 months.

Mr. ROSENTHAL. From the time you first filed the original complaint.

Mr. COLLIER. For the guide, yes.

In that industry we had the situation where we had several of the large companies agree with us in that process in a consent format. Some of these things work hand-in-glove when you have cases——

Mr. ROSENTHAL. The industry was anxious to start advertising those things?

Mr. COLLIER. They wanted to advertise, but they didn't have a common language to advertise, or at least had no——

Mr. ROSENTHAL. But they wanted to advertise. Once the EPA had gotten into this, they wanted to advertise those results.

Mr. COLLIER. Right. I think that is good.

Mr. ROSENTHAL. I think it's good too. I'm trying to find an occasion where industry resisted, rather than cooperated.

Mr. COLLIER. We find that a lot in the safety area. They are the kinds of things that Commissioner Dole was earlier talking about. There isn't anybody dying to advertise how hair straighteners might be

damaging to your scalp. Particularly where there are negative attributes of the product and, in particular, safety hazards.

Mr. ROSENTHAL. Some years ago the FTC was referred to as "the old gray lady."

How would you describe the FTC today in language similar to that? Or in colorful language?

Mr. COLLIER. May I submit that for the record?

Mr. DIXON. I think we're the most active agency in the Government.

Mr. ROSENTHAL. The whole U.S. Government?

Mr. DIXON. The whole U.S. Government. Yes, I do. On both sides—in antitrust and in the consumer fields. I make no apologies for anything we're trying to do.

Mr. COLLIER. In my short time as Chairman of the Commission, there have been a lot of names used; but I have been searching my mind as to whether any of them can be put in the record.

Mr. ROSENTHAL. On that rather pleasant note, the subcommittee stands adjourned.

[The material referred to on p. 186 follows:]

FEDERAL TRADE COMMISSION,
BUREAU OF CONSUMER PROTECTION,
Washington, D.C., August 19, 1976.

Hon. BENJAMIN S. ROSENTHAL,
House of Representatives,
Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSMAN ROSENTHAL: This letter provides supplemental information to the testimony delivered on June 24, 1976 by Commissioner Elizabeth Hanford Dole before the Subcommittee on Commerce, Consumer and Monetary Affairs of the House Committee on Government Operations.

During her testimony Commissioner Dole was asked whether the Commission has obtained consent orders or litigated decisions requiring cosmetic manufacturers to make affirmative disclosures in advertising. Commissioner Dole asked this Bureau to submit a response.

The answer to the question is an unqualified yes. Since 1973 approximately nine cosmetic manufacturers have been placed under a Commission order to make affirmative disclosures concerning possible health and safety dangers associated with the product's use. Among the cosmetics and cosmetics devices covered by such orders are hair straighteners, eye liners and hair transplants.

We trust this information is responsive to your concerns.

Sincerely,

JAMES V. DELONG,
Acting Director.

[Whereupon, at 12:15 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

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APPENDIXES

APPENDIX 1

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

OFFICE OF THE CHAIRMAN

MAR 1 0 1976

Honorable Benjamin S. Rosenthal
Chairman, Commerce, Consumer, and
Monetary Affairs Subcommittee of the
House Committee on Government Operations
Rayburn House Office Building, Room B-350
Washington, D.C. 20519

Dear Chairman Rosenthal:

This letter responds to certain matters raised during the Subcommittee's February 25, 1976, hearing concerning the rulemaking process of the Federal Trade Commission's Bureau of Consumer Protection. The purpose of the letter is essentially four-fold: 1) to explain the deliberative nature of the rulemaking process at the Commission; 2) to correct seriously incomplete and inaccurate information contained in a chart of Commission rules presented at the hearing; 3) to provide specific budgetary information and related management data pertaining to Commission rulemaking which your subcommittee requested, and 4) to discuss the Bureau of Consumer Protection's procedures with respect to petitions.

As indicated in prepared testimony submitted at the hearing, rulemaking permits the Commission to formulate agency policy in an informed, reasoned, and open setting. At the same time, rulemaking provides all interested persons with significant procedural protections by affording the opportunity to present data, views, and arguments on specific Commission proposals. Further, the Commission has for many years provided interested persons an opportunity to present their views through oral hearings, although only recently required to do so by the enactment of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, P.L. 93-637 (hereinafter the "Magnuson-Moss Act"). In requiring procedures in addition to those mandated by 5 U.S.C. §553 of the Administrative Procedure Act, (hereinafter the "A.P.A.") this legislation has further delineated the deliberative nature of Commission rulemaking and the judicial review to which it is subject.

The Commission believes that rulemaking is an essential means of agency policy implementation, as evidenced by its extensive rulemaking activities over the past six years. 1/ During this period, the Commission has promulgated thirteen final trade regulation rules which define and prohibit unfair or deceptive acts and practices in a broad spectrum of commercial activity. These include such diverse subjects as care labelling of wearing apparel, preservation of consumer rights and remedies in credit transactions, provision for a "cooling-off" period in door-to-door sales, warranty terms disclosure, and mail order merchandise.

Within the past few years, the Commission has proposed some seventeen additional trade regulation rules in a wide variety of areas. Some of these proposed rules require affirmative disclosure of material information, such as those concerning vocational schools, mobile homes, and franchises, while others would require accuracy in health and safety claims in areas such as hearing aids, flammability of plastics, and pesticides. Still others seek to open up the marketplace to free competition, now allegedly foreclosed by restrictive state and local laws in areas such as prescription drugs and prescription eyeglass advertising.

Within this same period, the Commission has articulated agency policy through another means of consumer protection--that of the industry "guide". A guide is a Commission interpretation of the legality of a particular act or practice in light of the Federal Trade Commission Act and those other statutes which the Commission enforces. Although not having the force and effect of law--as does a trade regulation rule--guides have a salutary effect on the regulatory process by providing businessmen with "advance warnings" of possible areas of Commission law enforcement activity. In so doing,they foster industry self-regulation and thereby result in increased consumer protection.

1/ Exhibit I, attached hereto, contains a complete listing of the Commission's proposed and final trade regulation rules and guides and corrects the chart prepared for the hearing.

Since 1970, the Commission has promulgated ten guides in areas such as endorsements and testimonials, automobile fuel economy and household furniture. Although not required to do so by the A.P.A., the Commission has afforded interested persons with the same types of procedural protections in guide proceedings as in its pre-Magnuson-Moss rulemakings. This further evidences the openness of Commission policymaking--and of a setting which has allowed the Commission to consider all data, views, and arguments from interested persons.

The ability of the Commission to address over forty different substantive areas through the rulemaking process within a span of six years is a considerable achievement, given the detailed procedural safeguards mandated by the A.P.A., the Magnuson-Moss Act and the Commission's own procedures.

Effective rulemaking should -- indeed it must -- take time. Initially it takes time to investigate the content and extent of the acts and practices at issue. It takes time to determine which regulatory tool -- rulemaking or adjudication, or a combination of both -- is the most appropriate enforcement tool. It takes time to examine related law enforcement activities of other federal, state, and local agencies.

If rulemaking is selected as the appropriate regulatory option, it then takes time to develop a final rule from an initial proposal. Full Magnuson-Moss procedures must be afforded, including publication of a proposed rule, and an opportunity for interested persons to present their views, both through written comments and through an oral hearing, including cross examination and the presentation of rebuttal submissions. Finally, it takes time to organize and analyze the factual and legal bases of the resulting public record, which is massive in many rulemaking proceedings.

In this context, it must be emphasized that the announcement of an industry-wide investigation by the Commission is not a commitment to develop a proposed trade regulation rule. The Commission cannot initiate a rulemaking or an adjudication until such time as it has adequate factual and legal support

for the view that the practices in question are in fact unlawful. Given the great variety of industry practices with which the Commission must deal and the complexity of individual practices under review, the period between announcement of an investigation and Commission resolution of the matter under review is often necessarily lengthy. The completion of such an initial investigation may result in any one of a number of decisions.

In some instances, no agency action may be the wisest course; this may be the case where the practices in question are determined not to raise questions of law violation, or where other federal or state and local law enforcement agencies are found to be adequately regulating such matters.

In other circumstances, the Commission may bring individual administrative cases. Such an approach may be dictated by a perceived compelling need to redress past consumer injury that may have occurred as a result of particular industry members' practices, or the need to seek injunctive relief. An adjudicative approach may also be appropriate to deal with particularly egregious conduct of individual industry members or unlawful conduct which is atypical of overall industry practices. Finally, in certain areas the adjudicative course may enable the Commission, in an area where it has insufficient expertise, to initially proceed against major law violators, while, at the same time, accumulating the necessary expertise to formulate a sensible rulemaking proposal for the entire industry.

Examples of how adjudication can be used not only to prohibit illegal conduct by individual companies but also to assist in the development of trade regulation rules are found in the mobile home area--where consent agreements against four leading industry members were announced with the publication of the proposed rule, and the vocational schools area--where the Commission's initial thrust consisted of bringing a number of well-chosen cases, some of which have been settled with substantial consumer redress, while developing the proposed rule. In both these areas, as well as others where both adjudicative and rulemaking approaches have been utilized, the investigative and litigated records have provided vitally needed support for the rulemaking proposal which has followed.

The crux of this analysis, however, is that the period following Commission announcement of an industry-wide investigation need not, and should not, be inextricably linked to rulemaking. The presence of a number of months or even a year or two after an announcement of an investigation indicates that the Commission is carefully assessing the practices in question, as it must under its statutory mandate, and not that it is formulating a proposed rule. In effect, the "genesis" of a rulemaking occurs only when an investigation is specifically directed to the proposal of a rule. In a very real sense, then, a rulemaking may not formally "begin" until Commission publication of a proposal, for this may represent the first step in the Commission's decision-making process that a rulemaking is necessary to properly address the acts or practices in question.

Once a rule proposal is published, the Commission's formal rulemaking procedures come into play. These regulations (16 C.F.R. §§ 1.7-1.20) were adopted to implement the rulemaking authority granted the Commission by Title II of the Magnuson-Moss Act. In addition to authorizing Commission promulgation of rules which define specific acts or practices that are unfair or deceptive within the meaning of §5 of the Federal Trade Commission Act, the Act requires that the Commission afford certain procedural rights to interested persons in rulemaking proceedings--procedural rights in addition to those mandated by the A.P.A. Thus, the Commission must now hold an oral hearing in each rulemaking proceeding, and interested persons have the limited right to cross-examine and to present rebuttal submissions.

Mindful of the statutory aims of improving both public participation in rulemaking proceedings and the quality of information available to the Commission, while avoiding rigid or cumbersome procedures, the Commission has created a two-stage procedure for rulemaking under the Act. The proceeding is commenced by the Commission's publication of an Initial Notice of Proposed Rulemaking. The Initial Notice is designed both to elicit written comments on the proposed rule and to identify those issues to which the rights of cross-examination and presentation of rebuttal submissions obtain. These designated issues are limited to disputed issues of fact that are determined to be material and "necessary to resolve" for a fair determination of the rulemaking taken as a whole.

While written comments on the rule are received by the Commission until forty-five days before the commencement of the oral hearing, the time for proposal of "designated issues" is limited to sixty days after publication of the Initial Notice. The Presiding Officer, whose function has been designed by the Commission to insure the orderly conduct of the rulemaking proceeding, examines the proposed issues and then publishes a Final Notice of Proposed Rulemaking. The Final Notice sets forth the "designated issues" and the details of the oral hearing.

After the close of the informal hearing, rebuttal submissions are allowed on the "designated issues". The Presiding Officer then prepares a summary of the record with particular attention to the "designated issues". That summary is placed on the public record and interested persons are afforded an opportunity to comment upon it. In addition, Bureau staff makes recommendations to the Commission based on the rulemaking record and the Presiding Officer's findings. Post-record comments are received for a period of sixty days after the staff report is made public.

At that time, the Commission reviews the entire public record and determines what form of rule, if any, it should promulgate. If a final rule is adopted, it is then published in the Federal Register not less than thirty days prior to its effective date, accompanied by a Statement of Basis and Purpose.

Individual rules will present peculiar problems requiring more or less time for resolution either by the Presiding Officer or by the Commission. Nevertheless, it is possible to estimate that, at a minimum, 300 days are required from the publication of the Initial Notice to the publication of a final rule. This includes 60 days for the proposal of designated issues, 30 days for the Presiding Officer to review those proposals and publish a Final Notice, 60 days notice of the oral hearing, 30 days for the Presiding Officer's review of the record, 30 days for the staff report, 60 days for post-record comments, and 30 days for the Commission to consider the rulemaking record.

Such time limits are of course only estimates and are subject to various procedural rights which may further prolong the rulemaking process. More specifically, this 300 day period is premised upon the absence of significant procedural motions which demand response and may temporarily disrupt the planned course of the proceeding.

Effective rulemaking activity is time well spent in the Commission's eyes, however, for it results in the uniform application of policy, and the ability of interested persons to actively participate throughout the process. In this regard, effective rulemaking thereby allows the Commission to consider the views of all who may be affected by the proposed rule--consumers, businessmen, academicians, the other federal and state government agencies alike. Rulemaking thus facilitates openness in the administrative process, which protects those affected and at the same time leads to more efficient use of agency resources. Further, while rulemaking is a "time consuming" process, it frequently may permit the Commission to articulate fair standards of commercial behavior governing entire industries.

Rulemaking allows clear enunciation of agency policy and fair warning of the consequences to be imposed on individual conduct on an industry-wide basis. In this way, it minimizes the uncertainty fostered by a case-by-case approach. Use of agency rulemaking is also advantageous in that it limits the scope of litigation by more clearly prescribing the behavior of regulatory subjects.

The chart used at the hearings was apparently designed to illustrate Commission rulemaking efforts from 1970 to 1976. However, the chart contained a number of serious flaws which resulted in unfortunate misperceptions of the extent and nature of the Commission's activities.

First, twelve of the thirteen final trade regulation rules promulgated during the 1970-1976 period were omitted from the chart. Rules omitted covered a broad range of commercial practices and industries, including rules concerning retail food store advertising and marketing practices, negative option sales plans, a "cooling-off period" for door-to-door sales transactions, amplifier power output ratings, and the light bulb industry. The chart also omitted mention of a final trade regulation rule focusing on the preservation of consumer rights and remedies with respect to the "holder in due course" doctrine, which was promulgated in November, 1975. Additionally, the chart omitted mention of three warranty-related rules promulgated January 4, 1976, pursuant to Title I of the Magnuson-Moss Act. As these statutorily mandated rulemaking proceedings demanded a substantial commitment of Commission resources in 1975, a complete picture of Commission activities cannot be obtained without reference to them.

Second, the chart omitted several trade regulation rules proposed during this period. Among these are the proposed rules relating to credit practices and care labeling of wearing apparel and other items, both major areas of activity for the Commission. Third, the chart omitted six of the ten Guides adopted from 1970 to 1976. Again, these guides represent a substantial commitment of Commission resources and serve to protect consumers by providing industry with "advance warning" of Commission views of specific practices -- thereby encouraging self-regulation, and preventing the challenged acts or practices from occurring.

Fourth, the chart presented a misleading picture of the relationship between an industry-wide investigation and a proposed rulemaking proceeding. As previously indicated, the announcement of such investigation is not necessarily a commitment to rulemaking by the Commission, but rather allows the Commission to explore a number of regulatory options with respect to industry practices which violate Section 5 of the FTC Act or other Commission-enforced statutes. Moreover, the Commission did not generally announce such investigations prior to 1974. Thus the dates accompanying the subjects of investigation in the chart do not represent a true picture of when investigation specifically directed toward a rulemaking proceeding commenced.

Fifth, in a number of instances, for the rules that do appear on the chart, information on hearings and other significant events in the rulemaking process was omitted.2/ A comparison of the Subcommittee chart with the Bureau of Consumer Protection's revised chart should prove helpful in gaining a complete understanding of all developments in the Commission's rulemaking and guide activities throughout the years 1970-1976.

The Commission recognizes the substantial time factors involved in its rulemaking efforts. However, the Commission believes the time spent is justified by the well-defined proceedings; the need to allow extensive public participation in the rulemaking process; and the need to proceed deliberately and carefully in its rulemaking activities. In this context the appeal proceedings in conjunction with the Octane Numbers

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2/ For example, the chart shows no hearings for the proposed rule on detergent labeling and the fuel economy proceeding, and gives incomplete information on the prescription drug rule hearings.

rule 3/ and the necessity of republishing several proposed rules after passage of the Magnuson-Moss Act 4/ did set back some proceedings substantially. In addition, there is no question that in a few cases unfortunate delays not ascribable to the foregoing factors have occurred. However, these delays must be viewed in the context of the Commission's entire rulemaking effort, summarized in the chart. Moreover, as the chart indicates, the Commission's most recent rulemaking efforts are proceeding at a considerably swifter pace than earlier proceedings. This evidences increased experience with rulemaking as a regulatory tool, organizational changes designed to stimulate the use of rulemaking and an increased commitment of staff resources to rulemaking in general.

The Commission is, of course, concerned about eliminating unnecessary delays and expediting its rulemaking efforts to the greatest extent possible within the confines of the requirements of the A.P.A. and the Magnuson-Moss Act.

In order to facilitate better management of its rulemaking efforts, the Bureau of Consumer Protection has directed its Management Division to undertake, on a high-priority basis, a project to assist the Bureau of Consumer Protection in its rulemaking activities. In addition, the Commission's Case/Project Tracking System (CPTS) is used to monitor organizational responsibility, staff assignments, planned and actual staff time requirements, and the like. With these tools, Bureau management can control staff assignments and schedules to assure that its overall rulemaking efforts are proceeding in a timely fashion.

In response to a request during the hearings we have attached for the Subcommittee's information (Exhibit II) data sheets indicating the amount of manhours and other resources directed to Commission consumer protection activities over the past six years -- data which includes our rulemaking activities. Clearly, such a staff commitment is substantial. If rulemaking at the Commission is to be effective, however, such a commitment is essential.

3/ National Petroleum Refiners Association, et al. v. F.T.C., et al., 482 F 2d 672 (D.C. Cir. 1973); cert. denied 415 U.S. 951 (1974).

4/ Proposed rules dealing with mobile homes, flammability of cellular plastics, vocational schools, and food nutrition claims were republished due to this Act.

In this regard, as requested by the Subcommittee, we have also attached information concerning our total budgetary requests for consumer protection activities during the past three fiscal years and the allotment made by OMB and the Congress to the Commission for that same period (Exhibit III). As Exhibit III indicates, the Bureau of Consumer Protection staff has remained fairly constant in size over the last three fiscal years. In fiscal 1974, the Office of Management and Budget reduced the Commission's request for additional people, and the Congress reduced the number of authorized positions for the Bureau even further. Since then, the Bureau has remained the same size except for the government-wide personnel reduction, and the establishment of a Freedom of Information Act unit outside the Bureau of Consumer Protection after the 1974 amendments to that Act. 5/

More importantly, the proportion of the Bureau devoted to rulemaking activities has increased sharply during the last three years. During fiscal 1974, less than 10 percent of the Bureau's professional staff was committed to rulemaking. One year ago, during the third quarter of fiscal 1975, 14.7 percent of the Bureau's efforts went toward rulemaking. In January of 1976 this commitment had risen to 21.3 percent. Hence, the Commission and the Bureau of Consumer Protection have been devoting a significantly larger proportion of available resources to rulemaking. And this trend will continue with a higher proportion of the Bureau's resources being committed to expeditious implementation of the rules mandated by the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, and the Commission's proposed rules that are under current development.

On another subject, the Subcommittee also expressed interest in the Bureau of Consumer Protection's internal guidelines concerning petitions, adopted in November 1975. A detailed schedule is attached as Exhibit IV for the Subcommittee's information. While this schedule represents the outside limits for response for most petitions, it must be stressed that it is often those petitions representing feasible rulemaking proposals which demand the greatest staff commitment in developing recommendations to the Commission. In this regard, a number of petitions have contributed to the development of proposed trade regulation rules, as in the

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5/ Small reductions were made in the staffing of various divisions of the Commission in order to staff this unit.

areas of food nutrition, over-the-counter drugs, and credit collection. For these petitions where final dispositions cannot be made within the suggested time frame, interim responses will be made to such petitioners.

