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CONSUMER CONTROVERSIES RESOLUTION ACT

DOCUMENTS HEARINGS

BEFORE THE

MAR 2 1978
SUBCOMMITTEE ON CONSUMER PROTECTION
AND FINANCE

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OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 2482 and H.R. 2965

BILLS TO REGULATE COMMERCE BY ESTABLISHING NATIONAL
GOALS FOR THE EFFECTIVE, FAIR, INEXPENSIVE, AND
EXPEDITIOUS RESOLUTION OF CONTROVERSIES INVOLVING
CONSUMERS, AND FOR OTHER PURPOSES

S. 957

AN ACT TO PROMOTE COMMERCE BY ESTABLISHING A
NATIONAL GOAL FOR THE DEVELOPMENT AND MAINTENANCE
OF EFFECTIVE, FAIR, INEXPENSIVE, AND EXPEDITIOUS
MECHANISMS FOR THE RESOLUTION OF CONSUMER CON-
TROVERSIES, AND FOR OTHER PURPOSES

JULY 20 AND 21, 1978

Serial No. 95-178

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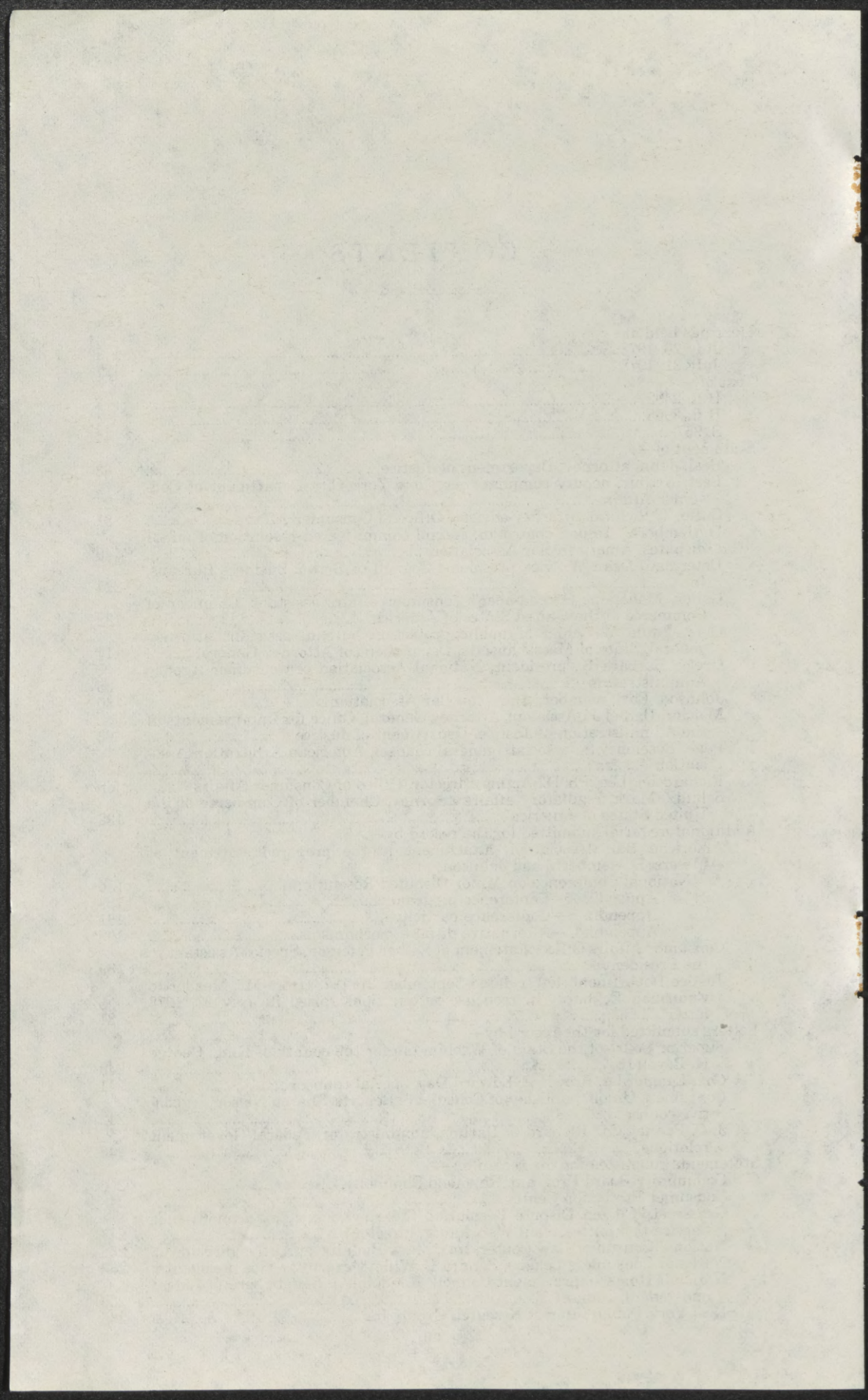
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CONSUMER CONTROVERSIES RESOLUTION ACT

THURSDAY, JULY 20, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, at 10 a.m., pursuant to notice, in room 2218, Rayburn House Office Building, Hon. Bob Eckhardt, chairman, presiding.

Mr. ECKHARDT. The Subcommittee on Consumer Protection and Finance will commence its hearing.

Today the subcommittee begins 2 days of hearings on bills to encourage the development of inexpensive, fair, and simple methods for resolving consumer and other minor disputes. Such methods could include improving existing small claims courts, setting up mediation or conciliation procedures, and establishing neighborhood justice centers.

Impetus for this legislation comes from a growing awareness that our present judicial system is so complicated and expensive to use that consumers have no practical forum to redress small grievances. The consumer whose \$30 toaster doesn't toast or whose special auto paint job doesn't really resist corrosion isn't going to hire a lawyer to pursue the claim.

Even if there is a small claims court where the consumer doesn't need an attorney, the costs of taking a day off work to sit waiting for the case to come up still may be greater than the value of the claim. As a result, the individual with a minor dispute is effectively denied an opportunity to obtain compensation.

The increased awareness about the lack of redress opportunity for consumers, coupled with a growing concern about congestion in the court system, has stirred an interest in improving informal procedures for resolving minor disputes. The National Institute for Consumer Justice report indicated that a modest infusion of Federal funds would stimulate States to establish efficient redress systems. The legislation before us today is an outgrowth of that recommendation.

I want to compliment my colleague, Jim Broyhill, for introducing one of the bills before us today. Mr. Broyhill has always had a strong interest in seeing the development of a good minor dispute resolution program, and I look forward to working with him and the rest of the subcommittee to see that a good bill is enacted this Congress.

The bills before us today set minimum Federal goals for consumer and other minor dispute resolution mechanisms. They condition the receipt of Federal grant money on the States taking steps to

achieve those goals. This approach assures us that Federal dollars will not be spent for ineffective programs, and at the same time we give the States and local governments sufficient flexibility to develop a system which best serves their needs.

Without objection the text of H.R. 2482, H.R. 2965, and S. 957 will be printed at this point in the record.

[Testimony resumes on p. 63]

[The text of the bills referred to follow:]

95TH CONGRESS
1ST SESSION

H. R. 2482

IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 1977

Mr. MURPHY of New York introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To regulate commerce by establishing national goals for the effective, fair, inexpensive, and expeditious resolution of controversies involving consumers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3

SHORT TITLE

4 SECTION 1. This Act may be cited as the "Consumer
5 Controversies Resolution Act".

6

FINDINGS AND PURPOSE

7 SEC. 2. (a) FINDINGS.—The Congress finds and de-
8 clares that—

9

(1) for the majority of American consumers,
10 mechanisms for the resolution of controversies involving

I

1 consumer goods and services are largely unavailable,
2 ineffective, or unfair;

3 (2) the total amount of money involved each year
4 in consumer controversies in the United States exceeds
5 \$100,000,000, but the amount involved in any single
6 controversy is apt to be small, less in many cases than
7 the cost of legal representation for the affected consumer;

8 (3) the existing mechanisms for consumer con-
9 troversy resolution are inadequate to handle the
10 enormous volume of such controversies;

11 (4) there is substantial unavailability, for most
12 consumers, of—

13 (A) meaningful remedies in cases of fraud,
14 deception, and manipulation;

15 (B) adequate representation of the interests of
16 consumers;

17 (C) meaningful protections in cases of over-
18 reaching and unfair repossession of goods and
19 products;

20 (D) effective barriers against improper service
21 of process, abuse of default judgments, and other
22 such practices; and

23 (E) readily available and adequate forums for
24 the fair, effective, and efficient resolution of contro-
25 versies involving consumer goods and services;

(6) while there have been substantial efforts on the part of the business community to resolve consumer disputes and such efforts must be encouraged and expanded, effective consumer redress will be brought about only through a cooperative functioning of both public and privately sponsored mechanisms.

20 DEFINITIONS

22 (1) the term "commerce" means trade, traffic, com-
23 merce, or transportation—

24 (A) between a place in a State and any place
25 outside thereof; or

1 (B) which affects trade, traffic, commerce, or
2 transportation described in subparagraph (A);

3 (2) the term "Director" means the Director of the
4 Office;

5 (3) the term "local" means of or pertaining to any
6 political subdivision within a State;

7 (4) the term "Office" means the Office of Con-
8 sumer Redress;

9 (5) the term "Commission" means the Federal
10 Trade Commission;

11 (6) the term "State" means any State of the United
12 States, the District of Columbia, the Commonwealth
13 of Puerto Rico, the Virgin Islands, Guam, American
14 Samoa, the Canal Zone, and the Trust Territory of the
15 Pacific Islands;

16 (7) the term "State administrator" means the indi-
17 vidual or government agency which is designated, in
18 accordance with State law, to direct, coordinate, or con-
19 duct a State system; and

20 (8) the term "State system" means all of the State
21 sponsored mechanisms and procedures within such State
22 for the resolution of controversies involving consumers,
23 including small claims courts, arbitration, and other
24 mechanisms and procedures set forth in the State plan
25 developed pursuant to section 5 (b) of this Act.

1 OFFICE OF CONSUMER REDRESS

2 SEC. 4. (a) IN GENERAL.—The Commission shall estab-
3 lish, within 30 days after the date of the enactment of this
4 Act, a new office to be known as the Office of Consumer
5 Redress. The Commission shall appoint a Director of the
6 Office.

7 (b) DUTIES.—The Commission, through the Director,
8 shall, consistent with the purpose and goals of this Act—

9 (1) enter into or renew cooperative agreements
10 with the States;

11 (2) allocate and pay to the States funds appropri-
12 ated for financial assistance to States under cooperative
13 agreements;

14 (3) issue such regulations as are necessary to carry
15 out the provisions of this Act, in accordance with the
16 provisions of section 553 of title 5, United States Code;

17 (4) encourage and assist the development and im-
18 plementation of innovative concepts and approaches,
19 including adapting or expanding the mechanism of the
20 unsatisfied judgment fund in the field of automobile
21 compensation law to satisfy all unsatisfied judgments;

22 (5) award discretionary grants;

23 (6) determine whether a State plan is in accord-
24 ance with this Act;

25 (7) review the operation and effectiveness of each

1 State plan for the resolution of controversies involving
2 consumers which has been approved under this Act;

3 (8) articulate and evaluate the goals for a model
4 State system of consumer controversy resolutions, in-
5 cluding the formulation and promotion of model small
6 claims court statutes and ordinances which may be
7 adopted by the several States, and which shall be formu-
8 lated within 12 months after the date of the enactment
9 of this Act and shall be revised from time to time as is
10 deemed appropriate by the Director;

11 (9) coordinate and integrate the functioning of
12 both public- and business-sponsored mechanisms; and

13 (10) take such other actions as are appropriate to
14 fulfill the purpose of this Act.

15 FINANCIAL ASSISTANCE TO STATES

16 SEC. 5. (a) COOPERATION WITH STATES AND PRI-
17 VATE ENTERPRISE.—In carrying out their functions under
18 this Act, the Director and the Commission shall cooperate,
19 to the maximum extent practicable, with the States and
20 the business community. In addition to any other enumerated
21 obligation, the Director shall consult, from time to time,
22 with the State administrator, if any, in each State.

23 (b) FINANCIAL ASSISTANCE.—The Commission,
24 through the Director, is authorized to enter into a coopera-
25 tive agreement to provide financial assistance to any State

1 for the development or maintenance of a system approved
2 by the Commission for the effective, fair, inexpensive, and
3 expeditious resolution of controversies involving consumers.

4 Before a State shall be deemed eligible to enter into or renew
5 a cooperative agreement for the development or maintenance
6 of a State system, the Director shall make, justify, and publish
7 in the Federal Register a finding that such agreement would
8 further the purpose of this Act and that such State has
9 developed, or is developing, a 4-year State plan which—

10 (1) is designed to meet the requirements of a
11 State system set forth in section 7 of this Act, and rep-
12 represents an effective response to the needs of the State
13 for fair, expeditious, and inexpensive resolution of con-
14 troversies involving consumers;

15 (2) provides for a State administrator authorized
16 under the law of the State to receive and disburse
17 moneys, to submit required reports to the Director,
18 including assembling copies of the rules and regulations
19 covering each redress mechanism within such State, to
20 conduct the comprehensive survey required by para-
21 graph (3) of this subsection, and to supervise, direct,
22 coordinate, or conduct the State system;

23 (3) provides for a comprehensive survey of the
24 State system and major business-sponsored mechanisms
25 within the State which discloses (A) the nature, num-

ber, and location of all consumer controversy resolution mechanisms within the State; (B) the annual expenditure and operating authority for each such mechanism; (C) the existence of any program for informing the potential users of each such mechanism of its availability; and (D) statistical data on the following factors with respect to each such mechanism, to the extent practicable and appropriate: (i) annual caseload; (ii) jurisdiction limit, if any; (iii) number of cases filed by corporations or partnerships and their disposition; (iv) number of cases filed by individuals and their disposition; (v) availability and nature of legal or paralegal assistance which is available to low-income consumers during preparation, at settlement during arbitration, or at trial; and (vi) number of defaults each year, by category of plaintiff and method of service;

(4) requires that funds expended pursuant to the State system for the development and maintenance of consumer controversy resolution mechanisms within the State for which application for a cooperative agreement is made are distributed in accordance with need and in a manner which would further the purpose of this Act; and

(5) provides for participation by consumers, including low-income consumers, in developing and com-

1 menting upon such State plan, which comments shall
2 become part of any application for a cooperative
3 agreement.

4 (c) DETERMINATION.—Within 90 days after the Com-
5 mission receives a certified copy of a State plan developed
6 under subsection (b) of this section, the Director shall make
7 a determination whether (1) the State is eligible to receive
8 financial assistance under subsection (b) of this section; and
9 (2) such State plan is in accordance with this Act. Unless
10 the Commission determines, within 30 days after the Di-
11 rector determines that a State plan is in accordance with this
12 Act, that such State plan is not in accordance with this Act,
13 the Director shall, to the extent resources are available,
14 enter into a cooperative agreement designed to effectuate
15 such plan. A State may submit a revised or improved plan
16 designed to better effectuate the purpose of this Act at any
17 time.

18 (d) REVIEW.—The Director shall periodically, but not
19 less than once every 2 years, or may at any time upon
20 complaint of an affected consumer, review any State plan or
21 any discretionary grant for the resolution of controversies
22 involving consumers which has been approved and for which
23 there is experience (1) to determine whether such plan or
24 grant is still in accordance with the goals of this Act;

1 and (2) to evaluate the success of such plan or grant in terms
2 of the purpose of this Act. In addition to the data required
3 under subsection (b) (3) of this section and section 9 (a)
4 of this Act, reports shall be submitted on each mechanism
5 showing the extent to which it has met the requirements of
6 section 7 of this Act, including results of random sample
7 surveys of attitudes of consumers who have actually used the
8 services of the mechanism. Any plan or grant which is found
9 not to be in accordance with such requirements or which
10 has not been successful shall be terminated in accordance
11 with the procedures set forth in subsection (e) of this sec-
12 tion. To facilitate such review, the State administrator in
13 each such State shall submit to the Director, not later than
14 March 15 of each year, an annual report containing all rele-
15 vant information requested by the Director and comments
16 of consumers, including low-income consumers, on the effec-
17 tiveness of mechanisms funded under this Act.

18 (e) PROCEDURE.—Before making any determination
19 under subsection (c) or (d) of this section, the Director
20 shall cause a notice and a summary of the State plan under
21 consideration to be published in the Federal Register and
22 shall afford the affected State and all interested parties a
23 reasonable opportunity to present their views by oral or
24 written submission, and to propose modifications to such State
25 plan or grant program. The Commission, through the Direc-

1 tor, shall notify the affected State or grantee of any determi-
2 nation made under this section and shall publish any such
3 determination with reasons therefor in the Federal Register.
4 Any final determination by the Director under this section
5 shall be subject to judicial review in accordance with chapter
6 7 of title 5, United States Code, in the United States court
7 of appeals for the circuit in which is located the State whose
8 plan or grant is the subject of such determination or in the
9 United States Court of Appeals for the District of Columbia.
10 Any such review shall be instituted within 60 days after
11 the date on which the determination of the Director is pub-
12 lished in the Federal Register.

13 (f) ALLOCATION OF FUNDS.—Moneys appropriated for
14 financial assistance pursuant to this section shall be available
15 to the Director for allocation to the States under cooperative
16 agreements. Such agreements shall have a duration of no
17 more than 4 years. The purposes for which such funds
18 may be used include—

19 (1) compensation of personnel engaged in the reso-
20 lution of controversies involving consumers, including
21 personnel whose function it is to assist private citizens
22 in the preparation and resolution of their claims and
23 the collection of judgments;

24 (2) recruiting, organizing, training, and educating
25 personnel described in paragraph (1) of this subsection;

1 (3) public education and publicity relating to the
2 availability and proper use of consumer controversy
3 resolution mechanisms and settlement procedures;

4 (4) improvement, purchase, or lease of buildings,
5 rooms, vehicles, and other facilities and equipment
6 needed to improve mechanisms for the settlement of
7 controversies involving consumers;

8 (5) continuing supervision and study of the mech-
9 anisms and settlement procedures employed in the
10 resolution of consumer controversies within the State;

11 (6) research and development of more fair, less
12 expensive, or more expeditious mechanisms and proce-
13 dures for consumer controversy resolution; and

14 (7) sponsoring programs of nonprofit organizations
15 to accomplish any of the provisions of this subsection.

16 The Director shall consider population density when allo-
17 cating funds to the States under cooperative agreements. The
18 proportion of the Federal share of the estimated cost of a
19 cooperative agreement shall not exceed 70 per centum of the
20 total cost of such agreement. The aggregate expenditure of
21 funds of the State and political subdivisions thereof, exclu-
22 sive of Federal funds, for such purposes shall be maintained
23 at a level which does not fall below the average level of such
24 expenditures for the last 2 complete fiscal years preceding
25 the date of application for a cooperative agreement.

2 SEC. 6. (a) IN GENERAL.—The Director, in accordance
3 with the purpose of this Act, shall promote the development
4 of consumer controversy resolution mechanisms through re-
5 search and demonstration projects or other activities that will
6 encourage innovation or effectuation of the purpose of this
7 Act.

(b) DISCRETIONARY GRANTS.—Notwithstanding the provisions of section 5 (b) of this Act, the Director is authorized to make discretionary grants, in a total amount each year not to exceed 25 per centum of the financial assistance authorized to be appropriated under this Act.

(c) ELIGIBILITY FOR GRANTS.—The Director shall establish criteria, terms, and conditions for awarding grants for research or demonstration projects which are consonant with the purpose of this Act. Such grants may be made to units of local government, combinations of such units, or nonprofit organizations. No discretionary grant shall be made to any professional organization whose consumer controversy resolution mechanism does not fairly represent the consumers of the services provided.

23 SEC. 7. Each State plan shall provide for the develop-
24 ment or maintenance of a State system in which—

25 (1) there are sufficient numbers and types of readily

1 available consumer controversy resolution mechanisms
2 which meet the requirements of paragraph (4) of this
3 section;

4 (2) a public information program is effectively
5 communicating to potential users the availability and
6 location of consumer controversy resolution mechanisms
7 and consumer complaint offices in such State;

8 (3) each such mechanism and unit thereof files
9 an annual report with the State administrator in such
10 form and with such content as is prescribed by him in
11 consultation with the Director, including not less than
12 the information required in section 5 (b) (3) of this Act;

13 (4) a consumer controversy resolution mechanism
14 is established and maintained which—

15 (A) is inexpensive to use and which has
16 forms, rules, and procedures which are, so far as
17 practicable, easy for potential users to understand
18 and free from technicalities;

19 (B) is designed so that assistance, including
20 paralegal personnel where appropriate, is provided
21 to persons in pursuing claims and collecting
22 judgments;

23 (C) is open and available for the adjudication
24 or resolution of controversies during hours and on
25 days that are convenient for consumers, such as

1 evenings and weekends, and a fair proportion of
2 controversies are scheduled to be resolved at such
3 times;

4 (D) provides for adequate arrangements for
5 translation in areas with substantial non-English-
6 speaking populations;

7 (E) is governed by reasonable and fair rules
8 and procedures which are approved by the State
9 administrator and which shall—

10 (i) facilitate the early resolution of con-
11 sumer controversies by means in addition to
12 the adjudication of claims;

13 (ii) encourage the fairest and most effec-
14 tive use of the services of attorneys in the
15 resolution of such controversies;

16 (iii) encourage the finality of the resolution
17 of such controversies;

18 (iv) provide for the qualification, tenure,
19 and duties of persons charged with resolving or
20 assisting in the resolution of such controversies;

21 (v) prohibit the use of consumer contro-
22 versy resolution mechanisms by assignees or
23 collection agencies in any manner consistent
24 with the purpose of this Act;

25 (vi) provide for the maintenance of com-

1 plete records of each grievance submitted to the
2 consumer controversy resolution mechanism and
3 each complaint filed with it, together with a
4 notation as to the disposition of each such
5 grievance or complaint;

6 (vii) assure that all parties to a dispute are
7 directly involved in the resolution of such
8 dispute;

9 (viii) assure that the resolution of dispute
10 settlement efforts is actually carried out;

11 (ix) assure that all parties are informed of
12 the status of the case; and

13 (x) provide useful information about other
14 available redress mechanisms in the event that
15 dispute settlement efforts fail or the controversy
16 does not come within the jurisdiction of such
17 mechanism; and

18 (F) provides for the identification and correc-
19 tion of product design problems and patterns of
20 service abuse by—

21 (i) maintaining public records on all closed
22 complaints;

23 (ii) bringing substantial authority and
24 meaningful influence to bear on the complaine

1 to correct patterns of product and service
 2 deficiency; or
 3 (iii) providing information to Government
 4 agencies responsible for the administration of
 5 applicable laws so they can perform their re-
 6 medial deterrent tasks more effectively; and
 7 (5) a small claims court system is established and
 8 maintained which meets the requirements of paragraph
 9 (4) and which—
 10 (A) is part of the regular court system main-
 11 tained by the State;
 12 (B) has a jurisdictional limit which is adequate
 13 to permit all, or substantially all, consumer contro-
 14 versies within its jurisdiction to be resolved therein;
 15 (C) provides methods for assuring that process
 16 served is actually received by defendants, including
 17 procedures for supplemental notification after serv-
 18 ice of process;
 19 (D) provides an easy method for an individual
 20 to determine the proper name in which, and the
 21 proper procedure by which, any person may be
 22 sued;
 23 (E) provides informal means for the resolu-
 24 tion of controversies through conciliation, media-

tion, arbitration, or other means, except that such informal means (i) are required to be used in good faith by all parties, before a date may be set for trial involving a claim initiated by such person; and (ii) involve the presence and approval of, or decision by, a disinterested third party or the participation of a representative for all parties with judicial approval of the term of any proposed resolution;

(F) discourages the entry of judgments by default by requiring, as a prerequisite thereto, that the appropriate judge find, after a proceeding in open court, that—

(i) the defendant was given adequate notice of such claim, or, if any person other than the defendant accepted service on behalf of the defendant, by requiring that the judge find that there was a business, family, or personal relationship between such person and the defendant sufficient to assure that the defendant in fact received notice of such claim;

(ii) the defendant understood the nature of the claim and the proceedings; and

(iii) the plaintiff established a prima facie case demonstrating entitlement to judgment; and

1 (G) provides effective means for assuring that
2 judgments awarded to aggrieved individuals are paid
3 promptly.

4 RECORDS, AUDIT, AND ANNUAL REPORT

5 SEC. 8. (a) IN GENERAL.—Each recipient of assistance
6 under this Act shall keep such records as the Commission,
7 through the Director, shall prescribe, including records which
8 fully disclose the amount and disposition by such recipient
9 of the proceeds of such assistance, the total cost of the project
10 or undertaking in connection with which such assistance is
11 given or used, and the amount of that portion of the project
12 or undertaking supplied by other sources, and such other
13 records as will facilitate an effective financial and perform-
14 ance audit. The provisions of this subsection shall apply to
15 all recipients of assistance under this Act, whether by direct
16 grant or contract with the Commission through the Director
17 or by subgrant or subcontract from primary grantees or con-
18 tractors of the Commission, through the Director, or from
19 any State administrator receiving financial assistance under
20 this Act.

21 (b) AUDIT.—The Commission or any of its designated
22 representatives shall have access for purpose of audit and
23 examination to any relevant books, documents, papers, and
24 records of the recipients of grants and financial assistance
25 under this Act.

1 (c) COMPTROLLER GENERAL.—The Comptroller Gen-
2 eral of the United States, or any of his duly authorized
3 representatives, shall, until the expiration of 3 years after
4 the completion of the program or project with which the
5 assistance is used, for the purpose of financial and perform-
6 ance audits and examinations, have access to any relevant
7 books, documents, papers, and records of recipients of finan-
8 cial assistance under this Act.

9 (d) ANNUAL REPORT.—The Commission, through
10 the Director, shall submit an annual report to the President
11 and the Congress simultaneously by June 15 each year. Such
12 report shall include—

13 (1) a summary of any reviews undertaken pursu-
14 ant to section 5 (d) of this Act;

15 (2) the results of financial and performance audits
16 conducted pursuant to this section; and

17 (3) an evaluation of the effectiveness of the Office
18 and the Commission in implementing the purpose of
19 this Act, together with any recommendations for addi-
20 tional legislative or other action.

21 AUTHORIZATION OF APPROPRIATIONS

22 SEC. 9. For purposes of this Act, there are authorized
23 to be appropriated to the Commission not to exceed \$5,000,-
24 000 for the fiscal year ending September 30, 1978, and not

1 to exceed \$20,000,000 for the fiscal year ending Septem-
2 ber 30, 1979. Not more than 10 per centum of the amount
3 authorized to be appropriated under this Act shall be used
4 for Federal administrative expenses.

95TH CONGRESS
1ST SESSION

H. R. 2965

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1977

Mr. BROYHILL introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To regulate commerce by establishing national goals for the effective, fair, inexpensive, and expeditious resolution of controversies involving consumers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Consumer
5 Controversies Resolution Act".

6 FINDINGS AND PURPOSE

7 SEC. 2. (a) FINDINGS.—The Congress finds and de-
8 clares that—

9 (1) for the majority of American consumers, mech-
10 anisms for the resolution of controversies involving con-

1 sumer goods and services are largely unavailable, in-
2 effective, or unfair;

3 (2) the total amount of money involved each year
4 in consumer controversies in the United States exceeds
5 \$100,000,000, but the amount involved in any single
6 controversy is apt to be small, less in many cases than
7 the cost of legal representation for the affected consumer;

8 (3) the existing mechanisms for consumer con-
9 troversy resolution are inadequate to handle the enor-
10 mous volume of such controversies;

11 (4) there is substantial unavailability, for most
12 consumers, of—

13 (A) meaningful remedies in cases of fraud, de-
14 ception, and manipulation;

15 (B) meaningful protections in cases of over-
16 reaching and unfair repossession of goods and
17 products;

18 (C) effective barriers against improper service
19 of process, abuse of default judgments, and other
20 such practices; and

21 (D) readily available and adequate forums for
22 the fair, effective, and efficient resolution of contro-
23 versies involving consumer goods and services;

24 (5) a major and inseparable portion of the goods

1 and services which form the underlying subject matter
2 of consumer controversies flows through commerce, the
3 circumstances of the sale and distribution of such por-
4 tion of goods and services to consumers affect com-
5 merce, and the unavailability of effective, fair, inex-
6 pensive, and expeditious means for the resolution of
7 such controversies constitutes an undue burden on com-
8 merce; and

9 (6) while there have been substantial efforts on the
10 part of the business community to resolve consumer dis-
11 putes and such efforts must be encouraged and expanded,
12 effective consumer redress will be brought about only
13 through a cooperative functioning of both public and
14 privately sponsored mechanisms.

15 (b) PURPOSE.—It is therefore declared to be the pur-
16 pose of the Congress in this Act to assure all consumers
17 convenient access to consumer controversy resolution mech-
18 anisms which are effective, fair, inexpensive, and expeditious.

19 DEFINITIONS

20 SEC. 3. As used in this Act—

21 (1) the term “commerce” means trade, traffic, com-
22 merce, or transportation—

23 (A) between a place in a State and any place
24 outside thereof; or

1 (B) which affects trade, traffic, commerce, or
2 transportation described in subparagraph (A) ;

3 (2) the term "Director" means the Director of the
4 Office;

5 (3) the term "local" means of or pertaining to
6 any political subdivision within a State;

7 (4) the term "Office" means the Office of Consum-
8 er Redress;

9 (5) the term "Secretary" means the Secretary of
10 Commerce;

11 (6) the term "State" means any State of the
12 United States, the District of Columbia, the Common-
13 wealth of Puerto Rico, the Virgin Islands, Guam,
14 American Samoa, the Canal Zone, and the Trust Ter-
15 ritory of the Pacific Islands;

16 (7) the term "State administrator" means the
17 officer or employee of State government who is desig-
18 nated, in accordance with State law, to direct, coordi-
19 nate, or conduct a State program;

20 (8) the term "State plan" means the 4-year State
21 plan for the development or maintenance of consumer
22 controversy resolution mechanisms which is established
23 in accordance with section 5 (b) (4) and section 7 (a) ;
24 and

1 (9) the term "State program" means all of the
2 State sponsored mechanisms and procedures within such
3 State for the resolution of controversies involving con-
4 sumers, including small claims courts, arbitration, and
5 other mechanisms and procedures set forth in the State
6 plan.

7 OFFICE OF CONSUMER REDRESS

8 SEC. 4. (a) IN GENERAL.—The Secretary shall estab-
9 lish, within 30 days after the date of the enactment of this
10 Act, an office to be known as the Office of Consumer Redress.
11 The Secretary shall appoint a Director of the Office.

12 (b) DUTIES.—The Director shall, consistent with the
13 purpose and goals of this Act—

14 (1) enter into or renew cooperative agreements
15 with the States;

16 (2) allocate and pay to the States funds appropri-
17 ated for financial assistance to States under cooperative
18 agreements;

19 (3) issue, after consultation with the Federal Trade
20 Commission, such regulations as are necessary to carry
21 out the provisions of this Act, in accordance with the
22 provisions of section 553 of title 5, United States Code;

23 (4) encourage and assist the development and im-
24 plementation of innovative concepts and approaches

1 with respect to the resolution of consumer controver-
2 sies, including adapting and applying the unsatisfied
3 judgment fund mechanisms, used in connection with
4 automobile accident compensation litigation, to unsatis-
5 fied judgments relating to consumer controversies;

6 (5) award grants under section 6 to carry out the
7 purpose of this Act;

8 (6) determine whether a State plan is in accord-
9 ance with this Act;

10 (7) review the operation and effectiveness of each
11 State plan which has been approved under this Act;

12 (8) formulate and promote model small claims
13 court statutes and ordinances which may be adopted
14 by the States;

15 (9) coordinate and integrate the functioning of
16 both public and business-sponsored consumer contro-
17 versy resolution mechanisms; and

18 (10) take such other actions as are appropriate to
19 carry out the purpose of this Act.

20 FINANCIAL ASSISTANCE TO STATES

21 SEC. 5. (a) COOPERATION WITH THE STATES AND
22 PRIVATE ENTERPRISE.—In carrying out the functions of the
23 Office under this Act, the Director shall cooperate, to the
24 maximum extent practicable, with the States and the business
25 community. In addition to any other obligation established by

1 this Act, the Director shall consult, from time to time, with
2 the State administrator, if any, in each State.

3 (b) FINANCIAL ASSISTANCE.—The Director may
4 enter into a cooperative agreement to provide financial
5 assistance to any State to assist such State in the develop-
6 ment and maintenance of a State program approved by the
7 Director. Before a State shall be considered eligible to enter
8 into a cooperative agreement for the development or main-
9 tenance of a State program, such State shall submit an ap-
10 plication to the Director. Such application shall provide
11 assurances that—

12 (1) such State will designate a State administrator
13 and such State administrator will be authorized under
14 the laws of such State to receive and disburse moneys;
15 to submit required reports to the Director, including
16 assembling copies of the rules and regulations covering
17 each redress mechanism within such State, to conduct
18 the comprehensive survey required by paragraph (2),
19 and to supervise, direct, coordinate, or conduct the State
20 program;

21 (2) a comprehensive survey of the State program
22 and major business-sponsored consumer controversy reso-
23 lution mechanisms within such State will be conducted
24 which discloses (A) the nature, number, and location
25 of all consumer controversy resolution mechanisms.

1 within such State; (B) the annual expenditure and op-
2 erating authority for each such mechanism; (C) the
3 existence of any program for informing the potential
4 users of each such mechanism of its availability; and
5 (D) statistical data on the following factors with respect
6 to each such mechanism, to the extent practicable and
7 appropriate: (i) annual caseload; (ii) jurisdiction limit,
8 if any; (iii) number of cases filed by corporations or
9 partnerships and their disposition; (iv) number of cases
10 filed by individuals and their disposition; (v) availa-
11 bility and nature of legal or para-legal assistance which
12 is available to consumers during preparation, at settle-
13 ment, during arbitration, or at trial; and (vi) number
14 of defaults each year, by category of plaintiff and
15 method of service;

16 (3) funds expended pursuant to the State program
17 for which application for a cooperative agreement is
18 made are distributed in accordance with need and in a
19 manner which would further the purpose of this Act;

20 (4) the State administrator has submitted or will
21 submit a 4-year State plan for the development or
22 maintenance of consumer controversy resolution mech-
23 anisms within such State for which the application for
24 a cooperative agreement is made and such State plan

1 is designed to meet or exceed the goals established in
2 section 8; and

3 (5) provision is made for participation by con-
4 sumers, including low-income consumers, in developing
5 and commenting upon the State plan.

6 (c) REVIEW OF APPLICATIONS.—The Director shall
7 review each application for a cooperative agreement which
8 is submitted under subsection (b), and shall make a deter-
9 mination with respect to such application in accordance with
10 section 7 (b).