In sum, the Commission views its rulemaking functions as an extremely important aspect of its law enforcement mandate. The corrected chart (Exhibit I), describing the dimensions of the Commission's rulemaking efforts, attests to its efforts in this area. It is hoped that the attached materials and above remarks provide the Subcommittee with a more complete understanding of the Commission's rulemaking activities since 1970.

By direction of the Commission.

Paul R. Dixon

Paul Rand Dixon
Acting Chairman

Attachments

EXHIBIT I

EXHIBIT I

PROGRESS OF FEDERAL TRADE COMMISSION RULES AND GUIDES: 1970 - 1976

INVESTIGATION (ANNOUNCEMENT, IF MADE)	ACTION PROPOSED	MAJOR EVENTS (PAST AND PROJECTED)	HEARINGS (PAST AND PROJECTED)	FINAL ACTION	REMARKS
Pesticides	January 24, 1968 TRR	Notice of REVISED PROPOSED TRR February 5, 1969 2nd Notice of REVISED PROPOSED TRR August 11, 1970	April 9, 1969 (Washington, D.C.)		3 administrative cases brought; 2 settled, 1 went into litigation; all now settled.
Decorative Wall Paneling Industry	February 20, 1968 GUIDE	Comment period closed April 22, 1968 Notice of REVISED PROPOSED GUIDE May 28, 1969 Comment period closed June 27, 1969	March 12, 1970 (Washington, D.C.)	FINAL GUIDE promulgated December 16, 1971	
Use of the Word "Free"	March 20, 1969 GUIDE	Comment period closed May 19, 1969	(not required to be held)	FINAL GUIDE promulgated November 16, 1971	
Household Furniture Industry	April 24, 1968 GUIDE	Notice of REVISED PROPOSED GUIDE February 13, 1970 Notice of REVISED PROPOSED GUIDE August 14, 1970 Comment period closed December 28, 1970	November 2-3, 1970 (Washington, D.C.)	FINAL GUIDE promulgated December 21, 1973	
Light Bulb Industry	July 30, 1969 TRR	Comment period closed November, 1969	September 30, 1969 (Washington, D.C.)	FINAL TRR promulgated July 23, 1970	
Octane Numbers	July 30, 1969 TRR August 19, 1971 REVISED TRR	Comment period closed October 7, 1969 Public record reopened April 17, 1971 Comment period closed June 16, 1971 Comment period closed on revised TRR September 21, 1971	October 14-16, 1969 (Washington, D.C.)	FINAL TRR promulgated January 12, 1971 REVISED FINAL TRR promulgated December 16, 1971	
Feather and Down Industry	August 14, 1969 GUIDE	Comment period closed November 14, 1970	April 7, 1970 (Washington, D.C.)	FINAL GUIDE promulgated September 23, 1976	Guide revised September 8, 1971
Wigs and Hair Pieces Adv. and Labeling	October 14, 1969 GUIDE	Comment period extended to January 31, 1970 (industry request)	(not required to be held)	FINAL GUIDE promulgated August 8, 1970	
Care Labeling	November 6, 1969 TRR	Comment period closed July 7, 1970	January 13-14, 1970 March 17-20, 1970 (Washington, D.C.)	FINAL TRR promulgated December 8, 1971	
Retail Food Store Adv. & Mktg. Practices	November 14, 1969 TRR	Comment period originally to close April 24, 1970 Comment period extended; closed March 2, 1971	January 20-21, 1970 March 24-25, 1970 (Washington, D.C.)	FINAL TRR promulgated May 31, 1971	
Negative Option	May 13, 1970 TRR	Notice of REVISED PROPOSED TRR February 1972 Comment period closed May 31, 1972	November 16-19, 1970 (Washington, D.C.)	FINAL TRR promulgated February 22, 1972	
Vocational Schools	July 7, 1970 GUIDE	Comment period extended to November 9, 1970 (industry request)	December 1-7, 1970 (Washington, D.C.)	FINAL GUIDE promulgated May 2, 1972	
Cooling off Period for Door to Door Sales	September 29, 1970 TRR	Comment period closed March 15, 1971 Notice of REVISED PROPOSED TRR February 12, 1972 Comment period closed March 31, 1972	March 8-10, 1970 (Washington, D.C.) March 22-24, 1971 (Chicago, Illinois)	FINAL TRR promulgated October 26, 1972 (without effective date)	TRR amended December 7, 1973; published with effective date
Franchise Disclosure	November 11, 1971 TRR	Comment period closed February 7, 1972 Notice of REVISED PROPOSED TRR August 22, 1974 Comment period closed November 25, 1974	February 14-March 1, 1972		
Detergent Labeling	January 20, 1971 TRR on labeling & adver. of synthetic detergents February 6, 1974 FPLA REGS on ingredient labeling	Comment period extended to November 16, 1971 (environmentalists' request) Comment period extended to June 26, 1974 Record reopened June 20, 1975 Record closed July 20, 1975	April 26-29, 1971 June 16-17, 1971 June 23, 1971 (Washington, D.C.)		Guideline Agreement to Adopt Uniform Labeling for Phosphorus Content in Biodegradable Detergents reached between Comm. and industry July, 1973
Amplifiers	January 12, 1971 TRR	Notice of REVISED AND AMENDED TRR February 1, 1972 Notice of REVISED PROPOSED TRR October 11, 1973 Comment period closed January 29, 1974	April 13-14, 1971 (Washington, D.C.)	FINAL TRR promulgated May 3, 1974	
Holder in Due Course	January 26, 1971 TRR November 19, 1975 TRR Amendment	Notice of REVISED PROPOSED TRR January 5, 1973 Record closed June 11, 1973 Final Notice February 5, 1976 Staff Report June 1976 (est.)	June 7-9, 1971 (New York, N.Y.) July 12-14, 1971 (Chicago, Illinois) September 20-23, 1971 (Washington, D.C.) March 12-15, 1973 (Washington, D.C.) May 7-9, 1973 (Chicago, Illinois) April 5, 1976 (added.) (Washington, D.C.)	FINAL TRR promulgated November 14, 1976	
Viewable Television Fixtures	April 21, 1971 REVISED TRR	Comment period closed June 28, 1971	(not required to be held)	FINAL TRR promulgated November 16, 1971	Revision of a 1967 TRR on the same subject
Mail Order Merchandise	September 28, 1971 TRR	Notice of REVISED PROPOSED TRR March 8, 1974 Comment period extended to April 15, 1974	March 27-29, 1972	FINAL TRR promulgated October 17, 1975	
Health Spas	August 15, 1975 TRR	Comment period extended to December 15, 1975 Final Notice June 1976 (est.) Staff Report Winter 1977 (est.)	late Summer, Fall 1976 (est.)		10 administrative cases brought preceding publication of proposed TRR
Mobile Homes	December 26, 1974 TRR	REPUBLICATION pursuant to Magnuson-Moss Act May 19, 1975 Final Notice Summer 1976 (est.) Staff Report February 1977 (est)	Fall 1976 (est.)		Consent agreements with 4 major industry members announced with proposed TRR
Flammability of Cellular Plastics	August 6, 1974 TRR	Postponement of hearings due to Magnuson-Moss Act January 8, 1975 REPUBLICATION of revised TRR pursuant to Magnuson-Moss Act July 23, 1975 Final Notice mid-March 1976 (est.) Staff Report September 1, 1976 (est.)	May 15-June 15, 1976 (est.) (Washington, D.C. and San Francisco, Ca.)		Consent agreement with 25 named respondents announced July 1974

INVESTIGATION (ANNOUNCEMENT, IF MADE)	ACTION PROPOSED	MAJOR EVENTS (PAST AND PROJECTED)	HEARINGS (PAST AND PROJECTED)	FINAL ACTION	REMARKS
Vocational Schools (May 1972)	August 15, 1974 TRR	REPUBLICATION pursuant to Magnuson-Moss Act May 15, 1975 Final Notice September 29, 1975 Staff Report March 30, 1976 (est.)	December 1-11, 1975 (San Francisco, Ca.) December 15-19, 1975 (Los Angeles, Ca.) January 12-29, 1976 (Chicago, Illinois)		12 administrative cases seeking consumer redress brought; 4 settled; 8 in litigation
Endorsements & Testimonials	December 1, 1972 GUIDE	Comment period closed March 30, 1973 3 revised Guides published May 21, 1975 Comment period closed August 21, 1975	(not required to be held)	FINAL GUIDE promulgated August 8, 1975	
Food Nutrition Advertising	November 11, 1974 TRR	REPUBLICATION pursuant to Magnuson-Moss Act May 28, 1975 Final Notice March 2, 1976	Phase I: June 7 - July 2, 1976 (Washington, D.C.) July 12-30, 1976 (San Francisco, Ca.) September 13 - October 1, 1976 (Chicago, Illinois) October 11-22, 1976 (Dallas, Texas)		
Law Books	February 28, 1973 GUIDE	Comment period closed	(not required to be held)	FINAL GUIDE promulgated August 8, 1975	
Child Directed Premiums (August 8, 1973)	July 11, 1974 GUIDE	Comment period extended to September 23, 1974 Publication of alternative proposal and evaluation of Guide July 7, 1975 Comment period closed September 8, 1975	(not required to be held)		
Funeral Practices (October 1973)	August 29, 1975 TRR	Final Notice February 20, 1976 Staff Report September 30, 1976 (est.)	April 20-27, 1976 (New York, N.Y.) May 10-18, 1976 (Chicago, Illinois) June 9-18, 1976 (Los Angeles, Ca.) June 28, 1976 (Atlanta, Georgia) July 19-23, 1976 (Washington, D.C.)		1 administrative case in litigation
Credit Practices	April 11, 1975 TRR	Motions to Dismiss: August 17, 1975, October 24, 1975, November 7, 1975, November 21, 1975 Final Notice Summer 1976 (est.) Staff Report January 1977 (est.)	September 1976 (est.)		
Air Conditioner Labeling	August 28, 1975 TRR		(proceeding terminated)	TERMINATION OF TRR PROCEEDING as result of energy legislation	Issues will be re-addressed pursuant to recent legislation.
Hearing Aids (April 3, 1974)	June 24, 1975 TRR	Final Notice December 30, 1975 Staff Report March 15, 1977 (est.)	April 12 - May 4, 1976 (Washington, D.C.) June 7-30, 1976 (Chicago, Illinois) August 8-25, 1976 (San Francisco, Ca.) October 4-15, 1976 (est.) (Washington, D.C.)		
Prescription Drugs (May 30, 1974)	June 4, 1975 TRR	Final Notice September 30, 1975 Staff Report May 30, 1976 (est.)	December 1-3, 1975 (Chicago, Illinois) December 16-17, 1975 (San Francisco, Ca.) January 12-14, 1976 (Washington, D.C.)		
Over-the-Counter Drugs (June 5, 1975)	November 11, 1975 TRR	Extension of time to propose designated issues to March 12, 1976 (request of Proprietary Association) Final Notice June 1, 1976 (est.) Staff Report October 15, 1976 (est.)	July 15-30, 1976 (Washington, D.C.) (est.)		
Protein Supplements (August 22, 1974)	September 4, 1975 TRR	Final Notice March 10, 1976 Staff Report December 31, 1976 (est.)	May 10-21, 1976 (Los Angeles, Ca.) July 12-16, 1976 (Boston, Mass.) September 13-24, 1976 (Washington, D.C.) October 18 November 5, 1976 (San Francisco, Ca.)		
Fuel Economy	September 18, 1974 TRR	Record closed December 31, 1974	November 25 December 6, 1974	GUIDE promulgated September 10, 1975	Commission noted problems with EPA tests when Guide promulgated; issues being reassessed in light of recent energy legislation
Used Car Industry (April 10, 1975)	January 2, 1976 TRR	Request for 90 day extension for proposing designated issues filed by industry trade associations, February 23, 1976 Final Notice June 1976 (est.) Staff Report February 1977 (est.)	September 1976 (est.)		Rule required to be proposed pursuant to Magnuson-Moss Act §109(b)
Growers, Wholesalers, Retailers of Plants (April 25, 1975)	Proj. staff rec. to Comm. April 1976				This is but one of many ongoing investigations which may result in TRRs, other regulatory action, or no action
Warranty Rules: Disclosure of Warranty Terms Presale Availability of Warranties Internal Dispute Settlement Mechanisms (July 16, 1975)	July 16, 1975 TRR July 16, 1975 TRR July 16, 1975 TRR	Record closed for all three proceedings December 1, 1975	September 15-18, 1975 (Washington, D.C.) September 22-25, 1975 (Chicago, Illinois) September 29 - October 1, 1975 (Los Angeles, Ca.) October 2, 1975 (San Francisco, Ca.)	3 FINAL TRRs promulgated on December 31, 1975	These statutorily mandated proceedings took a substantial resource commitment in 1975
Prescription Eyeglasses Pricing (September 23, 1975)	January 16, 1976 TRR	Final Notice April 15, 1976 (est.) Staff Report September 1, 1976 (est.)	June 1-7, 1976 (Washington, D.C.) (est.) June 14-20, 1976 (New York, N.Y.) (est.) June 28 - July 2, 1976 (Cleveland, Ohio) (est.) July 12-16, 1976 (Dallas, Texas) (est.) July 26-30, 1976 (San Francisco, Ca.) (est.)		
Care Labeling (January 22, 1976)	January 26, 1976 REVISED TRR	Final Notice August 1976 (est.) Staff Report Spring 1977 (est.)	October 1976 (est.)		Revision of TRR promulgated December 9, 1971

EXHIBIT II

MANHOURS EXPENDED ON GUIDES AND RULES
BUREAU OF CONSUMER PROTECTION
(July 1974-March 1, 1976)

NAME OF GUIDE OR RULE	NUMBER OF GUIDE OR RULE	TOTAL MANHOURS*** EXPENDED TO DATE
Pesticides	R511001	773
Decorative Wall Paneling Industry		**
Use of the Word "Free"		**
Household Furniture Industry	G511198	451
Light Bulb Industry	R511960	153
Octane Numbers	R511911	669
Feather and Down Industry		[illegible]
Wool and Fur Pieces Adv. & Labeling	G511837	**
Care Labeling	R511915	1,846
Retail Food Store Adv. & Mktg. Pratices	R511003	9[illegible]6
Negative Option	R511024	**
Vocational Schools	R511005	10,427
Cooling Off Period for Door to Door Sales	R511920	22[illegible]0
Franchise Disclosure	R511003	4194
Detergent	R511013	335

NAME OF GUIDE OR RULE	NUMBER OF GUIDE OR RULE	TOTAL MANHOURS*** EXPENDED TO DATE
Amplifiers	R511992	1674
Holder in Due Course	R511930	1360
Viewable Television Pictures		**
Mail Order Merchandise	R511929	2527
Health Spas	R511012	637
Mobile Homes	R511022	2584
Flammability of Cellular Plastics Oct. 13, 1972)	R511002	3547
Endorsements & Testimonials	G511003	671
Food Nutrition Advertising	R511008	9866
Law Books	G511850	197
Child Directed Premiums (August 6, 1973)	G511002	2113
Funeral Practices	R611001	1740
Credit Practices	R511023	3385
Air Conditioner Labeling	R511013	1349
Hearing Aids	R511006	6429
Prescription Drugs	R511025	3762
Over-the-Counter Drugs	R511009	982

NAME OF GUIDE OR RULE	NUMBER OF GUIDE OR RULE	TOTAL MANHOURS** EXPENDED TO DATE
Protein Supplements	R689001	1814
Fuel Economy		
Used Car Industry	R511021	3729
Growers, Wholesalers, Retailers of Plants	7523100 RO	2039
Warranty Rules	R511017	2980
Disclosure of Warranty Terms		
Presale Availability of Warranties		
Informal Dispute Settlement Mechanisms		
Prescription Eyeglasses Pricing	R611003	187
Care Labeling (Revised)		****

* All hours recorded reflect the time spent since the decision is made to develop a proposed rule. Hence, time spent on prior case-related investigations that may have led to the development of a proposed rule is not included.

** No data readily available, because work prior to July 1, 1974 was not recorded in a systematic manner.

*** The time recorded in this column is almost entirely attorney reported time. Although it also includes some para-legal reported time, it does not include secretarial or support time. Data on attorney manhours in only available from the coumputer from July of 1974 to the present.

**** Total time reported on revised Care Labeling is reported under Care Labeling on page (1).

March 3, 1976

FEDERAL TRADE COMMISSION
THREE-YEAR BUDGET REQUEST HISTORY

(dollars in thousands)

	FY 1974		FY 1975		FY 1976	
	Dollars	Positions	Dollars	Positions	Dollars	Positions
Bureau of Consumer Protection						
OMB Request.....	$5,940	385	$4,983	307	$7,461	292 1/
OMB Allowance (President's Budget).....	4,811	306	5,051	289	7,256	277
Congressional Allowance.....	4,904	289	5,090	277	8,076	277
Total Federal Trade Commission						
OMB Request.....	$34,654	1,748	$39,835	1,692	$49,424	1,771
OMB Allowance (President's Budget).....	30,090	1,570	38,104	1,631	45,649	1,634
Congressional Allowance.....	32,496	1,582	38,983	1,569	47,091	1,634

Note: Bureau of Consumer Protection figures for FY 1974 and FY 1975 are for salaries only. Congressional allowances include funds to cover the cost of applicable pay raises. (FY 1976 amount not yet appropriated.)
Source: FY 1974, FY 1975 and FY 1976 OMB Budget Justifications and corresponding President's Budgets. Figures may vary due to further Commission action; the OMB decisions were attempted to be isolated on this chart.

1/ No new positions were requested in fiscal 1976. The number of positions was reduced because the President reduced the FTC's authorized strength as part of a government-wide reduction in Federal employment. In addition, the Bureau's authorized positions were reduced because the Commission created a Freedom of Information Section by transferring persons from several bureaus.

EXHIBIT III

EXHIBIT IV

The Bureau of Consumer Protection's internal procedures for handling responses to petitions are as follows:

Day 1 Receipt of petition by Secretary's Office

Day 3 Referral by Secretary to Commissioner and to Bureau of Consumer Protection; assignment of member of Director's staff to monitor petition response; acknowledgement of receipt of petition by Bureau;

Day 6 Referral by Bureau Director's office to operating division for assigning recommendation for response; notification by division of assignment to Bureau Director's office

Day 15 Informal prediction by staff of action to be taken. If petition is to be denied because information is insufficient for Commission determination (either because facts or legal basis of petition is insufficient) then the following schedule applies:

Day 25 Recommended answer to petition due to Bureau Director

Day 30 Recommended answer to petition due to Commission

Otherwise:

Day 75 Recommended answer to petition due to Bureau Director's office

Day 90 Recommended answer to petition due to Commission

If for any reason this schedule is not appropriate -- if, for example, staff were engaged in an extensive investigation to determine whether a rulemaking proceeding should be indicated in an area that is the subject of the petition, then we would provide at a minimum an interim response to the petition within the time frame suggested above.

These procedures have been in effect since November, 1975, and all petitions received since then are on target. Acknowledgement of receipt of the petitions has just recently been added to the schedule.

March 17, 1976

Hon. Paul Rand Dixon
Chairman
Federal Trade Commission
Washington, D. C. 20580

Dear Chairman Dixon:

This is to acknowledge receipt of your letter of March 10, 1976, which expands and updates the chart on rulemaking presented at our February 25th hearing. The letter and accompanying materials will be inserted in the hearing record.

I want you to know that I reject your characterization of the chart as containing "seriously incomplete and inaccurate information." I do so for the following reasons:

1. As you know, the chart was prepared in close consultation with Commission staff members who received and reviewed copies of the chart in various stages of preparation. For every rule proposed or investigation announced during 1974-1975, the staff was asked to provide all pertinent information regarding hearings and other significant events. They were asked whether all proposed rules were included and whether the dates were accurate. The chart was reviewed line by line in an effort to assure accuracy and completeness and was, in fact, altered at FTC staff request.

2. As the hearing record makes clear, the Subcommittee's chart was never intended to illustrate the totality of Commission rulemaking activities from 1970 to 1976. The purpose of the chart was to demonstrate the length of time it takes for rules to proceed from initial investigation to final rule. The chart traced proposed rules and investigations which were the subject of public announcement from January 1974 to November of 1975. This period was selected because it reflected the most recent Commission rulemaking activity; and, because public announcement of investigations only began in 1973, it allowed the Subcommittee to pinpoint when an investigation leading to a rule commenced. The chart accurately reflects delays in the progress of the 21 rules and guides which were announced during 1974 and 1975.

In fact the expanded chart you have submitted illustrates additional delays and further confirms the point made by the Subcommittee's chart. For example, the pesticide rule, proposed in 1968, is not yet final after 9 years; the "wall paneling industry" guide took almost 4 years to become final; the "Use of the word 'free'" guide took 2 and 1/2 years to become final, etc. And because your chart in many cases fails to indicate the date on which an investigation began, the length of time it took to approve a rule or guide was likely much longer than indicated.

3. I must take strong exception to what is termed a "misleading picture of the relationship between an industry-wide investigation and a proposed rulemaking proceeding." It is precisely that relationship that concerns this Subcommittee. If a marketplace practice is sufficiently suspect and important to justify the public announcement of an industry-wide investigation, the investigation cannot be divorced from the final product. If the final product is a rule, that rule should result in a timely fashion. The Subcommittee is fully aware that the findings of some investigations argue against the promulgation of a rule. These investigations were eliminated from the chart. Where investigations do lead to rules, 2, 3 and 4-year delays before proposing that rule are excessive.

4. The "Holder in Due Course" (HDC) Rule and the Amplifier Rule, both of which became final during the period of the chart, were left off the chart after discussion with Commission staff. I concede that perhaps they should have been included since they were the subject of public announcement during 1974-1975. Had they been added, however, the chart would have revealed that it took well over 5 years to get from initial investigation to final rule in the HDC instance and over 3 years to finalize the Amplifier Rule.

5. Statutorily mandated rules were left off the chart because the statutes imposed time restrictions on a rule promulgation and were not, therefore, indicative of Commission performance. Revised rules, such as the care-labeling rule, were similarly not a subject of concern since presumably most of the staff work had already been performed.

I appreciate the efforts of the Commission in preparing a chart and the budgetary and petition information included with it.

Sincerely,

Benjamin S. Rosenthal
Chairman

BSR:pv

APPENDIX 2

QUESTIONS ON INVESTIGATIONS

1. How long does it take to investigate an industry prior to issuing a proposed rule?

2. How long is a "reasonable" time for industry-wide investigations?

3. How long does it generally take the Commission to approve a rule submitted by the staff?

4. Can you explain why the Antacid rule, which was proposed to the Commission on July 7, 1975, has not yet been acted upon?

5. Can you explain why the amendment to the care and labeling rule which was proposed to the Commission on June 24, 1975, has not yet been acted upon?

6. How high a priority are proposed rules on the Commission agenda?

7. Where are the bottlenecks in the investigatory process?

   a. How can they be avoided?

8. What is the Commission's policy on public announcement of investigations?

   a. Are most investigations publicly announced?
   b. Are there any reasons why investigations are not publicly announced?
   c. Is an announcement made when an investigation closes?

9. Can you explain why it took 37 months to investigate problems in detergent labeling?

10. Can you explain why it took 42 months to investigate mail order merchandise?

11. Can you explain why it took 32 months to investigate mobile homes?

12. Can you explain why it took 34 months to investigate cellular plastics?

13. What percentage of investigations result in rules?

14. How is the decision made to propose a rule or develop cases following an investigation?

Delays In Rulemaking Process

1. The chart shows the comment time extended in a number of cases. Except for extensions resulting from Magnuson-Moss Act, what are the reasons for extending the comment time?

2. What are the reasons for postponing hearings? (aside from Magnuson-Moss delays)

3. Who generally requests extensions?

4. Are extensions granted automatically? What criteria are used to determine whether extensions should be granted?

5. What has the Commission done to ensure wider participation in its rulemaking procedures, particularly by consumer and public interest groups as well as business interests affected by a proposed rule?

QUESTIONS ON OUTSIDE PETITIONS

1. Describe the new internal procedures for dealing with outside petitions.

2. Is ther a Commission policy with respect to petitions?

3. Could you characterize the kinds of petitions you get?

4. How does one go about finding out the status of a petition?

5. Why does it take so long for the Commission to respond to these petitions?

6. On March 26, 1975, and May 13, 1975, the Commission received petitions from industry requesting Commission action on problems with FTC proceedings. While the situations are not strictly analogous, the Commission was able to respond within 30 days. Can you explain the discrepancy?

General

1. What is the Commission's view of the legal consequences of issuing a rule? For example, can a company affected by a rule challenge its validity or procedural fairness when later charged with violating the rule?

2. In the S&H case, the Supreme Court extended to the Commission a broad grant of authority to challenge practices that are "unfair" as well as "deceptive". In its rulemaking activities, what use has the Commission made of this separate grant of power?

3. What has happened to Commission plans to devote a major portion of resources to rules and guides requiring disclosure of information consumers need to make a sensible choice among products? (Except for the food nutrition rule and the disclosure of price information in the funeral and prescription eyeglass industry, there seems to be very little going on with respect to information disclosure.) Is the Commission backing away from its commitment to this program?

APPENDIX 3.—ADDITIONAL CORRESPONDENCE RELATIVE TO THE HEARINGS

MILES LABORATORIES, INC.
ELKHART, INDIANA 46514

CHARLES N. JOLLY
ASSOCIATE GENERAL COUNSEL
TELEPHONE (AREA 219) 264-8011

March 23, 1976

RECEIVED

The Honorable Benjamin Rosenthal
U.S. House of Representatives
2372 Rayburn House Office Building
Washington, D.C. 20515

Benjamin S. Rosenthal M.C.

Dear Congressman Rosenthal:

On February 25, 1976, the Government Operations Subcommittee on Commerce, Consumer and Monetary Affairs held hearings on delays in FTC rulemaking. In the course of that testimony, Mrs. Peggy Charren, in response to a question from Congressman Drinan, stated:

> "I saw in Broadcasting magazine yesterday, the new issue this week, that Miles Laboratories was going to start a campaign to sell Flintstone vitamins starting in a couple of weeks. We do not know where those ads are going to be. For all I know, they are a resurgence of the same problem that we have been talking about." (Emphasis added.)

Apparently, while trying to make another point, Mrs. Charren chose to advance the casual supposition that Miles Laboratories was about to begin advertising its dietary supplements directly to children.

This is not the case. We are very distressed by Mrs. Charren's linking the Miles name with criticized activities on the basis of a mere supposition.

We have contacted Mrs. Charren and requested that she clarify the record with the Committee. Although she had no facts supporting her statement, she was unwilling to correct this statement until such time as I proved to her that her supposition was incorrect.

While I am unwilling on principle to respond to her unsupported supposition, I am happy to state to the Subcommittee that Miles is not advertising its chewable vitamins directly to children.

We trust that you will find this clarification of the record useful.

Very truly yours,

Charles N. Jolly

/d

CC: Ms. Peggy Charren
Action for Children's Television

March 30, 1976

Mr. Charles M. Jolly
Associate General Counsel
Miles Laboratories, Inc.
Elkhart, Indiana 46514

Dear Mr. Jolly:

This is to acknowledge receipt of your letter of March 23, 1976, concerning the statements of Ms. Peggy Charren at a February 25, 1976, hearing on FTC rulemaking.

Your letter will be included in the record of the hearing to clarify any misimpressions created by Ms. Charren's testimony.

Thank you for writing.

Sincerely,

Benjamin S. Rosenthal
Chairman

BSR:pv

APPENDIX 4

On June 11, 1976, the subcommittee requested the appearance of a representative of the National Advertising Review Board (NARB) at the hearings to examine the effect of the relationship of the NARB to the activities of the National Advertising Division of the Federal Trade Commission. On June 16, 1976, the NARB informed the subcommittee that they would be unable to appear to testify at the hearings, but would provide for the record a response to the questions posed to them by the subcommittee's June 11 letter. The subcommittee's June 11 letter and the NARB response follow.

June 11, 1976

Mr. Ralph Alexander
National Advertising Review Board
850 Third Avenue
New York, New York 10022

Dear Mr. Alexander:

The Subcommittee on Commerce, Consumer and Monetary Affairs, pursuant to its oversight responsibilities under the Rules of the House of Representatives, is holding hearings into the effectiveness of the Federal Trade Commission's activities in eliminating advertising abuses. At these hearings we will examine the relationship between the FTC's advertising law enforcement program and the advertising industry's self-regulation efforts, particularly through the National Advertising Review Board.

To assist us in our review, we would appreciate your appearance before the subcommittee on Wednesday, June 23, 1976, at 10 A.M. in Room 2247 of the Rayburn House Office Building to present your views of the following aspects of advertising and advertising regulation:

1. How successful has the NARB been in establishing meaningful guidelines and in bringing about sound advertising practices in the following areas: comparative advertising, the portrayal of women in advertising, the portrayal of the elderly in advertising, product safety advertising, and energy and environmental advertising?

2. What has been the impact of NARB reports and recommendations in the aforementioned areas? Please be specific.

3. The relationship between the NARB and the Federal Trade Commission.

   a. How often does the NARB refer complaints to the Commission?

   b. What is NARB policy with respect to investigating or resolving complaints in areas which are the subject of FTC investigation, rulemaking or litigation? Is there an overlap?

c. Does the NARB make available to the FTC data and results of investigations? Please give examples.

d. What are the standards for determining whether a claim has been substantiated? Are they the same as those applied by the FTC?

4. NAD decisions are not the subject of a press release. Why?

5. Have the decisions of NAD and NARB been codified so that they may be used as a precedent and are available in a convenient form?

6. What efforts have been made to make the activities of the NARB and NAD known to the public?

In anticipation of your appearance, please furnish the subcommittee the following information and materials by June 21, 1976:

1. NARB's and NAD's budgets for 1975 and 1976. Please include a breakdown of how much each organization contributes and where the resources are spent.

2. The number of staff employed by NAD to respond to and to decide complaints.

3. The length of time it takes for a complaint to be resolved at the NAD level and at the NARB level, including the time it takes to decide whether an appeal will be granted.

4. Copies of NAD monthly staff reports for 1975 and 1976.

5. Copies of the biographies of all the present public members of the NARB.

6. Copy of the 1973 Product Advertising and Consumer Safety Report.

The Rules of the House of Representatives and this committee require that 50 copies of a witness's prepared statement be made available to the subcommittee at least 24 hours prior to the presentation of testimony. If you have any questions regarding these hearings, please contact Jean Perwin of the subcommittee staff.

We look forward to your testimony.

Sincerely,

Benjamin S. Rosenthal
Chairman

BSR:pv

NARB
National Advertising Review Board
Established for the self regulation of national advertising ■ Sponsored by The National Advertising Review Council, Inc.
888 Third Avenue, New York, N. Y. 10022, (212) 832-1320
845

June 16, 1976

Honorable Benjamin S. Rosenthal
Chairman
Commerce, Consumer, and Monetary Affairs Subcommittee
of the Committee on Government Operations
Rayburn House Office Building
Room B 350 A-B
Washington, D.C. 20515

RECEIVED
JUN 17 1976
Benjamin S. Rosenthal, M.C.

Dear Mr. Chairman:

Thank you for your letter dated June 11 (received June 15) inviting the NARB to appear at the oversight hearings on the effectiveness of the Federal Trade Commission.

The time restraints make it impossible for us to adequately prepare a response to the many questions and requests for material outlined in your letter. This is further complicated by the fact that we have recently moved our offices and are not completely settled in our new quarters.

We are, however, most anxious to cooperate with the Committee and inform you of the work of the NARB/NAD. If you are able to hold the record open for about 60 days we shall compile material in answer to the questions posed in your letter. We believe this written submission should answer all your questions, but should the Committee feel additional questions have been raised by our submission, we would be willing to schedule an appearance by a representative of both NAD and NARB.

As you may know, the advertising industry's self-regulatory mechanism was established to sustain high standards of truth and accuracy in national advertising. To this end, the two-tier system was created to handle disputed matters: 1) The National Advertising Division of the Council of Better Business Bureaus (NAD) was formed for the purpose of evaluating, investigating and usually resolving at the first stage cases of alleged misleading or deceptive advertising. The great majority of matters are resolved at this level.

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National Advertising Review Board

Chairman Rosenthal -2- June 16, 1976

2) For those matters that cannot thus be resolved, there is available an appeal to the NARB for a resolution. A five person panel (1 public member, 1 advertising agency member and 3 advertiser members) is selected from the Board of 50 members to review and decide the matter. Should the advertising be found untruthful and the advertiser refuses to cooperate with the Panel's recommendation to terminate or correct it, the matter is referred to an appropriate government agency (to date this has not been necessary). The NARB is sponsored by the American Association of Advertising Agencies, American Advertising Federation, Association of National Advertisers and the Council of Better Business Bureaus.

I offer this brief thumbnail of our basic function as there appeared to be confusion in the way some of the questions were phrased in your letter.

Please let us know if you feel we should proceed to develop our written submission in response to your letter.

Sincerely,

Ralph H. Alexander, Jr.
Executive Director

Ra/jr

On August 4, 1976, the subcommittee received the following submission for the record.

NARB
National Advertising Review Board
Established for the self regulation of national advertising ■ Sponsored by The National Advertising Review Council, Inc.
850 Third Avenue, New York, N. Y. 10022, (212) 832-1320

August 4, 1976

Honorable Benjamin S. Rosenthal
Chairman
Commerce, Consumer and Monetary Affairs
Subcommittee
Rayburn House Office Building
Room B 350 A-B
Washington, D.C. 20515

Dear Mr. Chairman:

In response to your letter of June 11, please find attached a report of the National Advertising Division of the Council of Better Business Bureaus and the National Advertising Review Board that briefly describes the purpose and function of the advertising industry's self-regulatory mechanism, including answers to questions posed in your letter.

We hope you find this informative and helpful in meeting your legislative oversight functions. Should you have any questions, please let us know, and we will be happy to try and answer them.

For your convenience, we are forwarding to you ten additional copies of this report for distribution to your Committee members.

Respectfully submitted,

Roland P. Campbell
Roland P. Campbell
Senior Vice President
National Advertising Division
Council of Better Business Bureaus

Ralph H. Alexander Jr
Ralph H. Alexander, Jr.
Executive Director
National Advertising Review Board

National Advertising Review Board

SELF-REGULATION OF NATIONAL ADVERTISING

A Report Prepared by

The National Advertising Division of the Council of Better Business Bureaus and the National Advertising Review Board

for the

Subcommittee on Commerce, Consumer and Monetary Affairs

of the

Committee on Government Operations

Honorable Benjamin S. Rosenthal,
Chairman

August 4, 1976

SELF REGULATION OF NATIONAL ADVERTISING

1. Background

The industry-supported program for the self-regulation of advertising was initiated about four years ago through the combined efforts of four industry organizations: the American Advertising Federation, the American Association of Advertising Agencies, the Association of National Advertisers and the Council of Better Business Bureaus.

The organizational structure consists of the National Advertising Review Council (NARC), the National Advertising Review Board (NARB) and the National Advertising Division of the Council of Better Business Bureaus (NAD).

The NARC membership is composed of the Chairmen, or their designees, and the Presidents of the four industry organizations, The purpose of NARC, the parent body of the NARB, is to create and maintain the NARB. Its functions include:

....create and monitor the application of basic policies for the operation of NARB.

....designate the members of the NARB and appoint its Chairman.

Attached are the By-Laws of the National Advertising Review Council (Exhibit A) and the Statement of Organization and Procedures of the National Advertising Review Board (Exhibit B). As stated

in Section 1.13 of the latter, the NARB will act in complete autonomy.

> "In the review and disposition of all cases coming before it, the NARB shall be completely autonomous and independent of any and all other persons and organizations."

In keeping with this statement no member of NARC may be a member of the NARB.

The NARB, formed to sustain high standards of truth and accuracy in national advertising, consists of a Chairman, an Executive Director and a 50 member board ...30 representatives from advertiser companies; ten from advertising agencies and ten public members. Ten advertising agency alternates are also designated in order to avoid possible conflict of interest problems. (Exhibit C).

PROCEDURES OF THE SELF-REGULATORY SYSTEM -- ADJUDICATIVE FUNCTION

The basic function of the self-regulatory mechanism is to respond constructively to complaints of truth and accuracy of national advertising and resolve matters on the basis of voluntary compliance with decisions of the NAD and NARB.

Complaints involving the truth and accuracy of national advertising are initially received by the NAD from many sources: consumers, consumer groups, local Better Business Bureaus, government agencies and business firms. The NAD also initiates complaints or inquiries on its own through internal monitoring of broadcast and print advertising.

Complaints of truth and accuracy of local advertising are referred by NAD to an appropriate local Better Business Bureau. Complaints dealing with matters other than truth and accuracy are forwarded to the NARB for consideration as a possible subject for study by a "consultive panel." (The purpose and function of consultive panels are further examined later in this report).

When the NAD accepts a complaint, it first requests of the advertiser substantiation in support of the claim in question.

If the substantiation is deemed adequate, the case is closed.

If, on the other hand, NAD finds the substantiation inadequate, the advertiser is asked to modify or eliminate the advertising, as appropriate. If the advertiser agrees, the matter is closed. Sometimes NAD's investigations require the assistance of outside experts in evaluating complex or highly technical data.

More than 97% of all investigations result in settlement of advertising problems at the NAD level.

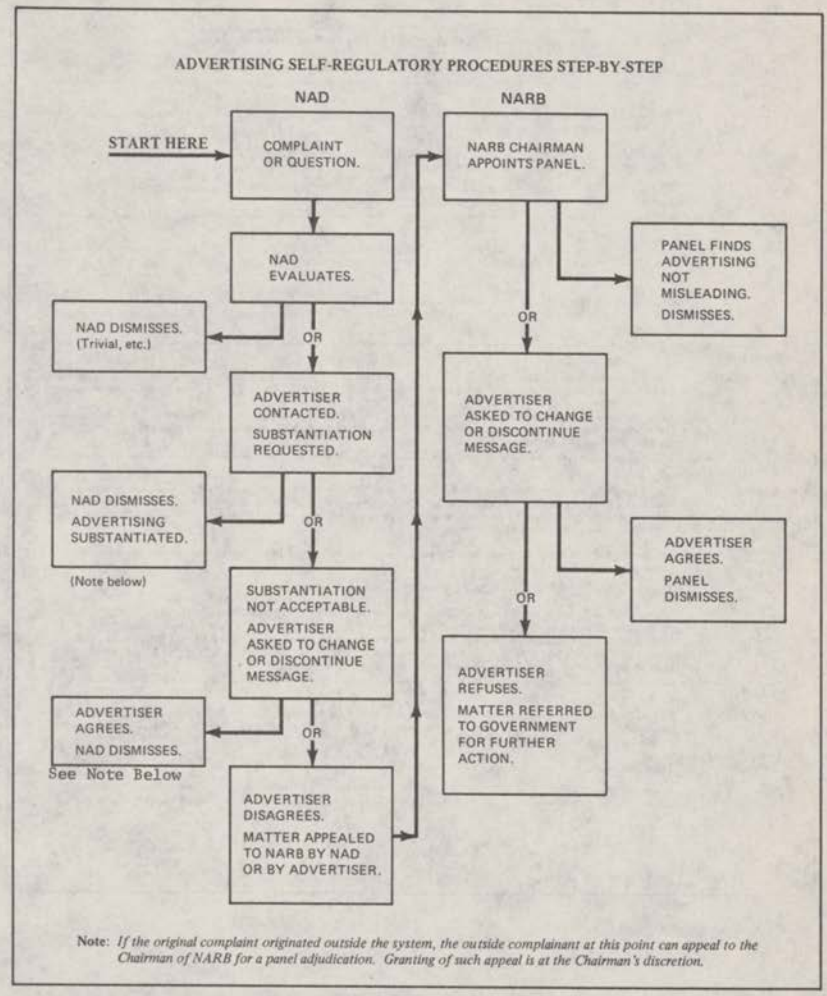
If, however, NAD and the advertiser cannot arrive at a satisfactory settlement, either party has the right to appeal to the NARB and this appeal is automatically granted. If, on the other hand, an outside complainant is dissatisfied with the NAD decision, he may also request an appeal, the granting of which is at the discretion of the Chairman of the NARB.