11 (d) ALLOCATION OF FUNDS.—Moneys appropriated
12 for financial assistance pursuant to this section shall be avail-
13 able to the Director for allocation to the States under cooper-
14 ative agreements. The Director, in making such allocations,
15 shall take into account population density and shall seek
16 to achieve an equitable geographic balance in connection
17 with the distribution of such moneys.

18 (e) USE OF FUNDS.—The purposes for which moneys
19 appropriated for financial assistance pursuant to this section
20 may be used include—

21 (1) recruiting, organizing, training, educating, and
22 compensating personnel engaged in the resolution of
23 controversies involving consumers, including person-
24 nel whose function it is to assist private citizens in

1 the preparation and resolution of their claims and the
2 collection of judgments;

3 (2) public education relating to the availability
4 and proper use of consumer controversy resolution
5 mechanisms;

6 (3) improvement, purchase, or lease of buildings,
7 rooms, vehicles, and other facilities and equipment
8 used in connection with the State program;

9 (4) continuing supervision and study of the mech-
10 anisms and settlement procedures employed in the
11 resolution of consumer controversies within the State
12 involved;

13 (5) research into, and development of, more fair,
14 less expensive, or more expeditious mechanisms and
15 procedures for consumer controversy resolution; and

16 (6) sponsoring programs of nonprofit organizations
17 to accomplish any of the provisions of this subsection.

18 The proportion of the Federal share of the estimated cost
19 of a cooperative agreement shall not exceed 70 percent of
20 the total cost of such agreement. The aggregate expenditure
21 of funds of the State and political subdivisions thereof, ex-
22 clusive of Federal funds, for carrying out the State pro-
23 gram shall be maintained at a level which does not fall

1 below the average level of such expenditures for the last
2 2 complete fiscal years preceding the date of application
3 for a cooperative agreement.

4 RESEARCH AND DEMONSTRATION PROJECTS

5 SEC. 6. (a) IN GENERAL.—The Director may make
6 grants to local governments, combinations of local govern-
7 ments, and private nonprofit organizations for research and
8 demonstration projects designed to further the purpose of
9 this Act. Any such grant shall be made in accordance with
10 the provisions of subsection (b) and shall be made after
11 consultation with the State administrator, or other appro-
12 priate State officer or employee, of the State involved.
13 Funds available for grants under this section shall not
14 exceed 25 percent of the total amount of funds available
15 for financial assistance under this Act for any fiscal year.

16 (b) ELIGIBILITY FOR GRANTS.—The Director shall
17 establish criteria, terms, and conditions for awarding grants
18 for research or demonstration projects which are consonant
19 with the purpose of this Act. No grant may be made under
20 this section to any private nonprofit organization unless such
21 organization provides for the participation of consumers, in-
22 cluding low-income consumers, in the formulation of the
23 research and demonstration project involved.

STATE PLANS

1
2 SEC. 7. (a) IN GENERAL.—Any State which desires to
3 enter into a cooperative agreement under section 5 (b) shall
4 submit a State plan to the Director in accordance with
5 section 5 (b) (4) . Such plan shall be considered to meet the
6 requirements of this Act if such plan is designed to meet
7 or exceed the goals established in section 8, and represents
8 an effective response to the State's need for fair, expedi-
9 tious, and inexpensive resolution of consumer controversies.
10 Upon the establishment of a State plan, the State adminis-
11 trator shall promptly transmit a certified copy of such plan
12 to the Director.

13 (b) DETERMINATION.—Within 90 days after the
14 Director receives a certified copy of a State plan estab-
15 lished under subsection (a) , the Director shall make a
16 determination whether (1) the State involved is eligible
17 to receive financial assistance under section 5 (b) ; and (2)
18 such plan is in accordance with this Act. If the Director
19 determines that such State is eligible to receive financial as-
20 sistance under section 5 (b) , and that the State plan is in
21 accordance with this Act, then the Director shall enter into
22 a cooperative agreement designed to effectuate such plan. A
23 State may submit a revised State plan designed to better
24 effectuate the purpose of this Act at any time.

1 (c) REVIEW.—The Director shall periodically, but not
2 less than once every 2 years, or may at any time upon
3 complaint of an affected consumer, review any State plan,
4 or any grant made under section 6, for which there is (1)
5 experience to determine whether such State plan or grant
6 continues to be in accordance with the purpose of this
7 Act; and (2) in the case of a State plan, experience to
8 evaluate the success of such plan in meeting the goals
9 established in section 8. Any State plan or grant which is
10 found not to be in accordance with the purpose of this Act,
11 or with the goals established in section 8 (in the case of
12 a State plan), shall be terminated in accordance with the
13 procedures set forth in subsection (d). To facilitate such
14 review, the State administrator in each State which has an
15 approved State plan shall submit to the Director, not later
16 than 30 days after the close of each calendar year, an annual
17 report containing all relevant information requested by the
18 Director and comments (or summaries of comments) of
19 consumers, including low-income consumers, on the effec-
20 tiveness of mechanisms receiving financial assistance under
21 this Act.

22 (d) PROCEDURE.—Before making any determination
23 under subsection (b) or subsection (c) with respect to a
24 State plan, the Director shall cause a notice and a summary

1 of the State plan under consideration to be published in
2 the Federal Register. Before making any such determina-
3 tion with respect to a State plan or a grant made under
4 section 6, the Director shall afford the affected State and
5 all interested parties a reasonable opportunity to present
6 their views by oral or written submission, and to propose
7 modifications to such plan or grant program. The Director
8 shall notify the affected State or grant recipient of any
9 determinations made under this section and shall publish
10 such determinations with reasons therefor in the Federal
11 Register. Any final determination by the Director under
12 this section shall be subject to judicial review in accordance
13 with chapter 7 of title 5, United States Code, in the United
14 States Court of Appeals for the circuit in which is located
15 the State or local government whose State plan or grant is
16 the subject of such determination or in the United States
17 Court of Appeals for the District of Columbia. In the case
18 of any grant recipient other than a local government, such
19 judicial review shall occur in the United States court of
20 appeals for the circuit in which such grant recipient resides
21 or maintains its principal place of business or in the United
22 States Court of Appeals for the District of Columbia. Any
23 such review shall be instituted within 60 days from the date
24 on which the determination of the Director is published in
25 the Federal Register.

1 GOALS

2 SEC. 8. (a) STATE PROGRAM.—Any State plan sub-
3 mitted under section 7 (a) shall provide for the establishment
4 of a State program which seeks to achieve the following
5 goals—

6 (1) the provision of sufficient numbers and types
7 of readily available consumer controversy resolution
8 mechanisms responsive to the goals established in sub-
9 section (b) ; and

10 (2) the establishment of a public information pro-
11 gram which effectively communicates to potential users
12 the availability and location of consumer controversy
13 resolution mechanisms and consumer complaint offices
14 in such State.

15 (b) CONSUMER CONTROVERSY RESOLUTION MECH-
16 ANISMS.—Any State plan submitted under section 7 (a)
17 shall provide for the establishment of consumer contro-
18 versy resolution mechanisms which seek to achieve the
19 following goals—

20 (1) the utilization of forms, rules, and procedures
21 which are, so far as practicable, easy for potential users
22 to understand and inexpensive to use;

23 (2) the provision of assistance, including para-legal
24 personnel where appropriate, to persons in pursuing
25 claims and collecting judgments;

1 (3) the establishment of procedures which permit
2 the adjudication or resolution of consumer controver-
3 sies during hours and on days that are convenient for
4 consumers, such as evenings and weekends;

5 (4) the provision of adequate arrangements for
6 translation in areas with substantial non-English-speak-
7 ing populations; and

8 (5) the establishment of reasonable and fair rules
9 and procedures which are approved by the State admin-
10 istrator and which shall—

11 (A) facilitate the early resolution of consumer
12 controversies by means in addition to the adjudica-
13 tion of claims;

14 (B) encourage the fairest and most effective
15 use of the services of attorneys in the resolution
16 of such controversies;

17 (C) encourage the finality of the resolution
18 of such controversies;

19 (D) provide for the qualification, tenure, and
20 duties of persons charged with resolving or assisting
21 in the resolution of such controversies;

22 (E) prohibit the use of consumer controversy
23 resolution mechanisms by assignees or collection
24 agencies in any manner inconsistent with the pur-
25 pose of this Act;

1 (F) provide for the maintenance of complete
2 records of each grievance submitted to the consumer
3 controversy resolution mechanism and each com-
4 plaint filed with it, together with a notation as to
5 the disposition of each such grievance or complaint;

6 (G) ensure that all sides to a dispute are
7 given an opportunity to be directly involved in
8 the resolution of such dispute;

9 (H) ensure that dispute resolutions are actu-
10 ally carried out;

11 (I) ensure that all parties are informed of the
12 status of the case involved; and

13 (J) provide information relating to other avail-
14 able redress mechanisms in the event that dispute
15 settlement efforts fail or the controversy is not
16 within the jurisdiction of such mechanism.

17 (c) SMALL CLAIMS COURTS.—Any State which
18 receives financial assistance under section 5 and which uses
19 any portion of such assistance for the establishment or
20 maintenance of a small claims court system shall include
21 in its State plan submitted under section 7 (a) provisions
22 for the operation of such system in a manner which seeks
23 to achieve the following goals—

24 (1) inclusion of the small claims court system as

1 part of the regular court system maintained by such
2 State;

3 (2) the establishment of jurisdictional limits which
4 are designed to provide for the effective resolution of
5 consumer controversies;

6 (3) the establishment of methods for assuring that
7 process served is actually received by defendants, includ-
8 ing procedures for supplemental notification after serv-
9 ice of process, if appropriate;

10 (4) the provision of information to individuals to
11 assist them in determining the proper methods and
12 procedures through which any person may be sued;

13 (5) the provision of informal means for the reso-
14 lution of controversies through conciliation, mediation,
15 arbitration, or other means, except that such informal
16 means shall (A) be used in good faith by all parties,
17 before a date may be set for trial with respect to the
18 claim involved; and (B) involve the presence and
19 approval of, or decision by, a disinterested third party
20 or the participation of a representative for all parties
21 with judicial approval of the term of any proposed reso-
22 lution; and

23 (6) the achievement of reductions in the number of
24 entries of judgments by default by requiring, as a pre-

1 requisite thereto, that the appropriate judge find, after
2 a proceeding in open court, that—

3 (A) the defendant was given adequate notice
4 of such claim; and

5 (B) the plaintiff established a prima facie case
6 demonstrating entitlement to judgment; and

7 (7) the provision of effective means for ensuring
8 that judgments awarded to aggrieved individuals are
9 paid promptly.

10 RECORDS, AUDIT, AND ANNUAL REPORT

11 SEC. 9. (a) IN GENERAL.—Each recipient of assistance
12 under this Act shall—

13 (1) provide for keeping such records, and pro-
14 vide for affording such access to such records, as the
15 Director may determine to be necessary to assure that
16 such recipient is properly carrying out the cooperative
17 agreement or grant involved; and

18 (2) provide satisfactory assurance that such fiscal
19 control and fund accounting procedures will be adopted
20 as may be necessary to assure proper disbursement of,
21 and accounting for, Federal funds made available to
22 such recipient under this Act.

23 (b) AUDIT.—The Director, or any designated repre-
24 sentative of the Director, shall have access for purpose of

1 audit and examination to any relevant books, documents,
2 papers, and records of the recipients of grants and financial
3 assistance under this Act.

4 (c) ANNUAL REPORT.—The Director shall submit
5 an annual report simultaneously to the President and the
6 Congress. Such report shall be submitted no later than 60
7 days after the close of the calendar year involved and shall
8 include—

9 (1) a review of the activities of the Office during
10 such calendar year;

11 (2) a summary of any reviews undertaken pursu-
12 ant to section 7 (c) during such calendar year;

13 (3) the results of financial and performance audits
14 conducted pursuant to this section during such calendar
15 year; and

16 (4) recommendations for any appropriate legislative
17 or other action.

18 AUTHORIZATION OF APPROPRIATIONS

19 SEC. 10. For purposes of this Act, there are authorized
20 to be appropriated not to exceed \$5,000,000 for fiscal year
21 1978, and not to exceed \$20,000,000 for fiscal year 1979.
22 Not more than 10 percent of any amounts appropriated
23 under this Act may be used for Federal administrative
24 expenses.

95TH CONGRESS
2D SESSION

S. 957

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 1978

Referred jointly to the Committees on the Judiciary and Interstate and Foreign
Commerce

AN ACT

To promote commerce by establishing a national goal for the development and maintenance of effective, fair, inexpensive, and expeditious mechanisms for the resolution of consumer controversies, and for other purposes.

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

4 **SEC. 2. FINDINGS AND PURPOSE.**

5 (a) FINDINGS.—The Congress finds and declares that—

6 (1) for the majority of Americans, mechanisms for
7 the resolution of disputes involving consumer goods and
8 services, as well as numerous other types of disputes

1 involving small amounts of money, are largely unavail-
2 able, inaccessible, ineffective, expensive, or unfair;

3 (2) the inadequacies of dispute resolution mecha-
4 nisms in the United States have resulted in dissatisfaction
5 and many types of inadequately resolved grievances and
6 disputes;

7 (3) each individual dispute, such as that between
8 a consumer and seller, and landlord and tenant, for which
9 adequate resolution mechanisms do not exist may be of
10 relatively small social or economic magnitude, but taken
11 collectively such disputes are of enormous social and
12 economic consequence;

13 (4) there is a lack of necessary resources or exper-
14 tise in many areas of the country to develop new or
15 improved consumer and other necessary dispute resolu-
16 tion mechanisms;

17 (5) the inadequacy of dispute resolution mecha-
18 nisms throughout the United States is contrary to the
19 general welfare of the people;

20 (6) a major portion of the goods and services which
21 form the underlying subject matter of consumer disputes
22 and disputes involving small amounts of money flows
23 through commerce, and the unavailability of effective,
24 fair, inexpensive, and expeditious means for the resolu-

1 tion of such disputes constitutes an undue burden on
2 commerce; and

3 (7) while the States and the private sector have
4 made substantial efforts to resolve disputes, and while
5 such efforts should be encouraged and expanded, effective
6 redress will be promoted through a cooperative
7 functioning of both public and private mechanisms with
8 the support and assistance of the Congress.

9 (b) PURPOSE.—It is the purpose of the Congress in
10 this Act to assist the States and other interested parties in
11 providing to all persons convenient access to dispute resolution
12 mechanisms that are effective, fair, inexpensive, and
13 expeditious.

14 **SEC. 3. DEFINITIONS.**

15 As used in this Act, the term—

16 (a) “Attorney General” means the Attorney General
17 of the United States, or his designee;

18 (b) “commerce” means trade, traffic, commerce,
19 or transportation—

20 (1) between a place in a State and any place
21 outside thereof, or

22 (2) which affects trade, traffic, commerce, or
23 transportation described in paragraph (1);

1 (c) "Commission" means the Federal Trade Com-
2 mission;

3 (d) "dispute resolution mechanism" means courts
4 of limited jurisdiction and arbitration, mediation, concilia-
5 tion, and similar procedures, and referral services, which
6 are available to adjudicate, settle, and resolve disputes
7 involving small amounts of money or otherwise arising in
8 the courses of daily life;

9 (e) "local" means of or pertaining to any political
10 subdivision within a State;

11 (f) "State" means any State of the United States,
12 and the District of Columbia; and

13 (g) "State system" means all of the State-spon-
14 sored mechanisms and procedures available within a
15 State for the resolution of consumer disputes and other
16 civil disputes not involving large amounts of money,
17 including, but not limited to, small claims courts, arbi-
18 tration, mediation, and other similar mechanisms and
19 procedures.

20 **SEC. 4. CRITERIA FOR DISPUTE RESOLUTIONS MECHA-**
21 **NISMS.**

22 (a) **CRITERIA.**—In order to achieve the purpose of this
23 Act, a dispute resolution mechanism funded in whole or in
24 part under this Act shall provide for—

1 (1) forms, rules, and procedures which are, so far
2 as practicable, easy for potential users to understand
3 and free from technicalities;

4 (2) assistance, including paralegal assistance where
5 appropriate, to persons seeking the resolution of dis-
6 putes;

7 (3) the adjudication or resolution of disputes during
8 hours and on days that are convenient, including
9 evenings and weekends;

10 (4) adequate arrangements for translation in areas
11 with substantial non-English-speaking populations; and

12 (5) reasonable and fair rules and procedures, such
13 as those which would—

14 (A) insure that all sides to a dispute are di-
15 rectly involved in the resolution of such dispute,
16 and that such resolution is adequately implemented
17 (including promoting effective means for insuring
18 that a monetary award or agreement is promptly
19 paid, and a nonmonetary award or agreement is
20 effectively carried out) ;

21 (B) provide an easy way for an individual to
22 determine the proper name in which, and the proper
23 procedure by which, any person may be made a
24 party to a dispute resolution proceeding;

1 (C) encourage the resolution of disputes by, in
2 addition to adjudication, such informal means as
3 conciliation, mediation, or arbitration;

4 (D) permit the use of dispute resolution mech-
5 anisms by the business community, including, but
6 not limited to, small businesses, corporations, part-
7 nerships, and assignees;

8 (E) provide for the qualifications, tenure, and
9 duties of persons, other than judicial officers, charged
10 with resolving or assisting in the resolution of dis-
11 putes;

12 (F) encourage the finality of the resolution of
13 consumer and other minor disputes; and

14 (G) provide information about the availability
15 of other redress mechanisms in the event that dis-
16 pute settlement efforts fail or the dispute does not
17 come within the jurisdiction of the mechanism.

18 (b) STATE SYSTEM.—Each State is encouraged to de-
19 velop a State system which is responsive to the criteria es-
20 tablished in subsection (a) of this section by providing—

21 (1) sufficient numbers and types of readily avail-
22 able dispute resolution mechanisms which meet the re-
23 quirements for such mechanisms set forth in subsection
24 (a) of this section; and

25 (2) a public information program which effectively

7

1 communicates to potential users the availability and lo-
2 cation of such mechanisms and consumer complaint
3 offices in such State

4 **SEC. 5. DISPUTE RESOLUTION PROGRAM.**

5 Within 60 days after the date of enactment of this Act,
6 there shall be established within the United States Depart-
7 ment of Justice a dispute resolution program, to be adminis-
8 tered at the direction of the Attorney General. Such program
9 shall consist of the Dispute Resolution Resource Center es-
10 tablished pursuant to section 6 of this Act and of the financial
11 assistance authorized under section 7 of this Act.

12 **SEC. 6. DISPUTE RESOLUTION RESOURCE CENTER.**

13 (a) **ESTABLISHMENT.**—There shall be established
14 within the United States Department of Justice, as part of
15 the dispute resolution program established pursuant to sec-
16 tion 5 of this Act, a Dispute Resolution Resource Center
17 (hereinafter referred to as the “Center”). As soon as prac-
18 ticable after the creation of such dispute resolution program,
19 the Attorney General shall provide for the creation of the
20 Center and prescribe basic criteria for its operation consist-
21 ent with the purposes described in subsection (b) of this
22 section.

23 (b) **PURPOSES.**—The Center shall—

24 (1) serve as a national clearinghouse for the ex-
25 change of information concerning the improvement of

1 existing and the creation of new dispute resolution
2 mechanisms;

3 (2) provide technical assistance to State and local
4 governments to improve existent and to create new
5 mechanisms for dispute resolution;

6 (3) conduct research and development for the im-
7 provement of existent and creation of new dispute reso-
8 lution mechanisms;

9 (4) undertake comprehensive surveys of the vari-
10 ous State systems and, to the extent possible, major
11 private dispute resolution mechanisms within the States,
12 and each such survey shall, to the extent possible, dis-
13 close (A) the nature, number, and location of dispute
14 resolution mechanisms within each State; (B) the an-
15 nual expenditure and operating authority for each such
16 mechanism; (C) the existence of any program for in-
17 forming the potential users of the availability of each
18 such mechanism; (D) an assessment of the present use
19 of and projected demand for the services offered by
20 each such mechanism; and (E) other relevant data on
21 the types of disputes handled by each such mechanism,
22 such as disputes between consumers and sellers, land-
23 lords and tenants, and any other relevant categories of
24 cases;

(5) identify, after consultation with the Commission, those dispute resolution mechanisms or aspects thereof that—

(i) are consistent with the provisions of section 4;

(ii) are most effective and fair to all parties in the resolution of disputes; and

(iii) are suitable for general replication.

Consideration shall also be given to the need for the program to provide new or improved mechanisms for the resolution of all types of minor disputes. Mechanisms or aspects thereof so identified shall be certified as “national priority projects”; and

(6) make grants to, or enter into contracts with, to the extent provided in appropriation Acts, public agencies, institutions of higher education, or private organizations to conduct research, demonstrations, or special projects to implement paragraphs (1) through (5).

SEC. 7. FINANCIAL ASSISTANCE.

(a) AUTHORITY.—As part of the dispute resolution program established under section 5 of this Act, the Attorney General is authorized to provide financial assistance in the form of grants to applicants who have filed, pursuant

1 to subsection (c) of this section, applications for the pur-
2 pose of improving existent or creating new dispute resolu-
3 tion mechanisms.

4 (b) DUTIES OF THE ATTORNEY GENERAL.—As soon
5 as practicable after the date of enactment of this Act, the
6 Attorney General shall prescribe—

7 (1) the form and content of the applications for
8 assistance to be submitted as set forth in subsection (c)
9 of this section;

10 (2) the time schedule for submission of applications
11 for assistance available under this section;

12 (3) the procedures for approval of applications
13 submitted under this section, and for notification to
14 each State of all funds awarded to applicants within
15 such State;

16 (4) the specific criteria for the distribution of
17 funds received by applicants under this section, con-
18 sistent with the limitations contained in section 4 and
19 subsection (e) of this section and after consultation with
20 the Commission;

21 (5) the form and content of the reports to be filed
22 under this section as may be reasonably necessary to
23 monitor compliance with the requirements of this Act
24 and to evaluate the effectiveness of projects funded under

1 this Act and the procedures to be followed by the De-
2 partment of Justice in reviewing such reports;

3 (6) the uses to which funds received under this sec-
4 tion may be put consistent with those set forth under
5 subsection (d) of this section; and

6 (7) procedures for publishing in the Federal Reg-
7 ister a notice and summary of approved applications.

8 (c) ELIGIBILITY REQUIREMENTS.—Nonprofit organi-
9 zations, agencies of State governments, and units of local
10 governments are eligible to receive assistance under this
11 section. Any such entity desiring to receive grant funds
12 under this section shall submit to the Attorney General an
13 application consistent with the criteria set forth in section
14 4 of this Act and such specific criteria as the Attorney Gen-
15 eral may establish under paragraph (4) of subsection (b)
16 of this section. Such application shall—

17 (1) set forth a proposed plan for improving or
18 creating dispute resolution mechanisms for which finan-
19 cial assistance is sought;

20 (2) identify the person responsible for the admin-
21 istration of the project set forth in the application;

22 (3) provide for the establishment of fiscal controls
23 and fund accounting of Federal funds paid pursuant to
24 this Act;

1 (4) provide for the submission of reports in such
2 form and containing such information as the Attorney
3 General may require under subsection (b) of this
4 section;

5 (5) (A) meet the criteria of the national priority
6 projects program of the Center, or (B) identify the
7 project proposed therein as not meeting the criteria of
8 the national priority projects program and request
9 funding as an exception thereto in such manner, on
10 such forms, and pursuant to such specific criteria as the
11 Attorney General may prescribe pursuant to paragraph
12 (2) of subsection (e) of this section; and

13 (6) set forth the nature and extent of participation
14 of interested parties, including consumers, in the de-
15 velopment of the application.

16 (d) USE OF FUNDS.—(1) Funds available under this
17 section may be used only for the following purposes:

18 (A) compensation of personnel engaged in the ad-
19 ministration, adjudication, conciliation, or settlement of
20 disputes, including personnel whose function it is to as-
21 sist in the preparation and resolution of claims and the
22 collection of judgments;

23 (B) recruiting, organizing, training, and educating
24 personnel described in subparagraph (A) of this sub-
25 section;

1 (C) improvement or lease of buildings, rooms, and
2 other facilities and equipment and lease or purchase of
3 vehicles needed to improve the settlement of disputes;

4 (D) continuing monitoring and study of the mech-
5 anisms and settlement procedures employed in the reso-
6 lution of disputes within a State;

7 (E) research and development of effective, fair, in-
8 expensive, and expeditious mechanisms and procedures
9 for the resolution of disputes;

10 (F) sponsoring programs of nonprofit organiza-
11 tions to accomplish any of the provisions of this subsec-
12 tion; and

13 (G) other necessary expenditures directly related
14 to the operation of new or improved dispute resolution
15 mechanisms.

16 (2) Funds available under this section may not be
17 used for the compensation of attorneys for the representa-
18 tion of disputants or claimants or for attorneys otherwise
19 providing assistance in any adversary capacity.

20 (e) DISTRIBUTION OF FUNDS.—(1) One-half of the
21 funds available for the purpose of making grants under this
22 section shall be reserved for equal distribution among the
23 States from which applications have been received for proj-
24 ects which are identified as national priority projects and
25 which are approved by the Attorney General. The sum of

1 all grants awarded in any State under this subsection shall
2 be (A) an amount equal to the entitlement of such State;
3 or (B) an amount up to the entitlement of such State, if
4 approved applications for funds under this paragraph are,
5 in total, in an amount less than such State's entitlement.
6 Funds available under this paragraph shall be awarded to
7 applicants in such amounts as the Attorney General may
8 decide.

9 (2) One-half of the funds available for the purpose of
10 making grants under this section shall be reserved for the
11 awarding of discretionary grants by the Attorney General.
12 Such grants may be made to fund applications that were not
13 funded under paragraph (1) of this subsection, to applica-
14 tions for projects that do not meet the criteria of the national
15 priority projects program, or to research and demonstration
16 projects or other activities that will encourage innovation in
17 order to effectuate the purpose of this Act. The Attor-
18 ney General shall, in consultation with the Commission,
19 establish specific criteria, terms, and conditions for awarding
20 grants under this paragraph. Such criteria, terms, and
21 conditions shall include consideration of: (1) population
22 and population density; (2) the financial need of States and
23 localities in which applicants for funds available under this
24 section are located; (3) the need in the State and locality
25 for the type of dispute resolution mechanism proposed; and

1 (4) the national need for experience with the type of mech-
2 anism proposed, including the need to further the goal that
3 for all types of disputes there be dispute resolution mecha-
4 nisms available.

5 (f) PAYMENTS TO GRANTEES.—When the Attorney
6 General has approved an application submitted under sub-
7 section (e) (1), he shall pay to the applicant the Federal
8 share of the estimated cost of the approved project. The
9 Federal share of the estimated cost of projects funded pur-
10 suant to applications submitted under subsection (e) (1)
11 shall be 100 percent for the first fiscal year in which funds
12 are appropriated for grants under this section; 90 percent
13 for the second fiscal year in which funds are appropriated for
14 grants under this section; 75 percent for the third fiscal year
15 in which funds are appropriated for grants under this section;
16 and 60 percent for the fourth fiscal year in which funds are
17 appropriated for grants under this section. When the
18 Attorney General has approved an application under sub-
19 section (e) (2), he shall pay to the applicant the amount
20 which he in his discretion determines appropriate. The
21 aggregate expenditure of funds of the State and political
22 subdivisions thereof, exclusive of Federal funds, for such
23 purposes shall be maintained at a level which does not fall
24 below the average level of such expenditures for the last 2
25 fiscal years preceding the date of application for funding.

1 Payments made pursuant to this subsection may be made in
2 installments, in advance, or by way of reimbursement, with
3 necessary adjustments on account of underpayment or over-
4 payment, but shall not be used to compensate, directly or
5 indirectly, for any administrative expense incurred in apply-
6 ing for funds under this Act.

7 (g) SUSPENSION OF PAYMENTS.—Whenever the Attor-
8 ney General, after giving reasonable notice and opportunity
9 for hearing to any recipient of a grant under this subsec-
10 tion, finds that the project for which such grant was re-
11 ceived no longer complies with the provisions of this Act,
12 or with the relevant application as approved by the Attor-
13 ney General, the Attorney General shall notify such recipient
14 of his findings and no further payments may be made to
15 such recipient by the Attorney General until he is satisfied
16 that such noncompliance has been, or promptly will be,
17 corrected. However, the Attorney General may authorize
18 the continuance of payments with respect to any program
19 pursuant to this Act which is being carried out by such
20 recipient and which is not involved in the noncompliance.

21 (h) No funds for assistance available under this sec-
22 tion shall be expended until one year after the date of
23 enactment of this Act.

24 **SEC. 8. RECORDS, AUDIT, AND ANNUAL REPORT.**

25 (a) GENERAL.—Each recipient of assistance under this
26 Act shall keep such records as the Attorney General or

1 his designee shall prescribe, including records which fully
2 disclose the amount and disposition by such recipient of
3 the proceeds of such assistance, the total cost of the project
4 or undertaking in connection with which such assistance is
5 given or used, the amount of that portion of the project or
6 undertaking supplied by other sources, and such other rec-
7 ords as will assist in effective financial and performance
8 audits. This provision shall apply to all recipients of assist-
9 ance under this Act.

10 (b) AUDIT.—The Attorney General or his designee
11 shall have access for purposes of audit and examination to
12 any relevant books, documents, papers, and records of the
13 recipients of financial assistance under this Act.

14 (c) COMPTROLLER GENERAL.—The Comptroller Gen-
15 eral of the United States, or any of his duly authorized
16 representatives, shall, until the expiration of 3 years after
17 the final year of the receipt of any financial assistance
18 under this Act, for the purpose of financial and performance
19 audits and examination, have access to any relevant books,
20 documents, papers, and records of recipients of such assist-
21 ance under this Act.

22 (d) ANNUAL REPORT.—The Attorney General, in con-
23 sultation with the Commission, shall submit to the Presi-
24 dent and Congress on or before the 365th day following
25 the enactment of this Act, and on or before February 1 of
26 each succeeding year, a report on the administration of this

1 Act during the preceding fiscal year. Such report shall
2 include but not be limited to—

3 (1) a list of all grants awarded;

4 (2) a summary of any actions undertaken in ac-
5 cordance with section 7 (g) of this Act;

6 (3) a listing of the projects designated as national
7 priority projects for that year and the types of other
8 dispute resolution mechanisms which are being created,
9 and, to the extent possible, a statement as to the success
10 of all mechanisms in achieving the purpose of this
11 Act;

12 (4) the results of financial and performance audits
13 conducted pursuant to this section; and

14 (5) an evaluation of the effectiveness of the Center
15 in implementing this Act, including a detailed analysis
16 of the extent to which the purpose and goal of this Act
17 have been achieved, together with any recommendation
18 for additional legislative or other action.

19 **SEC. 9. AUTHORIZATION FOR APPROPRIATIONS.**

20 (a) To carry out the purposes of section 6 of this Act,
21 there are authorized to be appropriated to the Attorney Gen-
22 eral not to exceed \$3,000,000 for the fiscal year ending
23 September 30, 1978; not to exceed \$3,000,000 for the fiscal
24 year ending September 30, 1979; not to exceed \$3,000,000
25 for the fiscal year ending September 30, 1980; not to
26 exceed \$3,000,000 for the fiscal year ending September

1 30, 1981; and not to exceed \$3,000,000 for the fiscal year
2 ending September 30, 1982.

3 (b) To carry out the purposes of section 7 of this Act,
4 there are authorized to be appropriated not to exceed
5 \$15,000,000 for the fiscal year ending September 30, 1979;
6 not to exceed \$15,000,000 for the fiscal year ending Septem-
7 ber 30, 1980; not to exceed \$15,000,000 for the fiscal year
8 ending September 30, 1981; and not to exceed \$15,000,000
9 for the fiscal year ending September 30, 1982. Such sums
10 shall remain available until expended.

11 **SEC. 10. THE FEDERAL TRADE COMMISSION.**

12 The Federal Trade Commission shall hire and assign
13 applicants for employment and shall promote, train, disci-
14 pline, demote and dismiss employees on the basis of in-
15 dividual merit, without regard to race, color, sex, religion,
16 or national origin, and without engaging in any act or prac-
17 tice which has the purpose or the effect of illegal discrimina-
18 tion against any individual because of his or her race, color,
19 sex, religion, or national origin.

Passed the Senate June 29 (legislative day, May 17),
1978.

Attest:

J. S. KIMMITT,

Secretary.

Mr. ECKHARDT. I would yield to Mr. Broyhill.

Mr. BROYHILL. I have no statement at this time.

Mr. ECKHARDT. First, we have Prof. Daniel Meador, Assistant Attorney General, Office for Improvements in the Administration of Justice.

Will you please identify yourself for the record and then you may summarize or proceed in the manner you wish.

STATEMENT OF DANIEL J. MEADOR, ASSISTANT ATTORNEY GENERAL, OFFICE FOR IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE, DEPARTMENT OF JUSTICE, AND JOHN BEAL, ATTORNEY

Mr. MEADOR. I am Daniel J. Meador, Assistant Attorney General and head of the Office for Improvement for the Administration of Justice in the Department of Justice.

Mr. Chairman, we appreciate the opportunity to be here to present the views of the Department of Justice in support of S. 957. I have with me Mr. John Beal, an attorney in our office who has worked on these problems for over a year. He has been the principal attorney in our office in the development of our neighborhood justice center program and in working with minor disputes generally, and assisted in the development of S. 957.

I have previously filed a written statement and would like to ask now that it be inserted in the record.

Mr. ECKHARDT. Without objection it will be so entered.

Mr. MEADOR. Thank you.

Rather than read that statement, I would like to embellish upon it a bit and then answer any questions.

Mr. ECKHARDT. You may proceed.

Mr. MEADOR. The Department of Justice is interested in this problem because one of the major goals of our justice improvement program is to increase access to more effective justice for all citizens.

Access to justice is not to be confused with access to the courts. Indeed, under contemporary circumstances, if there is a controversy between persons and the only resort is to a court, the disputants may not in reality have access to effective justice.

I say that with all due respect to the courts and the important part they play in our Nation. The reality is, though, that the contemporary conditions that afflict the courts make access there less likely to be effective in small cases. This is so for at least two reasons.

One is that those ancient twin evils of cost and delay are perhaps worse now than ever before. A person with a small amount at stake simply cannot afford to go to court. The expenses involved would outrun what is at stake. Moreover, apart from that, the delays involved would actually frustrate justice in the long run, at least in many courts. The queues at the courthouses of the Nation are long indeed today.

Apart from those problems, the fact is that we have come to realize that courts are not the most appropriate forums for many of types of cases. The court system provides a formal adversary process which is elaborate, cumbersome, and though it may be well

tailored for some disputes, but it is not for many others. Resolution of a case in court produces a result for one side or the other.

Moreover, it pits the parties to the dispute in a tensely adversary posture. Thus, the process may be particularly inappropriate for disputes where there is an ongoing relationship among the parties.

The problem in disputes of this kind is not simply to resolve this particular controversy in favor of one side or the other. The problem may be to resolve the controversy in such a manner that leaves the parties in a position to continue some sort of reasonably decent, ongoing relationship. This would be the situation, for example, in disputes among customers and a local merchant, between members of the same family, between landlord and tenant, and between neighbors. Many of these disputes are of relatively small amounts and are trouble to the people involved who are going to have to live with each other and deal with each other thereafter.

There is another circumstance in contemporary American society which makes this problem before us today more pressing. In decades gone by, many disputes that arose in people's everyday lives were taken care of one way or another by a number of existing institutions, churches, schools, justices of the peace, family, policemen on the beat, and so on. It is a regrettable fact of modern life that many of these institutions have diminished in their authority and indeed some have gone away altogether in some places. This may be particularly true in the urban centers.

So for all of these reasons there has grown a perception in recent years that we need to develop procedures and means other than the courts to take care of a great mass of disputes that arise among our people. Interest in this has grown greatly in recent years as this perception has been heightened.

For example, 1 year ago there was a National Conference on Minor Dispute Resolution at Columbia University in New York. The American Bar Association has manifested great interest in this problem and has a special committee on the subject.

At the Pound Conference in 1976, considerable attention was paid to developing alternatives to the courts. The Ford Foundation has manifested interest in it.

In the academic world, the law schools increased attention has been given to these problems. At the annual meeting of the American Association of Law Schools last December this subject occupied a whole day's program on the agenda there.

S. 957 fits into that picture. If enacted, it would be a historic step by Congress to further this movement to develop other and better means of handling these disputes.

Now consumer disputes are a very important part of these. In fact, they are a major element of this problem. But that is not all there is to the picture. We have tried to take in our thinking and working on the problems a much broader approach, realizing that there are many other disputes in addition to consumer disputes that need an inexpensive, fair and prompt means of resolution.

We think S. 957 admirably serves that purpose. It brings the Federal Government to the assistance of these developments as a kind of catalytic agent, providing a means to assist the States and localities in getting these programs started.

The bill in essence has two key components. The first would create a minor dispute resolution resources center within the Department of Justice. The second feature creates a financial assistance program or a grant program.

The resource center would be a very valuable element in this picture. It would provide a national clearinghouse for information on the programs. It would provide modest technical assistance to States and localities who want to get them started. It would provide some funds for experimentation and research on this problem.

The resource center would also review projects under criteria spelled out in the bill and would identify those that satisfied the criteria as being particularly effective, innovative, and good as national priority projects.

The other component of the bill is the financial assistance, the grant program. This would be vested under the authority of the Attorney General. Incidentally, the resource center would be funded under the bill at \$3 million annually.

The financial assistance program would be funded at \$15 million annually. Under the financial assistance program, half of the money annually, \$7.5 million, would be devoted to the so-called entitlement feature of the program, that is to say, in every State where applications to initiate or further development projects were received, there would be an equal allocation of that entitlement money.

An important safeguard in the program is the provision in the bill that money would be allocated under the entitlement provisions only for those programs identified as national priority projects by the resource center. This means they would have to meet the criteria in section 4 and must be certified and identified by the resource center under the provisions of section 6. Half of the money, though, would be available for equal distribution among those States where applications were received and where they met the national priority projects.

The other half of the financial assistance money, \$7.5 million, would be a grant program to be administered under the discretion of the Attorney General. That money would be devoted to those projects where there is a special need shown or where especially promising and innovative projects were proposed which would further advance the development of the minor disputes programs nationwide.

That, in essence, is S. 957. We believe it would be an important, significant, forward step to enact this bill so that all of the groups, people, localities, across the country who are interested in this could get the necessary seed money for assistance, advice, technical help to move ahead.

So the Department of Justice does support S. 957 and hopes very much that Congress will enact it this session.

In closing, I think it is important to remember in considering these matters that the first object of this Government as stated in the Preamble to the Constitution is to establish justice. This bill serves that interest.

Mr. Chairman, with that I will be happy to answer any questions the subcommittee may have.

[Mr. Meador's prepared statement follows:]

STATEMENT OF DANIEL MEADOR, ASSISTANT ATTORNEY GENERAL, OFFICE FOR
IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE, DEPARTMENT OF JUSTICE

Mr. Chairman and members of the subcommittee; it is a pleasure to appear before the Subcommittee on Consumer Protection and Finance to support enactment of S. 957, the Dispute Resolution Act. This bill would create a dispute resolution program in the Department of Justice to assist states and localities in improving their mechanisms for the resolution of disputes that arise in the course of the daily lives of our citizens.

This is a program that would address a significant need of our country today. Society has always had various means of dealing with everyday disputes such as complaints by neighbors, customers, tenants and family members. Many of these disputes are small irritations. Others are larger and more serious. All are important to the persons involved.

In decades gone by, citizens in this country have turned to such informal dispute settling means as the justice of the peace down the road, the policeman on the neighborhood beat, the minister or the priest, and the family elder. There have been institutions that were stronger in the past than they are now such as churches, schools, and the family within which many controversies were considered and resolved. Regrettably, in contemporary American life, many of these persons and institutions have either been diminished in influence and authority or, indeed, may have disappeared altogether. Social conditions have changed. Today there is a void in the means available for settling citizen disputes. Everyday problems, small or large, if left unsettled can fester and grow. They can lead to breakdowns in otherwise harmonious neighborhood relationships. And they can even lead to crime. Thus, in today's world, we need to devise new and improve existing means of dealing with these controversies. The dispute resolution program authorized by S. 957 is designed to meet this need.

The program created by the bill would have two components. The first would be the creation of a dispute resolution resource center. No national clearinghouse of information and experience presently exists. No individual state or locality can support such a facility. The proposed center would gather together from all the states information and experience on minor dispute resolution processes, would make that information available to each state, and would conduct research and demonstration projects. The Center would be funded at \$3 million per year.

The second component of the dispute resolution program would be a seed money grant program of \$15 million per year for four years. This component would spur the implementation of new and improved dispute resolution mechanisms in States and localities. Limited state and local budgets make such innovative projects difficult to initiate. The Federal funding for an individual project would begin to taper off with the second year of the program and local funding would have to take its place. After four years, there would be no further federal contribution.

Half the grant money would be evenly divided among all the states to be used for projects certified by the Center as national priority projects. Through this provision, every State will gain at least some experience with these new minor dispute programs. At the same time, the national priority project restriction will insure that this entitlement money is spent only on programs that have been proven to be effective and suitable for replication.

The other half of the grant money is to be awarded at the discretion of the Attorney General. This will allow optimal utilization of the money as well as encourage experimentation with innovative proposals.

Through the resource center and seed money grant program the Dispute Resolution Act would establish and appropriate role for the Federal Government in this important area. In addition to recognizing the very limited role that the Federal Government should play in matters of purely local jurisdiction, the dispute resolution program would take a balanced and comprehensive approach to the whole spectrum of minor disputes. This is the method that we believe will be most productive.

While there are minor disputes in a wide variety of substantive areas that require resolution, the process of resolving such disputes has many common threads. It is by improving this process that we can most effectively enhance the quality of justice rendered to the people of this country.

This approach will apply to both informal and formal dispute resolution mechanisms. With respect to informal mechanisms, it is our expectation that the dispute resolution program will build upon the Neighborhood Justice Centers that the Department of Justice has recently launched. These centers are neighborhood offices that utilize citizen mediators to deal with a variety of problems arising in the communities in which they are located. They focus on family, neighborhood, con-

sumer, and landlord-tenant disputes. They resolve community problems at the community level. They also refer disputes that they cannot solve to the appropriate forum for the particular problem. The centers have been open in Los Angeles, Kansas City, and Atlanta since early spring of this year. The first reports on their operation are encouraging. As the centers gain more experience, we expect to learn new and better ways of dealing with the disputes that they handle. In the end, we hope to develop a model that can be copied across the country. The dispute resolution program would be central to encouraging the widespread adoption of the lessons learned by these centers.

The dispute resolution program would also assist states and localities in improving their more formal mechanisms for the resolution of minor disputes such as small claims courts. In some communities, small claims courts work very well, while in others they are nonexistent or not very effective. The dispute resolution program would promote the more widespread use of small claims procedures that have been proven to be effective, convenient, and inexpensive. And it would fund experimental efforts in areas where further work is needed, such as the development of better means for collecting small claims courts judgments.

The program under this bill would help to realize the goal that in every community there should be an appropriate forum that can provide effective redress for minor disputes. This forum need not necessarily be a full-fledged court. For many disputes, a public hearing before a judge—operating under formal rules of evidence and procedure—takes far too long and costs too much. A less formal means of resolution can be just as fair, but considerably more expeditious and less costly for all involved.

The dispute resolution program would develop and promote the use of improved dispute resolution mechanisms for a wide range of citizen disputes. The Department of Justice supports the prompt enactment of the bill that would create this much needed program.

Mr. ECKHARDT. Mr. Broyhill?

Mr. BROYHILL. Thank you, Mr. Chairman.

We thank you very much for your appearance here today.

Sir, I do agree with you that we do need to embark upon a program of this type. This bill is an attempt to set up some type of program to resolve these disputes that do arise from time to time in commerce. As I understand the bill, you are wanting to expand this to other types of disputes that might come up from time to time. For example, would this cover disputes over land, over title to property?

Mr. MEADOR. The bill has no restrictions on the types of disputes that might be dealt with under the bill. I think the answer to that lies down the road in further experience.

I should say right here something I meant to point out to the subcommittee. As the members may know, we have launched within the Department of Justice a neighborhood justice center program which may shed a lot of light on these questions. We began a year ago developing a model for a neighborhood justice center. Three were opened experimentally this spring, in Los Angeles, Kansas City, and Atlanta. These are funded for 18 months through LEAA funds. They will be carefully monitored and evaluated.

Out of this experience we hope to learn a great deal about the types of disputes that can be dealt with through this sort of process and further refine a model, so to speak, one that works effectively, which we can promote throughout the country, hopefully under the provisions of this bill.

But we will learn a lot more out of this experience as to what kinds of cases these centers can most effectively handle. Undoubtedly, certain kinds of cases will not lend themselves readily to this sort of process, but others will. This is one thing to keep in mind.

This is a state of the art that is in flux. Everything seems to be experimental now and we are moving into a new field with new procedures. It is very risky to try to lay down in advance what types of cases can or cannot be dealt with effectively.

Mr. BROYHILL. How many of these centers have you set up as of now?

Mr. MEADOR. Three.

Mr. BROYHILL. How are these centers administered?

Mr. MEADOR. Each one is organized a bit differently from the others, which is useful for the experiment. Each one, though, is under local sponsorship and control. They are not federally administered and federally controlled. They are federally funded and evaluated.

In Los Angeles the Los Angeles Bar Association is the sponsor. In Kansas City it is the city government. In Atlanta it is the Superior Court of Fulton County. In each city there is a board made up of local citizens drawn from throughout the community which is actually the governing board under whom the day-to-day operations of the centers take place.

Mr. BROYHILL. Do you expect these centers could be then, under the terms of this bill, certified as national priority projects?

Mr. MEADOR. They could be or something like them could be if they satisfy the 4(a) criteria which we think they do. That is, if they prove out and the resource center concludes that they are particularly effective and worthy of being replicated around the country, then they could be certified as national priority projects. They would not be the only thing that could be certified. There are many variations of these programs.

Mr. BROYHILL. I think the Attorney General had indicated that these centers would be located in urban areas where they are most needed. What about small towns or rural areas?

Mr. MEADOR. I think that was satisfied in the context of the three experimental centers which we now have going. His statement, I believe, reflects simply some sense of priority that perhaps the immediate, most pressing need is in the urban situations, so that is where we have set up our three experimental centers.

I don't think there is any intention on anybody's part, certainly not in the Department of Justice, that these programs should be confined exclusively to urban areas. We realize that small towns and rural areas may have similar needs.

Mr. BROYHILL. A national priority project, would that cover just one city in a State or would it have to be a program that applied to the entire State so that citizens in every community would have access to this dispute settlement mechanism?

Mr. MEADOR. I would like to call on Mr. Beal to respond to that.

Mr. BEAL. The national priority projects as we envision them would be, for example, a type of neighborhood justice center that could be for a particular locality or a type of improved component of a small claims court. They would not have to be applied statewide. Any community within a State could apply to set up one of these types of new or improved mechanisms.

Mr. BROYHILL. Would it not be better to encourage a State to set up these on a statewide basis, in other words, to use the seed

money to encourage a State to set these up so that all citizens across the State could be given this type of service?

Mr. MEADOR. Certainly that would be desirable, but the fact is, there is not enough money in the bill, probably, to create at one stroke a statewide system. When you distribute the money among 50 States, we simply have to start on a smaller scale. That is a good idea, I think. We don't plug in with a gigantic program on a statewide basis. We are learning a lot. This is experimental. It is a new thing. We start small and develop and learn what the good programs are and build upon those and then gradually expand.

Mr. BROYHILL. One of the concerns, of course, is that if we are going to put this into operation, that there should be perhaps some uniformity of the rules and procedures, and so forth, so that potential users can easily understand how this system works, say, from town to town, and that there not be a great difference in the way they operate from locality to locality.

Would you agree or disagree with that goal?

Mr. MEADOR. I would tend to go carefully about insisting on a large measure of uniformity for the reasons I have indicated. We are into a new thing here. The whole idea of having procedures available other than the courts in some sort of official way is a new thing in this country. We have previously relied upon informal arrangements. As I have mentioned, churches, schools, families, local policemen, what have you, have sought these things out to wash out all these disputes in one way or the other.

Now we are beginning to try to establish something more formal with official backing, so to speak. I would think we need to go very carefully here, to feel our way, learn about these procedures, what works, what doesn't work, and what kind, of matters are appropriate for this sort of treatment and proceed cautiously as we learn.

I think there might be a danger in moving too quickly into some kind of uniformity before we know what is effective.

Mr. BROYHILL. Under the terms of S. 957, the National Resource Center would have the authority of selecting the priority projects. As I read it, there would be no input from the States or the localities; that is, the Attorney General of a State or the officials of the State or localities.

Do you think that the State and localities should have some input into the selection of these projects?

Mr. MEADOR. Well, the projects certified as national priority projects would have to be projects initiated within a State, mainly that would be at the local level. So you have local initiative, local control, and the center collects experiences, identifies what works here and what works there with all the help it can get from local officials and experiments and what have you.

Mr. Beal, do you want to add to that?

Mr. BEAL. The precise procedure for the certification of projects as national priority projects is not spelled out in detail in the bill. I think that participation by States and localities might be very useful. There is nothing that prohibits that under the bill as now drafted and including some mechanism providing for that would not be a problem.

Mr. BROYHILL. What about consumer participation in this process? I don't see that there is any provision for consumer participation.

Mr. MEADOR. There are a number of provisions in the bill that require the involvement of the Federal Trade Commission. The Commission must be consulted at various steps throughout the bill. Consumers are a very important part of the bill. There are several references in the bill to consumer cases, consumer disputes, and so on.

I don't see anything that will prevent very heavy consumer involvement. Indeed that is the very nature of the enterprise. This is not a federally mandated blueprint handed down to localities to set up this or set up that. The initiative and impetus all comes from the localities where the people involved are there participating.

In our three neighborhood justice centers we have very heavy local involvement and local control. They are all in neighborhoods. The Board of Directors are made up of persons from the neighborhood and the community. The mediators and arbitrators who work in the centers all live in and around the immediate neighborhood.

Mr. BROYHILL. Are there any cutoff points with respect to the kind of disputes these centers are handling or will handle?

Mr. MEADOR. Cutoff points?

Mr. BROYHILL. Are there any type of disputes which you will not handle or have you circumscribed the types of disputes to be handled in these centers? Is there a monetary cutoff?

Mr. BEAL. There is no monetary cutoff, but there is a general case type envisioned. The bill is designed to deal with such matters as interpersonal disputes and disputes between customers and merchants. We do not intend at this point to get involved in disputes between citizen and governmental agencies. We think we should take this sort of thing one step at a time. It is not that other matters would never be appropriate, but we view this, as I said, as dealing at this time with basically interpersonal disputes.

Mr. MEADOR. Was your question directed to the bill or the three experimental centers?

Mr. BROYHILL. The experimental centers and also I assume that that would be cutting a pattern for the future.

Mr. BEAL. The centers have a similar approach. Specifically, they concentrate on four types of disputes: disputes between family members, between neighbors, between customers and local merchants, and between landlords and tenants. They will receive people with any kind of dispute if they fall within this general category. In fact, it is expanding slightly already. They are now taking some employer-employee grievances that arise within the community.

If a dispute is of a type that can be handled at the center, they try to resolve it there through the mediation process. If it falls outside the scope of the types of disputes I just described, then the center serves as a referral service to the appropriate public or private agency to deal with the dispute.

So, there is a limit to the types of disputes the centers will try to resolve there, but they also serve as a point of entry into the whole

justice system to get people started the right way to get a dispute resolved.

Mr. ECKHARDT. If the gentleman will yield, these disputes that are thus sought to be resolved, do they come before the tribunal on the basis of agreement of the parties?

Mr. MEADOR. Yes. Maybe it would be helpful for me to describe it.

Mr. ECKHARDT. It is a contract in effect?

Mr. MEADOR. Maybe I can describe the process that goes on. A person comes to the center, is referred or comes in voluntarily, with a problem or dispute. The first step is an interview with a staff interviewer, intake officer. The first point of contact, a trained person full time with the center.

The interview will identify the person and get the facts of the case and make a preliminary determination as to whether it is something the center might undertake to handle. If it is something within the center's scope of ability to deal with, then there is the next step of attempting to get the other person, that is, the other party to the dispute. This is approached variously.

The next step is to identify the mediator or conciliator within the center's staff—and a lot of these people are part time—who is in the best position to deal with this particular kind of dispute. Then that person will take over with the person who came in and attempt to get the other party in. This is a voluntary process.

Of course, that is one thing we hope to learn more about, how effective can that be. If the other party to the dispute is obstreperous or doesn't want to take part at all, that may end the matter there, there is nothing the center will be able to do. But if the other party is willing to come in and get engaged, then the process is mediation, try to talk it through and reach a mutually agreeable resolution.

Mr. ECKHARDT. Is it, then, in effect a sort of ex post facto agreement to arbitrate?

Mr. MEADOR. In effect, one can look at it that way, but it may not be arbitration in a technical sense. It is more of a mediation, conciliation process.

Mr. ECKHARDT. But suppose the parties agree to have the dispute settled by the mediator or the hearing officer or whatever he should be called. Suppose they agree to that and then they purport to withdraw from the agreement and are not willing to further mediate?

Mr. BEAL. All three centers have the standard process of producing a written agreement at the end that both parties sign.

Mr. ECKHARDT. That, then, is more or less an agreement to arbitrate?

Mr. BEAL. They approach it two ways. The centers attempt initially to mediate it, and if the mediation is successful, a written agreement is entered into. If the mediation bogs down, the centers offer to allow the parties to enter into arbitration. With that, you sign up ahead of time to be bound by what the arbitrator resolves.

In mediation you try to resolve it among yourselves with the assistance of a mediator and then sign an agreement at the end. The centers have both approaches.

Mr. ECKHARDT. The power to enforce the arbitration order would be the same as in the State's arbitration if that were necessary. In most instances, in labor arbitration it is virtually never necessary. I assume that would be true here.

Mr. BEAL. The centers have a two-step approach to this. The center staff will attempt informally, when the agreement is not lived up to by one of the parties, to induce the errant party to abide by the agreement. If that doesn't work, then it is a matter of what the State law is with respect to the enforcement of arbitration agreements.

Mr. ECKHARDT. Thank you.

Mr. BROYHILL. Do you feel that there is any need in this program to take another step and that is to provide a place where people can come and to have their disputes actually settled at law, that is, have a place where they can, say, make a claim against a tradesman or vice versa and have that settled in a legal sense?

Mr. MEADOR. There is no question but what we need to do a vast amount of work in improving the judicial system at that lowest level, for small claims and other relatively minor disputes, where this kind of process doesn't work, may not work, or may not be available. Much work is being done on that.

This bill contemplates that small claims courts are within the ambit of the bill. There are people at work trying to improve those processes. As you know, many small claims courts, originally a very salutary idea, became collection agencies over the years instead of performing their intended purpose. Much needs to be done to improve that judicial system and that is within the ambit of the bill.

Mr. BROYHILL. So you do at least envision that as the program develops, that a great deal of work could go into reforming the small claims courts system or at least to see that it is established in areas where it has not been?

Mr. MEADOR. Yes. I think one of the virtues of this bill is that it is broad, it leaves a lot open to the future. You can move in a number of directions under the bill as experience and need suggest.

I should add one comment about this bill. It has been designed with a great deal of care and taking into account a wide range of interest. S. 957, happily brings together the concerns of a wide range of persons and groups and interests. It has been very carefully crafted to take into account of that range of interest.

Mr. BROYHILL. Do you see any need for the changes in State laws in order to accommodate this type of program?

Mr. MEADOR. I would not think so. We have not encountered any difficulty in that regard in the neighborhood justice centers. The need or desirability for some State legislative changes, may develop down the road, but we have not yet encountered any serious problems of that sort.

Obviously, if you are going to do something about a small claims court or any court system, you then are dealing in the State legislative sphere and you will need to get legislation either local or statewide.

Mr. ECKHARDT. Mr. Broyhill has raised some interesting questions here. I can see the value of making available a tribunal which can be accepted by agreement, but I can also see an area in

which there is not likely to be agreement, in which there should be some kind of small claims tribunal into which persons can be brought, whether they want to come in or not. I think that would primarily fall in the realm of consumer complaints in connection with their transactions with businesses.

I can see a greater willingness for persons to settle some neighborhood disputes, for instance, of alleged nuisance or perhaps a settlement of a question that has to do with disputes between persons of more or less equal position. But it would seem to me that there may be many disputes where the disputants are very disparate in their ability to press their cases and in which the stronger would not be willing to agree to go into such a tribunal.

It would seem to me that it would be almost necessary to establish State law to enforce such compulsory adjudication and process.

Is there any kind of recommendation or suggestions with respect to State law in this area? I guess it would be very similar to the small claims court approach.

Mr. MEADOR. Well, there is a great deal of interest and work around the country on that problem, that is, in making available a better small claims type of court. We do not in the Department of Justice at present have a special program on that. We view it from our perspective as a part of the overall minor disputes resolution problem of the Nation which we would hope a bill like S. 957 would help work out eventually.

There is no doubt that what you say is correct, that there are going to be disputes that cannot be resolved here and where there is clear need to have available a compulsory system, with the sanction of law and the traditional court process, to bring in a person who otherwise won't come in.

What we need to learn is what those cases are. It may be that as the neighborhood justice centers get experience, people will be increasingly willing to utilize that process.

From the standpoint of businesses which may be the defendants, so to speak, in the dispute, there is the public relations factor they may want to be attentive to. It may not be desirable for the word to get around that this enterprise won't come in and deal with the justice center.

We don't know, though, very much about all that right now, and that is the beauty in going at it experimentally and somewhat tentatively and yet with imagination and some money to help promote these experiments.

Mr. ECKHARDT. Of course, public opinion would be a very strong incentive for a responsible business to subject its dispute cases to such a procedure. One of the difficulties is that the worst offenders would be the least likely to agree to such a settlement. It seems to me that in the area of voluntary dispute settlement you might well cover wide gamuts of types of disputes, neighborhood disputes, questions involving nuisance, questions perhaps even involving family disputes, questions involving differences between consumers and tradesmen, a wide range of different types of disputes, because ultimately the parties are in agreement to try those disputes before whomever is available as, well, call them an arbitrator for lack of a better term, but it would seem to me that there ought to be the other side of the coin. There ought to be a compulsory dispute

settlement process. But in that, it would seem to me with limited experience and limited funds, it might be well to very much narrow the brackets in which these types of disputes fall.

We do have a good court system. We have small claims courts. We have some prior voluntary arbitration, for instance, in labor disputes. It seems to me that the area that probably needs the most attention is consumer matters.

Do you have any comment on that?

Mr. MEADOR. Certainly, that is one area that is in need of attention, there is no question about that, and that is abundantly within the scope of the bill. Our approach has been that we should not deal exclusively with that, that it would be a mistake to disregard this wide range of other disputes for which there is no good place to go now.

Mr. ECKHARDT. I am not suggesting that that not be taken care of, but that could be taken care of in the voluntary area. The only thing I am concerned about is what should be done with respect to those cases in which the parties are not willing themselves to go in and subject themselves to a kind of contract arrangement.

Mr. BEAL. I think with respect to these two types of problems, in this whole minor dispute area, the two main focuses of attention and work right now, and I think the ones that would be initially receiving the most attention under the program set up by S. 957, would be, on the one hand, the neighborhood justice-type of program, alternatively called a community dispute resolution program, and the small claims court area. Regarding the latter, we are keeping in close touch with the National Center for State Courts. It is involved in a major examination of small claims courts. The program under S. 957 would not be limited to these two areas, but I think they are the two areas that are receiving the most attention, that we have the most experience with, and in which the money could be spent most productively at this time.

Mr. ECKHARDT. Are you suggesting then that this bill deal with the community centers on a voluntary basis, a contract-based decision alone?

Mr. BEAL. And the small claims courts also I am saying that these two areas are the areas that the program the bill would set up would be initially most concerned with.

Mr. ECKHARDT. In small claims court type of approach, you would envisage relying on State law, I suppose, in that area.

Mr. MEADOR. I think we would have to. We don't want to come in and create a Federal court system of that kind.

Mr. ECKHARDT. In effect, you are really relying on State law in the whole program. The only thing is you are suggesting that there will be contractual agreement, which in turn, of course, would be under the law of the particular State involved.

Mr. MEADOR. Right.

Mr. ECKHARDT. It would be enforceable under that law.

Mr. MEADOR. The point is to come in and set up a program, like a neighborhood justice center, that does not call for any alteration in State law, any action by a legislative body. You might get into State law later in some enforcement proceeding. But to tinker with small claims courts, you are necessarily immediately into State law or local law perhaps, and you might have to have some legislative

action to do much there, although maybe not. I think improvements can be made in our courts without altering anything legislatively, but you can only go so far with that.

Mr. ECKHARDT. It comes to mind that the fact that a claim is a small claim does not necessarily mean it is not a complex claim. About 18 years of my experience, before I came to Congress, was in labor arbitration. Many of these claims were individually small, but since they involved about 50,000 people, employees of the Southwestern Bell Co., the aggregate amount involved in matters like, for instance, whether or not a person was entitled to additional pay for out-of-pocket expense for noon lunch away from the station where he worked could result in reams of documents, as to how much this cost and how reasonable it was, what the problem was in different communities.

I can recall trying a case like that for some 5 or 6 days. The aggregate amount involved over a number of years was perhaps a half million dollars, and, of course, such a claim generated enough money and dispute to try it, and very completely and very thoroughly. That kind of case is frequently a difficult one—questions involving seniority rights from one unit to another, questions involving whether women should work as frame women or switch women, and their capabilities and limitations—and the contract provisions can be enormously complex. Yet for each individual involved, the claim might be relatively small.

It strikes me that there could be a very wide range of necessary expertise from accounting experience, the technical and engineering experience that might be necessary in the resolution of relatively small claims. This is always available, if the case aggregates a great number of claims, but I see some problems involved in finding the kind of person to try these cases, and the various and different kinds of cases that might arise, questions involving, for instance, nuisance through pollution, noise nuisance, questions of this nature, which can be very, very complicated.

We, of course, have tried to resolve some small claims traditionally with very poorly equipped people to take care of some of these claims in the past. For instance, justices of the peace may have to decide a wide range of claims without much experience.

How do you feel that these community centers could draw on persons of wide enough experience to take care of the very wide range of claims that you envisage in this act?

Mr. MEADOR. Let me speak to that first, and then I will ask Mr. Beal to add something.

First, let me say the cases you have described I would not think of as the kinds of small cases that these centers would deal with. Though each individual may have a small amount at stake, the case is really analogous to a class action, where what is involved is a class claim, an aggregate affecting maybe hundreds of people and maybe hundreds of thousands of dollars. That is what the case really is, and these centers are unlikely to deal with those, although we again find out through experience if one of those comes in.

Mr. ECKHARDT. Let me give you an example. The case I described about the noon lunch case dealt with the Southwestern Bell Telephone Co. and perhaps 15,000 employees that were subjected to this

procedure. But suppose you have got the owner of a plumbing establishment whose employee is engaged in eating away from home? You can have the same issues in the single case as would exist in a large arbitration, and you would have the same difficulty in resolving that case as in the big case which has generated sufficient money in order to try it correctly and before an experienced arbitrator.

Mr. MEADOR. Let me add one more comment to that.

The process in a justice center is not the same as in the court. The dispute is not necessarily resolved in accordance with any legal rules. It may be worked out in a practical commonsense way between the parties. Indeed the very idea is to have a kind of nonlegalized process. You know we are overlegalized in this country, too many regulations, too many laws and so on. You come into a center, you sit down and talk it out in a commonsense way, it is a move away from law in a sense. It is not illegal, but it is not in accordance with strict legal rules in all situations.

Would you like to add something to that?

Mr. BEAL. I would add that we have had some experience with employer-employee disputes. While there is always a problem in securing the appearance of persons with particular technical expertise, whether in a court or a justice center, nonetheless in these disputes the center has some very good experience.

The way they have resolved these disputes so far is to have the mediator and the employee meet with the employer, generally immediately after business hours so that nobody has to take off time from work. They will often meet at the place of employment, and they will sit down and try and work out this matter, not according to some technical provision in the contract, but in a way that leaves both the employer and employee most satisfied.

We haven't had a great many of these, but we have had several, and we have had quite good success in reaching an agreement that was satisfactory to both parties.

Mr. ECKHARDT. Perhaps I put too much emphasis on the employer-employee kind of question. I was just using that as an example. But you would also have questions that would arise under several Federal laws. For instance, the Magnuson-Moss Act with respect to warranties: The question of whether or not a product was subject to the implied warranty of suitability for the use for which it was sold, whether or not the warranty attempts to lessen that warranty of suitability. It is really something of a complex legal question under the Federal law, and yet the matter that might be before you might, as you pointed out at the beginning of the statement, involve a very small amount of money.

You have got the Truth-in-Lending Act, debt collection practices law, to name just a few of them, and in each of these instances the legal knowledge of the person involved, at least the legal knowledge required to resolve the question, might be considerable.

Mr. MEADOR. Let me speak to that because that is a very important point. It is important I think that it be understood.

Let us say, a person bought a product and it was defective in some way or didn't function. The question in the neighborhood justice center is not whether this violates the Moss-Magnuson Act or any other Federal statute. That is a legal question. This is not a

legal proceeding. Here is a customer that has a defective product. He is dissatisfied. He is unhappy. He thinks the merchant ought to make it good or do something about it. The mediator in the center will get hold of the merchant, try to get him in to talk about it, or at least talk over the telephone as a first step, and work this thing out.

It is not a question of whether it violates the law or not. It may or may not. But you have got a controversy here that is bothering and upsetting the customer, and we need an informal, nonlegal method of dealing with this so you don't have to go miles away downtown to the courthouse and file a suit that will cost you far more than what is involved. That is the essence of the idea.

Really, we shouldn't talk about the law in it. If you have to go to law, then you have to go to court, or you have to get a lawyer, and there are no lawyers in these procedures. That is the beauty of it, among those who have had experience with it and advocate it. At least that is the great experiment now underway.

Mr. BROYHILL. Would the chairman yield?

Mr. ECKHARDT. Surely, I yield to the gentleman.

Mr. BROYHILL. Have you had an opportunity to examine the bill I introduced, H.R. 2965, which, of course, is also similar to the bill that Mr. Murphy introduced, H.R. 2482?

Mr. MEADOR. Mr. Beal has examined those and I will ask him to answer any questions you have about those two bills.

Mr. BROYHILL. The program that I have included in this bill is somewhat broader in scope, I think, than is in the Senate bill. It would provide for assistance to States that enter into an agreement to establish these arbitration procedures, and they would submit a plan, of course, as to how the program would be conducted in that State. Under that plan consumer controversy resolution mechanisms would be set up. Even though small claims courts would not be mandated under that program, there are sections of the bill that provide that if the State did receive financial assistance and used portions of that assistance for the establishment and maintenance of small claims courts, that there would be some guidelines or goals that were outlined in this bill to assure that consumers were given full information and given, you might say, a fair shake in the process. In other words, the bill does provide for a far broader program than the Senate bill.

Would the department object to broadening the program as envisioned in S. 957 to at least give some authority to get into this area? For example, in H.R. 2965, the office that was set up would be set up, the Office of Consumer Redress would also be given the authority to help formulate and promote model small claims courts statutes and ordinances which could be adopted by the individual States.

Mr. BEAL. Our view is that that kind of an approach, first of all, creates bureaucratic requirements at both the State and Federal levels that we would prefer not to get into, and we are also concerned that it begins to encroach on prerogatives of the States in terms of the types of laws that States would be required to have.

We prefer to have a more simplified, streamlined grant program that doesn't require the establishment of a Federal Office of Consumer Redress on every State to have a State plan. We have been

through this sort of thing with the Law Enforcement Assistance Administration and have come to recognize many of the pitfalls of comprehensive requirements imposed on the States by the Federal Government. Particularly on this small magnitude, you can very quickly set up a situation where the administrative costs become greater than the money available under the program as a whole. This is a problem that we are trying very hard to avoid, we want to make the administrative requirements as streamlined as possible, the grant program being as modest as it is under both bills.

Mr. ECKHARDT. I think Mr. Broyhill's bill is both broader and narrower. It would be broader with respect to the question of setting forth standards or suggestions to the States, it is narrower in that it deals with consumer questions alone.

Mr. BROYHILL. That is true.

Mr. ECKHARDT. I had mentioned a few of the consumer areas that seem to me to call for a very high level of legal expertise, and though I agree that some of these solutions could be other than legal, it seems to me that the legal rights of the parties are the overriding rights that must be respected in any kind of decision, even to advise the settlement of the matter.

I think the arbitrator or the mediator should first consider the rights of the parties and urge those who are invading rights of others under law to yield on these points. There might be differences that can be settled beyond a strict legal settlement, but it does seem to me that there is a need for a considerable legal expertise amongst persons involved.

Now the New York City Bar Consumers Affairs Committee, recognizing that, recommended that informal tribunals be established to handle consumer complaints specifically, and that it exclude other types of complaints.

What do you think about that approach? If we widen the area of complaint to cover most everything, it seems to me we tend to lose the possibility of well-trained persons to decide the dispute.

When I first started practicing law, I was doing everything, from reading abstracts and giving opinions on them, to questions involving usury, to divorces, et cetera. I never really felt very competent in any field when I was attempting to do them all. I finally ended up in the labor law field and then felt some competency in that area.