In the event of an appeal, a five-member NARB panel composed of three advertiser members, one advertising agency member and one

public member, is appointed by the Chairman to adjudicate the matter. Particular care is taken in the selections of panel members to avoid possible conflict of interest. The initial screening is done by the Chairman who disqualifies any person who has an apparent conflict of interest. In addition, the advertiser whose advertising is in question, receives the names and business affiliation of the proposed panel members and the advertiser may challenge any for conflict of interest reasons.

The panel may reverse, modify or affirm NAD's decision. If the advertising were found to be untruthful and the advertiser refused to adhere to the panel's decision, the matter would be referred to an appropriate government agency and that fact publicly disclosed. To date no referral to a government agency has been necessary.

The flow chart on the following page graphically illustrates the self-regulatory procedures step-by-step.



Note: *If the original complaint originated outside the system, the outside complainant at this point can appeal to the Chairman of NARB for a panel adjudication. Granting of such appeal is at the Chairman's discretion.*

NARB PANELS: COMPLAINTS, DECISIONS

Panel #1

Complaint – That General Motors Corporation's use of its "Mark of Excellence" trademark in advertising did not conform to high standards of truth and accuracy in view of published reports of alleged defects in some of the company's cars.

Decision – There was no deception since trademark was not used in the advertising copy as an integral part of the "selling story."

Panel #2

Complaint – American Dairy Association television commercial, despite use of hyperbole and cartoon fantasy, was misleading in its claims for the nutritive and energy value of fluid milk.

Decision – Reversing NAD's dismissal of complaint, panel ruled that the commercial erroneously implied that the energy value derived from milk is of instant benefit, rather than from consumption over a long period of time.

While the advertiser disagreed with the panel's decision it pledged its full cooperation and assured NARB that the challenged commercial would be replaced by an entirely new creative approach.

Panel #3

Complaint – That a television commercial for Hershey Foods Corporation's Krackel candy bars, through the use of exaggerated sounds of a child chewing a candy bar, created a misleading impression that there were "aural thrills" to be expected from eating the product.

Decision – The panel ruled that, although the sounds of a child chewing the candy bar were exaggerated, the commercial was not misleading. It noted that there is a crackling sound that is audible when the bar is chewed, which is all that the commercial promised.

Panel #4

Complaint – That a television commercial for Luden's, Inc.'s Fifth Avenue candy bar depicting an actor in a football uniform claiming he ate a case of the candy bars before each game was a "blatant attempt" to relate the product with athletic performance.

Decision – The panel agreed with NAD that the commercial was satirical and not intended to deceive. As to whether the commercial was unintentionally deceptive, the panel found that it was directed at children old enough to understand satire and that the probability of harmful interpretation was remote.

Panel #5

Complaint – That a television commercial for Miles Laboratories' Chocks vitamins (a) falsely represented that children using Chocks were thereby "grown-up kids"; (b) encouraged children to ignore the possibility of selecting a diet on the basis of their nutritional requirements; (c) made ambiguous and deceptive references to "other" brands, and (d) made a deceptive suggestion that Chocks are related to athletic feats.

Decision – The panel ruled that the commercial had the capacity to mislead with regard to the question of potency variations between Chocks and other shaped vitamins.

The advertiser decided to withdraw the challenged commercial.

Advertiser Statement – The need for and value of vitamin supplements for children such as Chocks is well established. The decision of the NARB panel did not find this commercial false and deceptive, but did raise a question with respect to possible confusion as to the vitamin content of Chocks as compared to other children's vitamin products. The intention of the commercial was not to imply that there are vitamin differences either in kind or in amount, but to point out the basic shape differences since older children tend to prefer simple "non-shaped" products such as Chocks.

Panel #6

Complaint – That a television commercial for Procter & Gamble Company's Bold detergent made deceptive use of a so-called "dangling comparative" which would lead the public to conclude that Bold would get their wash "brighter" than any other detergent on the market.

Decision – The panel, in a majority opinion, found the complaint to be not valid.

Dissenting panel members argued that in their opinion the commercial had the capacity to mislead substantial numbers of consumers who might conclude that if they wish to have a detergent with brighteners, the only detergent to use is Bold.

Continued on pages 13, 15, 17, 19, 21

2. Matters involving issues other than truth and accuracy: Consultive Reports concerning Product Safety, Energy and Environmental advertising, Portrayal of Women in Advertising and Portrayal of Elderly in Advertising.

Although the NARB's primary purpose is to render judgment on individual matters of truth and accuracy in national advertising, the Board at an early stage decided that it could not completely fulfill its obligations to the consumer and industry if it did not attempt to offer suggestions on the more subjective questions of social responsibility in advertising. Hence, provisions in the NARB's Statement of Organization and Procedures (see Exhibit B, Section 4.1 to 4.9) were adopted permitting the formation of special "consultive panels" to study and report on such matters. The membership of such panels is the same as an adjudicative panel (1 agency member, 1 public member and 3 advertiser members). The panel studies the problem, and if it determines that a position paper will be useful, it prepares a report. This is then presented to the full Board for approval. If a majority (26) vote for publication, the paper is then issued. Consultive panels have been formed to study: Product Advertising and Consumer Safety (Exhibit F)

The first NARB consultive panel to explore a subjective advertising question, undertook to study advertising that may tend to foster unsafe consumer practices and behavior.

The panel's study revealed few examples of advertising with blatant disregard of normal safety precautions. It did uncover some advertisements that raised questions of consumer safety, generally in unintentional ways, but nevertheless, of the type that is potentially harmful. Most of the abuses involved advertising that showed an unsafe situation in which the product was presented

rather than in the claims made for the product itself.

The report makes specific suggestions in regard to the advertising of "high-risk products" and offers to those responsible for creating and approving advertising a check list of important safety considerations to keep in mind while preparing all advertising.

Environment and Energy-Related Advertising (Exhibit E)

The Panel on Energy-Related advertising was prompted by a request from Senator Thomas J. McIntyre (N.H.) to the NARB to establish a panel "to develop an advertising policy on energy" during the energy crisis in 1974. The Federal Energy Office and the Environmental Protection Agency were invited to submit ads in question. The panel which was originally organized to consider advertising related to environmental matters was reconvened and volunteered to screen specific ads relating to energy and environment from an advertising point of view. This panel recommended several broad principles to be considered by national advertisers:

1. If an advertiser has a vested interest in a public policy position implied or expressed in an advertisement that fact should be made clear.

2. If an advertiser refers to any research data, the source of such information should be stated in the copy.

3. In preparing advertising copy or visualizations relating to a public policy position, an advertiser should try not only to be factual but also to avoid being accusatory or inflammatory.

These recommendations were brought to the attention of government officials and senior officers of major domestic oil companies.

The view of NARB was that strict observance of First Amendment guarantees is the best assurance of ultimate public enlightenment. It took the position that advertisers have a right and an obligation to make their views known. It was carefully pointed out that "advertisers should scrupulously avoid adding to the public confusion. They should inform the consumer of the facts as they become known. They should guard against taking advantage of current national concern over the energy matter in such a way as to increase an apparent sense of public mistrust of statements from those who have economic interests tied to energy production, sales and consumption."

The Portrayal of Women in Advertising (Exhibit F)

This panel was established in response to widespread criticism of advertising by people concerned with the derogatory and frequently inaccurate image of women that existed in many different types of selling messages. The panel received reports, examples of offensive advertising, suggestions and itself consulted with a wide variety of people.

After months of study, the panel issued its report, which has gained wide praise from advertisers and agencies as an effective working tool. The check list of questions for advertisers and agency personnel to consider when creating or approving an advertisement is a clear, practical guide designed to improve the image of women as portrayed in advertising.

Approval has also been expressed by leaders in the "Women's movement." Pat Carbine, Editor and Publisher of Ms. Magazine recently publicly said that it is, "the best statement by far in this whole area." Further, the Commission on the Observance of International Women's Year appointed by President Ford stated: "The IWY Commission strongly endorses the NARB report as did a number of groups, including the National Federation of Business and Professional Women's Clubs."

Since publication of Advertising and Women some 5,000 copies have been distributed to advertisers, advertising agencies, schools and colleges, libraries, women's groups, government agencies and interested individuals.

The Portrayal of the Elderly in Advertising (Exhibit G)

This five person consultive panel concentrated its many months of study and review on the question: does advertising to any significant degree present old people in an unfavorable or derogatory manner?

To aid in their deliberations, the panel reviewed hundreds of advertisements portraying the elderly, had contact with organizations concerned with the problems of the elderly and invited input from interested groups and individuals.

The Panel reached the unanimous conclusion that old people are fairly and responsibly portrayed in advertising. In addition, its inquiry disclosed many examples of a positive treatment of elderly in advertising. They are often shown as active participants in groups of all ages, and many times depicted as a source of authority based on long and valued experience. Because of these reasons, the panel felt the issuance of a "position paper" was unnecessary and after concluding their study, issued a press release expressing the rationale of their decision.

Comparative Advertising

The much publicized controversy over comparative advertising prompted the convening of an NARB consultive panel to study the subject. The report of this panel is expected to be completed in the next several months, at which time, according to our procedures, it will be presented to the full NARB Board for approval.

* * *

The purpose of the consultive panel report is to provide advertiser and agency personnel with a thought-provoking, educational tool designed to help prevent abuses before an adver-

tisement appears publicly. Rather than acting as a set of "rules", consultive reports are designed to, hopefully, raise the consciousness level of responsible persons to the concerns outlined in the report. Because of the subjective nature of a "preventative" document of this nature, it is more difficult to evaluate statistically. However, because of wide distribution to decision makers, as well as creators of advertising, continuing favorable comments and daily requests for the reports, we feel confident that the consultive reports have been influential in helping to sustain high standards of advertising practice.

The Relationship between the NARB and the Federal Trade Commission

The relationship between NAD/NARB and the Federal Trade Commission has been cordial. From the inception of the NARB, the Chairman, commissioners, and staff of the Commission have been informed of the structure and operation of NAD/NARB. Numerous copies of press releases issued by the mechanism are routinely provided to various offices of the Commission.

The Commission also plays a vital role in the operation of the mechanism since it is the principal agency to which complaints that are incapable of resolution are to be referred. To the extent that an advertiser is unwilling to comply with the findings of an adjudicative panel, the operating procedures (See Exhibit B - Section 2.8)

provide that unresolved complaints be referred to the "appropriate government agency." It is contemplated that in most instances that would be the Federal Trade Commission.

To date, there has not been an occasion to make this referral.

The very existence of enforcement agencies such as the Federal Trade Commission, enhances the self-regulatory effort of the NAD/NARB. No doubt the very existence of NAD/NARB relieves the Commission of many matters, thus freeing its resources to cope with the hard cases of misrepresentation and deception not amenable to the self-regulatory process.

By policy the NAD/NARB will suspend any proceeding involving advertising which becomes the subject of litigation before the Commission or any other official agency. This recognizes the role of self-regulation as a voluntary effort prior to but not competitive with government litigation.

Thus, the informal but voluntary cooperation between NAD/NARB and the Commission brings to bear the full resources of private enterprise and government power on behalf of protecting legitimate business and the consumer from actions of misrepresentation and deception in advertising and selling practices.

What are the standards for determining whether a claim has been substantiated? Are they the same as those applied by the FTC?

The NAD/NARB mechanism decides whether or not the truth and accuracy of a claim has been substantiated, based on all the data and other information developed by the NAD investigation. When such information involves highly technical, or conflicting data, outside consultants may be called in for an independent, expert appraisal and clarification.

NAD decisions are not the subject of a press release. Why?

The NAD has issued a press release summarizing its decisions each and every month from January, 1973 to the present time. (Exhibit P)

Have the decisions of NAD and NARB been codified so that they may be used as a precedent and are available in a convenient form?

Work began several months ago to compile in one volume all the published decisions of the NAD and the NARB. There will be several indices to facilitate the retrieval of information. All future decisions of NAD/NARB will be added to this volume periodically. (See also summary of NARB cases in Exhibit H)

Public Relations Efforts Undertaken on Behalf of the NAD/NARB.

Public awareness of the NAD/NARB self-regulatory mechanism has been a concern of the industry since the NAD/NARB was established. A fundamental goal of self-regulations is to let the public know that there is a mechanism both for preventing and correcting untruthful and deceptive advertising.

At the inception of the NARB, the Bugli Company was retained to publicize the activities of the newly-formed self-regulatory organization.

In June of 1974, a public relations committee was formed of NARB members. The committee felt that it was vital to the best interests of NAD/NARB to expand the public relations program to further convey to the public and industry that the NAD/NARB exists to serve the consumer's interests.

Stevens Public Relations (later to become Lobsenz-Stevens) was retained on October 1, 1974 through October 1975 to develop such a program. It was their assignment to help achieve the kind of visibility for the self-regulation process (both NARB and NAD) that had not at that point been achieved. Their mandate was to carry the concept of self-regulation beyond the normal advertising trade publication channels and into the general news media, with national and regional print and broadcast media as targets.

Subsequently, a special in-house public relations staff was set up to expand and carry forward the continuing public relations efforts.

The programs described below illustrate a few of the on-going efforts that are part of an aggressive and informative public relations campaign on behalf of the NAD/NARB.

1. News releases on all NARB and NAD decisions are channeled to 676 media outlets, wire services, major-market newspapers and trade papers. Fifty releases go to the National Press Club. Six officials of the FTC receive all news releases. Also, staff of the Consumer Product Safety Commission, Commerce Department, HEW, ICC, HUD, Environmental Protection Agency, Federal Energy Agency, FCC, Library of Congress and the Office of Management and Budget are on the mailing list. In addition, over 1,000 individuals from law firms, advertising agencies and consumer groups have requested to be included

on the mailing list and regularly receive copies of the releases. Special consultive panel reports are sent to Congressmen and Senators (all members of both Houses were sent copies of "Advertising and Women" and "Product Advertising and Consumer Safety").

2. All three radio networks and over 4,000 stations continue to broadcast 30-second and 60-second public service announcements on NAD/NARB. The estimated weekly audience of these spots is in excess of 500 million listeners. (Exhibit I)
3. "Tips for Consumers from Your Better Business Bureau," a column published in more than 600 newspapers and with a circulation of over 9 million, has often been devoted to the NAD/NARB.
4. "Conversation for Consumers," a radio program on consumer issues, presented by the Council of Better Business Bureaus, has featured representatives of the NARB. The program is heard over WRC (Washington D.D.), WKYS-FM (Washington D.C.), KWUN (San Francisco Bay area), KCMO (Kansas City), WLDR Travers City), and KEZO (Omaha).
5. "Consumer Lines," a 90-second mini-program broadcast five times a week on the ABC Radio Network, featured the NARB on a spot broadcast on March 24, 1976.
6. "Be a Better Buyer," is a newsletter mailed to consumer groups, consumer writers, etc. It features news on the

NAD/NARB and has a circulation of 12,000. (One issue was totally devoted to it.)

7. A program to develop features in the company publications of NARB advertiser members to reach their millions of employees, resulted in stories run in the spring of 1975 in such house organs as Coca Cola's "Bottler," (Exhibit J) 'General Mills' "Modern Millwheel," (Exhibit K) among many others.

8. A program for obtaining local exposure for NARB through utilizing television programs, newspapers and speaking engagements in cities throughout the country was undertaken. The following are examples of the activities that took place under this plan:

---New York Times, advertising column 8/6/75, 8/11/75, 7/24/75 and 7/22/75, carried Leonard Sloane and Philip Dougherty's reports on the NARB

---"Midday Show," WNEW-TV featured NARB Chairman James Parton and Stanley Tannenbaum (member).

---Mobile, Alabama, Tony Balis (then Executive Director) spoke before the Advertising Federation of Greater Mobile on February 21, 1975 and taped a segment of WALA-TV's, "The Gulf Coast Today," which aired the week of February 24. Also, he was interviewed by the Business Editor of the Mobile Press and the Mobile Register. (Exhibits L & M)

9. A good working relationship has been established with several syndicated columnists who expressed interest in featuring the NAD/NARB in their columns. Some of these columnists are: Don Oakley (NEA), Phyllis Battelle (King Features), Harriet Van Horne (N.Y. Post), Kitty Hanson (Daily News).

10. Special press efforts were developed around special position papers like the reports, "Advertising and Women" and "Product Advertising and Consumer Safety." The women and advertising study generated good publicity. These are some of the placements: "Midday Show," WNEW-TV (6/10/75); Ms. Magazine (7/75); Sylvia Porter's column, appearing in over 400 newspapers; AP wire story (3/24/75); Washington Post (4/15/75). The entire report was reproduced in Advertising Age.
11. To bring attention to the newly-elected members of NARB and to publicize the availability of the self-regulation process regionally, news releases are issued announcing the appointment of each new member. These were distributed by the new members' organizations and a considerable number of newspapers and regional publications reported on these announcements.
12. James Parton appeared as spokesman on a Bicentennial Minute program on May 24, 1976 over the full CBS Television Network. Mr. Parton was identified as Chairman of the NARB.
13. "News and Views," a publication of the Council of Better Business Bureaus with a circulation of 5,000, covers NARB news. It is mailed to the press, chambers of commerce and others across the country.
14. "If You Have a Complaint about Advertising," (Exhibit N). Some 250,000 copies of this leaflet have been distributed through Better Business Bureaus, and the NAD/NARB.

The most recent recognition of the activities of the NAD/NARB appeared in the Congressional Record of July 1, 1976. The NAD's

having reviewed its 1,000th challenge to national advertising in March was the subject of Congressman Bob Wilson's (Calif.) address commending advertising self-regulation efforts. (Exhibit QQ)

NARB's and NAD's budgets for 1975 and 1976. Please include a breakdown of how much each organization contributes and where the resources are spent.

The NAD/NARB mechanism is supported by the Council of Better Business Bureaus. Total actual 1975 expenses for the NAD/NARB were $552,573; the NAD expenditure amounted to $310,189 and the NARB $242,384. Estimated total 1976 expenditures are budgeted at $524,152; with the breakdown at $348,819 for NAD and $175,333 for NARB.

The major expenses of the NAD include staff salaries, monitoring advertising, consultant fees and travel and administrative charges.

The largest expense items of the NARB are staff salaries; panel meeting expenses; printing and distribution of reports and administrative charges.

The NARB expects to realize economies in 1976 due to a reduction in rent by moving into office space made available by the CBBB. The NAD anticipates higher expenses due to an expansion of staff.

* * *

The number of staff employed by NAD to respond to and to decide complaints.

As of this date, NAD has seven (7) staff members responding to and deciding complaints.

The length of time it takes for a complaint to be resolved at the NAD level and NARB level, including the time it takes to decide whether an appeal will be granted.

The estimated average time to resolve a complaint at the NAD is three to four months.

The average time from the acceptance of appeal by the NARB to the convening of the panel is about three to four months. This may vary depending upon the difficulty of assembling the panel, the complexity of the matter under review, and the amount of material submitted to the panel for consideration and study.

An appeal received by the NARB from an advertiser who questions an NAD decision is automatically and immediately accepted by the NARB. Likewise, an appeal by the NAD is automatically and immediately accepted. An appeal by an outside complainant is granted at the discretion of the Chairman, and his decision is made known generally within a two or three week period.

Biographies of current NARB public members are included as Exhibit O.

Copies of NAD monthly press releases issued for the years 1975 and 1976 are included in Exhibits P through HH.

Copies of NARB panel reports for the years 1975 and 1976 are included in Exhibits HH through PP.

Exhibits A, B, C, and O referred to in the NARB submission follow. All other exhibits referred to in the NARB response are available for review in the subcommittee offices.

Exhibit A

BY-LAWS OF

NATIONAL ADVERTISING REVIEW COUNCIL, INC.