It seems to me I would be a little hesitant to create a new set of JP's with relatively little expertise in the fields in which they may deal.

Mr. BEAL. First of all, in the justice centers, the way we operate is through a panel of mediators. There are about 30 to 35 in each center, and these mediators have been selected carefully to have a variety of backgrounds. Some have backgrounds in family problems, in counseling and the like. Others have backgrounds in the resolution of consumer disputes and so on. When a particular dispute arises, one of the mediators who has a background, a substantive background, in that area, in addition to having received the training that all the mediators have received in arbitration and mediation techniques, is selected for that particular dispute.

In addition, each center has a backup panel of lawyers from the young lawyers section of the local bar association that is available to provide the mediator with legal advice on particular problems, so that we have the mechanism for bringing a reasonable degree of expertise to particular problems, such as consumer problems.

At the same time, it is our view that there is a limited level of public and governmental attention that can go into this area of minor dispute resolution, and if we start fractioning it off with this program for consumer matters, this program for family matters, this program for neighborhood matters, then we are likely to end up with a series of ineffective programs that may suffer an early demise.

We feel that the process of dispute resolution is basically the same for all these types of matters, even though you need to be able to bring to bear particular expertise with a particular problem, as we do through the selection of a mediator with a background in consumer affairs. So we think that this broad approach, with the ability to bring particular expertise to a particular problem, is the best way to approach the subject as a whole.

Mr. MEADOR. Let me add to that the program you mentioned in New York City is certainly one well worth pursuing and developing, and S. 957 would certainly authorize funding for that and so on. I think the fundamental point here though is this: While that is one very good idea, we don't think we or Congress are in position at the moment to say that is the only promising way to go. The beauty of S. 957 is that it avoids having a judgment made now by Congress as to what is the one best approach to these problems. We don't really know enough. This is a new thing that has come on, within the last several years, with a great deal of experimentation now going on. Much can be learned in the next few years, with some assistance through funding, so we avoid making judgments right now as to what is the best program.

Mr. ECKHARDT. How much are these projects funded for at the present time?

Mr. MEADOR. The neighborhood justice centers that we are running experimentally are funded at approximately \$200,000 each for 18 months. That is the operation of each project. You could, of course, have a low-priced or high-priced neighborhood justice center. You can buy an expensive model or low-priced model, depending on just how much staffing and what-not you are going to have, but that is the funding level of those three at the moment.

Mr. BROYHILL. If the chairman will yield.

Mr. ECKHARDT. Go ahead.

Mr. BROYHILL. Under S. 957 these neighborhood justice centers would be set up in other States as well, with financing of their initial operations by the Federal Government.

How would you anticipate that they would be financed when the Federal funding expires?

Mr. MEADOR. They would have to be picked up by somebody. It could be either a private group or a locality or a State. That would be the problem of whoever is running and sponsoring the center. This is a seed money startup sort of program. There is no intention in S. 957 to have permanent federally operated justice centers or any dispute resolution program.

Mr. ECKHARDT. I assume then that what you envisage is a program within relatively broad limits, but you do not necessarily assume that any particular program in a State would include everything within the scope. For instance, a State that had good experience with respect to its family courts might not enter that field but enter others, so that there would be considerable flexibility, depending on what the need of the situation with respect to legal services then afforded to a given community in a State would be.

Mr. MEADOR. Yes, sir.

Mr. BROYHILL. Thank you very much. It has been most helpful testimony.

Mr. MEADOR. Thank you, sir.

Mr. ECKHARDT. We may be submitting some questions in writing at a later time.

Would you be amenable to answering those?

Mr. MEADOR. Yes, sir, we would be glad to at any time.

[Testimony resumes on p. 88.]

[The following information was received for the record:]

**United States Department of Justice****OFFICE FOR IMPROVEMENTS IN THE
ADMINISTRATION OF JUSTICE**

WASHINGTON, D.C. 20530

September 21, 1978

Congressman Bob Eckhardt
Subcommittee on Consumer
Protection and Finance
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

It was a pleasure to appear before the Consumer Protection and Finance Subcommittee to discuss the proposed Dispute Resolution Act. In response to your letter of July 27, I am glad to provide the following answers to the questions you raised.

1. What kinds of disputes in addition to consumer controversies would you expect to come within the definition of minor disputes in S. 957? Landlord-tenant disputes? Domestic relations? Minor assaults? Other misdemeanors? Neighborhood problems--such as nuisances? Child support disputes?

We anticipate that the Dispute Resolution Program that S. 957 would create would be concerned with a wide range of disputes that arise among our citizens in the course of their daily lives. Included would be disputes between neighbors, relations, landlords and tenants, and employers and employees, as well as consumer disputes.

We recognize that many consumers are without a satisfactory forum in which to seek redress of minor consumer grievances. The bill is intended to respond to this important problem. As a result, consumer controversies would be a main focus of the Dispute Resolution Program.

I would like to note that, while the main purpose of the Dispute Resolution Program is to develop and improve mechanisms to resolve minor disputes, an important aspect of the program necessarily will be to identify the types of disputes that are and are not suitable for resolution by the those mechanisms. Consequently, it is premature to establish too inflexible a classification of types of disputes to be handled by the program.

2. Do you expect that applicants for Federal assistance will have to show that their proposed resolution mechanism will be able to handle all kinds of minor disputes? Are those who do attempt to address a broader range of disputes more likely to get priority treatment for funding?

All individual mechanisms will not have to handle all types of minor disputes. It is our expectation that some mechanisms funded under the bill will deal with a wide range of disputes and others will be more specialized in nature, such as consumer dispute resolution mechanisms. One of the purposes of the program is to determine whether specialized or generalized dispute resolution mechanisms are more effective.

Overall, we expect that the grants would be distributed so as to ensure that all types of minor disputes are covered by a substantial portion of the projects funded. How this will affect the likelihood of or priority for the funding of a particular type of mechanism is difficult to assess at this time. That will be determined by the exact language of the bill as it is enacted, the mix of applications that are received, and the advice given by the Advisory Board, the Federal Trade Commission, and the governor, attorney general, and chief justice of state. Speaking broadly, however, both specialized and generalized mechanisms should have good prospects for funding.

3a. Department of Justice, using money out of the LEAA budget, has seeded some Neighborhood Justice Centers. How much LEAA money has been used to seed how many neighborhood centers? What is the total LEAA budget?

Three Neighborhood Justice Centers were funded on November 23, 1977, at the following levels for 18 months: Los Angeles Center, \$212,760; Kansas City, Missouri Center, \$200,000; Atlanta Center, \$209,683. In addition, on December 29, 1977 LEAA awarded a grant of \$347,266 to the Institute for Research to conduct a two-year evaluation of the three Centers. LEAA's fiscal 1977 budget was \$753 million.

3b. Please describe the structure of these centers. Include in such description the number of persons used in mediation, arbitration, counseling, and other dispute handling procedures. If such persons are volunteers, how

are they selected? What kind of training is provided to persons who may act as mediators and arbitrators? Are these persons provided any training which familiarizes them with existing substantive laws which create rights for consumers (e.g., the Magnuson-Moss Warranty Act, Truth-in-Lending?)

The three Neighborhood Justice Centers are all operated under the direction of a board of directors consisting of representatives of the courts, municipal and private agencies, and the community. The Centers have a full-time staff of a director and four staff persons. In addition, between 20 and 34 volunteer mediators have been recruited from the community by the staff and board. They have undergone between 48 and 70 hours of training in mediation and arbitration techniques. At the present time, the training does not include instruction in substantive law. However, the mediators have been selected with a variety of substantive backgrounds, including individuals with knowledge of consumers' rights. Mediators are assigned to particular cases in accordance with their backgrounds. Moreover, in each city an arrangement has been made with the Young Lawyers section of the local bar association for the provision of free legal advice by section members to mediators on individual cases.

3c. Please describe the kinds of cases handled to date by the neighborhood justice centers. If possible, provide a break-down of the number of cases falling within the various dispute categories.

The following chart sets forth the numbers and types of cases handled by the Centers during the first three months of operation:

Neighborhood Justice Center Cases
From Opening Dates Through June 30, 1978

	<u>Total</u>	<u>Domestic</u>	<u>Neighborhood</u>	<u>Customer- Merchant</u>	<u>Landlord- Tenant</u>	<u>Employer- Employee</u>	<u>Other</u>
Total Cases	954	173	174	140	195	70	202
Referred to Other Agency	301	36	20	21	110	11	103
Not Resolved	321	60	64	56	50	35	56
Resolved Prior to Hearing	103	14	18	28	19	11	13
Hearing Held	229	63	72	35	16	13	30
Resolved at Hearing	194	56	65	24	15	8	26

4a. Section 5(b) requires the Resource Center, after consultation with Federal Trade Commission, to identify those resolution mechanisms which are consistent with the criteria set out in the bill, are most effective and fair to all parties, and are suitable for general replication. These mechanisms will be identified as "national priority projects". This provision is quite important because one-half of the grant money is set aside for these priority projects. Can you describe how you expect this priority setting to work?

b. Would this mean that during the first year, one-half of the grant money would be set aside for programs which are modeled after dispute resolution mechanisms which existed before the bill was enacted?

c. Why is it important to have designated priority projects? So long as an applicant can show that its program conforms with the criteria set out in section 4(a), why should it matter if the project is modeled after a "priority project"?

d. Is it possible that most grant applicants will model their program after one or two "priority projects" because doing so increases the likelihood of getting grant money. And as a result, are we likely to stifle creativity and innovation in developing methods for resolving disputes?

It is my understanding that discussions between your subcommittee and the Courts, Civil Liberties, and the Administration of Justice Subcommittee of the House Judiciary Committee have led to the deletion of the national priority projects provision.

5. A paper released by your office on July 11, 1977, describing the neighborhood justice program, sets out a number of reasons why existing programs don't work. One of the things this paper points out is that many people are unaware of the existing mechanisms, such as small claims courts, consumer protection offices or family counseling services. The same point has been made in numerous studies. For example, the National Institute for Consumer Justice recommended that small claims courts should be widely and systematically publicized. An ABA research report found that one reason existing arbitration procedures had not been used more widely by consumers was because they weren't familiar with them.

All of this would suggest that one of the most important aspects of any dispute mechanism is to make sure that the public knows about it. Both House bills require that any grantee make efforts to publicize its program to the community, but S. 957 does not. Do you think such a requirement is important?

It is important that parties with legitimate grievances know or be able to locate mechanisms available to resolve such disputes. Therefore, we favor requiring dispute resolution mechanisms to have a public information program.

At the same time, it is important that such information programs be properly structured. For example, they should not be overly expensive, draining funds from other important aspects of mechanism operation. Similarly, such information programs should be designed so as to attract to the mechanism primarily the types of disputes it is intended to handle. If the mechanism must spend much of its time dealing with frivolous matters or disputes it is not equipped to resolve, it will be diverted from and delayed in handling those disputes it was created to resolve. In short, we favor a requirement for well-designed public information programs.

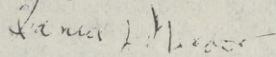
6. The definition of minor disputes in S. 957 could include minor criminal disputes. I know that a great deal of writing has been done about the need to provide alternatives to conventional criminal adjudication. Proponents of alternatives usually couple their advocacy of such alternatives with caveats about the need to make certain that an individual's rights are not impaired. For example, one proponent of community courts recognizes that dangers of a degeneracy into "kangaroo courts" and/or vigilanteism must be guarded against. Another author suggests that community courts be overseen by the formal courts to the extent necessary to insure that constitutional freedoms and protections are not infringed. The criteria in section 4(a) don't seem to address these concerns at all. Do you agree? Does this absence trouble you?

I do not understand S. 957 as passed by the Senate to encompass criminal matters that are actually under prosecution. Where defendants are charged with violations of the criminal law, it is important that they be accorded all of their rights and protections, both statutory and constitutional. However, many incidents occur in the course of daily life which constitute contraventions of both criminal and civil law. Examples would include a fight in which both a tort and simple battery has occurred, or a deceptive business practice that constitutes both civil and criminal fraud.

Under S. 957, dispute resolution mechanisms would resolve such disputes fairly, expeditiously, and inexpensively. Funding would not go to criminal courts, but, rather, to mechanisms that would bring together the private parties involved and provide a civil manner of resolution to disputes which a variety of labels, criminal included, might be applied. This approach will allow the Dispute Resolution Program to address the full range of disputes to which it is suited and capable of responding, without jeopardizing the rights of individuals or the protection of society in actual criminal prosecutions.

I hope you find the foregoing answers responsive to your concerns. I will be glad to provide any additional information you may wish. I look forward to favorable action by the House of Representatives on the proposed Dispute Resolution Act.

Sincerely,



Daniel J. Meador
Assistant Attorney General

Mr. ECKHARDT. Dr. Lee Richardson, Acting Director, Office of Consumer Affairs.

Dr. Richardson, would you identify yourself?

**STATEMENT OF LEE RICHARDSON, PH. D. ACTING DIRECTOR,
OFFICE OF CONSUMER AFFAIRS, ACCOMPANIED BY T. RICH-
ARD CUFFE, ATTORNEY-ADVISED**

Dr. RICHARDSON. With me is Richard Cuffe, Attorney-Adviser in the Office of Consumer Affairs.

Mr. Chairman, I have the written statement of Mrs. Peterson which I would like to submit.

Mr. ECKHARDT. Without objection, it will be entered in the record.

You may summarize it.

Dr. RICHARDSON. I am speaking in behalf of Esther Peterson, Special Assistant to the President on Consumer Affairs.

I am pleased to be here to be able to speak regarding the Dispute Resolution Act and I thank you for the invitation. I wish to announce our support and that of the administration for the Dispute Resolution Act as embodied in S. 957.

According to section 2 of S. 957, the Act will assist the States and also other interested parties in providing to all persons convenient access to dispute resolution mechanisms that are effective, fair, inexpensive and expeditious.

I think this statement of purpose is clear and concise, and it evidences congressional intent to establish a program that will provide more readily available means for resolving civil disputes involving relatively small amounts of money.

I think it is important to say what it is not. It is not an attempt by the Federal Government to take control of Small Claims Court systems, nor is it designed to create extensive Federal involvement in State and local attempts to resolve civil disputes.

Additionally, I think it has to be recognized that despite some good faith and at times successful attempts to fashion innovative means of resolving these small disputes by States and local governments and nonprofit groups of various types, there has generally been minimal experimentation and study of new and innovative ways of providing redress for these controversies. This legislation seeks to encourage that type of innovation.

Resolving these disputes in an uncomplicated and convenient way is a goal which has really eluded the consumer movement and others. Too often citizens with legitimate grievances concerning a purchased product, various household services, or performance of obligations under warranty, are buffeted back and forth between sellers and manufacturers, regulators, and service providers without ever receiving satisfaction or resolution of their difficulty. The consumer is simply lost in that process.

I can speak personally, having helped found an organization much like the Texas Consumer Association, on just how tough it is to try to build a mechanism that can resolve individual complaints efficiently without the expense and delay involved in the more formal methods of the legal process.

There have been surveys to show the frustration of the public. Seventy-nine percent of the public held this view: "The feeling that

it is a waste of time to complain about consumer problems because nothing will be achieved." This is from the Louis Harris survey that has been so widely quoted.

A study that has been done for our office, the Technical Assistance Research Program, asks the question: "Who was the most helpful getting the problem corrected?" Of the households asked this question, 35 percent responded that "no one" "or that the problem was not corrected". Only half of 1 percent of the households that responded the State consumer protection agency was the "most helpful", and only three-tenths of 1 percent responded that a local agency was most helpful. These figures are not an indictment of these 400 or more such offices that are providing services to consumers at the State and local level. On the contrary, it is amazing how much they can do, in spite of inadequate funding and low level of support in general at the State and local levels. It suggests that the assistance of Federal funds as embodied in this Act can do much to help the actual resolution of citizen disputes by State and local consumer offices.

There are many other types of disputes besides the consumer disputes such as those involving landlords, and tenants or neighborhood residents that are also worthy of inclusion in the bill. However, we believe though that care really must be taken to insure that noneconomic disputes do not dominate the activities of the funded mechanisms under the program.

Many times the only practical means of obtaining redress for a given problem is resort to Small Claims Courts, and on the other hand, these Small Claims Courts, it has been demonstrated, may not be providing the public service to all the people for whom it is intended.

There have been a number of studies endeavoring to identify the shortcomings of the small claims court system and to recommend corrective action. Many recommendations from one such study completed approximately 5 years ago, by the National Institute for Consumer Justice have been embodied in the specific provisions of section 4, of this bill.

The principle comes out in many of these provisions that experimentation is the key. We just don't have enough answers to know what it will take to resolve disputes satisfactorily, in order to meet the criteria of the legislation. We simply are at the point where this seed money is necessary to try to improve the system and see that other parts of the country will benefit from successes in one locality or another.

Beyond that, my comments refer to specific sections of the proposal, Mr. Chairman.

[Mrs. Peterson's prepared statement follows:]

STATEMENT OF ESTHER PETERSON, SPECIAL ASSISTANT TO THE PRESIDENT ON
CONSUMER AFFAIRS

Mr. Chairman: It gives me great pleasure to be here this morning to speak to you concerning the proposed "Dispute Resolution Act." I wish to thank you for your invitation to testify concerning this significant piece of legislation. At the outset, I wish to announce my support and that of the Administration for the "Dispute Resolution Act" as embodied in S. 957.

According to Section 2 of S. 957, the purpose of the Act is "to assist the States and other interested parties in providing to all persons convenient access to dispute resolution mechanisms that are effective, fair, inexpensive, and expeditious." This

statement of purpose clearly and concisely evidences a Congressional intent to establish a funding assistance program for state and local governments and other eligible recipients to aid them in their attempts to provide more readily available means for resolving civil disputes involving relatively small amounts of money. It should be emphasized that this legislation is *not* an attempt by the Federal government to seize control of small claims court systems. Nor is the legislation designed to create extensive Federal government involvement in State and local government attempts to fashion more responsive means of resolving civil disputes. To the contrary, this legislation recognizes that dispute resolution is a dynamic process which may be retarded by restrictive conditions on structuring dispute resolution mechanisms or otherwise controlling their substantive output. Additionally, it must be recognized that despite some good faith, and at times successful attempts to fashion innovative means of resolving small sum disputes by State and local governments and non-profit organizations, there has generally been minimal experimentation and study of new and innovative ways of providing redress for controversies which often plague the daily lives of many citizens. This legislation seeks to encourage that type of innovation.

Resolving disputes in an uncomplicated and convenient manner is a goal which seems to elude the consumer movement. Too often, citizens with legitimate grievances concerning a purchased product, a household service, or the performance of obligations under specific warranty coverage, are buffeted back and forth between sellers and manufacturers, regulators and service providers, or franchised dealers and corporate officials, without their ever receiving satisfaction or resolution of their difficulty. I speak with personal knowledge of the extent of citizen dissatisfaction with existing mechanisms which are ostensibly designed to resolve individual complaints. Letters from people throughout the country arrive in my office daily. Each is unique to its own facts, but all share the common characteristic of frustration.

A recent national survey of consumer attitudes undertaken by the Marketing Sciences Institute and Louis Harris and Associates, Inc., revealed that 79 percent of the public held "the feeling that it is a waste of time to complain about consumer problems because nothing will be achieved." ("Consumerism at the Crossroads," Marketing Sciences Institute and Louis Harris and Associates, Inc., May 1977, p. 5) Similarly, in another survey conducted by the Technical Assistance Research Program for the Federal Office of Consumer Affairs, 591 households which sought corrective action to resolve their complaints within a 12 month period preceding the survey were asked, "Who was the most helpful getting the problem corrected?" To this question, 204, or approximately 35 percent of the households, responded either "no one" or that "the problem was not corrected." Only one half of one percent of the households responded that the State consumer protection agency was "most helpful," even fewer, three-tenths of 1 percent, responded that the local agency was "most helpful."

These figures are not cited as an indictment of the state or local consumer affairs offices. To the contrary, I am often amazed that such agencies are able to function so very effectively in numerous areas such as legislative and regulatory advocacy, analysis, and, in many instances, complaint resolution, given their frequent low level of funding and other limited resources. What is clear is that with the assistance of the Federal funds embodied in the "Dispute Resolution Act," more attention can be properly directed toward the actual resolution of citizen disputes by such state and local agencies.

While I have just emphasized difficulties encountered by citizens in resolving consumer complaints, I fully recognize that other types of disputes, such as those involving landlords and tenants, or neighborhood residents, are equally aggravating and worthy of prompt resolution. Care must be taken, however, to insure that the non-economic disputes do not dominate the activities of the funded mechanisms.

Based upon our experience in processing citizen complaints, the only practical means of obtaining reasonable redress for a given problem most often is to resort to the small claims court system. However, given the practical impediments which frequently restrict their accessibility to a significant segment of the population, small claims court systems may not be providing the public service intended in their creation.

The small claims court systems have been the subject of numerous studies that have endeavored to identify their shortcomings and recommend corrective action. Among the more authoritative examinations of small claims courts is the 1973 Report of the National Institute for Consumer Justice (NIJC), entitled "Redress of Consumer Grievances." It is heartening to note that many of specific provisions of section 4, "Criteria for Dispute Resolution Mechanisms," implement some of the

recommendations of the NICJ final report that are designed to make small claims courts more accessible, and easier to use by the average person. It should be noted, however, that application of funds to forms of dispute resolution such as arbitration or mediation is fully anticipated and is deemed necessary to fulfill the innovation objectives of the legislation. Experimentation in fashioning different forms of dispute resolution is absolutely essential if we are to achieve the goals of the bill.

In addition to the fact that this proposed legislation will encourage creative activity by eligible recipients to develop or improve practical means of resolving small sum disputes, the bill may breathe new life into embryonic programs doomed to extinction by the current quest to reduce the burden of citizen taxation.

I will now focus on specific sections of the proposal.

Section 4, "Criteria for Dispute Resolution Mechanisms," establishes minimum standards for dispute resolution mechanisms to be funded under the Act. These criteria generally afford maximum flexibility to eligible recipients to fashion dispute resolution mechanisms according to their perceived needs rather than pursuant to strict federally imposed guidelines. Of particular interest is the fact that although subsection (a)(5) requires "reasonable and fair rules and procedures" for a funded dispute resolution mechanism, the actual extent to which such rules and procedures, for instance, "permit the use of dispute resolution mechanisms by the business community," is primarily left to the discretion of the funding applicant, that is, eligible state or local government units or nonprofit organizations. Thus, the proposed legislation will result in the infusion of Federal funding assistance with a minimum amount of "Federal strings" attached.

Section 4(b), "State System," encourages each state to develop "A Public Information Program" to apprise citizens of the "Availability and Location" of dispute resolution mechanisms. This feature is absolutely essential if we have any hope of increasing the use of existing mechanisms and encouraging the public to resort to new or improved resolution programs. Studies have consistently demonstrated that there is frequently a lack of public awareness of the existence and utility of dispute resolution mechanisms, and that this lack of familiarity with small claims courts systems and similar dispute handling mechanisms discourages their effective use and increases the public's skepticism towards them.

It should be further noted that public information concerning the presence of dispute resolution mechanisms and the procedures for their use is particularly important for low income consumers. As a group, low income consumers are more frequently victimized in consumer transactions for goods or services than other income levels. Accordingly, every effort must be made to fashion new or improved dispute resolution mechanisms in a manner such as to encourage low income consumers to turn to them when they are confronted with a problem or are faced with an arbitrary denial of essential services. Furthermore, actions should be taken to insure that the needs of low income consumers are fully considered by grant applicants.

I am generally very pleased to see that the proposal under discussion minimizes the extent to which States must create additional bureaucratic entities to qualify for funding under this act.

Section 6 requires the creation within the Department of Justice of a "Dispute Resolution Resource Center." I favor this feature since the presence of a centralized source of information, technical assistance, and research and development activity should greatly enhance the prospects for achieving the objectives of this bill. It stands to reason that if the Dispute Resolution Resource Center is collecting, analyzing, and disseminating data concerning the attempts by eligible recipients to fashion new or improved resolution mechanisms, all funded entities will benefit from common shared experiences. What may be entirely innovative and promising in a given locale, may have previously been attempted and failed to achieve any measurable success in another location. Thus, an inquiry to the Center could hypothetically prevent the expenditure of funds on a project unlikely to succeed.

Section 7, "Financial assistance," authorizes the Attorney General to provide assistance grants to applicants for the purpose of improving existent or creating new dispute resolution mechanisms. Subsection (b) sets forth duties of the Attorney General for the administration of the program. Principal among such responsibilities is the prescription of "the specific criteria for the distribution of funds received by applicants * * * consistent with the limitations" * * * of the Act and "after consultation with the (Federal Trade) Commission." Given the vast experience of the FTC in dealing with problems arising from marketplace transactions, it is most appropriate to specify the need for consulting with the Commission in fashioning the standards for fund distribution. Furthermore, since fund distribution criteria is an essential feature of the bill, I would hope and I am confident that the public will

be given a reasonable opportunity to participate in the development of that and other procedural requirements for grant recipients. Unless the public actively participates in the development of implementing regulations under the Act, full acceptance of new or improved resolution mechanisms may be lacking. Accordingly, I am encouraged to see that under Section 7(c), applicants are required to "set forth the nature and extent of participation of interested parties, including consumers, in the development of the applications" for funding.

In short, I support S. 957, because it provides a means to fashion new or improved dispute resolution mechanisms which best suit the circumstances and needs of a particular locale. While it is late in the session, I hope that this legislation can be enacted this year.

Thank you for the opportunity to testify on this legislation.

Mr. ECKHARDT. I am interested in your statement that you don't want to permit noneconomic disputes to so crowd the program as to prevent reaching a good number of economic disputes, many of which, of course, perhaps the majority of which, have to do with consumer matters. I am a bit concerned about the scope of this bill as compared to the Broyhill bill on that score.

Also, though, Mr. Broyhill's bill does go into encouragement of small claims courts, it sets out certain criteria with respect to the grants. He is dealing in an area that is much more natural for the Federal Government to be concerned with. He does not, of course, create any Federal courts, but I think the Federal Government should have a concern with respect to consumer affairs because they touch interstate commerce in a much closer way, for instance, than a family dispute or even a landlord-tenant question.

Do you have any concern about whether the provisions of S. 957 might be so broad as to disseminate funds or disseminate energy into a much wider field than we are likely to be able to take care of ultimately?

Dr. RICHARDSON. I think I would answer in two ways. First, there is certainly a demonstrated need that our office has seen, because of its concern with consumer affairs, in the consumer field. To that, we can address ourselves best and have done so in the testimony. Our office receives individual complaints, and we see many of the problems of trying to resolve them, particularly in our case, at a long distance from the people who write us.

Second, we see what happens when disputes are subsequently referred to private businesses or to State agencies of various sorts or to other Federal agencies, and I would attest certainly that the consumer area is an area with a very important priority and, simply, we haven't done the job as a Nation.

The definition of a consumer problem I think though will play tricks with us, and our knowledge of what is a consumer dispute perhaps will best get us at this point to say, well, we don't want to try to merely support innovative consumer programs, but try a wide range of programs to see what the States and localities can come up with in the formation of programs for dispute resolution in general.

I think some mechanisms tried in consumer affairs may be applicable to other fields. Attempts to resolve disputes that are not truly economic or consumer disputes in turn may have a cross-fertilizing effect and help us understand how to best deal with consumer problems.

I would certainly opt for a concentration of effort on consumer disputes, not trying to specify percentage, but also keeping it broad,

to attempt to deal with other forms of disputes. Within a \$15 million limit of course, all of this is experimental and seed money in nature.

Mr. ECKHARDT. After all, this is a program emanating from the Federal level. It is true, of course, that we are not attempting to dictate to the States what law they should put into effect, nor ultimately to create tribunals other than State or local tribunals. Nevertheless our expertise lies pretty largely within somewhat limited fields.

For instance, this subcommittee has been involved in consumer matters in connection with the Product Safety Act, the Magnuson-Moss Act, a number of other pieces of legislation, and we have been involved frequently with problems involving national manufacturers and the effect of their products on the Nation, as a whole, as in the Toxic Substances Act. However, there is no committee in Congress that has much expertise in the area, for instance, of domestic affairs.

It is just not an area of law, of social concern, which has touched the National Government to the extent that has been dealt with at the State level, and though I think that we can offer some guidance, some leadership in affording a means of permitting redress on economic matters, I can't see how we can afford much knowledge that the States don't already have a better grasp of in the beginning, in many of the family matters, in many of the neighborhood matters, that seem to be covered by the Senate bill.

On the other hand, the bill by Mr. Broyhill seems to me to be related to that area of expertise and knowledge at the Federal level in which we may provide some guidance and leadership. Your own office, for instance, deals with very much the same type of concerns that this subcommittee deals with. Yet neither your office nor any other office at the Federal level has gone very deeply into questions that are totally noneconomic and deal with the questions of neighborhood and social problems. To the certain extent HUD may, and to a certain extent HEW may get into some of these matters, but I have some doubts about the breadth of this act, and I would like to share my doubts, subject them to your discussion and comment.

Dr. RICHARDSON. Again, I think the breadth is an important issue, simply because of the limitations of the funding.

I would agree that much of the concern of Federal departments has been limited to the administration and the problems associated with specific programs, as at HUD or as at HEW, and that perhaps is a proper Federal role.

The experience of the States and localities is just what is needed. I think that the kinds of resources available in communities to address local disputes are frequently far superior.

In consumer affairs, the efforts by State and local consumer offices to mediate and in other ways deal with consumer problems, including their prevention is far ahead of any kind of Federal effort. Therefore, I think this bill, with its emphasis on allowing the States and localities and nonprofit organizations to be innovative is appropriate.

Mr. ECKHARDT. That is all I have on that particular subject. I have a few other questions, but I would yield at this time to Mr. Broyhill.

Mr. BROYHILL. I thank you.

I only have a couple of questions.

One of the points that is brought out in the statement that you have submitted is the need for public information concerning those mechanisms that may already be in existence in the States and local communities, and how this information needs to be made available to the public.

I felt that one of the weaknesses perhaps of S. 957 is that there may not be enough emphasis on this point, that is encouraging the States to develop public information programs to make sure the citizens know the availability and location of where they can get help.

Would you want to comment on this?

Dr. RICHARDSON. I think particularly in the early stages of development of some of the State and local programs dealing particularly with consumer complaints, that one of the serious problems is the fact that perhaps a good system was developed but nobody knew to come to it. Also, there were attitudes, particularly among low-income consumers, that caused them to be hesitant in using some mechanisms that really could help them.

Mr. BROYHILL. The point I am making is that in section 4(b), it may not be strong enough. It just says "each State is encouraged to develop a public information program which effectively communicates."

I am not sure that that is enough. It may be that we may need to do more.

Mr. ECKHARDT. Will the gentleman yield?

Mr. BROYHILL. Yes.

Mr. ECKHARDT. The two House bills require that any grantee provide such public information. Since you feel it is very important to have it, would you not feel that whatever bill we pass should require it?

Dr. RICHARDSON. I would reiterate a statement of principle, and agreement with the fact, that you simply cannot create something and not tell people about it. It is simply axiomatic that people must know. You cannot build a better mousetrap and people will buy it. You must tell them that you built it, and I think it is implicit in any program that it be able to deliver that service through information programs wherever it is established.

Mr. ECKHARDT. You think they won't beat a path to your door unless you have a good number of large signs pointing to where the mousetrap is?

Dr. RICHARDSON. I think in a practical sense it is a matter of using the available media. You have got to magnify your few dollars for information programs. I think on the small scale that we are anticipating establishment of seed programs, consequently setting up formal public affairs offices publishing materials and mailing them to everyone in the city is probably impractical. It is a matter of maybe a few signs, but also multiplying effects in the media of the communities affected.

Mr. BROYHILL. No other questions.

Mr. ECKHARDT. You recommend that action should be taken to insure that the needs of low-income consumers are fully considered by grant applicants.

Would you recommend that the criteria in section 4(a) be amended to include that requirement?

Dr. RICHARDSON. I think at this point that it is again an implicit statement. We are not recommending a change in what was passed as S. 957. Again any community, to be partly biblical in quotation, the poor are with us everywhere. I think to serve a community, as contemplated by the types of complaints that will be dealt with, the failure to address a significant group, such as the poor, would count heavily against any program proposal that came before the administrator of the program.

Mr. ECKHARDT. S. 957 requires grant applicants to tell how interested parties, including consumers, participate in the development of the application.

Now there is no requirement that public groups actually be involved in developing the application. If such participation is important, as you say in your statement, should it be mandatory?

Dr. RICHARDSON. Again, I say in order to do it, in order to have a program that meets the needs of the public, there is the implicit statement, or it is implicit that the administrator of the program indeed must consult the public in order to accomplish its goals. He simply could not address national priorities or even solve problems concerning the adequacy of proposals before him, unless indeed he consulted a wide range of individuals and institutions that were interested in dispute resolution.

I don't think it is necessary to make it mandatory as such. You simply cannot conduct the program to benefit any constituency without utilizing that constituency throughout the process.

Mr. ECKHARDT. Thank you, Dr. Richardson. Your testimony has been most useful to the subcommittee.

Dr. RICHARDSON. Thank you.

Mr. ECKHARDT. Ms. Barbara B. Gregg, president of the National Association of Consumer Agency Administrators.

Ms. Gregg, we are glad to have you before the subcommittee. Will you please identify yourself for the record?

You want us to put your statement in the record as is, and let you summarize it, or do you prefer to read it?

STATEMENT OF BARBARA B. GREGG, PRESIDENT, NATIONAL ASSOCIATION OF CONSUMER AGENCY ADMINISTRATORS

Ms. GREGG. No; I would like to submit it for the record, summarize it briefly, and perhaps add one or two things that occurred to me as I was listening to your questioning and to the other people that have testified.

Mr. ECKHARDT. Without objection, that will be permitted.

Ms. GREGG. Thank you, Mr. Chairman.

I am Barbara Gregg. I am the director of the Montgomery County Office of Consumer Affairs which is a dispute settlement mechanism. I am also the present president of the National Association of Consumer Agency Administrators, or NACAA. NACAA is a professional organization whose members are directors of State, county, and city government offices of consumer affairs. It has

members in 33 States, and in the Virgin Islands, and represents the interests of approximately 150 million consumers.

The offices vary in size and authority but have many things in common. They handle individual consumer complaints, refer consumers to alternative dispute settlement mechanisms when appropriate, and on occasion designate staff members to serve on industry-sponsored disputes settlement panels.

Many additionally administer deceptive and unconscionable trade practices laws, commonly referred to as mini-FTC acts.

At its annual meeting the membership unanimously resolved to support the passage of a consumer controversies resolution act and directed me to act on the organization's behalf.

The three bills which you are considering this morning all include findings of need for more and better consumer dispute settlement mechanisms. All would provide Federal Government assistance to States and localities through a special office or center within the Federal Government that would, among other things, administer a grant-in-aid program. However, there are five significant ways in which these bills differ.