A DELAWARE CORPORATION

(As Amended to April 7, 1975)

ARTICLE I

Section 1. The name of the corporation shall be "National Advertising Review Council, Inc."

Section 2. The purpose of the corporation shall be to create and maintain, as part of the corporation, the National Advertising Review Board (NARB), formed to sustain the highest standards of truth and accuracy in national advertising through self-regulation.

Section 3. The principal office of the corporation shall be in the City of New York, State of New York.

Section 4. The corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine and the business of the corporation may require.

Section 5. The members of the corporation initially will be composed of the following four constituent organizations: The American Advertising Federation, Inc., The American Association of Advertising Agencies, Inc., The Association of National Advertisers, Inc. and The Council of Better Business Bureaus, Inc.

ARTICLE II

Board of Directors

Section 1.

The Board of Directors shall consist of eight members who shall be the Chairman and President of The American Advertising Federation, the Chairman and President of The American Association of Advertising Agencies, the Chairman and President of The Association of National Advertisers and the Chairman and President of the Council of Better Business Bureaus. Any Director of one of the aforesaid organizations

may, by a written notice signed by the Chairman of such organization, be designated to serve as a Director of the corporation in lieu of the Chairman of such organization. Such designation may be revoked at any time by written notice signed by the Chairman of such organization. Each Director of the corporation shall be such a Director by reason of his office in one of the aforesaid organizations and shall continue to be a Director during his tenure in the aforesaid office. Any person ceasing to hold an office in one of the member organizations shall cease to be a Director.

Section 2.

The number of members and Directors of the corporation may be changed only by unanimous vote of the Board of Directors.

Section 3.

The business of the corporation shall be managed by the Board of Directors which may exercise all such powers of the corporation and do such lawful acts and things except as may be otherwise provided by statute, by the Articles of Incorporation or by these By-laws. The authority of the Board of Directors shall not, however, extend to any particular substantive advertising matter which is being, has been, or may be considered by the National Advertising Review Board in carrying out its functions.

Section 4.

The Board of Directors shall propose and submit to the NARB its recommendations concerning advertising standards. The Board shall also provide a Statement of Organization and Procedures of the National Advertising Review Board. The Board of Directors shall conduct continuous oversight and review of said advertising standards and Statement of Organization and Procedures of the National Advertising Review Board and may from time to time recommend such alterations, amendments, or repeals as the Board of Directors believes the public interest requires.

Section 5.

The annual meeting of the members of the National Advertising Review Council, Inc., shall be held in September or October of each year beginning in September or October, 1972 on such date and such place as may be set by the Board of Directors.

Section 6.

The Board of Directors of the corporation may hold meetings, both regular and special, either within or without the State of Delaware. The Board of

Directors may, from time to time, determine the time and place at which its regular meetings will be held and, following such determination, notice of such meetings need not be given. If no such determination is made, however, ten days' notice of all regular meetings shall be given.

Section 7.

Special meetings of the Board of Directors may be called by the President on three days' notice to each Director, either personally or by mail or by telegram; special meetings shall be called by the President in like manner and on like notice at the written request of three Directors.

Section 8.

At the annual and all other meetings of the Board, a majority of the Directors then in office shall constitute a quorum for the transaction of business, provided however, that at least one Director representative of each member organization is present and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the Articles of Incorporation. If a quorum shall not be present at any meeting of the Board of Directors, the Directors present thereat may adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum shall be present.

Section 9.

The President of the National Advertising Review Council on or before June 1 of each year shall appoint a nominating committee consisting of one member from each of the four constituent organizations and the Chairman of the National Advertising Review Board. The Committee shall develop a slate of candidates for election to the National Advertising Review Board and submit such slate to the secretary of the National Advertising Review Council not later than 15 days prior to the Annual Meeting. The secretary shall distribute the slate of candidates to the members of the National Advertising Review Council with the notice and the advance agenda for the Annual Meeting. The Board of Directors shall elect the members of the National Advertising Review Board at the Annual Meeting.

The Board of Directors may elect replacement members of the National Advertising Review Board to fill the unexpired terms of those members of the National Advertising Review Board who vacate their office prior to the completion of their designated terms. Such election may take place at any Board of Directors meeting providing that notice of the election is submitted to the Board at least 15 days prior to the meeting. Any member of the Board of Directors may nominate a replacement National Advertising Review Board member and election shall be by majority vote.

Section 10.

The Directors shall not receive any compensation for their services as Directors.

ARTICLE III

Notices

Section 1.

Whenever, under the provisions of the statute or of the Articles of Incorporation or of these By-laws notice is required to be given to any Director, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such Director, at his address as it appears on the records of the corporation, postage thereon prepaid and such notice shall be deemed to be given at the time when the same is deposited in the United States Mail. Notice to Directors may also be given by telegram.

Section 2.

Whenever, any notice is required to be given under the provisions of the statute or of the Articles of Incorporation or of these By-laws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE IV

Officers

Section 1.

The officers of the corporation shall be chosen by the Board of Directors and shall be a President, Secretary and a Treasurer. Any number of offices may be held by the same person, unless the Articles of Incorporation or these By-laws otherwise provide.

Section 2.

The Board of Directors may appoint such other officers and agents as it shall deem necessary who shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

Section 3.

The salaries of all officers and agents of the corporation shall be fixed by the Board of Directors.

Section 4.

The officers of the corporation shall hold office for a term of one year and until their successors are chosen and qualified. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of the majority of the Board of Directors. Any vacancy occurring in any office of the corporation shall be filled by the Board of Directors.

Section 5.

The President shall be a member of the Board of Directors and shall preside at meetings of that Board. He shall be the chief executive officer of the corporation, shall have general and active management of the business of the corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. He shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution hereof shall be expressly delegated by the Board of Directors to some other officer or agent of the corporation.

Section 6.

The Secretary shall attend all meetings of the Board of Directors and record all the proceedings of such meetings in a book to be kept for that purpose. He shall give, or cause to be given, notice of all meetings of the Board of Directors. The Secretary shall perform such other duties as may be prescribed by the Board of Directors or President. He shall have custody of the corporate seal of the corporation and he shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his signature. The Board of Directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his signature.

Section 7.

The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all monies and other valuable effects in the name and in the credit of the corporation in such depositories as may be designated by the Board of Directors. He shall

disburse the funds of the corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors at regular meetings or when the Board of Directors so requires an account of all his transactions as Treasurer and of the financial condition of the corporation. If required by the Board of Directors, he shall give the corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the corporation, in case of his death or resignation, retirement, or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the corporation.

ARTICLE V

Indemnification

Section 1

The corporation shall indemnify to the full extent authorized or permitted by the General Corporation Law of the State of Delaware (and in the manner therein provided) any person made, or threatened to be made, a party to an action, suit, or proceeding (whether civil, criminal, administrative, or investigative) by reason of the fact that he, his testator or intestate is, or was, a Director, officer, or employee of the corporation or serves or served any other enterprise at the request of the corporation.

ARTICLE VI

General Provisions

Section 1.

All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may, from time to time, designate.

Section 2.

The fiscal year of the corporation begins on the first day of January and ends on the 31st day of December in each year.

Section 3.

The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization and the words "Corporate Seal, State of Delaware." The seal may be used by causing it, or facsimile thereof, to be impressed or affixed or reproduced or otherwise.

Section 4.

A resolution proposing alteration, amendment or repeal of these By-laws or the adoption of new By-laws may be adopted by the Board of Directors at any regular meeting of the Board of Directors or at any special meeting of the Board of Directors if notice of such proposal is contained in the notice of such special meeting.

Section 5.

A proposal and recommendation for the amendment, alteration or repeal of any of the provisions of advertising standards adopted by NARB or of the Statement of Organization and Procedures of the National Advertising Review Board may be adopted by the Board of Directors at any regular or special meeting if notice thereof has been given at least 15 days in advance of such regular or special meeting.

Exhibit 2

STATEMENT

OF

ORGANIZATION AND PROCEDURES

OF THE

NATIONAL ADVERTISING REVIEW BOARD

(As Amended to April 7, 1975)

ORGANIZATION

1.1 Purpose

The National Advertising Review Board (NARB) is a body of industry and public persons as herein defined sponsored by the National Advertising Review Council, Inc. (NARC) for the purpose of sustaining high standards of truth and accuracy in national advertising.

1.2 Structure of the NARB

The National Advertising Review Board shall be composed of a Chairman, fifty members, and as many alternate members as the Chairman may specify, all elected by the NARC Board of Directors. Thirty members of the NARB shall be persons whose principal affiliation is with an advertiser; ten members shall be persons whose principal affiliation is with an advertising agency; and ten members shall be public members. If any member's principal affiliation changes, his eligibility to serve as a member will be reconsidered by NARC. The status and privileges of alternate members shall be the same as the status and privileges of regular members except that alternate members are not qualified to vote upon any matter which comes before the full NARB. No member of the NARC Board of Directors, while so serving, shall be eligible to be a member or alternate member of the NARB.

1.3 Terms of Office

The term of office for NARB members shall be two years except that the terms of one-half of the members of the original NARB (fifteen advertiser members, five advertising agency members and five public members) shall be for one year. A member is eligible for reappointment for one additional term. An eligible member may be removed from office by a two-thirds majority of the total membership of the NARB and by no other means. A member elected to fill a vacancy on the National Advertising Review Board between annual meetings shall serve for the remainder of the vacated term and be eligible for reappointment to one additional two year term.

1.4 Compensation

Advertiser and advertising agency members and alternates of the NARB shall receive no salary, but nonindustry members and alternates shall receive per diem compensation in such amount as shall be determined by the NARC Board of Directors. In addition, all NARB members shall be entitled to reimbursement for such out-of-pocket expenses as they shall incur in connection with the performance of their duties on the NARB.

1.5 The NARB Chairman

There shall be a Chairman of the NARB who shall be elected by the NARC Board of Directors for a term of one year and who shall be eligible for re-election. The Chairman shall receive such compensation for his services as shall be determined by the NARC Board of Directors.

1.6 Duties of the Chairman

The NARB Chairman shall be the overall coordinator of the activities of NARB and shall be its public spokesman. He shall appoint a panel composed of five NARB members to hear and decide each case which is brought before the NARB. In the event the Chairman is unable to appoint a qualified panel from among the regular membership of the NARB, he shall appoint the necessary number of qualified alternate members to fill the panel. The Chairman shall also act as Chairman of the NARB's Steering Committee and shall perform such other duties as may be directed by the NARB.

1.7 The NARB Executive Director

There shall be an Executive Director of the NARB who shall be appointed by the Chairman to serve as the Staff Executive.

1.8 Duties of the Executive Director

The Executive Director shall assist the Chairman in carrying out his duties. He shall also be responsible for managing the NARB office, maintaining liaison with NAD and other organizations and such other duties or projects as assigned by the Chairman.

1.9 The Steering Committee

At its first meeting and at each annual meeting thereafter, the NARB shall elect from among its members a Steering Committee composed of four members affiliated with advertisers, two members affiliated with an advertising agency and two members who are public members, plus the Chairman (ex-officio). The Steering Committee shall act as liaison and spokesman for the NARB in its contacts with the NARC Board of Directors.

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1.9 (Continued)

It shall survey and review the operations of the NARB (except that it shall have no authority with regard to individual cases which are being, have been, or may be considered by the NARB), and shall make recommendations thereon to the full NARB or to the NARC Board of Directors. It shall oversee the preparation and issuance of reports on NARB operations, or any other matters properly within the NARB's purview for submission to the members of the NARB.

1.10 Annual and Interim Reports

By March 31 of each year, the NARB Steering Committee shall cause to be prepared a report of the proceedings of the NARB during the preceding calendar year and shall submit such report to the NARB. The Steering Committee may direct the preparation and publication of such interim reports as the Committee deems necessary. Reports may be in such detail as the Steering Committee shall consider reasonably necessary to provide information to the public concerning the activities of the NARB, but under no circumstances shall any report disclose information on any proceeding currently being considered by the NARB. Reports may be published by the Chairman following their adoption, by majority, through a mail ballot by the NARB.

1.11 Meetings

As soon as practical after formation of the original NARB, the Chairman shall call a meeting of the full NARB. Thereafter, there shall be at least one annual meeting and such special meetings as the Steering Committee, in consultation with the Chairman, deems necessary. NARB members shall be given at least fifteen days' notice of annual and special meetings. At the original, and at each subsequent annual meeting, the NARB shall conduct such organizational and other business as may come before it.

1.12 Standards

The NARB shall promulgate, adopt, amend and publish, with the advice and counsel of the NARC Board of Directors, advertising standards to aid in its evaluation of the truth and accuracy of national advertising.

1.13 Autonomy of NARB

In the review and disposition of all cases coming before it, the NARB shall be completely autonomous and independent of any and all other persons and organizations. It shall conduct its business and issue its reports and opinions with full regard for the public interest. The individual members of the NARB shall be answerable to no one for the decisions reached and actions taken by the NARB or any panel thereof.

1.14 Definitions

The term "national advertising" shall mean advertising disseminated in all of the United States or in a substantial section thereof. The term "advertiser" shall mean any seller who uses "national advertising" in the sale of goods or services or for other purposes, and the term "advertising agency" shall mean any organization engaged in the creation and placement of "national advertising." The term "public or nonindustry member" shall mean any person who has a reputation for achievements in the public interest.

PROCEDURES

2.1 Function of the NAD

The National Advertising Division of the Council of Better Business Bureaus (hereinafter NAD) shall be responsible for receiving or initiating, evaluating, investigating, analyzing, and holding initial negotiations with an advertiser on complaints or questions from any source involving the truth or accuracy of national advertising.

The NAD shall make public a report on a monthly basis concerning all matters concluded during the month. These reports shall identify each advertiser, product, and subject matter reviewed, the NAD decision and its rationale or the fact the case is on appeal to the NARB. If the advertiser desires, a concise statement of his views shall be included. The complainant in each case shall be supplied with a copy of the report.

2.2 Requests for Review by the Advertiser or NAD

When an advertiser does not agree with a NAD decision, the NAD shall inform it that it has ten days to request an appeal of the NARB. Similarly, the NAD at that time may request review by the NARB. In such cases, the NAD or the advertiser shall prepare a Request for Review and mail one copy to the other party and a copy to the Executive Director of the NARB. The request for Review shall contain: (1) a statement of facts supported by attached documentary and physical exhibits including any significant exculpatory material previously supplied by either party, and (2) an analysis of the facts giving reasons, conclusions and recommendations. The other party upon whom such Request for Review is served may submit to the Executive Director of the NARB within ten days any requests as to procedure or dates for meetings or hearings as well as any documents he wishes the Executive Director to submit to the panel.

2.3 Requests for Review by Complainant

Any complainant may request review of a prior NAD decision by filing a Request for Review with the Executive Director of NARB for transmittal to the Chairman of NARB within ten days after notification of the NAD decision. Such a request need not follow any particular form but should contain sufficient information to support a decision as to whether the matter is appropriate for NARB consideration.

If the Chairman decides that the complainant's request for review will be granted, he shall disseminate the Request for Review to the other parties to the case in conformity with Section 2.2 of these Procedures.

2.4 Appointment of Review Panel

The Chairman, upon notification of a Request for Review from NAD or the advertiser by the Executive Director, or upon acceptance of a Request for Review by a complainant shall appoint a panel of qualified NARB members and designate the panel member who will serve as panel chairman.

2.5 Eligibility of Panelists

An "advertiser" NARB member will be considered as not qualified if his employing company manufactures or sells a product or service which directly competes with a product or service sold by the advertiser involved in the proceeding. An "agency" NARB member will be considered as not qualified if his employing advertising agency represents a client which sells a product or service which directly competes with the product or service involved in the proceeding. A NARB member, including a non-industry member, shall consider himself as disqualified if for any reason arising out of past or present employment or affiliation he believes that he cannot reach a completely unbiased decision. If the Chairman is unable to appoint a qualified panel, he shall complete the panel by appointing an alternate NARB member.

2.6 Composition of Review Panel

Each panel shall be composed of one "public" member, one "advertising agency" member, and three "advertiser" members. Alternates may be used where required. It will meet at the call of its Chairman, who will preside over its meetings, hearings and deliberations. A majority of the panel will constitute a quorum, but the concurring vote of three members is required to decide any substantive question before the panel.

2.7 Procedures of Review Panel

As soon as the panel has been selected, the Executive Director will inform all parties as to the identity of the panel members and will mail copies of the Request for Review and, upon receipt, any response or request submitted by the other party or parties to each of the panel members. Within ten days after receipt of the Request for Review, the panel members shall confer and decide and fix the procedure and time schedule which they will follow in resolving the matter. In reaching a decision as to procedure, the

2.7 (Continued)

panel should aim for informality and speed. If any party has requested an opportunity to appear and offer testimony or argument, he shall be accommodated and shall submit to cross-questioning. All evidentiary material and oral testimony introduced in any matter before the NARB shall be available for inspection by the NAD and the advertiser who is a party to such matter. All parties to a matter before the NARB shall be given ten days' notice of any hearing or meeting in which evidence or argument will be received. Such notice shall set out the date, place and procedure of the meeting or hearing.

2.8 Reporting of Panel Decisions

When the panel has reached a decision, it shall notify the Chairman of its decision and the rationale behind it in writing.

The Chairman, upon receipt of a panel's decision will transmit such decision and rationale to the advertiser who is party to the case, providing him with ten days to respond indicating his acceptance, rejection or any comments he may wish to make on the panel's decision. Thereafter, the Chairman will notify other parties to the case of the panel's decision, incorporating therein the response from the advertiser, and make such report public.

In the event that a panel has determined that an advertisement is misleading or deceptive and the advertiser either fails to indicate that the specific advertisement(s) will be withdrawn or modified in accordance with the panel's findings within a time period appropriate to the circumstances of the case, the Chairman will issue a Notice of Intent to the advertiser that the full record on the case will be referred to the appropriate government agency. If the advertiser fails to respond or does not agree to comply with the decision of the panel within ten days of the issuance of the Notice of Intent, the Chairman shall so inform the appropriate government agency by letter, shall offer the complete NARB file upon request to such government agency, and shall publicly release his letter.

2.9 Closing a Case

When a panel has turned over a decision to the Chairman, and when the Chairman has executed the procedures in Section 2.8 of these "Procedures," the case will be closed and no further materially similar complaints on the advertising in question will be accepted by NAD or NARB.

2.10 Confidentiality of Panel Procedures

All panels, through the Executive Director, shall maintain a complete record of their proceedings, but a verbatim record is not required except to preserve the oral testimony of a witness. All deliberations, meetings, proceedings and writings of a panel other than the written statement of its conclusions and the rationales behind them shall be confidential, with the sole exception of those which the Chairman determines must be made available to an agency of the government.

GENERAL PROVISIONS

3.1 Amendment of Standards

Any proposals to amend the advertising standards which may be adopted by NARB may be acted on a majority vote of the entire membership of the NARB at any special or regular meeting or by written ballot distributed through the United States mails, provided that the text of the proposed amendment shall have been given to the members thirty days in advance of the voting date and provided further that the Board of Directors of the National Advertising Review Council, Inc., shall have been given notice of such proposed amendment at least sixty days in advance of the voting date to afford said Board of Directors the opportunity to render advice and counsel to the NARB members on the proposal and to make such other proposals and recommendations as it deems necessary and appropriate.

The Use of Consultive Panels for Complaints Other Than Truth and Accuracy

Recognizing that, from time to time, NARB will be asked to consider content of advertising messages in controversy for reasons other than truth and accuracy, the following procedures shall be employed to deal with such complaints:

4.1 Acknowledgment

If the complaint is directed to NARB, that organization will acknowledge its receipt and forward it to NAD. If the complaint has been directed to NAD, it will acknowledge its receipt. The acknowledgment will include a brief explanation informing the complainant that all complaints are first processed by NAD which will determine whether the question is a matter of truth and accuracy or a matter of social responsibility. In either case, an explanation of the procedures to handle such matters will be provided to the complainant.

4.2 Nature of Complaints

Complaints other than truth and accuracy, to be considered, should be broadly applicable or involve techniques or concepts in frequent use. Complaints addressed to very limited kinds of advertising or involving idiosyncratic concepts shall not be processed.