First: There is disagreement as to the type of disputes which the mechanisms should handle.

Second: There are different approaches as to what characteristics Congress should specifically require of these mechanisms.

Third: Eligibility standards are dissimilar.

Fourth: There is no agreement as to which Federal agency should administer the program.

Fifth: There appear to be conflicting views as to the respective roles of State and Federal governments.

The need for consumer dispute resolution mechanisms is well established. Both House bills include findings of a need for more and better individual consumer dispute resolution mechanisms.

The Senate bill, which has a smaller authorization than either House bill, concerns itself with all manner of individual disputes involving small amounts of money.

In trying to do more for less, the Senate bill reduces the likelihood that it will have any long-lasting effect.

Consumer disputes have often been the subject of intervention by State and local governments that have long recognized the need to redress the balance between consumers and merchants. The imbalance exists because consumers are not as knowledgeable about the goods and services they purchase as are those providing the goods and services. That very imbalance is a justification for the intervention and expenditure of government funds.

That same justification does not exist for the provision of funds to establish other dispute settlement mechanisms for parties with equal knowledge and bargaining power, which is precisely what S. 957 allows.

Consumer merchant disputes are not primarily interpersonal disputes between people who have an ongoing relationship, such as they have been characterized by the Justice Department in testimony this morning. Problems in fact are often created by the very infrequency of contact between consumers and merchants. Consumers don't buy new homes very often, nor do they purchase cars or a

number of other things which are the subject of complicated consumer disputes.

In addition, to urging, however, that the program be limited to consumer disputes, we also would argue that the concept of consumer representation should be recognized in enabling legislation. Any mechanism which receives funding should offer some form of assistance or representation to the consumer. If assistance is not available, the consumer remains in a disadvantaged position vis-a-vis the merchant who has the greater knowledge and experience.

For example, a consumer with no knowledge of automotive mechanics will find it difficult, if not impossible, to prevail in a dispute with a garage concerning the necessity for or adequacy of an automotive repair. Consumers need skilled, knowledgeable person to help them with what the chairman recognizes are often complex matters which need skilled investigation of both facts and law.

Consumers need more than informal, well-meaning neighborhood justice centers.

Any effective dispute resolutions mechanism should not only resolve the individual's dispute but should also be a force for preventing consumer problems. In an as yet unpublished study done by the Center for the Study of Responsive Law under a Carnegie Foundation grant, we find a list of criteria for an effective dispute mechanism. All three bills under study by the subcommittee require that the mechanisms meet some of these criteria which are copied on page 4 of my testimony.

However, only H.R. 2482 appears to require that the mechanism identify problem areas, maintain open records—I think the openness of records is really extremely important—bring its influence to bear to correct patterns of complaint, and provide enforcement agencies with information so that they too can perform their preventive functions.

I think it is very important that Congress, in its findings, its statement of purpose, and in its listing of those criteria, which dispute settlements mechanisms must meet should articulate the importance of preventing consumer problems.

If Congress does not, it could be fostering mechanisms which would actually have a detrimental effect. If complainants are taken care of, and thereby silenced, the causes of complaints never made public nor acted upon, serious abuses which now surface could go unrecognized.

Each of the three bills gives the responsibility of administering the program to a different Federal agency. The Federal Trade Commission, with over 50 years of experience in the consumer protection field, would seem the natural home of a consumer dispute resolution center. FTC staff members are even today making a study of consumer dispute resolution. However, there apparently is a reluctance on the part of the Commission to house a grant-giving Office of Consumer Redress due to the fact that the commission is an enforcement agency which might on occasion be in conflict with potential grantees.

We suggest that any possible impropriety or even the appearance of impropriety can be avoided by giving the Office Director that

degree of independence presently had by FTC administrative law judges.

The Director could operate under general guidelines established by Congress, and by the Commission, but the Director, not the Commissioners, could be made ultimately responsible for choosing programs which they might fund.

NACAA has reservations about the Justice Department administering a consumer dispute resolution office, since in the past Justice has shown little interest in or sensitivity toward consumer problems, especially those not easily handled outside of the criminal justice system.

However, if the Justice Department is to administer a program of consumer redress, then we recommend that in addition to consulting with the Federal Trade Commission it be required to seek consumer participation on an ongoing basis.

We are concerned not only about the location of this office but also with its structure and with the scope of its responsibility. We hope that you do not adopt the plan of S. 957 which establishes a Federal center to establish national priority projects.

The substantial involvement of the Federal bureaucracy would, it is feared, delay the distribution of grant-in-aid money to those who want to begin the job of expanding and developing model consumer dispute resolution mechanisms. We also believe it incorrectly puts the major responsibility for shaping the form of these mechanisms on the Federal Government rather than on State and local groups and nonprofit groups. Already the Justice Department seems to have determined that one of the main priority projects should be neighborhood justice centers which may or may not suit particular State and local needs. There are similar dispute resolution mechanisms in some States and localities. The three that the Justice Department referred to are not the only neighborhood dispute resolution mechanisms available. Some communities may not need assistance to establish general neighborhood dispute or family dispute resolution mechanisms.

The House bill places the primary responsibility for planning dispute settlement mechanisms where it should be, at the State and local level, where authorities are close to the public and responsive to the needs of diverse communities. S. 957 unwisely substitutes the Federal bureaucracy.

There are, of course, numerous problems that can only be solved at the Federal level. Planning and experimenting with mechanisms to resolve individual consumer disputes would not seem to be one of them.

We urge the passage of a Consumer Controversies Resolution Act which would only fund consumer dispute settlement mechanisms which provide for consumer representation and which provide for the identification and correction of consumer abuses.

I want to thank you for the opportunity of summarizing my statement.

I would be more than happy to respond to any questions that you might have.

[Testimony resumes on p. 108.]

[Ms. Gregg's prepared statement follows:]

National Association of Consumer Agency Administrators

611 Rockville Pike, Rockville, Maryland 20852 301/279-1776

STATEMENT OF BARBARA B. GREGG, PRESIDENT OF THE NATIONAL ASSOCIATION
OF CONSUMER AGENCY ADMINISTRATORS BEFORE THE CONSUMER PROTECTION AND
FINANCE SUB-COMMITTEE ON H.R. 2482, H.R. 2965, and S. 957.

July 20, 1978

The National Association of Consumer Agency Administrators, or NACAA, is a national professional organization whose members are the directors of state, county, and city government offices of consumer affairs. These offices vary in size and authority, but they have many things in common. They handle individual consumer complaints, refer consumers to alternative dispute settlement mechanisms when appropriate, and on occasion, designate staff members to serve on industry-sponsored dispute settlement panels. They are in daily contact with the consuming public, they understand the consumer's problems, and they have a mandate to represent the interests of consumers within their respective jurisdictions.

At its annual meeting on May 9, 1978, the membership of NACAA unanimously resolved to support the passage of a Consumer Controversies Resolution Act and directed me to act on the organization's behalf and work for the passage of such a law.

I thank you on behalf of the Association and its consumer constituents for the opportunity to testify on H.R. 2482, H.R. 2965, and S. 957. I propose to discuss the need for and the characteristics of effective consumer dispute settlement mechanisms, and to comment on the way in which the federal government can best assist in the establishment and maintenance of these mechanisms.

The three bills which you are considering all include findings of need for more and better dispute settlement mechanisms. All would provide federal government assistance to states and localities through a special office or center within the federal government that would, among other things, administer a grant-in-aid program. However, there are five significant ways in which these bills differ. First, there is disagreement as to the type of disputes which these mechanisms should handle.

Second, there are different approaches as to what characteristics Congress should specifically require of these funded mechanisms. Third, eligibility standards are dissimilar. Fourth, there is no agreement as to which federal agency should administer the dispute resolution program. Fifth, there appear to be conflicting views as to the respective roles of the states and the federal government.

Consumer Disputes

The need for consumer dispute resolution mechanisms is well established. State and local government offices report a steadily increasing number of consumer complaints. A recent Harris poll done for the Sentry Insurance Company finds that 63 percent of the public wanted to complain about a product or service in the past year or so; that 47 percent had actually filed a complaint; and that two out of three Americans believe that it would be helpful if every community had a complaint bureau.

Both House bills include findings of a need for more and better individual consumer dispute resolution mechanisms. The Senate bill, which has a smaller authorization than either House bill, concerns itself with all manner of individual disputes involving small amounts of money. In trying to do more for less, the Senate bill reduces the likelihood that it will have any long-lasting effect. If Congress concentrates on disputes between consumers and merchants, as recommended by Congressman Murphy and Congressman Broyhill, then the issues which NACAA knows are in need of resolution mechanisms will be addressed. It is less clear that other disputes, such as those concerning domestic or neighborhood problems, are in need of new dispute settlement mechanisms. However, some of the mechanisms established to benefit consumers could later be adapted to cover these other types of conflict if a need can be demonstrated.

Consumer disputes have often been the subject of intervention by state and local governments which have long recognized the need to redress the balance between consumers and merchants. The imbalance exists because consumers are not as knowledgeable about the goods and services they purchase as are those providing the goods and services. That very imbalance is the justification for the intervention and expenditure of government funds. That same justification does not exist for the provision of funds to establish other dispute settlement mechanisms for parties with equal knowledge and bargaining power, which is precisely what S. 957 allows.

Consumer Representation

In addition to urging that the program be limited to consumer disputes, we also would argue that the concept of consumer representation should be recognized in the enabling legislation. Any mechanism which receives funding should offer some form of assistance or representation to the consumer. If assistance is not available, the consumer remains in a disadvantaged position vis-a-vis the merchant who has greater knowledge and experience. For example, a consumer with no knowledge of automotive mechanics will find it difficult, if not impossible, to prevail in a dispute with a garage concerning the necessity for or adequacy of an automotive repair.

Prevention

Any effective consumer dispute settlement mechanism should not only resolve the individual's dispute, it should also be a force for preventing consumer problems from occurring in the future.

In an as yet unpublished study done by the Center for the Study of Responsive Law, under the auspices of a Carnegie Foundation Grant, the following criteria are used to measure the effectiveness of dispute settlement mechanisms:

"...the procedures of complaint handling mechanisms should:

1. be visible to the consumer
2. be accessible to consumers of all economic strata in terms of:
 - a. ease of entry
 - b. cost
 - c. availability and convenience
 - d. language
3. encourage the speedy resolution of a dispute
4. see that both sides to a dispute are directly involved in the resolution process
5. encourage the finality and conclusiveness of the resolution of a dispute
6. ensure that the results of dispute settlement efforts are actually carried out
7. keep the consumer informed as to the status of the case
8. provide useful information on other avenues of redress should dispute settlement efforts fail, or the agency determine that the issue lies outside its formal or informal jurisdiction.

"As mechanisms for correcting patterns of abuse which give rise to individual complaints, such organizations should:

1. bring pressure to bear on the complaine to correct a pattern of abuse.
2. demonstrate that such pressure has indeed brought about changes.
3. provide information to public agencies responsible for administering laws on safety, health and economic deprivation so they can effectively do their remedial-deterrant tasks.
4. show a record of positive contribution of improving legislation for the consumer and of seeing that laws on behalf of the consumer are more rigorously enforced."

All three bills under study by the Sub-committee require that the mechanisms meet some of the above criteria. However, only H.R. 2482 requires that the mechanism identify problem areas, maintain open records, bring its influence to bear to correct patterns of complaint, and provide enforcement agencies with information so that they too can perform their preventive functions. 87(F)

If an agency that handles disputes focuses solely on settling individual cases and does not perform some preventive role, only the small number of actual complainants will benefit. However, if the preventive role is encouraged and unfair practices stopped, countless numbers of people will be benefited, further justifying federal government expenditures.

I think it is very important that Congress, in its findings, its statement of purpose, and its listing of those criteria which dispute settlement mechanisms must meet, should articulate the importance of preventing consumer problems through approved complaint handling entities. If it does not, Congress could be fostering mechanisms which would actually have a detrimental effect. If complainants are "taken care of" and thereby silenced, and the causes of complaints never made public or acted upon, serious abuses which would now surface could go unrecognized.

Business Sponsored Mechanisms

We also object to that portion of the Senate bill which permits business sponsored mechanisms to receive funding. It is ironic that what began as a bill for consumers now allows the federal government to subsidize business efforts to deal with its own customers dissatisfaction.

However, if business mechanisms are to be federally funded it is imperative that these mechanisms be required to maintain open records and provide information to government law enforcement agencies. Federal government monies must not be allowed to support business dispute settlement programs which could privately resolve cases involving violations of law. Consider for example, a case in which a repair facility was found to have substituted used automobile parts for new ones. Not only should this case be resolved in favor of the consumer, but it must also be brought to the attention of law enforcement officials.

Administration

Each of the three bills gives the responsibility of administering a program to resolve consumer controversies to a different federal agency. The Federal Trade Commission, with over 50 years of experience in the consumer protection field, would seem the natural home of a consumer dispute resolution center. FTC staff members are even today making a study of consumer dispute resolution. However, there is apparently a reluctance on part of the Commission to house a grant-giving Office of Consumer Redress due to the fact that the Commission is an enforcement agency which might on occasion be in a conflict situation with potential grantees.

We suggest that any possible impropriety or even the appearance of impropriety can be avoided by giving the Office Director that degree of independence presently had by FTC administrative law judges. The Director would operate under general guidelines established by Congress and the Commission but could be made ultimately responsible for choosing which programs to fund.

NACAA has reservations about the Justice Department administering a consumer dispute resolution office, since in the past Justice has shown little interest in,

or sensitivity toward, consumer problems, especially those not easily handled through the criminal justice system. This should not be surprising nor is it a criticism of the Justice Department. Legal arms of governments, be they federal, state, or local, are typically overburdened with the need to provide all manner of legal counsel to their government agencies and are rarely able to make the handling of consumer complaints or complaint prevention a top priority.

However, if the Justice Department is to administer a program of consumer redress, then we recommend that in addition to consulting with the Federal Trade Commission, it be required to seek consumer participation on an on-going basis.

Neither does the Commerce Department, which is perceived as representing the business community, seem to be the proper home for a new and innovative consumer program.

We are concerned not only about the location of the Office of Consumer Redress, but also with its structure and the scope of its responsibility. We hope that you do not adopt the plan of S. 957, which establishes a federal center to serve as a clearinghouse, provide technical assistance, conduct research, and undertake comprehensive surveys and establish "national priority projects." (emphasis added)

This substantial involvement of the federal bureaucracy would, it is feared, delay the distribution of the grant-in-aid money to those who want to begin the job of expanding and developing model consumer dispute mechanisms. We also believe that it incorrectly puts the major responsibility for shaping the form of these mechanisms on the federal government, rather than on state and local governments and non-profit groups.

The plan of both House bills, we submit, is far preferable. Using detailed Congressional guidelines for dispute settlement mechanisms set forth in these bills, the states and other potential recipients can immediately begin to plan and to initiate the grant submission process. In this way, the appropriated funds will reach the beneficiaries more quickly.

Furthermore, the House bills place the primary responsibility for planning consumer dispute settlement mechanisms where it should be -- at the state and local level, with authorities that are close to the public and responsive to the needs of diverse communities. S. 957 unwisely substitutes the federal bureaucracy as the major developer of dispute settlement mechanisms. There are, of course, numerous problems that are best solved at the federal level. Planning and experimenting with mechanisms to resolve individual consumer disputes is surely not one of them.

The federal government does, however, have a role to play in preventing certain types of consumer frauds. If the scheme of H.R. 2482 is adopted, the local dispute settlement mechanism will be required to report trends to enforcement agencies some of which will be branches of the federal government. The officials of the federal agencies contacted can then participate with their state and local colleagues in planning and executing preventive programs.

We urge the passage of a Consumer Controversies Resolution Act which will only fund consumer dispute settlement mechanisms which provide for consumer representation and which provide for the identification and correction of consumer abuses. Furthermore, the legislation should require that the implementing federal agency regularly obtain the participation of consumers in its administration of the Act.

Mr. ECKHARDT. Thank you.

Mr. Broyhill.

Mr. BROYHILL. Thank you, Mr. Chairman.

Thank you for your statement.

First, could you tell me a little about your association, about some of your members, who they are, where they are located, and what types of activities they are engaged in?

Ms. GREGG. They are all State and local offices of consumer affairs. They are located in California, in Texas, in Illinois, in Massachusetts. We have quite a wide variety of representation. We have members that in fact have budgets well over \$1 million. We have other members from smaller communities who have three or four people assisting citizens with complaints. Some have considerable law enforcement authority. Others do more consumer education and dispute resolution. It is a relatively new organization which has brought together the directors of these State and local agencies so that we may better communicate with each other and be more efficient in providing the service to our citizens.

Mr. BROYHILL. Then your members are primarily governmental.

Ms. GREGG. Our members are all—

Mr. BROYHILL. All government?

Ms. GREGG [continuing]. All government officials. All the directors of these governmental offices of consumer affairs, that is right.

Mr. BROYHILL. The way S. 957 is structured, as I understand it, these national priority projects would be identified and certified by the Justice Department after consulting with the FTC. I don't see that there is any requirement for State or local input or participation in this process.

Could you comment on this?

Ms. GREGG. No, Congressman, I don't see that either and that does concern me. As I said in my statement, we would hope that it would not be housed in the Justice Department, but should that be the case, I would certainly hope there would be a requirement on the part of the Justice Department to consult with State and local government offices of consumer affairs and grassroots consumer groups.

I think there should be that requirement to consult with the governmental officials and the many grassroots consumers around the country.

Mr. BROYHILL. In your statement you expressed some concern about the establishment of a Federal Center to serve as a clearing-house for information and you underlined the words "comprehensive surveys" to emphasize your concerns.

I wonder if you could elaborate on that concern? You don't want this agency to be taking surveys. Is that what your argument is?

Ms. GREGG. No. I am more than happy to have them take some surveys, but it seems to me that in the bill that you sponsored, Congressman, there was more responsibility coming from the States to do their own surveys and study of what is going on within the State and that we might be able to find out what is going on out there much more quickly by asking the States to please let us know what is going on.

I would hope that any office of consumer redress would do all of the things to some degree that the Senate bill would have them do,

serve as a clearinghouse and give assistance. But I was hoping more of the impetus would come from the State and local governments to the Federal office rather than the other way around. It seemed we could get going more quickly if we did that.

Mr. BROYHILL. That is a good point.

Thank you.

Mr. ECKHARDT. I was very interested in your observation that an ongoing relationship is not the relationship that is in greatest need of mediation and adjudication. The fact that presently the dealing between the consumer and, for instance, the large merchandising concern where contact is impersonal and infrequent makes this the area where there is more likely to be overreaching than in the situation where you deal constantly with a person.

For instance, there are certain people we deal with over and over again. For instance, if my barber doesn't treat me right, he knows I will take my business elsewhere.

But if I buy a disposal from a plumber and then perhaps don't buy another one for 5 years and I have forgotten who the plumber was that sold me the bad one, there is very little ongoing relationship which is likely to enforce fair dealing.

That struck me as a very important consideration and a consideration of what we really should be most involved in with this legislation.

Do you not think that such an ongoing relationship has a tendency to impel fair dealing without mediation or adjudication?

Ms. GREGG. Yes, I would agree with you, Mr. Chairman. I think not only like in the example you give. You know exactly what you want your haircut to look like. You don't really know exactly what kind of a disposal you want. You are relying on the expertise of the person from whom you buy it.

I think it is this very lack of expertise on the part of consumers that causes the problems or misunderstandings and sometimes actual fraud. No matter how good a consumer one tries to be, it is impossible to sufficiently understand all the goods and services that we purchase.

So if we have, say, a possibility of misunderstanding or fraud, I think it often occurs because we are not able to protect ourselves because we have insufficient knowledge. Therefore, once we have a problem, we need a dispute settlement mechanism and one which has some expertise.

Mr. ECKHARDT. It also seems to me that if the continuing and ongoing relationship doesn't itself impel some arrangements for fairness, some self-restraint on the parties involved as, for instance, neighbors concerned about whether or not the dog barks too much or the dog messes up the garden of the adjoining neighbor, if they can't decide this without resorting to a structural mechanism, it seems to me that the only solution to such problems is to make a person abide by the law. I wonder if informal procedures can really help that much.

It strikes me that to create merely a service that spreads over the entire field of relationships between people may generate disputes at a rate equal to that at which it settles them.

Ms. GREGG. I would also hope that the experimentation that would take place under the consumer dispute legislation might be

of some assistance if in fact it could later be shown that these other disputes also need resolution.

Mr. ECKHARDT. I am very interested in your suggestion which I think is good, that we should limit this to consumer disputes. You discuss the need for someone to represent the consumer, assist the consumer, in preparing a case.

S. 957 and the two House bills require that the program offer assistance, including paralegal assistance, where appropriate, to persons seeking the resolution of disputes.

Do you think this language adequately addresses the needs?

Ms. GREGG. No, Mr. Chairman, I don't. There is support for a variety of alternative means of disputes settlement. We have talked this morning about small claims courts, government offices, informal disputes settlement mechanisms, and binding arbitration programs. There are some kinds of disputes that can be settled in small claims court with some assistance, somebody to help fill out the forms and understand the process.

On the other hand, there are many kinds of disputes which will not be well solved in a small claims court where I submit the consumer needs more than assistance to fill out the papers and get through the process, but in fact needs advice from someone that has knowledge of the industries which the consumer is dealing with.

Rather than do what Justice did—establish very generalized mechanisms—I would hope some mechanisms could be funded which are even more specialized than ones which we have in the country today, perhaps a mechanism could be funded which deals only with disputes about automobile repair or only with disputes concerning home improvements where that specialty can come to play to help the consumer resolve the dispute.

Mr. ECKHARDT. I think you raise a very interesting question there. Some of these specialty situations may deal with problems in which the consumer comes into contact with the vendor of goods and services either once in a lifetime or very few times in a lifetime. I think that is what the Federal Trade Commission is addressing with respect to the funeral regulations. I guess that can't exactly be called "once in a lifetime" because, after all, the deceased doesn't make the arrangements.

But take, for instance, circumstances concerning moving: Whether the moving company was there at the date agreed to and whether or not, if they were not there, they made a reasonable attempt to get someone else to get a truck at that period of time.

These kind of questions, it seems to me, are very important consumer questions in which the consumers are at a great disadvantage because they are very unlikely to deal with a moving company again.

There is one other question I would like to ask you about. S. 957 prohibits the use of any Federal money to pay attorneys for any representation of disputants or claimants and then it adds, "for attorneys otherwise providing assistance in any adversary capacity." This language could work directly against the interest in having advice before the adjudication occurs.

Ms. GREGG. That paragraph concerned me, too, Mr. Chairman. I wonder if perhaps that was there because so much of S. 957 seems

to look toward neighborhood centers or small claims courts. Perhaps what they were getting at was that they don't want attorneys to be representing people in small claims courts, but if that is the concern, then it should be more clearly stated. In the office here in Montgomery County we have a number of attorneys on staff who are not representing individual consumers in small claims courts but in fact are there to help consumers with their problems and help them understand and interpret their legal rights.

That sentence would seem to say that no mechanism that made use of lawyers for advice and assistance could be funded and I think that would be too bad.

Mr. ECKHARDT. For instance, in the case I was referring to, a moving case, you have a complicated contract with a lot of exceptions provided. What is the moving company's responsibility if the van fails to arrive on a given day and the resulting costs involved in a situation in which someone else is moving in or you may have to pay additional costs in order to operate the elevator on Saturdays when the mover didn't come on Monday? All these questions are questions in which some advice is needed because if the consumer simply goes into a proceeding against a well-advised vendor of goods and services, it seems to me the consumer is at a complete disadvantage.

Ms. GREGG. And could in fact be getting all kinds of misadvice which I think would be extremely dangerous. We are presently investigating a case of the misstatement of annual percentage rates in large numbers of contracts with auto dealerships. Certainly, if a consumer complained informal to a mechanism about this, this problem would not surface and the consumer would be improperly advised.

Mr. ECKHARDT. You have said there should be some ongoing consumer participation if the Department of Justice operates the program. Can you say what kind you have in mind?

Ms. GREGG. I would like to have the opportunity to respond to you in writing on that. In general, I was hoping they would be required to perhaps have an advisory committee in which a certain number of consumer representatives were required to be in attendance.

But I would, if I could, respond to you more specifically in writing.

Mr. ECKHARDT. The record will be open without objection for that response.

Mr. Meador suggested that the disputes resolution program would build upon the neighborhood justice centers that the Justice Department has recently launched. He said DOJ hopes to develop a model that can be copied across the country.

Are you familiar with any of the neighborhood centers and do you think such centers are a good framework for emulation across the country?

Ms. GREGG. I am aware of the fact that they have established these centers. I don't have personal familiarity with any one of the three centers about which they comment. But, no, I would not be able to say whether there was a need in these communities for some family and neighborhood dispute settlement which they seem to be most concerned with.

But I would hope that this was not the way that we would go. They seem to me to sound too informal, to maybe work well in neighborhood and family, and as they say, ongoing type of relationships. They seem, as I understood the comments this morning, to be run primarily by part-time people and volunteers who, I would be concerned, would not have the expertise necessary and perhaps operate more as a referral source as far as consumer complaints are concerned.

Mr. ECKHARDT. I know your own agency in the Montgomery County area has an active mediation and arbitration program. Can you describe it?

Ms. GREGG. Yes. I think I said before I think we need a variety of alternative dispute settlement mechanisms. In Montgomery County we have cooperated with the local Metropolitan Washington Area Better Business Bureau in offering binding arbitration to consumers and merchants.

We will recommend this when we are unable to resolve a complaint. This might be a case which involves a legal interpretation of a contract and the parties just are not willing to agree, and yet there is no violation of law so we would not be carrying the case any further.

Perhaps it is a case that relies totally on credibility of witnesses, one party is saying one thing and the other another, and there is no way to investigate further to see which party is the most credible.

If the consumer and merchant in this case were unable to resolve it and they want to, they are provided with an arbitrator who has been trained about 4 hours by the Counsel of Better Business Bureaus. This is a good training session. The consumer and merchant choose the arbitrators and once it is done, it is binding under State law.

Mr. ECKHARDT. Do you have domestic relation problems within your operation?

Ms. GREGG. No, we do not. I think the skills necessary to mediate domestic relations cases would be substantially different. The knowledge of the whole family structure as opposed to the need for a knowledge of the economic system and the business merchant relationship I think is quite different. Perhaps the same skills of patience and art of negotiations are required, but I would say no office of consumer affairs would handle either neighborhood or domestic disputes.

I would like to add, though, that I would suggest landlord-tenant disputes could fall within the definition of a consumer's dispute. I don't know if that is how you would understand it.

Mr. ECKHARDT. I think the underlying issues may be very similar. But would you require the same type of expertise with respect to landlord-tenant questions as you would have, for instance, with warranty questions?

Ms. GREGG. I think you could have sufficiently similar staff. Many consumer affairs offices do have both. I think if your mechanism is large enough, what you seek to do is do some specializing within the mechanism. We have people that handle automotive cases and others who handle condominium matters. If I had re-

sponsibility for landlord-tenant matters, I would have my condominium investigator involved.

I think there are different ways you can structure it. Again, if the granting body would have the flexibility, they might fund some mechanisms that in fact deal with a number of consumer disputes, and they might also fund some creative mechanisms which in fact become more specialized and deal with complaints involving particular industries.

Mr. ECKHARDT. I suppose almost all States these days separate their district court system or their general courts from their domestic relations courts. I know that is generally true in Texas. There is a considerable amount of expertise by a judge who tries from day to day divorce cases, questions of child custody, the followthrough after divorce, and situations with respect to separation before divorce. It seems to me this involves a rather high level of expertise and really is rather capably handled by a court system today.

I am just wondering if we would gain anything by attempting to have a sort of resolution of these disputes? I recognize that they might come to such an outside agency before separation and divorce. But I have a serious question of whether they would tend to accelerate or impede separation or divorce if such a service were avoided?

Ms. GREGG. Many of our family courts do have staffs that get involved with family disputes before the stage of separation or divorce and perform exactly the same function.

Mr. ECKHARDT. I have serious questions as to whether or not it would be desirable to attempt to bring this into a law center.

Ms. GREGG. I share the concerns you expressed before. Many years ago I used to practice in family court. I must say at this point I certainly would not feel qualified to do so, but would now feel more qualified to handle consumer disputes.

Mr. ECKHARDT. Mr. Broyhill?

Mr. BROYHILL. I have no questions.

Mr. ECKHARDT. Thank you for your very excellent testimony here. We appreciate your contribution.

This concludes our hearings for this morning. We have another witness at 2 p.m. We will break at the present time.

[Whereupon, at 12:30 p.m. the subcommittee recessed, to reconvene at 2 p.m. the same day.]

AFTER RECESS

[The subcommittee reconvened at 2:30 p.m., Hon. Bob Eckhardt presiding.]

Mr. ECKHARDT. The Subcommittee on Consumer Protection and Finance will resume its hearings.

Ms. Paula Gold, chief of the public protection bureau and assistant attorney general of the Commonwealth of Massachusetts is our next witness.

We are glad to have you. You may proceed.

STATEMENT OF PAULA W. GOLD, CHIEF OF PUBLIC PROTECTION BUREAU, ASSISTANT ATTORNEY GENERAL, STATE OF MASSACHUSETTS, DEPARTMENT OF ATTORNEY GENERAL

Ms. GOLD. My name is Paula Gold and I am an assistant attorney general and chief of the attorney general's public protection bureau in the Commonwealth of Massachusetts. I appear here today on behalf of the Massachusetts attorney general, Francis X. Bellotti.

Prior to my appointment as bureau chief this June, I served as chief of the consumer protection division for the previous 3½ years. As chief of the public protection bureau, I supervise the consumer protection, antitrust, civil rights, environmental protection, public charities, utilities and insurance divisions of the attorney general's office, all of which have substantial contact with individual citizens seeking redress for private wrongs. I am here today because we strongly support passage of a dispute resolution act.

I should say that I am going to address myself particularly to comments dealing with the consumer aspects of a dispute resolution act and feel that those particular aspects are the most important aspects that need addressing at this particular time.

What I would like to do is talk a little bit about our experience in Massachusetts in that particular area so that you can understand our views on it.

We believe our experience in Massachusetts has demonstrated that decentralized complaint mediation can result in the expeditious resolution of the vast majority of consumer complaints. Upon assuming office in 1975, Attorney General Francis X. Bellotti was faced with the reality that no other State agency wanted the task of mediating consumer complaints. Therefore, we had to continue handling complaints. That means that we had to devise a system of handling them so we could do the other tasks the attorney general wanted to do.

We started building a volunteer component in the attorney general's office to handle complaints. We used students, housewives, and retired people. We trained them and have a full-time, paid supervisor and a number of other backup personnel to work with them.

By using these volunteers, we were able to use our full time, paid assistant attorney generals and investigative staff to bring enforcement actions. We believe by doing this we are able to maximize the resources on behalf of the citizens of the Commonwealth.

Since 1975 we have mediated in our office over 40,000 individual complaints. I should add that you can't really enforce the laws unless you know the problems the people have. Therefore, our decision to handle complaints was not simply based upon "we wanted to help people." We need the complaints to determine the patterns to bring lawsuits.

At the same time we restructured our office, we began making contact with local groups throughout the State who were either mediating complaints or interested in mediating complaints. There was a secretary of consumer affairs office in the Governor's office to handle consumer complaints in the city of Boston. There was the Boston Consumers Council to handle consumer complaints. So

there were at least three places to complain to. A number of them, as I mentioned before, didn't want to handle them any more.

But the Boston Consumers Council, for example, continued to handle consumer complaints. We entered into an agreement with the Boston Consumers Council whereby they would handle consumer complaints in the city of Boston and we would back them up with litigation and with training. We began looking throughout the State for groups that were capable of handling complaints or who had a desire to mediate complaints.

Then we began to hold monthly training and information meetings with many of these groups. In those cases where the local groups were capable of mediating complaints, we referred complaints to them.

Mr. ECKHARDT. If you will excuse us, we will recess for a few moments to get the vote.

[Brief recess.]

Mr. ECKHARDT. You may proceed.

Ms. GOLD. As I mentioned, at the same time as we handled complaints in our own office, we have in the past held monthly meetings with local groups throughout the State and have encouraged the formation of new groups which would be capable of handling consumer complaints.

As a result of these experiences, we developed a belief that the best way to handle individual consumer complaints was through local groups working in conjunction with our office. This has the advantage of enabling the groups to use local resources, including volunteers as well as maintaining locations which are physically close to the consumers and businesses involved. These groups can also vary, depending on the local needs of the community. These groups also have the additional advantage of being able to say they are working with the Attorney General, an Attorney General who will take legal action in referred cases if there is a pattern of violation or impact upon the general public, not an individual problem, that was not resolved.

Indeed in Massachusetts in the past 3½ years, the Consumer Protection Division has taken formal legal action in over 457 matters, all of them involving such a pattern of violation. One case, for example, that we are working on now involves insurance overcharging which affects 14,000 people.

Every one of those cases involve more than just an individual. The matters have involved areas of advertising, automobiles—the single largest area of consumer complaints—home improvements, health, nursing homes, sales practices, housing, insurance, utilities, et cetera.

A significant breakthrough for complaint mediation in Massachusetts occurred on March 10, 1977, when the Massachusetts Legislature, at the request of the Attorney General and the local consumer group network, appropriated \$200,000 to be distributed via the local consumer aid fund with the Attorney General as custodian and disbursing officer of the fund.

I have also supplied the committee with a copy of the guidelines, the application, and the groups that we have funded. The guidelines were drawn up by an advisory committee that the Attorney General named and who worked with us.

Basically, the guidelines put an emphasis on encouraging groups to maximize other resources, moneys from other sources, volunteers, local space, et cetera.

Pursuant to these guidelines, we have given \$185,000 to 22 applicants during the fiscal year 1978. These applicants represent a variety of groups, nonprofit organizations, municipalities, community action programs, and a community college.

Just to give you some example of the different character of these groups, in western Massachusetts, there is a countywide, nonprofit corporation which received funds from us and also received some funds from the county commissioners in Berkshire County.

On Cape Cod there is a group of senior citizens who have received some funds from us and also received some funds from the RSVP program. In Boston there is a consumer council established by the city which receives some funds from the city and receives some funds from us.

Each of these organizations submits to the Attorney General's office on a bimonthly basis a computer report of each complaint they mediate. They are then entered into our master computer file on consumer complaints. This is a relatively new process only in existence for the past 4 or 5 months.

We are then able to review the computerized complaints to pick up any possible patterns of illegal business activities in the State. It is not a very helpful process if you have the same businesses involved in mediation complaints, in other words, using Federal and State money and people's time to get complaints mediated if, in fact, there is an underlying illegal practice they are engaging in. What should happen is you should stop the underlying illegal practice.