4.3 Classification

When such complaints have been received from NAD, the Chairman and his staff shall quantify and classify them. The Chairman may consult with the NARB Steering Committee for assistance and guidance in this process.

4.4 Consultive Panels

The Chairman may consult with the NARB Steering Committee periodically when the volume and nature of such complaints justifies the convening of a consultive panel of five NARB members which will be comprised in the same ratio as the NARB.

4.5 Panel Procedures

Consultive panels shall review all matters referred to them by the Chairman and may consult other sources to develop data to assist in the evaluation of the broad questions under consideration. No formal inquiry should be directed to advertisers nor should the individual complainant be contacted.

4.6 Confidentiality

All investigations, consultations and inquiries shall be conducted in complete confidence.

4.7 Position Paper

If a panel concludes that the preparation of a position paper is desirable, the writing should be done by the panel and the conclusions should represent the thinking of the entire panel.

4.8 Voting on Publication

Such papers will be submitted to the Chairman for distribution to the full NARB for a vote. The vote to publish or not to publish may be filed by a member at any time during a three week period following the distribution by the Chairman to the full Board.

4.9 Publication

If a majority of the Board vote for publication, the paper will be published promptly with appropriate publicity.

Exhibit C

National Advertising Review Board
Established for the self regulation of national advertising ■ Sponsored by The National Advertising Review Council, Inc.
850 Third Avenue, New York, N. Y. 10022, (212) 832-1320

Ralph H. Alexander, Jr.
Executive Director

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* Member of Steering Committee

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EXHIBIT O

ANNETTE K. BAXTER

Personal

Date and place of birth: November 12, 1926, New York, N. Y.
Marital status: married to Dr. James E. Baxter, practising psychiatrist; attending staff, New York Hospital; faculty, Departments of Psychiatry and Surgery, Cornell University Medical College.
Children: one son, one daughter.
Residence: 435 East 70th Street, New York, N. Y. 10021.

Education

A. B., summa cum laude, Barnard College, 1947
M. A., Smith College, 1948
M. A., Radcliffe College, 1949
Ph.D., Brown University, 1958

Honors and Fellowships

New York State Regents Scholarship
Phi Beta Kappa, Barnard College
Jenny A. Gerard Medal in American History, Barnard College
Trustee Fellowship, Smith College
Grace Hill Fellowship, Radcliffe College
Carnegie Teaching Fellowship, Brown University

Present position

Adolph S. and Effie Ochs Professor of History, Barnard College
~~Professor of History, Barnard College~~
Chairman, Department of History, and Chairman, American Studies Program, Barnard College

Previous positions

Assistant to Executive Secretary, Practising Law Institute, summer, 1945
Editorial assistant, Random House, 1946-47 (part-time) and summer, 1947
Assistant Curator, Collection of Regional History, Cornell University, 1949-51
Carnegie Teaching Fellow, American Civilization Program, Brown University, 1951-52
Lecturer and later Associate, Department of History, Barnard College, 1952-66; Assistant Professor, 1966-68; Associate Professor, 1968-71; Professor, 1971-

Committee service

(Committee service since 1969 only -- service on numerous committees between 1952 and 1969 not listed here)

Council on Development
Sub-committee on Missions and Goals of Council on Development
Barnard-Columbia Relations Committee
Committee on Instruction
Chairman, Search Committee for Dean of Faculty
Education Program Committee
Committee on Faculty Travel and Research
Committee on the City
Nominating Committee, Board of Directors of Alumnae Association
Faculty-Student Relations Committee of History Department
Consultant to Barnard Archives and to Barnard Library-Columbia Special Collections
Joint Committee on Development of Collection of Women's Literature
Faculty representative, Women's Conference, Spring, 1970
McIntosh Center Dedication Committee
University Senate Committee on Earl Hall
Barnard representative to Columbia University Senate
Senate Faculty Affairs Committee
Executive Committee, Women's Center
Committee on Appointments, Tenure and Promotion
Committee on Faculty Retirement Policy
Faculty representative to Board of Trustees
rustee Education Committee
Chairman, Women's Studies Faculty
Women's Center Charter Committee
Columbia-Barnard Committee of American Historians
Columbia Doctoral Defense Committees in Departments of History, Art History and English

Professional memberships

American Association of University Professors
American Historical Association
American Studies Association
Organization of American Historians

Professional activities

Secretary, American Studies Bibliography Project, American Studies Association, 1953-56
Executive Secretary, University Seminar on American Civilization, Columbia University, 1953-59; member, 1959- ; co-chairman, 1967-69
Class Adviser to Class of 1962, Office of the Dean of Studies, Barnard College, 1958-61

Writer-consultant, Barnard College 75th Anniversary Exhibit, "Women in Politics: Their Role and Responsibility," 1963-64
Trustee, The Conference in Theology for College and University Faculty, 1964
Editorial Board, Ararat, 1964-69
Program chairman, "Poverty in the U. S.," conference jointly sponsored by Barnard College and the Metropolitan New York chapter of the American Studies Association, spring, 1965
Vice-President, 1966-67 and President, 1967-68, Barnard College chapter of Phi Beta Kappa
Special adviser to freshmen, 1966-67 and 1967-68
Acting Chairman, American Studies Program, Barnard College, 1960-61; 1963-64; Chairman, 1967-
Adviser, Thursday Noon Meetings, 1965-67
Chairman, Faculty Appeal Board of Honor Board, 1959-65
Committee member, Barnard College Alumnae Council, 1964-67
Delegate, Danforth Foundation Workshop on Liberal Arts Education, Colorado Springs, Colorado, summer, 1967
Program chairman, meeting on "History of Women in America," sponsored by Metropolitan New York chapter of American Studies Association, Fall, 1967
Member, Executive Council, Metropolitan New York chapter, American Studies Association
Barnard representative to Conference on Violence in America, Philadelphia, Pennsylvania, 1968
Barnard representative to Seven College Conference, Vassar College, Poughkeepsie, New York, 1969
Barnard representative to Radcliffe College Conference on Women, New York, New York, 1968
Barnard representative to AAUW Conference on Women, New York, New York, 1969
Trustee, Kirkland College, Clinton, New York, 1969
Chairman, Curriculum Committee of the Trustees, Kirkland College, 1969-
Member, Personnel Committee of the Trustees, Kirkland College, 1969
Member, Advisory Board, Source Library of the Women's Movement, Source Book Press, 1970
Member, Committee on Education for Community Leadership, National Council of Women, 1971
Guest lecturer, University of Toronto Interdisciplinary Series, spring, 1971
Guest speaker, Mount Holyoke College Club of Northern New Jersey, 1971
Panelist, "The Shape of Things to Come in Education," Kirkland College Associates Weekend, Clinton, New York, October, 1971
Member, Editorial Board, Women's Studies: An Interdisciplinary Journal, 1971
Panelist, "Sexism in the Schools," Lenox School, New York City, November, 1971
Panelist, American Historical Association Workshop on Women's Studies, Boston, December, 1971
Keynote speaker, "What to do with a women's college in a sexist society," Kirkland College Conference on Women, February, 1972
Panelist, National Council of Women Conference on Women's Studies, February, 1972
Member, Kirkland College Trustee Development Committee, 1972
National American Studies Faculty Consultant to United States Information Agency for evaluation of Contemporary America Seminar sponsored by U.S.I.A. for returning Foreign Service Officers, Washington, D. C., June, 1972

Keynote speaker, Pelham, New York Junior League Series on "Women," October, 1972
Panelist, "Women's Studies: Politics and Strategies," annual convention of Modern Language Association, December, 1972
Moderator, panel on Sexual Stereotypes, conference on "Historical Perspectives on Women," sponsored by Berkshire Conference of Women Historians, Douglass College, Rutgers University, March, 1973
Member, Committee on Bibliographical Needs of the American Studies Association, 1973
Invited participant, National American Studies Faculty Workshop on Graduate Program in American Studies, Stetson University, Deland, Florida, March, 1973
Panelist, "Going to College in an Urban Setting," sponsored by Barnard College Club of Washington, D. C., March, 1973
Lecturer, Columbia University graduate course on "The Literature of American History," spring and fall, 1973
Member, American Studies Association Prize Committee on annual selection of best article appearing in American Quarterly, 1973-74; chairman, 1974-75
Guest speaker, Thomas More Honors Program, Fordham University, "The Why and How of Women's History," May, 1973
Guest speaker, Hunter College Committee on Women's Studies, May, 1973
Workshop leader, "The Family," National Council of Women Conference, October 11,1973
Panelist, "Program Structures," Women's Studies in Postsecondary Education Conference, sponsored by State Education Department, Tarrytown, New York, October 24-26, 1973
Lecturer, "Looking at Women's History," The Cosmopolitan Club, January, 1974
Consultant, Faculty Research Fellowships, Division of Education and Research, The Ford Foundation, 1974
Panelist and invited participant, Newsweek Corporate Executive Conference, Orlando, Florida, March 24-26, 1974
Consultant, Executive Board, National Council of Women, 1973-74
Moderator, Barnard College Conference, "The Scholar and the Feminist," May, 1974

Editorial consultancies

Louisiana State University Press
University of Illinois Press
Pennsylvania State University Press
Harvard University Press
Plenum Publishing Company
Reader's Digest Books

Publications

Books

Henry Miller, Expatriate, University of Pittsburgh Press, 1961

Introduction to The Universal Self-Instructor, Winter House, November, 1970

Co-editor, American Women: Images and Realities, Arno Press, September, 1972, 44 volumes

Co-editor, Women in America: From Colonial Times to the 20th Century, Arno Press, August, 1974, 59 volumes

Articles

"Archetypes of American Innocence: Lydia Blood and Daisy Miller," American Quarterly, Spring, 1953, pp. 31-38. Reprinted in The American Experience, Houghton, Mifflin, 1968, edited by Hennig Cohen

"Independence versus Isolation: Hawthorne and James on the Problem of the Artist," Nineteenth Century Fiction, December, 1955, pp. 225-231

"Europe's Projection of America," Barnard Alumnae Magazine, January, 1957, p. 7

'Elvis: The Man in the Blue Suede Shoes," with James E. Baxter, Harper's, January, 1958, pp. 45-47. Reprinted in Cross Currents, A Collection of Essays from Contemporary Magazines, edited by Harold P. Simonson, Harper and Bros., 1959 and in A Reading Approach to College Writing, edited by Martha H. Cox and Dorothy N. Foote, Howard Chandler, 1959. Translated and published in Japan.

"Is There a Barnard Type?", Barnard Bulletin Special Alumnae Issue, April 2, 1959

"Freedom: Fun and Games," with James E. Baxter, Columbia University Forum, Summer, 1961, pp. 44-47

"Caste and Class: Howells' Boston and Wharton's New York," The Midwest Quarterly, Summer, 1963, pp. 353-361

"Henry Miller and Henry James: An Imaginary Correspondence on the Morality of the Artist," Ararat, Autumn, 1963, pp. 29-35. Reprinted in Ararat Anthology, New York, 1969

"Looking at the Literary Twenties," Ararat, Winter, 1964, pp. 23-27

"The College's Leading Women and Their Roles: An Interpretation," Barnard Alumnae Magazine, Spring, 1964, pp. 5-7, and 36. Reprinted in Congressional Record Appendix, May 19, 1964, pp. a2649 and a2650

"Women in Politics: Their Role and Responsibility," a text of the Barnard College 75th Anniversary Exhibit, reprinted in Barnard Alumnae Magazine, Fall, 1964

"Henry Miller," in Encyclopaedia Britannica, 1967

"Searching for the Lost Sex," Ararat, Winter, 1969, pp. 22-25. Reprinted in Barnard Alumnae Magazine, Summer, 1969

"The Historical Roots are Deep," Americana Annual, 1971, the yearbook of the Encyclopedia Americana

"Isadora Duncan," in Notable American Women, Belknap Press of Harvard University Press, 1971

"Sarah Porter," in Notable American Women, Belknap Press of Harvard University Press, 1971

"Emily Putnam," in Notable American Women, Belknap Press of Harvard University Press, 1971

"Ella Weed," in Notable American Women, Belknap Press of Harvard University Press, 1971

"Is Gloria Steinem Dead?", Newsweek, September 2, 1974

Reviews

"Cheever Achieves Consistency," a review of The Wapshot Chronicle by John Cheever, Barnard Bulletin Special Faculty Issue, March 27, 1958

A review of Robert McAlmon: Expatriate Publisher and Writer by Robert E. Knoll, American Quarterly, Fall, 1958, p. 381

A review of Edith Wharton: Convention and Morality in the Work of a Novelist by Marilyn Jones Lyde, Journal of the Central Mississippi Valley American Studies Association, Spring, 1961, p. 83

A review of The Beer Can by the Highway by John A. Kouwenhoven, Barnard Alumnae Magazine, Winter, 1962, pp. 12-13

A review of Letters to a Friend by Rose Macaulay, The Parish Messenger, May, 1962, pp. 6-7

"Random Brushstrokes of a Radical Optimist," a double review of Henry Miller: Watercolors, Drawings and his essay "The Angel is my Watermark," and Stand Still Like the Hummingbird by Henry Miller, The New York Times Book Review, July 8, 1962, pp. 6-7

"Gorky Reconsidered," a review of Arshile Gorky by Harold Rosenberg, Ararat, Summer, 1962, pp. 51-52

A review of Notes from a Dark Street by Edward Adler, Critique, Fall, 1962, pp. 91-93

"Insistent Seriousness," a review of The Bewildered Age: A Report on Morals and Values in Today's Society by Virginia Potter Held, Barnard Alumnae Magazine, Fall, 1962, p. 17

"A Magic Lens," a review of In Search of Greatness by Yousuf Karsh, Ararat, Spring, 1963, pp. 54-55

A review of Men of Principle by Edward Loomis, Critique, Fall, 1963, pp. 132-134

A review of A Backward Glance by Edith Wharton, The New York Times Book Review, August 9, 1964, p. 4

A review of The Man Bilbo by A. Wigfall Green, Political Science Quarterly, September, 1964, p. 477

A review, with James E. Baxter, of Honest to God by John Robinson, The Parish Messenger, June, 1964, pp. 6-7, and 15

A review of The John Birch Society: Anatomy of a Protest by J. Allen Broyles, Political Science Quarterly, June, 1965, pp. 338-339

A review-article, "An Organic Concept of Life," Ararat, Summer, 1965, pp. 61-62

A review of Vernon Lee: Violet Paget, 1856-1935 by Peter Gunn, Victorian Studies June, 1965, pp. 366-367

A review of The Two Lives of Edith Wharton: The Woman and Her Work by Grace Kellogg, The New York Times Book Review, November 28, 1965, p. 52

A review of A Mother in History by Jean Stafford, The New York Times Book Review, March 13, 1966, pp. 16-18

A review of The Mind and Art of Henry Miller by William A. Gordon, The New York Times Book Review, October 15, 1967, pp. 46-47

A review of The Fighting Pankhursts by David Mitchell, The New York Times Book Review, January 7, 1968, p. 8

A review of American Poets: From the Puritans to the Present by Hyatt H. Waggoner, Brown Alumni Monthly, July, 1968

A review of Black Power: The Politics of Liberation in America by Stokely Carmichael and Charles V. Hamilton, Political Science Quarterly, December, 1968, pp. 653-655

A review of Samuel Griswold Goodrich, Creator of Peter Parley: A Study of His Life and Work by Daniel Roselle, American Historical Review, October, 1969, pp. 211-212

A review of The Child and the Republic: The Dawn of Modern American Child Nurture by Bernard Wishy, The New York Historical Society Quarterly, January, 1971, pp. 95-96

A double review of A Formula of His Own: Henry Adams' Literary Experiment by John J. Conder and Symbol and Idea in Henry Adams by Melvin Lyon, American Historical Review, April, 1971, pp. 564-565

A review of The Life of Ezra Pound by Noel Stock, American Historical Review, April, 1972, pp. 594-595

A double review of The Woman Citizen: Social Feminism in the 1920's by J. Stanley Lemons and Women, Resistance and Revolution by Sheila Rowbotham, Political Science Quarterly, December, 1973

A review of Mary Todd Lincoln: Her Life and Letters edited by Justin G. Turner and Linda Levitt Turner, The American Historical Review, June, 1974

An essay-review of Mary Wollstonecraft by Eleanor Flexner, Women's Studies: An Interdisciplinary Journal, scheduled for Fall, 1974

Completed and scheduled for publication

Books

"Breaking the Male Barrier," chapter in Men, Women and Issues in American History, Dorsey Press

Articles

"Mary Emma Woolley," Dictionary of American Biography

"Mary Lyon," Harper's Encyclopedia of Notable Americans

"Amy Lowell," Harper's Encyclopedia of Notable Americans

"Women's Studies and American Studies: The Uses of the Interdisciplinary," American Quarterly, scheduled for October, 1974

Reviews

A review of A Minority of Members: Women in the U. S. Congress by Hope Chamberlin, The Social Studies

A review of Woman's Consciousness, Man's World by Sheila Rowbotham, Political Science Quarterly

Current projects

Democracy's Ladies, an anthology to be edited with Michael A. Rockland

Centennial History of the American Association of University Women

ANNETTE K. BAXTER

Addendum

October, 1974 - March, 1975

Honors

Awarded Adolph S. and Effie Ochs Chair in History, Barnard College, December, 1974

Committees

Gildersleeve-Reynard Fund Committee
Women's Studies Review Committee
Columbia University Bicentennial Committee
Friends of the Columbia Forum

Professional activities

Keynote speaker, Tishman Seminars, Hunter College, October 9, 1974
Guest speaker, "Women's History," Litchfield, Connecticut Historical Society, November 24, 1974
Executive Committee, Board of Directors, National Council of Women
Member, National Advertising Review Board
Guest speaker, "Faculty Careerism and Students' Careers," Barnard College Alumnae Council, November 8, 1974
Panelist, "Sexism and Scholarship," Mount Holyoke College, January 8, 1975
Consultant to Department of Higher Education of the State of New Jersey for the evaluation of the School of American Studies, Ramapo College
Historical Consultant, Children's Television Workshop

Editorial Consultancies

Standard Education Corporation
Robert Hector Books

Publications issued (page 8 for complete citation)

chapter in Men, Women and Issues in American History
articles in Harper's Encyclopedia of American Biography
review-essay in American Quarterly
review of Rowbotham's book in Political Science Quarterly

10.

ANNETTE K. BAXTER

Addendum

April, 1975 - ~~September, 1975~~ January, 1976

Professional Activities

Speaker, "The Role of the Independent Residential School in our Society," Conference sponsored by Central Atlantic Residential Schools Organization, University Club, New York City, April 14, 1975

Participant, Round Table discussion, "America in the Twentieth Century," Radio Station WOR broadcast, June, 1975

Member, Board of Advisors of "Women of our Time," sponsored by the Hammond Museum, North Salem, New York

Chairman, Bicentennial Observance, National Council of Women

President and Trustee, H. Malcolm Teare Educational Foundation, Inc.

Member, Advisory Committee, Archives and Resource Center of New York City YWCA, Project on "History of the 100 Years of the YWCA in New York City and its Contributions to the Status of Women."

Editorial Consultancies

Columbia University Press

G. P. Putnam's Publishing Co.

Publications Issued (see page 8 for complete citation)

Article in Dictionary of American Biography 1974 Supplement.

Review in The Social Studies March-April, 1975 issue.

Recent publications

"Perspectives," The Independent School Bulletin, Oct., 1975, pp 61-62

A review of Hidden from History: Rediscovering Women in History from the 17th Century to the Present by Sheila Rowbotham, Political Science Quarterly, Winter 1975-76, pp. 786-788.

Recent Professional Activities

Panelist, "Why a Women's College," College Information Meeting sponsored by Women's Independent Colleges. Greenwich Country Club, Greenwich, Conn. Sept 24, 1975.

Member, Mary McEwen Schimke Memorial Fellowship Committee, December, 1975.

CAROLYN SHAW BELL

EXHIBIT O

Present Title: Katharine Coman Professor of Economics, Wellesley College (1970 to date).

Previous: Instructor to Professor, Wellesley College, 1951 to date.
Research Associate, Harvard University, University of Puerto Rico, 1950-53.
Research Associate, London School of Economics, 1946-47.
Economist, Office of Price Administration, 1941-45.

Education: Ph.D. (Econ) London University (London School of Economics and Political Science), 1949.
B. A. magna cum laude, Mount Holyoke College, 1941.

Professional Activities: Consultant, writer, speaker. Presentations for the American Council on Education, Association of National Advertisers, Conference on Full Employment, Interstate Conference of Employment Security Agencies, Institute for Public Policy, National Academy of Engineering, National Affiliation of Concerned Business Students, American Association of Retired Persons, etc.
Commentary on current economic affairs for radio and television (CBS, NET, WGBH, and news media (Wall Street Journal, New York Times, Christian Science Monitor, Washington Post, Boston Globe, etc.)
Expert witness for Congressional committees, in litigation, etc.

Current Offices: Chairman, Federal Advisory Council on Unemployment Insurance
Executive Committee, American Economic Association
Steering Committee, National Advertising Review Board
Board of Advisors, Center for Women's Policy Studies
Board of Economic Advisors, Public Interest Economics Center
Board of Editors, CHALLENGE Magazine
Board of Editors, Journal of Economic Issues
Board of Overseers, Amos Tuck Graduate School of Business, Dartmouth College
Board of Trustees, Joint Council on Economic Education

Memberships: American Association of University Professors, American Association of University Women, American Economic Association, Association for Evolutionary Economics, Eastern Economics Association, National Organization for Women.

Awards, etc: Phi Beta Kappa, Lucy Farr Fellowship (AAUW, 1960-61), listed in Who's Who, Dictionary of International Biography, Who's Who in America and Europe, American Men and Women of Science, World Who's Who of Women, etc.

Current Research: Human resource economics; the microeconomic unit of analysis.

Office: Wellesley College, Wellesley, Massachusetts 02181, (617)235-0320

Home: Mrs. Nelson Sibley Bell, 167 Clay Brook Road, Dover, Massachusetts 02030, (617) 785-0578.

BIBLIOGRAPHY

Coping in a Troubled Society: An Environmental Approach to Mental Health

D. C. Heath (Lexington Books), 1974 (Co-author with M. Just, S. Schensul, and W. Fisher).

The Economics of the Ghetto

A Pegasus book distributed by Bobbs-Merrill, Inc., 1971.

Consumer Choice in the American Economy

Random House, 1967.

The Economics of Consumption

McGraw Hill, 1956 (Co-author with William W. Cochrane).

Marketing Efficiency in Puerto Rico

Harvard University Press, 1955 (Co-author with J. K. Galbraith, Richard Holton, and others).

PUBLISHED ARTICLES

1. "Innovation in the Capitalist Process: A Critique of the Schumpeterian Theory," in Quarterly Journal of Economics, August 1951, LXV:3 (my name was then Carolyn Shaw Solo).

2. "Puerto Rican Lessons in Economic Development," in The Annals, January 1953, Vol. 285, (as Carolyn Shaw Solo), in collaboration with J. K. Galbraith.

3. "Innovation and Consumption," in Those Having Torches, Economic Essays in Honor of Alzada Comstock, Manchester Press, 1954.

4. "Elementary Economics and Depreciation Accounting," American Economic Review, March 1960, L:1.

5. "On the Elasticity of Demand at Retail," American Journal of Economics and Sociology, October 1960, XX:1.

6. "L'innovazione nel processo capitalistico," in Il Nuovo Imprenditore, ed. by Franco Angeli, Milan 1967.

7. "Liberty, Property, and No Stamps," Journal of Business, April 1967, XL:2; July 1968, XLI:3.

8. "Toward an Understanding of Consumer Behavior," American Journal of Economics and Sociology, October 1968, XXVIII:4.

9. "Macroeconomics and Unbalanced Growth: Comment," American Economic Review, September 1968, LVIII:4.

10. "Consumer Economic Power," Journal of Consumer Affairs, Winter 1968, II:2.

11. "The Economics of Trading Stamps," Journal of Consumer Affairs, Summer 1969, III:1.

12. "The Economist's Interest in Accounting," Business Economics, September 1969, IV:4.

13. "Economics Tutorials," The Wellesley Alumnae Magazine, Autumn 1971, 54:1.

14. "Liberty, Property, and No Stamps," in Consumerism, edited by David Aaker and George Day, The Free Press, 1971

15. "Business Warmth For Controls," Christian Science Monitor, October 18, 1971.

16. "The Freeze: A Big Dose of Faith-Healing," The Wellesley Magazine, November 1971, III:4.

17. "Unemployed Women - Do They Matter?" The Wall Street Journal, March 15, 1972.

18. "Full Employment: Implications for Women," Social Policy, September/October 1972, III:3.

19. "Social Security: Society's Last Discrimination," Business and Society Review, Autumn 1972, I:3.

20. "Age, Sex, Marriage, and Jobs," The Public Interest, Number 30, Winter 1973.

21. "Women in Science: Definitions and Data for Economic Analysis," Annals of the New York Academy of Sciences, March 1973, Volume 203.

22. "Women, Role of," The New Book of Knowledge, Grolier Press, 1973.

23. "The Urban Poor," Current History, June 1973, 64:382.

24. "Middle-class Action and the Ghetto Consumer," Journal of Economic Issues, June 1973, VII:2.

25. "Social Security: Unfair to Those Who Pay It; Unfair to Those Who Receive It," Challenge, July/August, 1973, 16:3.

26. "Implications for Women," in Public Service Employment, edited by Gartner, Nixon, and Riessman, Praeger, 1973.

27. "Social Security: Myths and Inequities," The Washington Post Outlook, September 2, 1973.

28. "The Current Economic Crisis: The Economist's Responsibility," Society, January/February 1974.

29. "Issues of Accountability," Women in Higher Education, American Council on Education, 1974.

30. "The Cruel Tangled Web of Social Security," Los Angeles Times, December 16, 1973.

31. "Definitions and Data for Economic Analysis," Women and Success; ed. R.B. Kundsin, William Morrow, 1974.

32. "Working Women's Contributions to Family Income," Eastern Economic Journal 1:2-3 (summer, 1974)

33. "The Contribution of Working Wives to Family Income," Annuals of Women Policy, Vol. I, Sage Publications 1974.

34. "Economics, Sex, and Gender," in Social Science Quarterly, Winter, 1974

35. "The Economics of Might Have Been," in Monthly Labor Review, November, 1974

36. "Don't Forget Jobless Wives," Boston Globe, January, 1975

37. "Full Employment - For Whom?" Inflation, Unemployment and Social Justice, Academy for Comtemporary Problems, May, 1975

38. "A Look at Unemployment Compensation," Tuck Today, June, 1975

39. "The Cost of Unemployment," Boston Globe, July, 1975

40. "Should Every Job Support A Family?," The Public Interest, Summer, 1975

41. "When Will U.S. Taxpayer Stop Sharing Income?" Christian Science Monitor, July, 1975

42. "The Economics of the Lottery," Boston Globe, August, 1975

43. "The Next Revolution," Social Policy, September-October, 1975

44. "The Value of Time," Social Research, Autumn, 1975

45. "Capital Shortage," Christian Science Monitor, October 14, 1975

46. "Trade Act Aids in Import Battle," Boston Globe, November 20, 1975

47. "Higher Taxes: An Inflation Factor," Christian Science Monitor, December 6, 1975

48. "The Marriage Tax," Boston Globe, December 17, 1975

In Press

"Working Wives and Family Income," Independence For Women, Sage Press, 1975

"Economics in the Short Run," Impact ERA: Reality and Utopia, California Press, 1975/6

"Alternatives for Social Change: The Future Status of Women," Women in the Professions, ed. Laurily Keir Epstein, Lexington Books, 1975

"Environmental Policy and the Distribution of Income," Environmental Management, Economic and Social Dimensions, Ballinger Publishing Company, 1976

"Women in the Labor Force," Encyclopedia of Social Work, 1976/7

"The Economics of Work and theLabor Force," Women at Work, Mayfield Publishing Company, 1976

"Psychological Dimensions of Economic Supply Functions," in untitled book on discrimination, Lexington Books, 1976

Reviews

Consumer Economics, by James Morgan, American Economic Review, 1955

Consumer Behavior, L.H. Clark, ed., American Economic Review, 1959

Soviet Marketing, by Marshall Goldman, Wellesley Alumnae Magazine, 1963

The Economics of Trading Stamps, by Harold Fox, Journal of Consumer Affairs, 1969

The Economics of Black Community Development, by Frank G. Davis, Journal of Negro History, 1972

Alienation and Economics, by W. Weisskopf, Journal of Economic Issues, 1973

Changing Women in a Changing Society, Joan Huber, ed., Social Policy, 1973

Changing Women in a Changing Society, Joan Huber, ed., Transaction, 1973

Philanthropy and the Business Corporation, by Marion Ritvo Fremont-Smith, Wellesley Alumnae Magazine, 1974

Antibias Regulation of Universities, by Richard Lester, Journal of Economic Literature, 1975

Sex, Discrimination, and the Division of Labor, Cynthia Lloyd, ed., Journal of Economic Issues, 1975

ORVILLE G. BRIM, JR.

EXHIBIT O

Born April 7, 1923, Elmira, New York.

Married Kathleen Jane Vigneron, 1944. Children: John Gilbert, Scott Whittier, Margaret Lowry, Sarah Morgan.

Career History

President, Foundation for Child Development, 1974--

Consultant: Grant Foundation, Russell Sage Foundation, Social Science Research Council, 1972-1974.

President, 1964-72, Sociologist and Assistant Secretary, 1960-64, Sociologist, 1955-1960, Russell Sage Foundation.

Assistant Professor, 1953-55, Instructor, 1952-53, University of Wisconsin; Research Assistant (Instructor), 1951-52, Yale University.

B.A., Yale University, 1947; M.A., Yale University, 1949; Ph.D. (Sociology) Yale University, 1951.

U.S. Army Air Force, 1943-1946 (First Lieutenant, B-24 Pilot).

Author

The Dying Patient (with Howard E. Freeman, Sol Levine and Norman Scotch), New York: Russell Sage Foundation, 1970.
American Beliefs and Attitudes about Intelligence (with David C. Glass, John Neulinger and Ira J. Firestone), New York: Russell Sage Foundation, 1969.
Intelligence: Perspectives 1965 (with Richard S. Crutchfield and Wayne H. Holtzman), New York: Harcourt, Brace & World, Inc., 1966.
Socialization After Childhood: Two Essays (with Stanton Wheeler), New York: John Wiley & Sons, 1966. German Edition: Erwachsenen-Sozialisation, Sozialisation nach Abschluß der Kindheit (with Stanton Wheeler), Stuttgart: Ferdinand Enke Verlag, 1974.
Personality and Decision Processes: Studies in the Social Psychology of Thinking (with David C. Glass, David. E Lavin, and Norman Goodman), Stanford: Stanford University Press, 1962.
Education for Child Rearing, New York: Russell Sage Foundation, 1959. Paperback Edition, Basic Books, 1965.
Sociology and the Field of Education, New York: Russell Sage Foundation, 1958. German Edition: Soziologie des Erziehungswesens, Heidelberg: Quelle & Meyer, 1963.

Also, about fifty articles, contributed chapters and technical reports.

Advisory and Consultative Positions

Current

Board of Trustees, American Institutes for Research (1971--)
Board of Governors, Center for Creative Leadership (1972--)
Board of Trustees, The Grant Foundation, Inc. (1975--)
Board of Trustees, Mental Health Law Project (1975--)
Board of Trustees, The Greenwich Hospital Association (1971--)
Board of Directors, Foundation for Child Development (1974--)
Chairman, Committee on Work and Personality in the Middle Years; Social Science Research Council (1972--)
Advisory Committee on Child Development, National Academy of Sciences (1971--)
Research Advisory Committee, Teachers Insurance and Annuity Association/College Retirement Equities Fund
Visiting Committee for the Social Sciences (Behavioral), Yale University (1974--)
Public Member, National Advertising Review Board (1974--)

Previous

Chairman, Special Commission on the Social Sciences, National Science Foundation (1968-69)
Chairman, Board of Directors, Automation Engineering Laboratory, Inc., Stamford, Connecticut (1959-67)
Board of Trustees, Russell Sage Foundation (1964-72)
National Advisory Food and Drug Council, Department of HEW (1967-69)
Joint Commission on Mental Health of Children (1967-69)
Publication Committee, The Public Interest (1967-76)
Committee on Socialization and Social Structure, Social Science Research Council (1960-67)
Drug Research Board, Division of Medical Sciences, National Academy of Sciences (1964-65)
Chairman, Environment Review Panel, U.S. Office of Education (1962-64)
Subcommittee on Social Sciences of the Mental Health Training Committee, National Institute of Mental Health (1956-62)
Board of Directors, Consumer Behavior, Inc. (1957-61)
President, The Rocky Point Club, Old Greenwich, Connecticut (1966-67)

Professional Association Memberships and Activities

American Orthopsychiatric Association (President, 1974-75; Board of Directors, 1972-75)
American Sociological Association (Governing Council, 1972-75; Former Chairman, Section on Social Psychology; and Section on Education; Associate Editor, Sociometry, 1959-62; Advisory Editor, Sociology of Education, 1963-69)
Eastern Sociological Society (President, 1971-72)
American Psychological Association (Fellow, Divisions 7 & 8; Committee on Assessment, 1964-68)
Society for Research in Child Development (Governing Council, 1957-61; Consulting Editor, Child Development, 1958-61; Long-Range Planning Committee, 1971-75)
American Academy of Arts & Sciences
Sociological Research Association
American Association for Public Opinion Research
American Political Science Association
Certified Psychologist, State of New York
Authors Guild

Other

Wilbur Lucius Cross Medal of the Yale Graduate School Association

The Century Association (Member, Admissions Committee, 1975--)
Yale Club (NYC)

Biographical Listing in: Who's Who in the World
Who's Who in America
American Men of Science
The World's Who's Who of Authors

RESUME: James A. Brown EXHIBIT O

b. May 10, 1932; Cleveland, Ohio

CURRENT ADDRESS: P.O. Box 45041; Los Angeles CA 90045
TELEPHONE: (213) 642-3006; 642-3170; (bus.) 454-8769

1974-.... Executive Director, Human Family Educational and Cultural Institute, Inc.

1971-74 Ass't. Professor, Telecommunications, Univ. of Southern California; Dept. Chairman 1973-74

1971 Resident consultant, Program Practices, CBS Television Network, New York City

1967-70 Ass't. Professor & Chairman, Radio-Television Dept. Univ. of Detroit

1966 Ordained Roman Catholic priest

1950-.... Member, Society of Jesus (Jesuit) religious order

PARTTIME TEACHING, 1957-1975

1974-75 Univ. of Southern California, Telecommunications
Loyola Marymount Univ., Communication Arts
1966-68 Dir., Educational Media Faculty Training Institutes (U.S. Office of Education/HEW & Univ. of Detroit)
1961, '64-67 Colombiere College (Michigan); West Baden College (Indiana); Bellarmine School of Theology (Chicago)
1957-58, '60 Univ. of Detroit, Radio-Television Dept.

LECTURES, 1957-1975
13 universities in the U.S., 7 seminaries, 9 high schools

PROFESSIONAL ACTIVITIES
Producer-director, public television programs, Detroit, 1957-58
Producer-director & host, two syndicated radio series, 1967-70
On-air talent, educational radio programs, 1948-50 (Cleveland), 1957 (Chicago), 1960-62 (Los Angeles)

Communications Committee, U.S. Catholic Conference, 1969-74; chairman, subcommittee for minority broadcasting
Archdiocesan Communications Committee, Los Angeles, 1974-....
Advisory committees: Chicago Board of Rabbi's Broadcasting Commission (1965-67), Metropolitan Detroit Council of Churches (1968), WWWW-FM, Detroit (1968-69)

MEMBERSHIPS
Broadcast Education Assoc.; National Assoc. of Educational Broadcasters; Hollywood Radio & Television Society; Jesuit Educational Assoc., ETV Committee

ACADEMIC DEGREES
A.B. (Latin); Ph.L. (Philosophy); M.A. (English); S.T.L. (Theology); Ph.D. (Communications [U.S.C.])

PUBLICATIONS
NAEB Journal; Journal of Broadcasting; Broadcasting; Television Information Office of Nat'l. Assoc. of Broadcasters
New Catholic Encyclopedia (McGraw-Hill, 1967): "Mass Media of Communications, Church Philosophy, Radio & TV"; "Communication Arts, Catholic Schools of" (vols. 2 & 9)
Broadcast Management rev. ed. w. Ward Quaal (Hastings House 1975)

BACKGROUND INFORMATION: James A. Brown

Assistant Professor, Telecommunications, Univ. of Southern California
Allan Hancock Bldg. 244; Los Angeles 90007. TEL: (213)746-2166
Residence: *Jesuit Community; 7101 W. 80 St., L.A. 90045; (213)* 642-3170

Born: May 10, 1932; Cleveland, Ohio

Entered Society of Jesus (Jesuits), Roman Catholic religious order, 1950; ordained priest June, 1966.

Academic degrees:

A.B. (Latin)	Loyola University, Chicago, 1955
Ph.L. (Philosophy)	" " " 1957
M.A. (English)	" " " 1959
S.T.L. (Theology)	Bellarmine School of Theology, Chicago, 1967
Ph.D. (Communications)	Univ. of Southern California, L.A., 1970

Master's thesis: *Richard II on TV: A Critical Analysis Comparing the NBC Television Production with Shakespeare's Original Play* (194 pp.)

Doctoral dissertation: *A History of Roman Catholic Church Policies Regarding Commercial Radio and Television Broadcasting in the United States, 1920 through 1961* (2,760 pp.)

Teaching:

UNIVERSITY OF DETROIT: 1957-58, 1967-70--commercial radio-TV theory & technique
summers, 1960, 1966--workshops in educational and religious broadcasting
summers, 1967, 1968--Director, Educational Media Faculty Training Institutes for U.S. Office of Education (HEW): ETV workshops for college teachers
1967-1970--Assistant Professor and Chairman, Dept. of Radio-Television
COLOMBIERE COLLEGE (Michigan), summer 1961: history & criticism, documentary film
WEST BADEN COLLEGE and BELLARMINE SCHOOL OF LOYOLA U., Chicago, 1964-67: ETV workshops
UNIVERSITY OF SOUTHERN CALIFORNIA: 1971-1974-Ass't. Prof., Telecommunications Dept. Chairman, 1973-74

Lectures:

Univ. of Southern California
Loyola Univ. of Los Angeles
Loyola Univ., New Orleans
Loyola Univ., Montreal
Northwestern University (Chicago)
American University (Washington, D.C.)
University of San Francisco
St. Louis University
Fordham University (New York)
Georgetown University (Washington, D.C.)
Memphis State University

at Jesuit seminaries:

Alma College (Calif.)
Colombiere College (Mich.)
Milford Novitiate (Ohio)
Sacred Heart Novitiate (Calif.)
West Baden College of Loyola U. (Indiana)
Woodstock College (Maryland)
Bellarmine School of Theology of Loyola Univ. (Illinois)

at high schools:

Los Angeles, San Francisco, San Jose, Chicago, St. Louis, Cincinnati, Cleveland, New York City, Washington, D.C.

Publications:

NAEB Journal; Journal of Broadcasting; Broadcasting (businessweekly); Television Information Office of the National Assoc. of Broadcasters (reprint of paper)
New Catholic Encyclopedia (McGraw-Hill, 1967): "Mass Media of Communications: Church Philosophy, Radio & TV"; "Communication Arts, Catholic Schools of" (vols. 2 & 9)
Currently collaborating with Ward Quaal (pres., WGN Continental Broadcasting Co.) on revision of Broadcast Management (Hastings House, 1968 [1975])

PROFESSIONAL ACTIVITIES:
Exec. Dir., Human Family Educational & Cultural Institute, 1974-....
Fulltime resident consultant, CBS Television Network, Program Practices, New York City, Jan. 1-Aug. 1, 1971
Program advisory committee, WWWW-FM, Detroit, 1968-69
Advisory committee, Chicago Board of Rabbis' Broadcasting Commission, 1965-67
Radio-TV consultant, Metropolitan Detroit Council of Churches (Protestant), 1968
Chairman, Subcommittee on Minority Training for Broadcasting, U.S. Catholic Conference: Communications Committee, 1969 to present
Nominated by FCC Commissioner Robert E. Lee to board of Corp. for Public Broadcasting, 1967 (but not so appointed by President of U.S.)