At the present time we are still handling complaints in our own office for all those areas of the State where there are not local groups. For example, Cambridge, Mass., does not have a local group. In fact, the demand is so great that despite the local groups we will handle more complaints in our own office this year than we did last year. There is a need for an increased number of local groups so that every local area will be covered by a group which can attempt to mediate disputes.

Based on our experiences, we believe that an adequate dispute resolution bill should contain the following four elements:

I should say, basically, that I am really talking about a dispute resolution bill that deals with consumer complaints because the amount of money that is being talked about in terms of being appropriated for dispute regulation, in my judgment, is not adequate in terms of handling the whole gamut of complaints.

So I am addressing myself to what I think is important in terms of the handling of consumer complaints basically.

1. Mediation. We think mediation is very important. The primary emphasis should be on mediation, as opposed to binding arbitration. It is impractical to devise a system that would insure consumer satisfaction in every case. The only way to insure enforcement of a mediator's opinion would be to provide lawyers in all those cases where satisfaction is not achieved. This would be too costly.

In addition, binding arbitration has the disadvantage of limiting the number of citizens who could be assisted with their problems because the merchant's consent is required.

2. Enforcement of existing laws. Through enforcement of existing laws, a climate can be created in which it is easier to resolve a dispute short of litigation. This can be accomplished through a tie-in with local or State law enforcement officers. They could act in those instances where there was a pattern of violation or an impact on the public involved in the bringing of the suit.

3. Recordkeeping. Adequate record keeping is essential to determine patterns of abuse. Wherever possible, computerization should be encouraged.

4. Coordination. Coordination on a Statewide basis should be encouraged to avoid duplication. This would involve the possibility of awarding money to subgrantees.

What we are advocating is a realistic approach to problems that do exist in the marketplace. People should not expect, nor can Government provide, a magic wand that will solve all problems. But it has been demonstrated that third parties, utilizing community resources and backed by a law enforcement agency, can resolve many disputes that occur.

Mr. ECKHARDT. Mr. Broyhill?

Mr. BROYHILL. Thank you, Mr. Chairman.

That was a very good statement and we do appreciate your coming down to give us the benefit of your experience in Massachusetts.

Could you describe for the subcommittee the nature of consumer-related disputes that are most frequently encountered? Do you have that for the record?

Ms. GOLD. Certainly. The largest single area of consumer complaints involves automobiles. It can be a new car or a used car. It is often a repair job. It can be a situation, for example, where an individual takes their car in to be repaired and it doesn't function properly after the repair. It can be a situation where a person buys a new car and brings it back, for example, six times in 7 months and still hasn't got satisfaction. This is the single largest area of complaint we get.

Another large area is landlord-tenant problems. This can involve deposit problems and other types of problems. I include this in the area of consumer complaints.

Another area we have had problems in have involved career schools, programs that were advertised as guaranteeing you a job, for example, and in fact the program turned out not only not able to get you a job, but it was not a recognized program by anyone.

The disputes can range from what might be criminal in nature, an actual out and out fraud, larceny, or it might range to the other end of the spectrum where there is a difference of opinion between the merchant and consumer as to what they are entitled to.

Mr. BROYHILL. Do you have that broken down as to how often that would occur in the 40,000 cases you dealt with? You indicated you do considerable recordkeeping.

Ms. GOLD. I could supply you with percentages of complaints in the various areas if you are interested.

Mr. BROYHILL. I think you indicated that you had gone to court over 400 times in order to stop illegal practices. The question I am really leading up to is what type of mechanism do you see as needed to resolve these consumer disputes? In other words, is it an arbitration mechanism we need or is it more than that?

Ms. GOLD. I think it is less than that. I think, basically, going by our experience in Massachusetts, the ability of an independent third party to intervene in a situation and attempt to mediate it, to convey the complaint to the business person, to get in the middle where communication has broken down and to discuss it with the parties involved, is often helpful in terms of resolving a dispute.

When I say I think it is less than that, I don't think it necessarily has to take the format of people coming in and sitting down. I think telephone communications, communication by mail—that doesn't mean everybody is going to be happy. But I think it does take care of a large percentage of the problems.

The problem, as I mentioned before, I think with arbitration, of a notion that something will be binding, is that it takes an agreement of both parties. What I am talking about in terms of mediation is voluntary. It means that if you are a merchant, one of the complaint groups calls you up and says, I have a complaint from Mr. So and So, and this is what he says, they listen to your side of the story. They say under the law you must—for example, if a car doesn't pass inspection in Massachusetts and the cost of repairs is more than 10 percent, you are entitled to have it returned. It may be just an independent third party saying that to the other side that gets the problem resolved.

I don't think the formal process is necessarily what resolves it. We have instances where people go to small claims court, get judgments, and never get them satisfied.

What I would favor is something in a sense building on the model because I know that model of what we have in Massachusetts which sort of combines an informal approach by mediation backed—and I think this is important—backed by litigation where it is important to litigate.

I think it is a disgrace to have the Government pay for business complaint departments. If you have continued patterns of complaints—and we had one automobile dealer with over 500 complaints. I am not his complaint department. It is time for him to get his shop in order and the Government should not pay for that.

Mr. BROYHILL. How could Federal legislation best assist in efforts to establish this kind of mechanism? What can we do? I am sure you have studied the bills, the differences between the administration bill and my bill.

Ms. GOLD. I am not as familiar with the bills as I should be because I am here on short notice. I am very familiar with the Senate bill because I have read that.

One, I think that it should probably not include all disputes. I think that that is biting off much too much. I think, for example, the Senate bill which includes all disputes which could be domestic relations problems, problems that are really far afield from the consumer problems I am talking about and really amount to court diversion programs which are good and valid programs but I think confuse the issue when they are all combined in the same thing.

I think it should be Federal legislation which deals particularly with consumer problems which I think in Massachusetts are not atypical in terms of the great need that exists.

I know I go to National Association of Attorneys General meetings and we discuss these very same problems. So I think that dispute resolution legislation should deal with consumer problems. It obviously should make money available and it should not preclude the use of this money for programs that also tie in with law enforcement. It should allow a variety so that the States could fashion their own.

I don't say the Massachusetts would be the model and is necessarily the only model. In all honesty, I didn't realize before I came here that this bill wasn't as directed as I thought it was to consumer problems. I am now beginning to believe that the way at least the Senate bill was structured and the way it might be implemented by the Justice Department is not at all what I envisaged and certainly not what I think should be done.

Mr. BROYHILL. The bill introduced, as you know, would call for a program of grants to States to encourage them to set up these programs, whereas the Senate bill, as I understand it, would enable, through the Department of Justice, enable them to fund a center or two in each State.

I suppose with the amount of money that is called for in this bill it probably would be maybe one per State which is far narrower in scope than I had anticipated.

Ms. GOLD. I am in agreement with what you are saying. I think you can get more leverage for your money if you use it to address one problem which is the problem I see in terms of the consumer need for mediation.

Mr. BROYHILL. But would you want to see a program of encouraging the States to set up these programs or to set up one of these centers per State? That seems to be the difference between the two bills.

Ms. GOLD. I would like to see legislation that encourages the States to set up the programs. That takes into consideration what may already exist in the various States. The reason I say I don't necessarily say the Massachusetts model I have mentioned is the only model, I mean, New York State is a totally different State with ongoing programs of a totally different nature.

In my opinion, it ought to be a program that you let the State set up. I would like to see it have an impact on as many people as possible, and I think that when you talk about the amount of money that is involved, it is more realistic to talk about it in terms of one particular type of problem, of which there are an enormous number, than it is to talk about it in terms of many dissimilar problems.

Mr. BROYHILL. Thank you very much.

Mr. ECKHARDT. I understand, then, that you conceive of what is needed and what your program is affording is a kind of a consumer mediation service primarily which may then lead to other levels in which adjudication may be had if necessary. For instance, a case might go to small claims courts, or in some instances cases would go to the ordinary courts. Or a case could lead, as one of the cases

you described with respect to insurance overcharging, to a relatively large class action.

But at any rate, you are looking at this as a mediation service more than anything else, but one in which problems and cases would be identified and could then be taken care of in the ordinary process of the courts.

Do I state that correctly?

Ms. GOLD. That is correct. I think that through the mediation process the vast majority of the complaints, at least in our experience, can be resolved. I think it is absolutely correct that in some instances it may be appropriate for people then to have to go to small claims court if it cannot be resolved, maybe with the assistance of individuals.

In some instances it may be appropriate for them to bring a private suit or appropriate for a public person to sue. The Attorney General in Massachusetts can sue on behalf of all the citizens who have been wronged and to seek restitution. We did in that insurance case and obtained a judgment for 1.1 million and whatever the audit showed to be owed to consumers.

But it is absolutely correct that mediation would be a preliminary level at which the vast majority of problems I believe could be resolved.

Mr. ECKHARDT. Do you feel that the \$15 million, if it were limited to consumer matters in the Senate bill, would be of any help to Massachusetts?

Ms. GOLD. Yes, I absolutely do. I mean, when you consider the fact that the amount of State money that we now have that we are using for this program is \$200,000, and under that \$15 million, Massachusetts could double or triple possibly the amount of money that we have, that is meaningful. It builds on something that already exists for Massachusetts.

What we tried to do was build on something that existed even before we did. I think it is so important that you pull together as many resources as possible and not keep starting new programs in different directions.

Mr. ECKHARDT. Suppose on the other hand the money is used for the kind of centers that have multi-purposes, that is beyond the consumer question, having to do with neighborhood disputes and things of that nature. Do you think that would be of any benefit to Massachusetts?

Ms. GOLD. Yes, I do. Before I worked in the attorney general's office I was a legal services lawyer for 6½ years. So I have a great familiarity I think with neighborhood problems and some of the other problems you are talking about. So I think it certainly would be a benefit.

I would have to look at exactly what programs exist in Massachusetts in some of those areas. I think it is a totally different thing. You are talking about apples and potatoes. I don't think you are talking about the same thing. I think if the decision is you want to use \$15 million in a type of court diversion process which deals with community problems, that is one thing. If the decision is you want to use \$15 million to assist consumers, I don't think you can do that through the neighborhood justice center and get the

same widespread benefit that you could in another way. To me it is totally different.

Mr. ECKHARDT. I wonder whether the broader program, as the Senate bill envisions, I wonder whether that program would in fact be a court diversion program?

Do you think it would prevent cases from going to court or would it simply open up disputes that would then be in addition to what goes to court?

Ms. GOLD. Well, I think that might depend on exactly what the court system in any given community at the current time is. It just depends a lot on how the courts are operating presently in a particular community. I think it is conceivable that there might be additional ones that will go. It might be also conceivable that in some instances—let me give you a specific example: When I worked in Dorchester, which is a section of Boston, as a legal services attorney, there would be times when there were neighborhood problems. A kid might have damaged property of a neighbor or there might be yelling and screaming going on behind a neighbor.

What would happen, people would go down to the clerk's office and want to file a criminal complaint. Often what the clerk would do in the courthouse was to call the people in to sit down and talk about the problem.

In a sort of nonofficial way he would say, you don't do this and you don't do this and I don't want to see you people again. This seems to be somewhat what happens in the neighborhood justice center.

If you have courts that are not doing that in communities, that is one thing. If you have courts that are, that is something else. Some of the courts in this nature are receiving funding from other Federal sources.

I think I may have gone off the track, but I keep coming back to the same thing, that I think we are just talking about two totally different kinds of problems. That is not to say that in a neighborhood justice type center you would not have a consumer problem. Of course you would. It doesn't mean that you could not handle some there, but you could never handle the volume.

I guess what I am talking about is being able to handle a large volume of consumer problems that exist and for which I believe there is a large demand.

Mr. ECKHARDT. Should collection agencies be permitted to use the dispute resolution mechanism under this law?

Ms. GOLD. Well, if the dispute resolution mechanism were a mediation of the nature that I have spoken about, then it probably would not be terribly successful if they used it. It would mean that this local consumer group, for example, local dispute consumer-business problem group contacted someone and said, you know, you owe some money. Probably that would not be very effective. As a practical matter, even if they could use it, I don't think it would be very effective.

I think the other problem, I suppose, is that in some States collection agencies and businesses cannot use small claims court so that if you were to tie that to an appropriation and a small claims

court project wanted the money, then they would not be able to get the money.

I am not as troubled by the notion of business having access to whatever the dispute mechanism is as I am by the notion that the dispute mechanism deals with many other kinds of problems. It seems to me to be realistic to allow some access to that kind of system if it can be meaningful to businesses that have problems, particularly on a local level.

For instance, in our local consumer groups it might be in some instances helpful to be able to have businesses have access to it because they would have more faith in the system and its credibility. I don't think collection agencies should be able to use the process. That is what their business is, collecting. So let them go and collect and earn their money.

Mr. ECKHARDT. How do you set priorities to determine who gets funds from your office?

Ms. GOLD. We basically looked at the area that was served, their past history and track record and the sources of moneys that they had, what they had done, for example, to pull together resources of their own, and the criteria are set out in the pact that I have given you.

The criteria, as I said before, were devised by an advisory committee that consisted of a number of people who were knowledgeable in the consumer area in Massachusetts. We basically looked at and are looking at now what is the area you intend to serve and can you really do it? Is your program a viable one? If you are operating from your own house and you are an individual, that doesn't seem to be very viable. What are your other resources that are available?

Mr. ECKHARDT. Senate bill 957 would permit nonprofit private groups to receive grant money. Does the Massachusetts program also permit nonprofit groups to receive grant money?

Ms. GOLD. Yes, it does.

Mr. ECKHARDT. How do you draw any distinction between business-sponsored groups and others, if you do?

Ms. GOLD. We have not funded a business-sponsored group, but that is because none have applied either. I mean, no chamber, for example, has applied for funds. Under our program, any kind of group could possibly participate in it. The major thing we would look for was again the area they were serving and whether or not they were going to comply with our guidelines which include giving us the computerized information on a monthly basis.

Mr. ECKHARDT. Do you think that there should be any concern about whether a business group would adequately advise consumers of newly-acquired rights, for instance the rights under the Magnuson-Moss bill with respect to warranties? Or whether business groups might urge in mediation that persons settle for less than they are actually due?

Ms. GOLD. I think that is a possibility. I think what would make the difference is how closely one looks at or supervises those groups. Relating, again, to the Massachusetts experience, if we had a business group that appeared to be structured in such a way that it was going to provide the same services as the other groups, I

think we would be in a position to monitor them relatively closely to insure they are providing the service.

When we give money, we also have conditions for the grant. One of the conditions, for example, for the legal services office we funded was that they have to handle mediation for people who are above the poverty level with this money. They don't give them legal services, but they attempt to mediate. It is conceivable to me that there could be a business group somewhere that would be concerned, conscientious, and believe that they can help to provide this service. I would not necessarily foreclose that possibility.

Mr. ECKHARDT. I would think, though, that you would have to work out some basic requirements for the nature of the business group and the limitations upon its exercise of the authority if you are going to guard against such problems as that.

Ms. GOLD. I think that is absolutely correct.

Mr. ECKHARDT. Were you here when Mr. Meador testified?

Ms. GOLD. No, I was not.

Mr. ECKHARDT. Among other things, he said the Justice Department conceived of these mechanisms looking into the question of certain considerations other than legal rights in with respect to mediation. I suppose to a certain extent this is a question of semantics. There are always lawyers to advise clients not to proceed in cases in which practical considerations weigh into the total result.

I would advise a client, for instance, not to bring a suit if the suit might cost more than the recovery possible, or I might advise a client not to bring a suit just because he was standing on "principle."

But it does trouble me a little that such agencies might be set up with a quasi-official capacity that would look toward other standards for mediation other than the rights of the individuals as spelled out in law.

It particularly troubles me if the matter is of a potential criminal nature because it seems to me that that might lead to a situation in which the prosecuting authorities might be influenced not to bring cases where the criminal law has been violated.

I don't know whether you have any experience in this area or not or whether you have any opinion on it, but I would like your comment.

Ms. GOLD. I think the principles underlying the mediation must be the law. I think that is the framework in which you attempt to also resolve the dispute. My notion of mediation, and maybe it is a loose notion of it, is not that you give away what people's rights are. One service is also to let the people know what their rights are and to inform the business that is involved, for example, of what the law is.

What underlies the 40,000 complaints that we have mediated in the attorney general's office, and I quote "mediated", is the law. If there is a violation of law, we will use that and call the merchant and say this is what the law is and this is why you must do this and bring it to his attention.

I don't understand the notion of mediating independently and what the law is personally.

Mr. ECKHARDT. This is what gives you the clout of mediation with the strong party against the weak.

One, the strong party, if the party is a mercantile establishment, has a reputation to maintain that might be tarnished by the fact that many have a forum in which to bring their complaints; and, two, that if the rights of the individual are known, they may eventually end up in the law courts which can be costly and can be injurious from a public relations standpoint to the stronger party in the case.

But it seems to me that that is peculiarly related to consumer complaints. I can't see how these factors can much touch neighborhood disputes. For example, take questions, of whether a person using an easement across a property or asserting an easement is in fact trespassing or whether or not the handling of one's garbage constitutes a nuisance to one's neighbor.

Questions of that nature seem to me to invite extra legal persuasion and to create a lot of problems that may be more than they solve.

Ms. GOLD. I would agree with you. I think there is a big problem there. We have lots and lots of consumer laws which are supposed to mean something, otherwise we would not pass them. But they can't mean anything unless people know about them. That takes not just the consumer knowing about it, it takes the business person knowing about it.

There is the same ignorance, I find, among business as there is among consumers as to what people's rights are and what people's responsibilities are. So I think it is a very different area than the neighbor who plays the radio at 2 in the morning, and the notion of how you can help them live together as neighbors is very different than applying legal principles.

There are consumer situations where there is a bona fide dispute of facts and there is no particular law that is very clear on what ought to happen in that situation.

Then there is a third party attempting to say maybe this seems reasonable, and then the other side makes some form of accommodation where maybe both parties are not all that happy but at least they have resolved the matter and have not been involved in lengthy litigation.

Mr. ECKHARDT. That is what a capable lawyer does in respect to settlement of a case in many instances and in many instances finds a way to ultimately come to a conclusion so the clients on both sides are not injured by lengthy and expensive litigation, but the discussion remains legal rather than merely persuasive.

It does seem to me that when you get into areas of just every type of dispute, you get pretty far away from the questions involved in the construction of the law.

Ms. GOLD. I would absolutely agree with you.

Mr. ECKHARDT. Any further questions?

Mr. BROYHILL. Mr. Chairman, I would like to yield to Mr. Greene, minority counsel, for one or two questions.

Mr. GREENE. I suppose the purpose of this type of mechanism and program is to wash out of the court system some things that really don't need to go through it and that is one function that it serves.

Another function is diminished costs, perhaps. It takes less time of the courts and it is simpler for people to deal with. But how

would it? Undoubtedly it should in some manner interface with the established court system.

Should that take the form of perhaps, well, in regard to matters that were within the defined scope of the mediation program, should a person be required to seek mediation or go through this mechanism prior to seeking redress in courts in regard to this matter within the defined scope of perhaps the mediation mechanism?

Ms. GOLD. No; I don't think so. I think that is creating additional hurdles to people who already view our court system as fraught with all kinds of hurdles.

In terms of the consumer aspects that I was talking about, I think it interfaces in the respect that if a person chooses to try to have their complaint mediated, in other words, complains to a group, so and so will not resolve my problem, if that is unsuccessful—if, for example, very specifically speaking, we are unable in the Attorney General's office to resolve the particular complaint or if a local group is unable to resolve it, then we will tell them what their rights are. You have a right to go to small claims court if it is less than x amount of dollars, or you have a right to a legal services lawyer if you can't afford a private lawyer or you have a right to have a private lawyer.

In our law there is provision for class action suits and attorney fees and also the Attorney General will sue if it is a pattern of class problems. This is an easier and cheaper and maybe less time consuming mechanism for people to resolve disputes.

It is also cheaper for the merchant than the individual going down to small claims court. It doesn't mean that one would not then, after the process, if it didn't work, have access to the court system.

Mr. GREENE. Would the mediation result, from time to time, do you envisage, in a signed agreement as to a resolution of the matters? Perhaps you could resolve one-fourth of the matters involved in whatever the controversy is and the other percentage would have to be litigated.

In order to maintain some type of binding aspect of mediation so that the court would only address a portion of the total controversy, would you envisage something in the order of signed agreements?

Ms. GOLD. It could be. We have way more than that resolved satisfactorily. Our percentages are 60 to 70. Then there is another number that may not choose to go any further in terms of enforcing it whether there was an enforceable agreement or not.

I think there ought to be leeway for different types of programs to develop. We don't happen to use written agreements and they are not enforceable now en masse. I don't know that that is the important thing.

I think if the person is going to do it, they will do it anyway. If they are not going to do it as a result of the mediation, it is going to take a lengthy court battle until the person does it, if they ever do it.

As I said before, we have people who go through small claims courts and get judgments and never get what they are supposed to get. Then they have to go one step further and pull them into court

in a supplementary process. It depends on the people's willingness to comply with either the mediation or court order.

Mr. GREENE. I was pursuing something the chairman pursued, that is, once you have agreement between the parties, what mechanism do you have to enforce that agreement other than voluntary compliance or should we consider adding other mechanisms?

Ms. GOLD. I find that a little troublesome and a little impractical. The only real enforcement you are ever going to have is to supply everybody with a lawyer I think. That is ultimately where it is going to come about. To give a person a written agreement after they finish with mediation and now say, go hire your own lawyer, they are not going to view as very much enforcement. I don't think we can do that, supply everybody with a free lawyer.

I think we can think about enforcement, but unless it is binding arbitration, which cuts down on the number of people who can be involved in the process, I think it very difficult.

Mr. GREENE. So the total function of the program you are describing is voluntary?

Ms. GOLD. It is basically voluntary, yes, but I think equally as important is the tie-in with law enforcement. That is the teeth. It is voluntary, but it is voluntary in a climate whereby a person knows there are laws in a particular State that are going to be enforced.

If this program were entirely voluntary without the Attorney General taking the actions he has taken, I don't think it would be as successful as it is. The local groups have clout because they can say they are working with the Attorney General. A merchant is going to think twice about am I really right about not resolving this matter because I should be really right because if I am wrong, there is going to be a pattern of complaints building against me.

So it is voluntary in that there is no agreement that people must mediate the clout is contributed by the law enforcement agency which creates the right climate for people to get together and resolve their own problems.

Mr. GREENE. That is all.

Thank you, Mr. Chairman.

Mr. ECKHARDT. Are there any further questions?

Thank you very much for your testimony. It has been useful to the committee.

The subcommittee will be adjourned until 10 a.m. in the morning.

[Whereupon, at 3:30 p.m. the subcommittee adjourned, to reconvene at 10 a.m., Friday, July 21, 1978.]

CONSUMER CONTROVERSIES RESOLUTION ACT

FRIDAY, JULY 21, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, at 10:30 a.m., pursuant to notice, in room 2218, Rayburn House Office Building, Hon. Bob Eckhardt, chairman, presiding.

Mr. ECKHARDT. The Subcommittee on Consumer Protection and Finance will resume its hearings. I should like to ask the witnesses to come to the table. If you will, sit in this order: Commissioner Arthur Best; Mark Schultz, accompanied by Madelaine Geller; Rosemary S. Page; Mr. Talbert D'Alemberte, accompanied by Prof. Earl Johnson; and Mr. Dean Determan.

Without objection, the written statements of each of the persons will be permitted in the record. I will recognize you in order that you may summarize your statements.

STATEMENT OF ARTHUR BEST, DEPUTY COMMISSIONER, NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS

Mr. BEST. Thank you, Mr. Chairman.

Good morning. My name is Arthur Best; I am deputy commissioner, New York City Department of Consumer Affairs.

We strongly support this legislation, for two primary reasons: First, the Nation has a severe problem with consumer abuses that remain unresolved. This legislation you are considering represents a worthwhile step toward remedying some of those unresolved problems.

I emphasize consumer problems because those were the focus of this legislation in its earliest forms and should continue to be its primary focus.

The costs and quantity of consumer problems are both difficult to quantify. The broadest based survey of those problems is one I was associated with in 1975 conducted for the Center for Study of Responsive Law and Call for Action, a complaint handling organization. Data have been published in the Harvard Business Review and Law and Society Review, and they show one out of three purchases leads to some kind of dissatisfaction; and as high a percentage as 1 out of 10 leads to a serious feeling of dissatisfaction.

How much each of those problems costs is difficult to say, but a Federal study estimated a median cost as about \$80 each.

Who are the victims of these problems is a question which has a simple answer. Everyone can be a victim of consumer trouble, and we all are. In the study conducted, we discovered very few class distinctions in people's exposure to consumer trouble.

What are the responses? Typically, it is to do nothing. Another is to complain to the seller; and a final response might be to use some kind of third party, a complaint-handling institution.

An overwhelming majority of persons faced with consumer problems do nothing; a significant proportion return to the seller and seek fair treatment; and a tiny group use some kind of third party. This is where we are now.

In New York City, our department handles approximately 250,000 contacts from aggrieved consumers each year. Some of those contacts we are able only to treat by giving brief information over the phone; others, we are able to process as complaints with a somewhat complex resolution process.

Those quarter of a million contacts represent an astronomical rate of incidence of consumer problems in the New York City area alone.

With a shortage of third parties, the situation turns out to be this way: Sellers have a monopoly on complaint resolutions and can set their own standards as to how to handle those complaints. This leads to social and economic costs which are obvious.

There is another process which leads to optimism. This fact is that all consumer complaint handling and suffering is a kind of cyclical system. The bad things about it contribute to further bad things; good things such as improvements are helpful and have a ripple effect far greater than one might expect.

In a city or town where there are very few methods of resolving problems, people will be less inclined to speak up and sellers will be less inclined to treat those voiced complaints fairly.

Working in an area where consumer complaints are effective, people learn there is a place to go and they will be more interested in speaking up. As more complaints are voiced to sellers and some small group of complaints are helped by third parties, there is more incentive for people to speak up and for the complaints to be handled fairly. This is the second reason we are supportive of this legislation. This legislation, if passed, will increase people's ability to complain, and give people additional experiences of exercising rights as consumers.

In New York City, for example, we need increased funds for consumer complaint handling; we would like to have night hours. We recognize we should have more bilingual employees and larger staffs; people who call get busy signals often. We should have a computer system to deal with complaints. We should improve our consumer education efforts. All these are things we are unable to do at this time.

The small claims court in New York City would be ineligible for support under one of the bills under consideration now. Those small claims courts have been a model for the Nation, but they themselves could benefit significantly from increased support.

Nongovernment complaint handling also deserves sustenance and encouragement.

One well-respected organization, Consumer Help, run jointly by New York University Law School and WNET channel 13 in New York City, was forced to close last spring for lack of funds after 4 years of successful service.

Summing up, I would say in New York City our department could improve its overall activities. The small claims courts could benefit by increased funds, although a topic that requires attention is limiting the impact that businesses have by excluding businesses—or approaching a more moderate procedure such as limiting the number of cases any individual or business can bring in a given year. Helping consumers at a time of energy crisis and financial crisis, it seems to us, is a very constructive effort. Making sellers deliver what they promise to deliver makes the free enterprise system work.

For those reasons, we support this legislation.

[Mr. Ratner's prepared statement follows:]

STATEMENT OF BRUCE C. RATNER, COMMISSIONER, NEW YORK CITY DEPARTMENT
OF CONSUMER AFFAIRS

Good morning. My name is Bruce Ratner, and I am the Commissioner of the New York City Department of Consumer Affairs. The Department was created in 1968 and is charged with protecting and educating the city's consumers, by enforcing licensing laws and laws related to the sale and offering for sale of goods and services within New York's five boroughs. We license businesses, promulgate consumer protection regulations, conduct hearings and investigations, recommend fines, and help consumers with thousands of complaints each year. Our experience with consumer problems and their solutions leads us to support consumer controversy and dispute resolution legislation such as Representative Broyhill's H.R. 2965, Representative Murphy's H.R. 2482, and Senator Kennedy's amended version of S. 957 which recently passed the Senate.

Consumers need and deserve help in resolving controversies with vendors, manufacturers, and providers of services. The New York City Department of Consumer Affairs handled 247,606 phone calls, letters and personal interviews concerning consumer problems in 1977. These contacts are only the tip of the iceberg: recent research published in Harvard Business Review and Law & Society Review shows that only about one in three perceived problems is voiced to a vendor or third party. Of these voiced complaints, only 3.7 percent are referred to third parties. And of the small number of cases that go to all third parties, only about 16 percent are reported to local consumer agencies. This survey, which covered 2,500 urban households in 34 cities nationwide, showed that for some categories of goods and services, such as denture and hearing aid purchases and appliance repairs, problems were perceived in one-fourth to one-third of all transactions.

Frequently the time and expense involved in trying to resolve a complaint seem so great in comparison to the dollars involved in the original purchase that consumers just don't bother to pursue a solution. However, it is important to remember that the sum of all these small problems is a great burden on the American marketplace. A manufacturer or vendor who reduces his or her costs at the consumer's expense and gets away with it puts more reputable businesses at a competitive disadvantage, and can contribute to lowering standards throughout an industry. Equally important is that the frustration and hopelessness felt by a consumer with no access to redress can lead to cynicism and alienation. The opinion research firm of Louis Harris and Associates, Inc., conducted a nationwide survey in 1976 in which 6 out of 10 respondents agreed that "most companies are so concerned about making a profit, they don't care about quality." Six out of ten respondents disagreed with the statement that consumers can take care of themselves in the marketplace without outside help. A Consumer Controversies or Dispute Resolution Act providing funding, guidance, research and development resources to consumer protection mechanisms would be of great help in responding to this need.

In voicing the Department's support for these bills, there are a few specifics that merit special attention. First, consumer needs should remain a focal point of concern as this legislation evolves. Although issues such as landlord-tenant conflicts are important and deserve attention, consumer help is the original concern of the bills. Each of the House bills and the original version of S. 957 emphasizes that present

mechanisms for resolving these controversies are inadequate to deal with such a huge volume of disputes.

Another important point concerns use of dispute resolution mechanisms by businesses, corporations, partnerships and assignees. Some states which allow these groups unlimited access to their small claims courts have found that the original purpose of the courts—to provide fair, inexpensive and speedy justice for individual litigants—has been subverted. A study done by the Connecticut Public Interest Research Group shows what can happen when businesses are allowed complete access to small claims courts: From May to September of 1976, 83 percent of the small claims cases filed in Hartford involved corporate plaintiffs and individual defendants. Forty percent of the Hartford cases were filed by three plaintiffs. A predictable result of these massive filings is a long waiting period before cases are heard: only 3 to 4 percent of cases in Hartford have hearing dates that are within 7 weeks of filing.

In addition, institutions that use the courts frequently may have an unfair advantage over inexperienced defendants. Beatrice Moulton reported in a Stanford Law Review article that "business claimants who every few weeks file multiple suits in small claims courts become familiar to the judge and the handling of their claims becomes routine." Professor Moulton added that the "plaintiff soon learns the operative facts necessary for a judgment and soon gives unassailable answers." Imagine the dismay an individual defendant feels when he stands against a corporate representative who is handling his one hundredth case and is on a first-name basis with the judge. Combined pressure from an experienced creditor and a hurried judge can prevent a defendant from describing the legitimate defenses of fraud, defect, material misrepresentation or failure to deliver in a transaction which would shield him or her from an unfair judgment. These defenses might as well not exist if they cannot be used.

When poor consumers see the small claims court as a rubber-stamp for powerful businesses, they suffer not only financial losses, but a loss of faith in government. Attorney General Robert Kennedy said "For (the poor man), the law is always taking something away." I urge you to prevent these desperately needed dispute resolution mechanisms from becoming collection mechanisms for businesses. New York law prevents corporations, associations, insurers and assignees from filing in small claims courts, although these groups may be defendants. Other states limit the number of cases any one plaintiff can file in a year. Another approach would be to specify a limited number of days for corporate plaintiffs to present cases. The legislation should adopt one of these methods of dealing with the so-called "business overload" problem.

I would also like to note the importance of education programs. Each of the bills under consideration allows for expenditures to inform the public about the availability and use of dispute resolution mechanisms. These provisions are vital, because dispute resolution mechanisms cannot serve a public unaware of their existence. Literature in the consumer field has pointed out time and time again that a central reason for the under-use of consumer help agencies is that people just do not know about them.

To show the services dispute resolution mechanisms can provide, I will describe some innovative mechanisms which have worked to solve consumer problems in New York City.

THE NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS

The New York City Department of Consumer Affairs is now in its tenth year and, as I said before, is responsible for enforcing laws relating to the sale of goods and services in the city. In addition to the Licensing Division and the Markets Division (which enforces weights and measures law) the Department devotes substantial time and energy to enforcing the Consumer Protection Law, representing consumer interests before administrative and legislative bodies, and responding to thousands of consumer complaints. When we receive a complaint that deals with an existing law or regulation under the jurisdiction of the Department, a field investigation is made and, if the inspector finds a violation, a summons is issued. When a complaint does not relate to one of our laws or regulations, it may be referred to a more appropriate agency, or if no other agency can help, Consumer Affairs staff will make strong efforts to work out a solution. In 1977, consumers were helped in 79.8 percent of these cases.

Additional funding and access to research and development resources, as provided for under consumer controversies and dispute resolution legislation, would be a great help to state and local government agencies such as the New York City Department of Consumer Affairs. Our complaint division would be able to help

many more consumers if we had night hours and more bilingual employees. We would like to have the staff to handle more complaints by phone, reducing consumer frustration and speeding up the resolution process. Right now our phone lines must be staffed almost entirely by part-time volunteers. These volunteers work very well and deserve high praise; however, they cannot supply the continuity and expertise of full-time employees. Having access to a computer would enable us to respond more quickly to inquiries, as well as spot trends in consumer concerns or patterns of violations. A National Dispute Resolution Resource Center could help analyze more efficient methods of dealing with complaints and, perhaps, provide for exchange of information about the education of consumers concerning dispute resolution mechanisms.

The New York City Department of Consumer Affairs works hard to make consumers aware of laws written for their protection, how to use money wisely and how to avoid problems in the marketplace. Pamphlets and fact sheets are made available, conferences are held, and volunteer speakers address community groups around the city. Information is disseminated through the press and broadcast media both in the news and through regularly scheduled programs. Consumer education is the core of an effective program. Additional funds could improve this education effort significantly.

HARLEM SMALL CLAIMS COURT COMMUNITY ADVOCATES

The Harlem Small Claims Court Community Advocates are funded by the Model Cities Program and are under the administration of the New York City Department of Consumer Affairs. The Supervising Community Advocate in Harlem is an attorney, and he is aided by two full-time employees. These experts in small claims court actions are available in the court clerk's office to explain legal rights, to help fill out forms and to assist plaintiffs and defendants in gathering appropriate evidence. Though volunteer lawyers provide part-time help of this sort in other parts of New York City, this crucial service is not available in many major cities or rural areas. The response to the Community Advocates program has been very favorable. This is consistent with the report of the 1977 American Bar Association Conference on Minor Dispute Resolution, which said that for both plaintiffs and defendants, a highly desired court feature is advice in planning and presenting a case. This service should be available nationwide.