Produced and hosted two program series for national AM transcription network of 85 stations and 17 stations, respectively, 1967-70

Produced and hosted individual programs and program series on FM radio stations in Cleveland (WBOE), Chicago (WBEZ), Los Angeles (KUSC and KXLU), and Bloomington, Ind. (Indiana U's WFIU), 1948-50, 1957, 1960-62

Produced and directed approximately 110 live educational television programs and hosted live on-air 13-week TV series in Detroit, WTVS (ETV, UHF); staff producer-director, Univ. of Detroit/WTVS(TV), 1957-58

Assisted in producing and appeared in television programs by KTTV (Ch. 11) and KRCA/KNBC (NBC's Ch. 4), LosAngeles; associated with productions by KLRN(TV), Austin & San Antonio, Texas; WBKB/WLS-TV (ABC's Ch. 7), Chicago; WJBK-TV and WTVS(TV), Detroit; and the CBS Television Network, Hollywood

Executive director of student-operated closed-circuit KUSC-TV for two years at U. of Southern California, Los Angeles, 1958-60. Produced and directed 20 closed-circuit programs, including a "pilot" kinescope for the U.S.C. Dpt. of French and Dept. of Planning, 1959.

MEMBERSHIPS:
Assoc. for Professional Broadcasting Education; Chairman, Committee on Minority Education for Broadcasting
National Assoc. of Educational Broadcasters
Jesuit Educational Assoc., ETV Committee
North American Commission for Mass Media, Society of Jesus
U.S. Catholic Conference: Communications Committee
Alpha Epsilon Rho (national radio-TV honor society); past national president; past local president, two terms, Alpha Mu chapter, U.S.C.
Phi Kappa Theta (national collegiate social fraternity)

AWARDS:
U.S.C. "Telecommunications Award" for scholarship and development and direction of programs for KUSC-TV, 1958-59
KNXT/CBS-TV "Graduate Scholar in Telecommunications" at U.S.C., 1959

Biography summarized in published reference works:
Directory of American Scholars, 5th edition, 1969: vol. 2 (Tempe, Arizona)
Dictionary of International Biography, 8th edition, 1971-72: vol. 1 (London)
American Men & Women of Science, 12th edition, 1973: The Social & Behavioral Sciences, vol. 1 (Tempe, Arizona)
Who's Who in the West, 15th ed., 1976-77 (Chicago, Ill.)

EXHIBIT O

From Who's Who 1975

File
Author
mentions

Forrester, William Ray

Educator, lawyer;

Born Little Rock, Ark, January 14, 1911, s, William Thomas and MaryLouise (lucas) F

A.B. U. Ark 1933, LL.D 1963; J.D. U Chicago, 1935

Married Celine Mortee Penn. October 31, 1942; children William Ray, Catherine Lucas, David Stephen.

Admitted to Ill bar 1936, N.Y. bar 1970

Member legal div., trust dept., 1st National Bank Chicago, 1935 atty..Defrees, Buckingham, Fiske & O'Brien, Chicago, 1935-41 assistant prof law, Tulane U 1941-43; Prof law 1943-49, sec law faculty 1942-46, dean and Irby prof law 1952-63, faculty editor Tulane Law Review, 1942-46, Dean and Prof law Vanderbilt U, 1949-52 Dean, prof law Cornell u law Sch, Ithaca, New York 1963-73, Prof law, 1973-- mc member summer faculty U. Wis., 1943, U. Miss, 1948, U N.C. 1954, Stanford 1955, Tex Tech, 1968; vis prof Yale Sch Law fall 1956, U.P.R. summer 1958; Walker Ames prof law U. Washington summer 1962; faculty Hastings Coll Law, U. Cal, summer 1966, 73; vis prof U. Ryukyus (Okinawa), summer 1969, U. Okla, fall 1973, U. London (Eng) winter 1974, U. Ga, spring 1974, Pub mem Regional WSB 1950-52; permanent arbitrator International Harvester and UAWCIO, 1951, 1951-52; interim chmn, Bd of Conciliation and Arbitration of U.S. Steel and United Steelworkers of Am; 1959-51; cons proposed revisions of La Constitution, 1949-50 commr on Uniform State laws for LA. dir. 1st Nat Bank, Ithaca 1967. Trustee Metairie Country Day Sch 1955-61, pres. Bd 1959; mem vis com Vanderbilt Law School, 1969-73 Mem American Bar Assn, N.Y. State Bar, Order of Coif, Kappa Delta Phi (hon) Sigma Nu (comdr, 1932) Omicron Delta Kappa, Phi Delta Phi, Tau Kappa Alpha, Club Boston (New Orleass). Author Forrester's Edition of Dobie and Ladd Federal Jurisdiction and Procedure, 1950 Cases and Materials on Constitutional Law 1959 ann supplements to 1966 (with Currier) Federal Jurisdiction and Procedure, 1962 2nd edit (with Currier and Moye), 1970 supplement 1973, Contrb to various legal publs Home 218 Fall Creek Drive, Ithaca, N.Y. 14850

RESUME

EXHIBIT O

PATRICIA ANNE GAYMAN
1624 - 6th Street
Sacramento, California 95814
916 443-2197

April, 1974 to March, 1975

Director, California Department of Consumer Affairs. Determined policy, directed the administration and coordination of the programs of the eight divisions and thirty boards and commissions, which constitute the Department. Determined the Department's position on legislation and directed legislative contacts and appearances. Conducted hearings on the Department's $25,000,000 budget and made decisions regarding level of service and dollar amounts.

January, 1967 to April, 1974:

Scheduling Secretary to Governor Ronald Reagan. Supervised the Governor's Schedule Office. Prepared and coordinated the Governor's complete schedule--appointments and speaking engagements. Represented the Governor at events (including delivering remarks when appropriate). Occasional advancing of Governor's appearances (in-state and out-of-state).

September, 1966 to December, 1966:

Member of Ronald Reagan for Governor Campaign Staff. Coordinated schedules.

January, 1965 to September, 1966:

Special Assistant to Senator George Murphy in Washington, D.C.
Responsibilities - Acting Press Secretary, Research Coordinator

June, 1965 to August 1965:

Claremont Men's College - General Electric Fellow in Economics.

September, 1964 to June, 1965:

Palos Verdes High School - Los Angeles
Taught 12th grade class in Government

Education: 1964 - Masters of Arts in Political Science from the University of California at Berkeley

1961 - Bachelors of Arts from Occidental College Los Angeles

1/75

BIOGRAPHICAL DATA

EXHIBIT O

C. H. Sandage

:n:

August 21, 1902, Hatfield, Missouri

Academic Degrees:

A.B. 1926, M.A. 1927, Ph.D. 1931 (State University of Iowa)

Teaching Experience:

Simpson College, 1927-28, Ass't. Prof. of Economics
University of Kansas, 1928-29, Ass't. Prof. of Business
Miami University (Ohio), 1929-46, Prof. and Head of Dept. of Marketing
University of Cincinnati, Evening College, 1930-35; 1937-42
University of California, summer 1941, Visiting Prof. of Marketing
Harvard Graduate School of Business Administration, 1943-44, Visiting Prof. of Business Research
University of Illinois, 1946-66, Prof. and Head of Department of Advertising
University of Illinois, 1966-68, Prof. of Advertising (Emeritus Prof.-1968)

Professional Experience:

U.S. Department of Commerce (Bureau of the Census), 1935-37, Chief, Division of Transportation and Communications
Institute of Transit Advertising, 1944-46, Vice President and Director of Research
Office of Price Administration, summer 1942, State Price Executive, State of Ohio
Federal Communications Commission, Consultant on Advertising and Marketing, 1956-58
Farm Research Institute, President since 1946
Private consultation work for various firms

Publications:

Books:
Advertising Theory & Practice (1st Ed. 1936; 9th Ed. with Vernon Fryburger, 1975)
Radio Advertising for Retailers, 1945
Marketing by Manufacturers (Contributing Author), 1946
Changing Perspectives in Marketing (Contributing Author), 1951
The Role of Advertising (with Vernon Fryburger), 1960
The Promise of Advertising, 1961
Readings in Advertising and Promotion Strategy (with Arnold Barban), 1968

Monographs:
The Motor Vehicle in Iowa - 1928
Motor Vehicle Taxation - 1932
Radio Broadcasting - 1936
Motor Trucking for Hire - 1937
Motor Bus Transportation - 1937
Public Warehousing - 1937
Qualitative Analysis of Radio Listening - 1949
Building Radio Audiences - 1951

Numerous magazine and journal articles

Member of:

American Marketing Association (Director 1944-47 and 1954-55, Vice President, 1956-57)
American Economic Association
American Academy of Advertising
Association for Education in Journalism
American Association for Public Opinion Research
Alpha Delta Sigma (Professional Advertising Fraternity)
Delta Sigma Pi (Professional Business Fraternity)
Phi Beta Kappa
Kappa Tau Alpha
Phi Kappa Phi

Special Recognition:

Recipient of Nichols Cup (1963) from Alpha Delta Sigma for "outstanding service to advertising education."
Recipient of Gold Medal Award (1964) from Printers' Ink, Advertising Federation of America, and Advertising Association of the West for "distinguished service to advertising."
Recipient of special award for contribution to advertising and advertising education by the American Association of Advertising Agencies (1966).

EXHIBIT O

CURRIN VANCE SHIELDS

Director, Community Services Center, Continuing Education Division, U. of Arizona, Tucson; Professor of Government, 1960- ; Head, Department of Government, 1960-69; Director, Institute of Government Research, 1963-72. Office: 522 N. Tucson Boulevard, Tucson, Arizona 85716. Telephone: (602) 884-2945.

Born LaPorte, Indiana, Feb. 18, 1918. Wife: Marjorie. Four children. Religion: Episcopal. Residence: 6480 Camino de Michael, Tucson, 85718. Telephone: (602) 297-3825.

Graduate of U. Nebraska (A.B., 1941), U. of Wisconsin (Ph.M., 1943), Yale U. (Ph.D., 1950). Instructor, Provost Marshal General's School, 1st Lt., Corps of Military Police, U.S. Army, 1943-46 (Army Commendation Award). Taught at Yale U. (1947-50), U.C.L.A. (1950-1960); summers at Boston U. (1948), U. of New Hampshire (1949), U. of Wisconsin (1955). Director, Robert A. Taft Institute of Government Arizona Seminars, 1970-72.

Consultant on Legislative Education, United Steelworkers of America, AFL-CIO, 1953-61. Weekly radio program, "What's the Issue?", KFWB, Hollywood, 1953-55. Co-chairman, Corporation Project, Fund for the Republic, 1958-60. Board of Editors, Western Political Quarterly, 1963-65. Executive Board, Arizona Academy of Public Affairs, 1964-67. Consultant, Title XI Program, HEW, 1967. Consultant, Senior Fellows Program, National Endowment for Humanities 1969- . Executive Council, Western Political Science Association, 1964-66; President-elect and Program Chairman, 1970-71; President, 1971-72. President, United Nations Association of Tucson, 1962-64; Chairman, Arizona 20th Anniversary United Nations Celebration, 1965. Delegate, White House Conference on International Cooperation, 1967. Delegate, White House Conference on Food, Nutrition, and Health, 1969. Lecturer, Air Command & Staff College, 1967. National Council, Pi Sigma Alpha (Political Science Honorary), 1968- . Chairman, Committee on Relations with Regional & State Association, American Political Science Association, 1971- . Chairman, Special Committee on Academic Freedom & Tenure, U. of Arizona, 1963-71; Committee on Constitution & Bylaws, U. of Arizona Faculty, 1968-72; President, University Faculty Club, U. of Arizona, 1967- . Executive Committee, Arizona Legislative Internship Program, 1970-73.

President, Arizona Consumers Council, 1969- . Board of Directors, Consumer Federation of America, 1969-74. Executive Committee, CFA, 1970- . Chairman, Resolutions Committee, CFA, 1971-73; Vice-president, CFA, 1973-74. Member, National Consumer Advisory Committee, Federal Energy Office, 1973- . Chairman, Conference of Consumer Organizations, 1974.

Member of Phi Beta Kappa, American Political Science Association, American Association of University Professors, American Society for Public Administration, Western Governmental Research Association, Council on Foreign Relations. American Council of Consumer Interests. Author of Democracy and Catholicism in America (1958) and numerous other publications including articles in the New Republic, Progressive, American Political Science Review, and Western Political Quarterly. Public Service Internship Programs, 1972.

345 Eighth Avenue
New York, New York 10001
212/924-8128

EXHIBIT O

CURRICULUM VITAE

MABEL M. SMYTHE

Recent Career Summary

1972--	Vice President, Phelps-Stokes Fund
1970--	Director, Research and Publications, Phelps-Stokes Fund
1973-74	Scholar in Residence, U. S. Commission on Civil Rights
Editor	The Black American Reference Book Prentice-Hall, Inc., 1976
1969--	Consultant, Encyclopaedia Britannica Educational Corporation
1959-62	City University of New York (last rank, Associate Professor)
1959-69	Principal of the High School, New Lincoln School, New York
1953	Deputy Director of Research, NAACP Legal Defense and Education Fund, for preparation of brief in School Segregation Cases

Education

Attended Spelman College
A.B. Mount Holyoke College, Economics and Sociology
M.A. Northwestern University, Economics and Government
Ph.D. University of Wisconsin, Labor Economics and Law
New York University, Professional Writing

Current Board Memberships

National Corporation for Housing Partnerships
Mount Holyoke College (Vice-Chairman)
Hampshire College (Vice-Chairman)
Connecticut College
The Cottonwood Foundation
National Advertising Review Board

Past Board Memberships

International Schools Service (Vice-Chairman)
African-American Institute
Urban League of Greater New York
New Lincoln School
Boardman School

Public Service (partial listing)

Artificial Heart Assessment Panel, National Heart and Lung Institute, 1972-73

Presidential Appointments:
John F. Kennedy: Advisory Commission on Educational Exchange, 1961-62
Advisory Commission on International Educational and Cultural Affairs, 1962-65

Lyndon B. Johnson: U.S. Delegate, UNESCO, Thirteenth General Conference, Paris, 1964

Public Service (continued)

U. S. National Commission for UNESCO, 1965-70
Advisory Council, National Assessment of Educational Progress, 1964--
Coordinating Committee, Public Education Association, 1967-69
Advisory Council on African Affairs, U.S. Department of State, 1962-69

Research Interests

Economic development and education in Africa
Non-racist, non-sexist education, especially in the United States
Civil Rights of minorities, especially Afro-Americans
International aspects of socioeconomic problems

Travel and Residence Abroad

Extended residence for teaching, diplomatic or research assignments:
Japan, Syria, Nigeria, Malta, France, Thailand

Shorter visits to Spain, East and West Africa, India, U.S.S.R., the Middle East, Far East, Scandinavia—about 50 countries in all

Consultant

Encyclopaedia Britannica Educational Corporation
The Ford Foundation
Agency for International Development, U. S. Department of State
Vassar College
Long Island University
Dwight School
Operation Crossroads Africa
Council on International Educational Exchange
Human Affairs Research Center
Urban Coalition

Teaching (pre-1963)

Lincoln University (MO) - Assistant Professor, Associate Professor, Acting Head, Economics and Business Administration
Tennessee A & I State College - Professor of Economics and Business Administration
Shiga University, Japan - Visiting Professor of Economics
City University of New York:
Brooklyn College, Lecturer in Economics
Baruch School of City College, Lecturer in Economics
Queens College, Associate Professor, Workshops on Africa

Clubs

The Cosmopolitan Club
The Mount Holyoke Club (New York)

Organizations

American Economic Association
Caucus of Black Economists
Association of Black Foundation Executives
Metropolitan Economic Association
Fellow, African Studies Association
National Council of Women of the United States
Marquis Biographical Library Society
Museum of the American Indian
The Smithsonian Institution

Other Interests and Experiences

Director, Consortium for Research Training, 1971-73
Co-Director, African Seminar for Presidents of Black Colleges, 1971

Speaking and Writing

Lectures: University and general audiences, commencement addresses, television

Books: The Black American Reference Book: (Editor), Prentice-Hall, Inc. March 1976

Curriculum for Understanding (Editor, with E. S. Bley), Union Free School District N° 13, Valley Stream, New York, 1965

The New Nigerian Elite (with H. H. Smythe), Stanford University Press, 1960, 1962, 1971

Intensive English Conversation (with Alan B. Howes), Kairyudo (Tokyo), 1953, 1954

Contributor: The Totally Implantable Artificial Heart, A Report by the Artificial Heart Assessment Panel, National Heart and Lung Institute, 1973

Women in Higher Education, American Council on Education, 1973

Love of This Land (J. H. Robinson, Ed.), 1957

Contributing Editor: Journal of Human Relations, 1955-65

Honors and Awards

Alpha Pi Zeta, Northwestern University
Julius Rosenwald Fellow
Harriett Remington Laird Fellow, University of Wisconsin
National Fellow, University of Wisconsin
Distinguished Service Award, Greater New York Chapter of Links, Inc., 1965
Gran Dama d'Inore, Order of the Royal Crown of Crete, Malta, 1969

Biographical Data in:

Dictionary of International Biography

Who's Who of American Women

Who's Who in the East

Who's Who in Education

Two Thousand Women of Achievement

International Who's Who in Community Service

Contemporary Authors

The World Who's Who of Women

The Writers' Directory

Who's Who of the Social Sciences in Africa

International Scholars' Directory

Living Black American Authors

EXHIBIT O

MAX WAYS

BIOGRAPHY

Member, Board of Editors, FORTUNE Magazine

Max Ways joined Time Inc. in February 1945 as a writer for Time Magazine's International section. A year later he was named a senior editor in charge of Time's International and Foreign News sections. In August 1951 he became National Affairs editor. Ways was appointed Time's senior correspondent in Europe and chief of the London newsbureau in April 1956.

In September 1959 he transferred to Fortune magazine. He later served as associate managing editor of Fortune and was a member of its Board of Editors, from which post he has recently retired.

Ways began his journalistic career in 1926 when he went to work as a reporter for the Baltimore Sun. In 1932 he moved to the Philadelphia Record, worked for that paper as an editor and editorial writer until 1942. During World War II, from May, 1942 to February, 1945, he was chief of the U. S. Foreign Economics Administration Enemy Branch, checking studies of German and Japanese war production for the U.S. Chiefs of Staff and the Army Air Force.

During his years with Time Inc., Ways has covered a wide variety of story assignments and travelled thousands of miles. He is the author of Beyond Survival (Harper & Bros., 1959), a book which resulted from a special assignment he had undertaken at the request of Henry R. Luce to review the aims of post-World War II foreign policy. Among his recent articles for Fortune are "The Era of Radical Change" (May 1964), "Antitrust in an Era of Radical Change" (March 1966), "Tomorrow's Management" (July 1, 1966), "Why Japan's Growth is Different" (November 1967), "How to Think About The Environment" (February 1970), "More Power to Everybody" (May 1970), "Finding the American Direction" (October 1970), "A New National Gropes for Better Government" (August 1971) and "It Isn't A Sick Society" (December 1971). He was invited to deliver one of the opening addresses to the White House Conference on the Future of Business, Feb. 7 to 9, 1972. On that occasion his subject was "The Human Side of Enterprise."

Born on August 13, 1905, in Baltimore, Md. and raised there, Ways attended Loyola College and took night courses at the University of Maryland Law School for two and a half years. (His father, Max Ways, Sr., was city editor of the Baltimore Herald.) He is married to the former Constance St. Onge and makes his home in Manhattan.

Since his retirement Ways has continued to write articles for Fortune and other publications.

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