There is also a great need for agencies to help in the collection of small claims court judgments. A 1976 report by the New York Public Interest Research Group said that the collection problem is "the most glaring and persistent" problem facing small claims courts today. In a New York Public Interest Research Group study of Queens Small Claims Courts, more than 40 percent of claimants who had won judgments were not able to collect any money more than 5 months after their hearings. Yet despite this drawback, the New York Small Claims Courts—with night hours, limited business access, and Community Advocate service—are considered among the most progressive in the country. Clearly, the proposed legislation's provisions concerning collection are of the utmost importance.

THE CONSUMER HELP CENTER

The Consumer Help Center was a joint project of the New York University School of Law and WNET/Channel 13, a public broadcasting station. This project, though eminently successful in serving consumers, was terminated due to lack of funding. The Help Center focused its energies on dispute resolution by means of intervention; using conciliation, mediation and negotiation techniques designed to re-establish goodwill between the vendor and consumer. Although the Center's staff included lawyers and 40 to 50 percent of the volunteers were law students, legal action was initiated only as a last resort. The Help Center limited the number of complaints it handled to approximately 5,000 a year in order to give each complaint individual attention. Most complaints were taken over the phone—a great advantage to lower income consumers who may have trouble expressing themselves well in a letter. The phone method also allowed volunteers to question the complainant about the conflict so that a complete history of the problem and all relevant details could be obtained. The complainant then was asked to send in copies of all relevant documents. After the case had been carefully reviewed, a call was placed to the vendor. Volunteers were carefully trained in mediation techniques and would take a conciliatory, but not apologetic, stance. The vendor's side of the story was carefully considered—it was not assumed that the complainant was always right. Negotiations continued, bringing cases to a conclusion satisfactory to both parties in an average of 15 business days from the complainant's first call.

Complete records of each case were kept for use by volunteers and as a statistical resource for other consumer groups. If no resolution was achieved, the complainant could be referred to small claims court.

The Consumer Help Center had a phenomenal 80 percent successful resolution rate and was well-known in New York as an innovative and effective source of dispute resolution outside the courts. Even while the Help Center was in operation, funding limitations kept the program from achieving its full potential. Even a small outlay for additional phone lines and for recruiting volunteers would have greatly increased the number of complaints handled. As it was, the phone lines could only be left open for 3 hours a day—otherwise so many complaints would come in that they could not be given individual attention. It is tragic that a program such as the Consumer Help Center—one which solved so many disputes on a financial shoe-string—could not find a funding source sufficiently interested in consumer problems to back its continuing operations.

I believe that these New York programs show substantial success, especially considering their limited resources. I hope these programs will be just the beginning of what will be done in many states, with the backing of consumer controversies and dispute resolution legislation, to provide consumers with the help they need and deserve.

I sincerely urge you to respond to this need by supporting this proposed legislation.

Mr. ECKHARDT. Thank you.

STATEMENT OF MARK SCHULTZ, REGULATORY AFFAIRS ATTORNEY, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, ACCOMPANIED BY MADELAINE S. GELLER, CHAMBER'S CONSUMER AFFAIRS ASSISTANT

Mr. SCHULTZ. My name is Mark Schultz, regulatory affairs attorney for the Chamber of Commerce of the United States. Accompanying me is Madelaine S. Geller, the Chamber's consumer affairs assistant.

We support S. 957, which authorizes the Federal Government to help States and local communities improve their informal complaint-handling and small claims court procedures. The purpose of the legislation is to provide consumers and business with ways for resolving minor disputes effectively, efficiently, fairly, inexpensively, and expeditiously. We hope that it will, as intended, provide an incentive for States and local communities to study their existing minor-dispute resolution mechanisms, to add new mechanisms, and to change old methods that no longer serve the public as they should.

S. 957 will implement, to a large extent, the Model Small Claims Court Act drafted by the National Chamber, plus the main elements of the Chamber's consumer redress program, "Up With Consumers." For years, the National Chamber has been in the forefront of efforts to encourage business to discover ways in which intra-company complaint-handling procedures, arbitration and mediation mechanisms, and consumer-oriented small claims courts could be established in their companies, trade associations, and communities across the country.

Although we have encouraged businesses and States to adopt similar consumer redress programs and to act voluntarily, expeditiously, and effectively on consumer problems, recognizing the role consumers themselves must play in advancing their own interests, we realize that, in some instances, Federal Government involvement is necessary. For example, during the past 2 years, the Chamber has been working to bring attention to the need for revision of small claims courts. Our regional offices have been involved with

business and consumer groups around the country to establish a working relationship that would highlight the need for change in the current small claims court system. However, we have found in some instances that minor consumer problems—the redress of grievances or complaints involving goods and services—have taken a back seat at the State level to other pressing consumer needs, such as energy and inflation. Of course, we recognize the priorities that State legislatures must establish in order to complete their calendars within short legislative sessions. But we feel passage of legislation such as S. 957 will help States recognize the continual need of consumers to have these minor problems resolved.

Some action by the States has taken place already. Kentucky, Arkansas, and Texas have made several favorable changes in their judicial systems. Other States have considered establishing consumer redress programs, but were unable to schedule hearings or move the proposal to the floor of the legislature because of overloaded calendars. Some states also have made changes through State administrative law. However, far too few have adopted such programs to date. With the incentive provided for in S. 957, we expect the next State legislative sessions to result in the examination and establishment of better redress mechanisms on the State level.

Legislation such as S. 957—a bill which transcends ideological lines and enjoys a unique coalition of the administration, consumer and business groups, as well as that of lawyers' groups and representatives of State and local governments—is a significant step in the right direction. S. 957, in facilitating the establishment and improvement of informal dispute resolution mechanisms and small claims courts, with its careful restraints on government intervention and its reasonable price tag, ultimately may be the solution to providing effective redress for consumer problems.

Full implementation of S. 957 will benefit both the consumer and the business community, and deserves serious consideration. We offer our support for and recommend approval of S. 957.

[Mr. Schultz' prepared statement follows:]

STATEMENT OF MARK SCHULTZ, REGULATORY AFFAIRS ATTORNEY, CHAMBER OF
COMMERCE OF THE UNITED STATES OF AMERICA

I am Mark Schultz, Regulatory Affairs Attorney for the Chamber of Commerce of the United States. Accompanying me is Madelaine S. Geller, the Chamber's Consumer Affairs Assistant.

The Chamber of Commerce of the United States is the world's largest business federation, composed of more than 69,000 business firms, 2,500 chambers of commerce in the United States and abroad, and 1,200 trade and professional associations. National Chamber members have a vital stake in S. 957—the "Dispute Resolution Act"—which seeks to facilitate establishment of small claims courts and other consumer-business dispute resolution mechanisms.

We support S. 957 which authorizes the Federal Government to help states and local communities improve their informal complaint-handling and small claims court procedures. The purpose of the legislation is to provide consumers and business with ways for resolving minor disputes effectively, efficiently, fairly, inexpensively, and expeditiously. We hope that it will, as intended, provide an incentive for States and local communities to study their existing minor dispute resolution mechanisms, to add new mechanisms, and to change old methods that no longer serve the public as they should.

S. 957 will implement, to a large extent, the Model Small Claims Court Act drafted by the National Chamber, plus the main elements of the Chamber's consumer redress program, "Up With Consumers." For years, the National Chamber has been in the forefront of efforts to encourage business to discover ways in which

intra-company complaint-handling procedures, arbitration and mediation mechanisms, and consumer-oriented small claims courts could be established in their companies, trade associations, and communities. This is due, to a large extent, to the fact that the National Chamber's federation of business enterprises, local and state chambers of commerce, and trade and professional associations provides a singularly appropriate vehicle to implement activities to achieve these objectives.

Initially, the consumer should be, and in the vast majority of cases is, able to obtain redress action directly from the retailer, manufacturer, or offerer of services, as appropriate. However, if the dispute cannot be resolved directly between the two parties, we have recommended that it be handled to the fullest possible extent by mediation or arbitration procedures or by third-party complaint resolution services. Should formal adjudication of individual claims be found necessary, swift and non-complex judicial procedures, such as small claims courts, should be broadly available at the local level. Such procedures should be fair, expeditious, accessible, effective, dignified, and of minimal cost to the parties.

Although we have encouraged businesses and states to adopt similar consumer redress programs and to act voluntarily, expeditiously, and effectively on consumer problems, recognizing the role consumers themselves must play in advancing their own interests, we realize that, in some instances, Federal Government involvement is necessary. For example, during the past two years, the Chamber has been working to bring attention to the need for revision of small claims courts. Our regional offices have been involved with business and consumer groups around the country to establish a working relationship that would highlight the need for change in the current small claims court system. However, we have found in some instances that minor consumer problems—the redress of grievances or complaints involving goods and services—have taken a back seat at the state level to other pressing consumer needs, such as energy and inflation. Of course, we recognize the priorities that state legislatures must establish in order to complete their calendars within short legislative sessions. But, passage of legislation such as S. 957, will help states recognize the continual need of consumers to have these minor problems resolved.

The inability to obtain a refund or delivery of a product or service paid for may not appear to be of as great significance as solving energy or employment problems within a state. But, to the consumer who has been wronged, the need to obtain justice is of equal importance, and legislatures must be provided with the incentive to realize this. The proposed legislation will enable states to take immediate steps in this direction. Hence, we support the promotion of effective consumer redress through a cooperative functioning of public and privately sponsored informal resolution mechanisms, which will make available to consumers more avenues of redress and, therefore, increase the speed within which satisfaction can be obtained.

Unfortunately, for many consumers, procedures for resolution of minor claims and disputes involving consumer goods and services are unavailable or ineffective. Therefore, the development of informal dispute resolution mechanisms will encourage businesses and consumers to resolve their differences quickly and inexpensively, without protracted litigation.

Some action by the States has taken place already. Kentucky, Arkansas, and Texas have made several favorable changes in their judicial systems. Other states have considered establishing consumer redress programs, but were unable to schedule hearings or move the proposal to the floor of the legislature because of overloaded calendars. Some States also have made changes through State administrative law. However, far too few have adopted such programs to date. With the incentive provided for in S. 957, we expect the next state legislative sessions to result in the examination and establishment of better redress mechanisms on the State level.

Legislation such as S. 957—a bill which transcends ideological lines and enjoys the support of the Administration, consumer and business groups, as well as that of lawyers groups and representatives of State and local governments—is a significant step in the right direction. S. 957, in facilitating the establishment and improvement of informal dispute resolution mechanisms and small claims courts, with its careful restraints on government intervention and its reasonable price tag, ultimately may be the solution to providing effective redress for consumer problems.

Full implementation of S. 957 will benefit both the consumer and the business community, and deserves serious consideration. We offer our support for and recommend approval of S. 957.

Mr. ECKHARDT. Thank you.
Miss Page.

**STATEMENT OF ROSEMARY S. PAGE, ASSOCIATE GENERAL
COUNSEL, AMERICAN ARBITRATION ASSOCIATION**

Ms. PAGE. Mr. Chairman, I am Rosemary S. Page, associate general counsel, American Arbitration Association. I have been authorized to appear on behalf of the American Arbitration Association by our president, Robert Coulson, and by our general counsel, Gerald Aksen.

H.R. 2482, H.R. 2965, and S. 957 contain provisions which, in the experience of AAA, should prove workable in accomplishing their stated goals and purposes. These provisions include: (1) encourage a variety of different mechanisms for disputants to use; (2) adapt existing mechanisms to accommodate a wider activity of disputes; (3) encourage finality; (4) educate the consumer on the uses of the various mechanisms; (5) involve the consumer in the planning stages and throughout the program; (6) encourage the scheduling of hearings at a time and place that are convenient to the consumer; and (7) include disputes that arise in the course of daily life, in addition to traditional consumer disputes.

My written statement goes into details which I will only mention now about the association's experience in four distinctive areas, and the important lessons gleaned from these consumer-type areas:

First: Developing rules for the home owners warranty program, to conform to the Magnuson-Moss warranty act and monitoring the administration of these rules has taught many valuable lessons about the workable or unworkable features of that act as applied to consumers' disputes.

Second: The educational component developed in connection with the Michigan Medical Malpractice Arbitration program has supported the conclusion that informing a potential user of a forum by both active and passive techniques is an effective teaching method.

I have brought with me a sample poster in Spanish which is actually used in that program. It shows something which was placed on the wall in the clinic and hospital areas so the consumers would be able to look at it. It asks them whether or not they have been informed about the arbitration program.

This is just one of a number of educational devices or techniques developed in connection with that type of program to make available to them the use of arbitration if they did have a medical malpractice dispute.

Third: New York's no-fault automobile insurance reparations arbitration is a program which has received great acceptability by consumers. This optional program is fast, accessible and has the added advantage of relatively trouble-free enforcement.

Fourth: The 4A program represents an innovative approach to the diversion of disputes arising in the course of daily life from the criminal courts into an alternative forum that is voluntary and civil in nature.

Incidentally, the Consumer HELP program referred to in Mr. Ratner's testimony is now housed at the American Arbitration Association.

Based upon the association's experience, I would say to accomplish the goals and purposes of the act will require time. Rules must be carefully tailored to meet the specific needs of each pro-

gram. An effective educational effort will be required to avoid failure.

I am speaking of this based on our own experience. A very thorough educational effort is necessary. To succeed in attaining the aims of this legislation will require this type of commitment.

There are differences between the bills. We would encourage including a wide variety of disputes. Ultimately, this approach may be more economical even if the initial startup and progress appears slow.

There will not be quick results in this area. Experience has shown that care in working out the details of each program which sometimes can only be developed after use, often brings about the most efficient and effective results.

Thank you.

[Testimony resumes on p. 140.]

[Ms. Page's prepared statement follows:]

STATEMENT OF ROSEMARY S. PAGE, ASSOCIATE GENERAL COUNSEL OF THE
AMERICAN ARBITRATION ASSOCIATION

I am Rosemary S. Page, Associate General Counsel of the American Arbitration Association. I am a member of the New York State Bar and I have been admitted to practice before the U.S. Supreme Court. I am a member of the Bar Association of the City of New York and was recently appointed to its Committee on Consumer Affairs.

The AAA is here today on invitation to testify on H.R. 2482, H.R. 2965, and S. 957. The association is appearing as a technical resource on arbitration and on other dispute resolving mechanisms and my testimony will principally cover those portions of the three bills.

The AAA is a private, nonpartisan, not-for-profit, educational corporation headquartered in New York City, with 24 regional offices throughout the United States. Now 52 years old, its mission is to design, educate and administer dispute resolution procedures such as arbitration, conciliation, mediation, and elections.

To implement its purposes, AAA has staff specialists in education and training, community dispute services, and elections as well as professional staff to administer the arbitrations under its various insurance, labor, commercial, construction and other rules of procedure.

In 1977 the association administered a total of 47,066 claims. Its 1978 budget is more than \$11 million. Its Board of Directors is drawn from a cross-section of disciplines—labor and management, both public and private sector, consumer advocates, attorneys, educators and international specialists. The largest part of its income is derived from case fees paid to administer arbitrations. Other sources of income include membership dues, educational seminars and moneys from contracts with Federal and State agencies to furnish education, training, elections or arbitration services.

The association is best known for administering arbitrations but, as you can see, AAA's mission is considerably broader than that. Perhaps its least known mission lies in the area of handling consumer-type disputes.

In preparation for my presentation I asked a number of AAA department heads to review H.R. 2482, H.R. 2965 and S. 957 and to comment. There was enthusiastic response from all AAA departments. I'd like to share their comments with you and have, accordingly interspersed their remarks among my own.

The overall reaction of AAA staff is positive; however, there are certain provisions of the bills which, based upon AAA experience, were considered especially important.

As I mentioned, AAA has had considerable experience with administering disputes of all kinds—some with success and some which have not gotten off the ground for various reasons and we'd like to share these with you.

One troublesome area for us has been in defining what is a consumer controversy. Is the dispute between the seller and buyer of a \$50,000 home a consumer controversy? Is a dispute over whether a landlord will pay for his tenant's \$40 eyeglasses a consumer controversy when the glasses were broken when the two began shoving each other during a dispute over a rent hike? Is the dispute as to an insurance

company's liability under an uninsured motorist endorsement for a \$200 personal injury caused by a hit-and-run driver a consumer controversy?

In defining the disputes that are covered, S. 957 has eliminated the word "consumer" from the purpose of the bill (page 3, line 9) and specifies disputes involving small amounts of money (page 2, line 1) and H.R. 2482 and H.R. 2965 have retained the word "consumer," (page 3, line 16 in each) but H.R. 2482 (page 5, line 17) directs the Commission to "encourage and assist the development and implementation of innovative concepts and approaches, including adapting or expanding the mechanism of the unsatisfied judgment fund in the field of automobile compensation law to satisfy all unsatisfied judgments," (emphasis added) and H.R. 2965 (page 6, line 2) speaks of applying the same mechanisms as are used in connection with automobile accident compensation litigation.

The provisions reflect the trend which our experience, has also seen to broaden, if not the definition of the word "consumer," then at least the use of the same mechanisms and procedures to handle a wide scope of disputes.

We recommend the approach of broadening, rather than narrowing the scope of the Act. A broadened scope may be of more practical importance than the need to define "consumer."

I will briefly describe the experiences of the Association in four areas that bear upon the provisions of the bills. When I use the word "consumer," it means the person who makes a claim.

First, I will describe the Home Owners Warranty Program and the lessons learned in devising and administering a non-binding mechanism under the provisions of the Magnuson-Moss Warranty Act of 1975, Public Law 93-637, 15 USC 2301 and its Informal Dispute Settlement Procedures, 16 CFR Part 703.

Second, I will describe the Michigan Medical Malpractice program because of the experience gained in educating the consumer on the use of binding arbitration.

Third, I will describe the New York No-Fault experience which contains features that consumers appear to favor.

Fourth, I will describe our 4A program because it is an example of an innovative approach to the resolution of disputes. It is a program which has contributed to diverting unnecessary matters from overcrowded criminal courts.

HOME OWNERS WARRANTY (HOW)

Developed in 1974 and nationally administered by the Home Owners Warranty Corp. (HOW), a subsidiary of the National Association of Home Builders, the warranty provides 10-years of protection against major structural defects, a 2-year warranty on the installation of electrical, plumbing, heating and cooling systems, and a year's protection against faulty workmanship and defective materials. Recently rewritten to meet the law's requirement of easily understandable language, the warranty is designated as "limited," reserving for the builder the option of repair, replacement or refund on the product sold.

I am a member of the Advisory Board of the Home Owners Warranty Program and have helped to develop the Expedited Home Construction Arbitration Rules of the AAA under which HOW arbitrations are administered. I have also been involved in monitoring the process of administering the HOW arbitrations.

The HOW dispute resolving mechanism for home buyers conforms to the Magnuson-Moss regulations and, I understand, is the only program in the country which does.

There are certain provisions under the Magnuson-Moss Warranty Act which have proven extremely difficult to work with:

(1) The mechanism for resolving disputes must be nonbinding. (This stumbling block has been eliminated from the new bills. H.R. 2482, page 15, line 16; H.R. 2965, page 16, line 17; S. 957, page 6 line 12).

(2) There is a 40-day time limitation from time of filing the claim to delivery of award. The rigidity of the limitation creates problems, especially when the parties are trying to settle their differences.

(3) There is a prohibition against builder arbitrators. Therefore, the most experienced persons of the subject matter of the dispute are ineligible to serve. The aim of the law is laudatory but it presupposes that no builder could be a neutral and our experience has shown that this concern is not well founded.

(4) No fee may be charged the home owner, thus there is no deterrent to the frivolous claim and, indeed, experience has shown that no fee plus nonbinding awards have caused some consumers to use arbitration like a revolving door.

The HOW arbitration is especially demanding to administer because most consumers are first time users of the process with no prior knowledge of how it works or what to expect. The administrator is frequently called upon as a paralegal. This

approach is endorsed in H.R. 2482, page 8, line 12; H.R. 2965, page 8, line 10 and S. 957, page 5, line 4.

One positive feature of these arbitrations is the fact that hearings are conveniently held in the home.

The association is in the process of devising an "instant education" device to overcome the lack of familiarity of the consumer. The education here must be specially tailored because of geography and the newness of the rules and the concept. This is a program which will require time to develop and this will also be true of the new programs planned under the three bills. It will take time to develop then and time to iron out their wrinkles.

MICHIGAN MEDICAL MALPRACTICE ARBITRATION

The Michigan Medical Malpractice Act of 1975 requires that all insured hospitals, HMO's, clinics and sanatoriums must offer optional arbitration agreements to all inpatients, outpatients and emergency room patients after treatment.

To provide that health care consumers in Michigan are aware of how malpractice arbitration works and what it entails, AAA, the State Insurance Bureau and the statutory Arbitration Advisory Committee developed a comprehensive education approach for patients. Parenthetically, the statute requires that one half the membership of the Arbitration Advisory Committee be consumers. The education program includes: Slide shows in hospital and patient waiting areas, explanatory posters in English and Spanish, a booklet with illustrations and easy to understand words which emphasize in bold print the differences between arbitration and litigation, and an optional arbitration agreement which includes a post signature revocation period.

When consumers know what arbitration or any other mechanism is, they can make an intelligent choice of one or another. The bills as written, permit this choice and this is to be encouraged.

NEW YORK NO-FAULT AUTOMOBILE INSURANCE ARBITRATION

New York's Insurance Law section 675(2) specifically authorizes the use of arbitration as an optional forum for no-fault claims and the regulations promulgated thereunder by the Superintendent of Insurance, 11 NYCRR 65.7 and 65.16 designate the American Arbitration Association as the administrator of the arbitrations.

The parties in the no-fault arbitration proceeding are the party claiming first party personal injury benefits (including assignees) and the insurer. Claimants have been opting for arbitration in increasing numbers, a total of 30,694 since the inception of the program in 1974 to June 1978. The consumers seem to like arbitration because the availability of arbitration is made known to them, they can easily ascertain how it works, it is inexpensive, it is quick, the hearings can be arranged at a place and time that are convenient and enforcement by and large is no problem.

THE 4A PROGRAM

The 4A program means arbitration as an alternative to litigation, in this case a court diversion program which removes petty criminal actions into mediation/arbitration if the prosecuting attorney and the defendant agree. The complaining witness and the defendant enter into an arbitration agreement. There is a hearing and an attempt is made by the parties to reach a consensual resolution of their problem. The arbitrator's award incorporates their agreement, as an award, which is binding upon both parties and enforceable under the state arbitration law.

FINALITY

Arbitration is one of the mechanisms specified in the definition of a consumer controversies resolution mechanism contemplated under each of the bills. And among the criteria which each bill is designed to encourage is the finality of the resolution of consumer controversies. Arbitration which is final and binding can do this. Our experience shows that this provision of the bill is to be encouraged.

AVAILABILITY OF ARBITRATION

In order for arbitration to be binding, however, it must be enforceable. There are still a number of States which will permit revocation of an agreement to arbitrate at any time prior to award.

There are 37 States and the District of Columbia with modern arbitration statutes. I understand that South Carolina and Oklahoma enacted Uniform Arbitration Acts effective May 8, 1978 and October 1, 1978 respectively, bringing to 39 the total number of States with modern arbitration laws.

If the Act is to be uniform in making available the various mechanisms to all consumers in every jurisdiction then all jurisdictions should be encouraged to enact laws which will make this possible if enforcement is to be sought in state court. If enforcement is to be under the Federal arbitration act then this should be spelled out in the Act as a separate ground for Federal court jurisdiction. A dilemma appears to arise now when the trend is to limit the number of claims within the jurisdiction of Federal courts because they are so overcrowded. As you are aware, there is pending legislation to eliminate diversity as a ground for Federal court jurisdiction (H.R. 9622). Consumer claims, because they frequently involves small sums (under \$10,000) and often lack diversity of citizenship between the parties would be enforceable only in State court unless the Act specified otherwise or unless a special enforcement tribunal were created with enforcement powers—enforcement of the agreement to arbitrate and enforcement of the arbitration award.

Another approach might be to make these claims cognizable under the Federal act without access to the Federal court. This approach may be one way to avoid the inconsistency in the availability of modern arbitration statutes until such time as all jurisdictions recognize the enforceability of the agreement to arbitrate future disputes.

THE INFORMED CONSUMER AND EDUCATIONAL COMPONENT

To foster the use of the various mechanisms, such as arbitration, parties should be free to include preclaim arbitration provisions otherwise known as future disputes clauses in their contracts. The Magnuson-Moss Warranty Act does not authorize precommitments to arbitration so that even the consumer who desires arbitration cannot be bound by a future disputes clause of a warranty provision. The rationale for this prohibition was that consumers are uninformed as to what arbitration is and how it works.

The association's experience, especially under the Michigan medical malpractice arbitration program, has shown that the consumer can be both actively and passively involved in the process of education, resulting in informed consumer choice of binding arbitration.

The consumer educated as to what arbitration, or any other mechanism, is can make an intelligent choice as to the preferred mechanism. The Act as written, permits this choice and this is to be encouraged.

ALTERNATIVE REMEDIES

It is heartening to see, under S. 957, page 5, line 14, authorization for implementation of nonmonetary as well as for monetary awards and agreements.

In the consumer field, AAA experience has shown that the nonmonetary award can frequently give the greatest relief. This may be true in the medical malpractice field, for example, where an award of any operation removing the sponge may be more meaningful than a flat monetary judgment. This may be true in the landlord/tenant field where an award requiring the tenant to lessen the volume of his stereo after 10 p.m. and for the landlord to replace the 5-watt bulb in the entry hall with a bulb of a least 60 watts is more meaningful than a monetary award or an eviction, which will solve nothing and may exacerbate the situation.

OTHER MECHANISMS

Recently the AAA Consumer HELP program was launched. This project, formerly under the auspices of New York's public television Channel 13 and New York University is now housed at AAA's central office in New York City. In this program, consumer complaints are resolved through telephone mediation and/or referral to existing government and legal agencies.

There have been very special programs developed also, such as the advisory arbitration programs administered by AAA for the Middleburg Prison in New Jersey and the California Youth Authority. Creativity in designing programs such as the California Youth Authority program can be encouraged by the U.S. Supreme Court's decision in *Goss v. Lopez*, 419 U.S. 565, where the court had before it the due process claims of nine Columbus, Ohio, junior and senior high school students who had been suspended from their schools for periods of up to 10 days. The court, in a 5-to-4 decision held that the students had a constitutional right to some kind of notice prior to their suspension from school and some kind of hearing before they could be suspended.

The AAA has been involved in the consumer area in other ways as well. In Florida the Miami Regional Office, administers Better Business Bureau arbitrations. The Community Dispute Services Department has been involved in a number of different community oriented programs more fully described in the attached CDS

pamphlet. The Montgomery Ward consumer project may be the one which is most frequently thought of because it encompassed a grand idea but for whatever reasons this project went unused. Perhaps the greatest value of this project was the experience which AAA gained in the consumer controversy field. And it is clear that the drafters of the three bills, too, have sought to include what should be included and to avoid what should be avoided.

The approach which AAA has taken in developing and administering each of the programs mentioned above has been to develop a set of rules specially tailored to meet the needs of the consumer and the program. This approach is supported in the purpose of each bill and is specified in S. 957 page 5, line 1 and in H.R. 2965 page 15, line 20.

SUMMARY

AAA's personal experience in administering dispute resolution techniques is mirrored in the various reports upon which the authors of the subject pending legislation relied in developing its criteria and components.

The goals of the Act and the methods specified to reach those goals are realistic and plausible within the Association's experience.

There may be a need to clarify jurisdiction for the enforcement of (1) agreements to arbitrate and (2) arbitration awards.

Informing and educating the consumer are essential parts of the success and efficiency of any program. The educational criteria and components, like the others stressed above, are to be encouraged.

The inclusion in the three bills and especially in S. 957 of the wider scope of conflict resolution is reflective of the new approach to a growing problem which is currently receiving minimal attention. The legislative treatment which includes consumer disputes and other disputes "arising in the courses of daily life," (S. 957 page 4, line 7) is to be encouraged.

On behalf of the Association I wish to offer its services to effectuate the purposes of the three bills, for to do so is fully in keeping with its mission.

Thank you.

Mr. ECKHARDT. Thank you.

Mr. D'Alemberte.

STATEMENT OF TALBOT D'ALEMBERTE, CHAIRMAN, SPECIAL COMMITTEE ON RESOLUTION OF MINOR DISPUTES, AMERICAN BAR ASSOCIATION, ACCOMPANIED BY EARL JOHNSON, MEMBER

Mr. D'ALEMBERTE. Mr. Chairman and members of the subcommittee, I am Talbot D'Alemberte, from Miami, Fla., where I am in the private practice of law. I serve as chairman of the American Bar Association's Special Committee on Resolution of Minor Disputes. With me, to handle any difficult questions if we get into that, is my colleague, Prof. Earl Johnson, a member of the special committee, who teaches at the University of Southern California Law Center and serves as director of the university's program for the study of dispute resolution policy.

Mr. Chairman, I will be brief, but I want to start in 1906, if I can, and truncate rapidly from there.

The ABA's work in the area of minor disputes has been traced back to Roscoe Pound's address on "The Causes of Popular Dissatisfaction with the Administration of Justice." To commemorate that address, the ABA called together a conference in April 1976, commonly referred to as the Pound Conference.

The participants of that conference heard a number of people, consumers, and others discuss the numerous contemporary causes of the popular dissatisfaction with the administration of justice.

Following that, a followup committee was appointed, chaired by an obscure lawyer named Griffin Bell. He had a committee of

distinguished scholars and citizens, people who have shown interest in justice reform for some time. They came out with some recommendations which I think are pertinent to the hearings today.

In that report, the ABA states:

We recommend that the American Bar Association undertake to stimulate research and experimentation designed to develop criteria by which to identify disputes most likely to profit from mediation, factfinding and other alternative mechanisms of dispute processing.

Another recommendation states that in disputes involving consumer complaints we encourage the creation and use of alternative methods of resolving the disputes.

Following this report by Griffin Bell and his committee, the committee which I chair was created by our board of governors. Out of that committee came an extensive amount of work. Most notably is the publication of a report on the May 1977 conference at Columbia University which we convened to address the general subject of resolution of minor disputes. I do recommend this report for the summaries of the conference presentations and for the appendix, which is a list of a number of alternative dispute resolution mechanisms now in operation throughout the United States. A copy have been provided to you, Mr. Chairman, and the other subcommittee members, and I request that it be included in the record of these hearings.

This brings us to our interest in this legislation, and particularly Senate bill 957, the proposed Dispute Resolution Act.

Support of this legislation is one of the nine priorities of ABA President Spann, and he very much encourages the passage of this legislation, and congratulates the subcommittee on the prompt hearing you are giving this bill.

I might pause just a moment to address what I understand was the principal thrust of questioning yesterday concerning the scope of the legislation, and whether there was sufficient focus on consumer disputes.

To speak to that briefly, we look at this legislation and the appropriation it carries as providing a chance for limited further experimentation. As we have said, there has been a great deal of vigorous interest and there has been a lot of research.

Professor Johnson has written an excellent book called "Outside the Courts," which I commend to you.

There has been that great experimentation. We see this legislation as further encouraging that kind of experimentation and we reason, from the ABA standpoint, that experimentation will touch all the areas that the ABA showed interest in; and that would include consumer areas, the landlord-tenant courts, and other minor dispute mechanisms.

The ABA is pretty clear in its position in encouraging a broad area of experimentation, including experimentation with consumer dispute resolution mechanisms.

It is pretty clear to us that this bill will not authorize a vast number of programs to solve many of those problems. What we will see is experimentation, and hopefully from that, alternatives to courts and better methods of resolving a wide range of disputes in our society.

Thank you; and I will be most happy to respond to questions. I can assure you I will direct most of them to Professor Johnson.

[Testimony resumes on p. 224.]

[Messrs. D'Alemberte and Johnson's prepared statement and attachments follow:]



AMERICAN BAR ASSOCIATION

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Statement of

Talbot D'Alemberte, Chairman
and
Prof. Earl Johnson, Member
Special Committee on Resolution of Minor Disputes
American Bar Association

Before the

Subcommittee on Consumer Protection and Finance
Committee on Interstate and Foreign Commerce
U. S. House of Representatives

In Support of
the proposed Dispute Resolution Act, S. 957

July 21, 1978

Mr. Chairman and members of the subcommittee; I am Talbot D'Alemberte from Miami, Florida, where I am in the private practice of law. I serve as chairman of the American Bar Association's Special Committee on Resolution of Minor Disputes. With me is my colleague, Professor Earl Johnson, a member of the Special Committee, who teaches at the University of Southern California Law Center and serves as Director of the University's Program for the Study of Dispute Resolution Policy.

The subject of your hearings today, the Senate-passed Dispute Resolution Act, and comparable House legislation, is one of the nine legislative priorities of ABA President William Spann. Mr. Spann is not able to attend these hearings, but did designate us as his representatives, and requested that I convey the Association's appreciation for your thoughtfulness in inviting us, and commend your initiative in focusing House attention on this important legislation.

American Bar Association support for the pending legislation was first expressed by the Board of Governors in May of last year following extensive study and approval by my committee. As adopted, the resolution provides:

RESOLVED, that the American Bar Association supports, in principle, the enactment of legislation such as the Consumer Controversies Resolution Act (S.957 and H.R.2482, 95th Cong.), or legislation of similar purport, which would provide federal financial assistance to the states for the improvement of existing mechanisms, and the

experimentation with new mechanisms, for the resolution of minor disputes and which would reserve to each state the right to provide such mechanisms for the resolution of minor disputes as appear appropriate to meet the needs of its residents.

The Board also directed that consideration be given to amending the then-pending version of S.957 to (1) expand its application to the broad range of citizen disputes in addition to consumer disputes; (2) place in the Justice Department's Office for Improvements in the Administration of Justice the responsibility for conducting the envisioned grant program; and (3) establish the grant program as a special revenue-sharing plan without burdensome requirements of detailed federal regulations. A more detailed statement of this policy in terms of the pending legislation will be discussed at the end of this testimony.

Causes of Popular Dissatisfaction With the Administration of Justice

During the 1906 Annual Meeting of the ABA, Dean Roscoe Pound delivered his classic address, "The Causes of Popular Dissatisfaction with the Administration of Justice."* To commemorate Dean Pound's insight on the 70th Anniversary of his speech and the 200th Anniversary of our nation, the ABA jointly convened** in April, 1976 a National Conference to review the current causes of public discontent with our justice system. These causes,

*Reprinted in 35 F.R.D. 273 (1964)

** The conference was co-sponsored by the Judicial Conference of the U.S., the Conference of Chief Justices, and the ABA

however, are not unknown: federal and state court backlogs and delays are notorious; the costs of litigation and legal counsel have priced the means of legal advocacy out of the reach of many; legislatures are legislating more protections which the justice system can't assimilate quickly enough to make the protection readily available; government bureaucracy, created in part to resolve disputes and to protect the public from shabby practices and products, is too cumbersome to effectively do its job; and I could go on.

But the real significance of the 1976 Pound Conference was the body of recommendations for action which the participants suggested. Pertinent to our discussion today were recommendations to create state and local Neighborhood Justice Centers; to increase research and experimentation in to which disputes are most susceptible of non-judicial dispute resolution; to experiment with non-governmental dispute resolution mechanisms, especially in the area of consumer disputes; and to evaluate the experience with small claims courts and arbitration programs as different, but important, existing mechanisms for dispute resolution.

These recommendations, and others, have guided the ABA in its work, and they have become the basis for a substantial portion of the Justice Department's legislative program during this Congress. Since Attorney General Griffin Bell was chairman of the Task Force that prepared these recommendations, I would ask that these recommendations be included in the record.

One of the recommendations was to convene a National Conference on Minor Disputes Resolution, which we did in May of last year at the Columbia University School of Law. Since we have provided each member of the subcommittee with a copy of the report of that conference, I will not detail the discussion that took place. I would like to note, however, that Appendix C, "Alternative Dispute Mechanisms," is a compilation of the kinds of dispute resolution forums which could benefit from enactment of the pending legislation and which also could be models for replication throughout the country.

Alternative Dispute Resolution Mechanisms

Passage of the Dispute Resolution Act would provide much-needed seed money to assist in the development of new projects, as well as to foster the expansion of the existing mechanisms to which I have referred.

There appear to be two primary goals advanced by the kinds of experiments and demonstration projects the Dispute Resolution Act might support: One is to make justice more accessible for low and middle income people; the second is to develop adequate forums for solving problems which are not particularly suited for the adversary system of justice.

The first goal responds to the perception that litigation in the courts simply has become too expensive for most people. Even the affluent cannot afford to litigate rather modest disputes where what is at stake does not justify the legal fees and related expenses. Thus, a corollary to the proposition that poorer persons can't afford access to the courts is the fact that many

aggrieved parties, regardless of socio-economic status, effectively have no access to any forum for the resolution of disputes because the time, money and trouble involved are simply worth far more than the loss involved. Consequently, we are as concerned with simplifying access as we are in assuring that many disputes which now go unresolved, will finally be aired.

There is, of course, another distinct way of furthering access. Government can provide subsidies -- free lawyers and the rest -- to litigants desiring to resolve modest disputes in the regular courts. If committed to increasing access for rather modest disputes, the economic question for government probably is whether that goal can be accomplished more efficiently by supplying nonjudicial forums that operate effectively without lawyers or by subsidizing access to the regular courts for anyone, including the affluent, who become implicated in these disputes.

Such issues as comparative equity, fair process, and subjective satisfaction also are important and perhaps more difficult to appraise. The ultimate resolution, preferably approached carefully through experimentation and research, may lie in a mix of low cost (to litigants), nonjudicial forums and government-subsidized access to the regular courts.

The other problem the Dispute Resolution Act addresses is that for some disputes the adversarial model is not the best approach. Common sense or research might suggest, for instance, that litigation in the courts is counterproductive for disputes between people with a continuing emotional relationship, such as members of the same family, or neighbors, simply because a negotiated

settlement is likely to be more conducive to a harmonious future than would an adversary proceeding and an imposed solution. In addition, the traditional adversary proceeding, by definition, is only concerned with the result of a wrong, and does not often deal effectively with resolving the cause of the dispute. For instance, does a fine or admonishment from the bench really resolve a domestic dispute? Most probably not. In fact, it is suggested that it may even fuel the fire. It is also necessary to consider that many such disputes never reach the court simply because they are not within the parameters of a definable, actionable cause. Consider the neighborhood dispute about a loud stereo -- is this really a matter for police, prosecutors and judges? Today it is, and the results are astonishingly poor: In court, the state says the defendant broke the law by x decibels. He will either be fined, or jailed, or both if proved guilty; neither if not. Yet there is no resolution of the underlying dispute between neighbors. A finding of guilty as well as a finding of not guilty, can heighten the animosity between the disputants. Soon (estimates run to about 90 days), the parties will be back with the same problem, or one which has escalated, perhaps, into a serious criminal matter.

Similarly, research may establish that litigation is less effective than some other approaches in disputes between parties involved in a continuing economic relationship such as landlord-tenant, supplier-merchant, or seller-consumer. This proposition appears more problematic since these economic relationships tend to be rather transitory and easily exchanged compared to the

emotional ties discussed above. It is simpler for a customer to shift patronage to another store than to disown a son or even to ignore a next-door neighbor.

Yet it may be preferable to offer all disputants government- or private sector-sponsored forums where they can seek to work out their problems short of litigation, and with less rancor, despite the fact the "failures" will end up in the professionalized adjudicatory setting. For the most part, knowledgeable negotiation currently is available to disputants only after the opposing parties have obtained (and paid for) legal counsel. Any discussions, after all, take place within the context of what the court is likely to do. For that reason, without lawyers at their side, litigants may be reluctant to enter into meaningful negotiations, and especially wary of making or accepting a settlement offer.

Many disputants might be able to work out their less complicated problems if the right kind of alternative forum were available. In some instances, this would require a law-trained mediator who could give both sides some rough idea of the likely outcome should the case go to court. The night small claims court experiment in Los Angeles has introduced a reform which approaches this idea. Volunteer lawyers function as pretrial mediators, listening to both litigants and seeking to resolve the problem without a court hearing. In that context, they advise the disputants of their respective legal rights and the probable outcome, or at least the possibilities and risks. Thus far, the mediators have been successful in negotiating compromises in a rather high percentage of cases.

A similar program in Orlando, Florida handles minor criminal matters. Jointly co-sponsored by the ABA's BASICS program (Bar Association Support to Improve Correctional Services) and the Orlando Bar Association, some 125 local lawyers volunteer their time to mediate disputes involving simple assault, menacing threat, harrassment, trespass, disorderly conduct and other minor disputes. This project was recently the subject of an NBC Nightly News "Segment 3" program, which noted that the program settles about half of the 60 cases a month handled. The program announcer concluded by observing that legislation was pending in Congress to help other cities start their own programs.

There does not appear to be any sound reason for limiting the government's dispute resolution role to that of the place of last resort. Society has a stake not only in a final disposition of a personal controversy but in an amicable one as well. Consequently, the legal system might invest resources in forums which could facilitate negotiated compromises in nonadversary settings.

Whatever the reasons, it already is possible to detect a trend toward alternatives to the professionalized adversarial judicial model both within the United States and elsewhere.

One of the most pervasive is found in England. Beginning shortly after World War II, Parliament began creating specialized "administrative tribunals" to hear cases arising out of newly enacted social legislation. Each tribunal is composed of a chairman, often a lawyer, and several citizens usually possessing some subject matter expertise or representative of an interest group relevant to that class of dispute. There now are several thousand

administrative tribunals in England and their jurisdiction has spread beyond the social welfare area. In fact, in recent years the tribunals have been handling nearly as many noncriminal cases annually as the entire English court system.

The "public complaint boards" in Sweden are a more recent development and on a less ambitious scale. But they also incorporate more revolutionary features. Aimed principally at consumer disputes, the boards accept complaints by mail and actively pursue a satisfactory resolution of the case. Staff members contact the commercial firm involved to learn its version of the facts. Where appropriate, staff also attempt to mediate the dispute to produce a suitable settlement. If that is unsuccessful, the disputing parties appear before a hearing board composed of citizen representatives from consumer groups and the relevant industry, e.g., dry-cleaning or auto repair. The decisions of these boards are not binding, but they are very persuasive since recalcitrant disputants can expect to appear on a blacklist reported in the newspaper. It is not surprising, then, that the Swedish public complaint boards report ninety percent compliance with their recommendations.

The rentalsman, found in British Columbia and a few other Canadian provinces, is an example of another model -- nonlegal personnel employed on a fulltime basis to resolve disputes. In this instance, the disputes are between landlords and tenants. The rentalsman and his deputies have been granted exclusive jurisdiction over these problems. Landlords and tenants can register complaints by telephone or letter. The rentalsman

office attempts to mediate informally. If that attempt is unsuccessful, an investigator looks into the case and a hearing is scheduled at a convenient location. Again mediation is tried, based in part on the investigative report. If this second attempt fails, the deputy rentalsman, a laymen, decides the case. Unlike the Swedish public complaint boards, he possesses adjudicative power.

The community ingredient becomes even more immediate when dispute resolution becomes a local or neighborhood matter, rather than part of a national scheme of specialized tribunals or boards. The "community conciliation committees" established in many Polish cities and towns during the 1960s exemplify this development. These committees are composed of local citizens chosen by broad-based community organizations because of their credibility with other residents of the area. Members serve without pay on a rather infrequent basis -- two or three times a month. They hear both civil and criminal cases at evening sessions in an informal manner without lawyers. These disputes may be brought to them directly by the parties or on referral from the courts. If a mediated settlement is impossible, the committee will announce its own solution to the problem. Community conciliation committee decisions are not binding, but the committee can use its powers of persuasion which have proved quite effective in producing compliance.

Recent years have seen community-based justice establish a tentative foothold in several American cities. Variouslly called

arbitration as an alternative to adjudication, community mediation, or citizen dispute centers, they all embody a similar approach. Principally focused on crimes between relatives, friends or neighbors, these programs seek to mediate a long-term solution to the problems which underlie the criminal offense. If the defendant struck his next-door neighbor out of frustration over a long-standing, unresolved controversy about a barking dog or an overhanging tree, the mediators seek to deal with the dog or tree as well as the punch that brought the neighbors to court. Proposed Dispute Resolution Act ("Consumer Controversies Resolution Act")

Of the four bills now pending before your subcommittee (H.R.2482, H.R.2965, H.R.13491 and S.957), we think that the Senate-passed Dispute Resolution Act embodies the most favorable features of the earlier version of this legislation, the Consumer Controversies Resolution Act. However, we have not had an opportunity to read Mr. Broyhill's recently introduced bill and, thus, are not able to comment on it.

The earlier concerns of the Association have generally been resolved in S.957:

(1) The proposed Dispute Resolution Resource Center, as part of the Dispute Resolution Program, will be under the direction of the Justice Department (although we assume most of the research, information-exchange, technical assistance and surveys will be undertaken outside of the Department under the Attorney General's direction);

(2) The scope of the bill has been expanded to include the broad range of citizen disputes in addition to consumer disputes;

(3) The dual funding mechanism of 50% discretionary and 50% entitlement (within stated priority categories) appears to be a workable approach. However, we urge you to be mindful of the fact that one of the purposes of this bill is to provide the financial means by which public and private entities at the state and local level will be able to experiment with novel approaches to dispute resolution. To the extent that the projects for which funds may be expended are stipulated by the Justice Department, this important degree of experimentation will be lessened.

Consequently, we would recommend that Section 7(e)(1) be amended to remove the requirement that only projects "identified as national priority projects" will be eligible to be funded. It is important to focus specific attention on projects identified as national priorities, but we think this purpose will be fully served through the exercise of the Attorney General's discretion under Section 7(e)(2).

The American Bar Association commends this subcommittee for its attention to this important bill. Our system of justice, and increased access to that system, will be greatly enhanced by the enactment of the Dispute Resolution Act, and we are pleased to offer our assistance in working with you to this end.

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Report on the
NATIONAL CONFERENCE ON
MINOR DISPUTES RESOLUTION

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Preface

Impelled by the observable fact that there are not adequate means in the standard adversary system of justice to handle promptly, efficiently and inexpensively what we have termed "minor disputes," the American Bar Association has launched an effort to determine and provide means which will be adequate for their handling.

A failure to achieve our goal will, I am afraid, result in widespread cynicism and discontent with our existing system.

The National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice held in St. Paul, Minnesota, in April of 1976, recognized this need for change and accommodation, as did our own Task Force headed by Griffin B. Bell, which was formed to implement recommendations made at the Pound Conference.

The National Conference on Minor Disputes Resolution held at Columbia University School of Law, May 25-27, 1977, financed by the American Bar Endowment and American Bar Association, constituted a major step in our effort to determine what was, in fact, being done to address the problem and what might be done.

The conferees, to whom we owe a debt of gratitude, were drawn from the practicing bar, from social workers, from judges and from academics. They all shared a common interest in wanting to address the problem frankly and to do something about it.

We were most honored to have the Chief Justice of the United States participate in our sessions and address us at our concluding

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luncheon. His interest in the problem is deep, indeed, but it is equalled by his dedication to its resolution.

Professor Frank E. A. Sander kindly served as our Reporter. His summary of the Conference, which follows, gives some notion of the matters we reviewed during two exciting days of discussion. To state a question is not, of course, to suggest its final answer. Therefore, no one, in all likelihood, would agree with all the points made by our conferees; but to raise the questions and to discuss them is an essential beginning to sound resolution.

As Professor Sander concludes in his own report: "The challenge remains."

JUSTIN A. STANLEY
Immediate-Past President
American Bar Association

Introduction

In the past few years, a serious concern has developed about the effectiveness of the manner in which various types of "minor" disputes¹ are societally resolved. Consider, for example, an angry argument between two neighbors, the culmination of a long festering hostility. The argument ends in a physical assault and ultimately winds up in the lower-level criminal courts. Regardless of the particular disposition, the court action is unlikely to address the basic underlying issues: what is at the root of the continuing conflict between these individuals? How can they be helped to get along better in the future? Obviously this problem is not confined to disputes between neighbors, but can be readily replicated with respect to disputes between family members, between consumer and merchant or between landlord and tenant.

A number of circumstances have combined to create the present concern. Just as the quickening pace of modern life has increased substantially the number of potential collisions between individuals, there has been a waning of some of the traditional dispute

1. The term "minor dispute" is used for lack of a better term to refer to a variety of disputes that involve relatively small amounts of money or relatively pedestrian issues. Yet in terms of importance to the parties or potential impact on society these disputes are decidedly not minor. "Perhaps", as Dean McKay said in his keynote address to the conference, "the major-minor dichotomy is a mistake . . . [and] we need a new terminology so that we may not be misguided in our search for a better means of dispensing justice."

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resolution institutions such as the family, the church and the neighborhood association. The growth of government too, has brought with it an increasing number of controversies between citizen and state. The result has been an unprecedented demand upon the judicial system, leading often to considerable frustration and delay, and ultimately to a hurried processing of the cases that come before the court. In these circumstances it is little wonder that there has been increasing interest in exploring alternative ways of resolving more expeditiously and effectively some of these disputes.

But perhaps the problem goes deeper. Along with the frustration engendered by the unresponsiveness of the legal system there has come a perceptible disenchantment with the increasing complexity and remoteness of the traditional dispute resolution process.² Sometimes the legal process appears to be so cumbersome that it develops a life of its own and loses sight of the underlying problems it was designed to resolve. Disputants appear to yearn increasingly for a simple, and accessible procedure that permits them to tell their story and get prompt and constructive assistance toward the resolution of the underlying controversy. Of course some minor disputes involve complex legal issues requiring full and careful judicial consideration. But many others do not, and it is with respect to this latter group that the search for alternative modes takes on a particular urgency.

It was a concern with questions like these that led Justin A. Stanley, President of the American Bar Association, to convene a conference of interested persons in New York City in May of 1977. The conference focused on two aspects of the broader topic—small claims courts and the resolution of disputes outside the courts through the use of such techniques as arbitration, mediation or fact finding. A detailed program of the conference is attached as Appendix A.

2. See Smith, "A Warmer Way of Disputing: Mediation and Conciliation in the United States," a paper to be delivered at the Tenth Congress of Comparative Law in the summer of 1978 and to be published in *The American Journal of Comparative Law*. The article compares the movement toward simplified dispute resolution with the trend towards a return to midwifery in child delivery.

I

Small Claims Courts

The session on small claims courts was devoted largely to a preliminary report of the recently completed survey of fifteen small claims courts, by John C. Ruhnka and Steven Weller. Since this study will be published later this year by the National Center for State Courts under the title *Small Claims Courts: A National Examination*, no attempt will be made to summarize it here. Suffice it to say that the study represents a comprehensive effort to examine fifteen urban small claims courts, with a view to determining their caseload, their mode of operation from filing through trial, and the attitudes of individuals who use those courts. Quite clearly any serious student of the small claims movement will wish to examine this study with care.

Although the Ruhnka-Weller study made a number of recommendations for change, which will be dealt with interstitially below, in general the report concluded that "the small claims courts we examined were meeting the goals of speedy and inexpensive justice far better than the previous literature would have led us to expect" (pp. 9-11 of Sept. 1, 1977 draft). This general conclusion was subjected to perhaps the heaviest questioning by the panel of commentators who followed the Ruhnka-Weller presentation. Rhoda Karparkin referred to "the case of the Missing Plaintiff"—an allusion to the fact that no examination of the small claims court can be complete without looking to those who are not pres-

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ently using the court.³ It was suggested that a useful complement to the Ruhnka-Weller study would be a study that sought to identify the missing plaintiffs—difficult as that would be—and to explore the reasons for their failure to use the court.

It was hypothesized that there might be a variety of reasons for nonuse. The most obvious one derives from the fact that small claims courts are not ubiquitously available, particularly in non-urban areas. Accordingly, an effort should be made to expand their availability in these locations.

Even where small claims courts are available, affected litigants may not know about them. It was pointed out that in many cities the court is not listed in the telephone directory under an easily accessible heading.⁴ Clearly this requires a major effort of citizen education, not only by consumer groups but also by the media. It suggests, in addition, the need for greater accessibility of these courts. Some conference participants urged the model of a book-mobile, i.e., a movable court that travelled from neighborhood to neighborhood. Another intriguing suggestion was that the courts might be located in firehouses. Finally, note should be taken of the recent effort in one community—San José, California—to bring the court closer to the potential users.⁵

It is possible, however, that the failure to utilize the court to its full potential has more subtle causes. Citizens, though generally aware of the existence of the court, may be unaware of how it operates and how it could be used by them. Indeed, some individuals may well have an affirmative distrust of the court as simply one other agency of "the system" which is "out to get them." This attitude is very likely enhanced by the fact that a large number of individuals come into the court as defendants in suits by institu-

3. Consider, for example, the wide disparity in filings per 1,000 population found in the Ruhnka-Weller study (from 52.48 in Des Moines to 4.81 in Grand Rapids).

4. For example in New York the court is not listed in the box labelled "Frequently Called Numbers" which appears at the top of the pages containing city listings.

5. See Beresford and Cooper, *A Neighborhood Court for Neighborhood Suits*, 61 JUDICATURE 185 (1977).

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tional plaintiffs (either merchants or collection agencies). This issue will be further dealt with below.

Quite obviously such skepticism of the court as an institution, if it is widespread, will be difficult to cure. It will necessitate not only educational efforts of the kind already referred to,⁶ but also attempts to work closely with indigenous community organizations and individuals who enjoy the confidence and trust of the community. Beyond that, however, the question arises whether in some situations nonuse is due not to inadequate awareness of the existence of the court but to its inherent limitations for resolving certain types of minor disputes.⁷

Aside from questions of access and utilization, the conference addressed a number of other basic issues.⁸ Some of these will be briefly discussed below.

A. Intake and Screening

An excellent recent survey of the small claims literature that was distributed in advance to the conference participants⁹ makes the point that, contrary to the common assumption respecting small claims courts, there is no necessary correlation between size of the claim and simplicity. Small claims can be complex, just as large claims may be simple. Accordingly, the authors recommend the use of a small claims administrator to sort out or screen the incoming cases, so as to subject each to the appropriate process. If, for example, a seller was suing a buyer, and the latter had no defense except lack of funds, there would be no point in schedul-

6. There was some reference at the conference to the "street law" program at Georgetown and a number of other law schools. This program enables law students to go into public high schools to teach those students about various aspects of the legal system.

7. In this connection, see particularly Section II, *infra*, on dispute resolution outside the courts.

8. For a useful compendium of recommended small claims procedures, see ABA COMMISSION ON STANDARDS OF JUDICIAL ADMINISTRATION, STANDARDS RELATING TO TRIAL COURTS 2.75 (1976).

9. Yngvesson and Hennessey, *Small Claims, Complex Disputes: A Review of the Small Claims Literature*, 9 LAW & SOC. REV. 219 (1975).

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ing the case for a full hearing. The sole problem would be to deal with the question of collection, a matter that could perhaps be handled by the administrator without requiring judicial time. On the other hand it is possible to envision a superficially similar case involving difficult issues of consumer protection law (as well as perhaps constitutional law). Such a case obviously requires careful and deliberate judicial consideration. It will also require the provision of some research assistance to the judge, perhaps by giving him or her access to a law clerk.

This model of a flexible process, with appropriate screening at the outset, was greeted with considerable interest by the conference.

B. Utilization of Court by Institutional Plaintiffs

There appeared to be considerable divergence of views on the question whether commercial sellers or collection agencies should be permitted to sue in small claims court.¹⁰ As is noted in much of the recent literature, such use defeats one purpose of the court—to make available a simple and efficient procedure for claims by or against individuals. On the other hand, as was pointed out most forcefully by Judge Earl Warren, Jr., of the Sacramento Municipal Court, if institutional litigants are barred from the small claims court, they will simply take their claims elsewhere, with the net consequence that the indigent defendant will be faced with the same claim in the regular trial court, where the judge may not be as ready to assist him in presenting his defense.

The conference appeared to find much merit in this objection. That, too, is the position taken in the Ruhnka-Weller study. A possible compromise suggested by Judge Felice Shea would bar institutional plaintiffs from the small claims court, but would permit the individual defendant to remove the case to that court.

C. Personnel

1. JUDGES

Quite obviously small claims courts can only be as effective as

10. Of course not all commercial litigants are large corporations. Presumably a "mom and pop" business should in any event be permitted to utilize the small claims court.

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the judges who serve in them. Although there are presently many dedicated and able individuals who hold these positions, it was noted that, as is characteristic of many of the lower courts, often these jobs are not regarded as important or prestigious. Accordingly, some small claims court judges do not value their work and regard it simply as a necessary step on the judicial ladder.

This condition, like the matter of community confidence in the court already discussed, has complex causes and hence is difficult to remedy. There appeared to be no agreement at the conference on whether, in those jurisdictions where small claims court judges are judges of general jurisdiction who simply serve in small claims court some of the time, it would be preferable to seek full-time "professionals," at the risk of losing the benefits that may come from distributing these functions more widely. Certainly a special effort by the Bar would appear to be called for to aid in the recruitment of qualified individuals who enjoy this type of work and to see to it that the judges receive the proper support in their work. Similarly, administrative judges having assignment powers ought to make a special effort to seek out those individuals who appear to have a special aptitude for small claims work. The law schools, too, can assist this effort by encouraging students to observe and study the lower courts which are so often neglected by teachers and scholars.

But with the press of business in these courts, and the shortage of qualified individuals to serve as judges, it is likely that there will always be a chronic undersupply of small claims court judges. Given this situation, the conference was particularly impressed by the effective use made of volunteer lawyers in the New York City Small Claims Court. Approximately 1,000 lawyers give their time to resolve cases expeditiously in the evening.¹¹ This would appear to be a program well worth emulating elsewhere.

11. See Sarat, *Alternatives in Dispute Processing: Litigation in a Small Claims Court*, 10 LAW & SOC. REV. 339 (1976), for a fuller description of this program. See also the San José Neighborhood Court described in note 5 *supra* which makes a similar use of volunteer attorneys.

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2. ROLE OF LAWYERS

The hallmarks of small claims court justice are speed, simplicity and economy. The process is essentially a Solomonic one, with each party telling his or her story, and the judge attempting to formulate some acceptable (often compromise) solution. In this situation, it is usually not practical to utilize attorneys in their traditional adversary role. Although the common absence of complex legal issues does not in itself dictate that conclusion since another legal skill—the effective marshalling of facts—is very much at issue, the unavoidable fact is that the small amount in controversy usually necessitates keeping costs to an absolute minimum.

But that does not mean that there is no place for lawyers in the small claims court. As was pointed out above, there are innovative possibilities for using lawyers in other capacities, such as volunteer dispute resolvers. Moreover, there are occasional cases that pose difficult and complex legal issues which would undoubtedly benefit from the participation of attorneys.

If adversary lawyers are to have a much more limited role in small claims courts, there emerges a clear gap in the form of needed guidance and assistance for litigants. Plaintiffs need to know how to fill out the requisite forms, and may also need help in gathering the information necessary for the trial. Defendants, particularly in suits brought by lawyers on behalf of institutional plaintiffs, need to be apprised of possible defenses and may also need help so as to be able to meet most effectively the case against them. The former task can probably best be performed by clerks or other lay advisors, as is the case, for example, in the Harlem Small Claims Court (see Appendix C). The latter task, however, may require trained paraprofessionals or law students since the issues can often be complex. In addition, judges in small claims court will often have to be prepared to play a more active role than their counterparts in the regular court.¹²

12. See Weller, Ruhnka and Martin, *Success in Small Claims: Is a Lawyer Necessary?*, 61 JUDICATURE 176 (1977).

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D. *Enforcement*

A basic weakness of the small claims court even in those jurisdictions where it presently works well appears to be the inadequacy of the enforcement process. Often the decision is not rendered until some weeks after the hearing, and the parties are advised of it by postcard. Although such a deferred decision may prevent emotional outbursts in court, it means that a winning plaintiff must come back again into court to obtain enforcement if the defendant is unwilling to pay.¹³ It was suggested that this situation might be markedly improved if the court were to render a decision where possible at the time of the original hearing, and then immediately address itself to the question of enforcement, e.g., by entering a small weekly order based on the defendant's demonstrated ability to pay. It should be noted, however, that often enforcement difficulties arise from default judgments, and the suggested change would have no effect in those cases. A new procedure recently adopted in New York, involving the issuance of an "information subpoena and restraining notice" to third parties, such as banks and insurance companies, would also aid the plaintiff in discovering assets of the defendant and immobilizing them until they could be seized.¹⁴

13. In New York close to half of the plaintiffs who won judgments were unable to collect any money. See Wall St. Journal, Aug. 16, 1977, p. 1, col. 4, and New York Times, Aug. 29, 1977, p. 28C, col. 1.

14. See New York Times, *ibid.* The New York program also calls for the revocation of the license of any business that fails to pay a valid small claims judgment.

II

Dispute Settlement Outside the Courts

The subject of nonjudicial dispute resolution is a vast one.¹⁵ For convenience of presentation at the conference it was roughly broken down into two parts—disputes between individuals and disputes between individuals and organizations (government or business).¹⁶

A. *Disputes Between Individuals*

1. NEIGHBORHOOD JUSTICE CENTERS

The discussion of interpersonal disputes was centered primarily on the newly emerging notion of a Neighborhood Justice Center (NJC). Although the general idea of a community dispute settlement center has ancient origins,¹⁷ and although modern prototypes have sprung up recently in many areas around the country (see

15. An excellent overview of the subject can be obtained from JOHNSON, KANTOR AND SCHWARTZ, *OUTSIDE THE COURTS—A SURVEY OF DIVERSION ALTERNATIVES IN CIVIL CASES* (National Center for State Courts 1977), which was distributed to all conference participants.

16. This dichotomy is of course not exhaustive. See, e.g., Goldbeck, *Mediation: An Instrument of Citizen Involvement*, 30 ARB. J. 241 (1975), for a description of mediation to resolve a community dispute.

17. See, e.g., Danzig *Towards the Creation of a Complementary, Decentralized System of Criminal Justice*, 26 STAN. L. REV. 1, 42 (1973), and the references there cited.

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Appendix C), the term Neighborhood Justice Center was first put forward in the Pound Conference Follow-up Task Force Report, chaired by former Judge (now Attorney General) Griffin Bell.¹⁸ Because of the strong interest of the Attorney General in this idea, it appeared likely at the time of the conference that the Justice Department, through its Law Enforcement Assistance Administration, would fund a number of experimental NJC projects. Accordingly, it seemed appropriate to devote substantial emphasis at the conference to this concept. Subsequent developments have borne out the wisdom of that judgment, for, as of the writing of this report, such funding has materialized for three NJCs, in Atlanta, Kansas City and Los Angeles.

Perhaps it is appropriate at the outset to say something about the precise contours of an NJC. The idea was rather generally described in the Pound Conference Follow-up Task Force Report, but that very generality is one of the NJC's prime virtues. For it is a truly flexible device capable of multiple adaptation to varied circumstances.¹⁹ It may therefore be useful briefly to delineate here the concept, drawing substantially upon the various citizen dispute centers presently in operation in various parts of the country (see Appendix C).

In essence a neighborhood dispute center is an informal institution designed for the expeditious and effective resolution of certain types of "minor" disputes. It may or may not be connected with the court. It can receive cases either on a voluntary walk-in basis, or by referral from social agencies, the police, prosecutors or the

18. ABA, REPORT OF POUND CONFERENCE FOLLOW-UP TASK FORCE 9 (Aug. 1976).

19. See MCGILLIS AND MULLEN, NEIGHBORHOOD JUSTICE CENTERS: AN ANALYSIS OF POTENTIAL MODELS, National Institute of Law Enforcement and Criminal Justice, Monograph Series (Gov. Printing Office 1977), for an excellent survey of six existing programs in Boston, Columbus, Miami, New York City, Rochester and San Francisco), as well as a probing examination of various possible models, and of some of the operational and legal issues they may pose. An earlier, abbreviated version of this volume was prepared by Abt Associates, Cambridge, Massachusetts, and released by the National Institute on June 6, 1977.

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court. The center utilizes a flexible process, usually consisting of mediation or arbitration, or a combination of the two. Arbitrators or mediators may be professionals, law students or trained citizens drawn from the community. The primary goal is to provide an informal alternative to the court process. Such an alternative appears to be particularly appropriate in resolving interpersonal disputes between individuals involved in an interdependent relationship (e.g., neighbors, family members or landlord and tenant), for in such cases there is a particular need for a noncoercive process (such as mediation) that has the capacity of reorienting the basic relationship between the disputants rather than simply dealing with the surface symptoms of their relationship, as a court typically would (e.g., "why can't Mrs. A get along with Mrs. B" rather than "did Mrs. A hit Mrs. B"). The ultimate aim is that, following a full airing of the dispute, the parties will be able, with the aid of the mediator(s), to arrive at a mutually satisfactory settlement of the controversy, which will then be reduced to writing. In some programs, if the parties fail to reach a consensual settlement, the mediator-arbitrator can impose a settlement on them.

The NJC concept raises a number of familiar and some novel issues. As with the small claims court, there are questions of how to enhance the accessibility and legitimacy of the institution. These difficult questions are no easier to resolve in the NJC context. But because the NJC is usually a newly created institution, and because a collateral goal of the NJC's creation is to help to reestablish the sense of community that has been largely lost in big urban areas, there is a greater opportunity forthrightly to address the issues of community involvement in the creation and operation of the Center.²⁰

Since an NJC is usually distinct from the court (though often having a more or less well defined relationship to it), some difficult issues not present with respect to small claims courts are raised by it. Two of these that were particularly emphasized at the confer-

20. See Wahrhaftig, *Citizen Dispute Resolution: Whose Property* (Amer. Friends Service Comm., Pittsburgh, mimeo, 1977), for an elaboration of this point.

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ence were the issues of confidentiality and coercion. As regards the former, the entire thrust of a neighborhood center is to facilitate a candid airing of the facts that gave rise to the dispute, unhindered by technical principles of relevance or constitutional law. But in view of the unofficial nature of the institution, how can the disputants be protected against compelled disclosure of facts revealed at the hearing which may be germane to a later court proceeding, possibly involving potential criminal liability? In principle, of course, strict confidentiality of such revelations is promised. But in the absence of legislation providing such confidentiality, it cannot be assured.²¹ Perhaps so long as the question remains a theoretical one, owing to the sound exercise of discretion on the part of prosecutors and others, the potential harm is primarily of academic interest.²²

A similar dilemma has been raised with respect to the issue of coercion. So far most of the neighborhood dispute centers have been tied to the criminal justice system; that is, most of their cases are diverted to them from the prosecuting attorney or the court. Obviously in that setting there is a residual element of coercion; for, if the disputants do not want to utilize the alternative process or live up to an agreement reached through it, they will most likely be returned to the criminal process. In the criminal context that kind of implicit coercion is unavoidable. Still, many individuals will opt for the less drastic process exemplified by community mediation because in most cases that will produce a more acceptable and enduring resolution of the underlying controversy.

It is true, of course, that there is a potential danger here. Although the criminal process is more drastic, concomitantly it provides more safeguards and protections. One needs to be concerned

21. Some projects (e.g., that in Brookhaven Township, Long Island) have executed a written agreement with the local district attorney assuring immunity from prosecution on the basis of any information revealed in the NJC proceeding. Whether such an agreement is enforceable, however (e.g., against a successor district attorney) is unclear.

22. A question of immediate importance, however, for such an institution is how candid it should be with disputants respecting the assurance of confidentiality.

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that individuals who are threatened by the criminal process not be induced uninformedly to waive these safeguards simply because at the end of the rainbow there is what appears to be a less drastic alternative. Clearly full disclosure and a knowing waiver of rights should be demanded here.²³

The next pressing question is what will happen when these neighborhood justice centers are no longer tied to the criminal justice system, and handle a variety of civil and criminal disputes, as is presently contemplated for the new NJCs to be established in Atlanta, Kansas City, and Los Angeles. We simply do not know whether, absent the residual coercion that is provided by the criminal process, the mechanism will work as well. There seems to be a good deal of evidence from the existing projects that many individuals will choose voluntarily to come into one of these centers in order to avail themselves of a service that the courts presently do not provide. Thus even if the Center were limited to consensual cases it would appear to be a valuable addition.

In some cases, however, it may be desirable to compel the parties to exhaust this process before going into court. We have done this with respect to divorce conciliation procedures in some states. Some jurisdictions have also taken a similar route with respect to compulsory screening panels for medical malpractice cases, or compulsory arbitration for money claims below a stipulated amount.²⁴

23. A related question concerns the appropriate remedy once there has been informed waiver followed by a refusal to go through with the alternative process. If that process is arbitration, then, assuming the appropriate state law, presumably an enforceable arbitration award can be entered. But where mediation is involved, by the very nature of that process (i.e., a consensual proceeding) no such relief is possible.

24. Generally speaking, such mandatory use of pre-court mechanisms is constitutional so long as a right of de novo trial is granted to the loser. See JOHNSON, KANTOR AND SCHWARTZ, note 15 *supra*, chapter 5. But see *Wright v. Central DuPage Hospital*, 347 N.E.2d 736 (Ill. 1976), *Simon v. St. Elizabeth Medical Center*, 355 N.E. 2d 903 (Ohio Comm. Pleas 1976), and *Johnson v. Burch*, Baltimore City Court, June 6, 1977, for three cases that hold unconstitutional on various grounds a requirement to resort first to a medical malpractice screening panel. See also Redish, *Legislative Response to The Medical Malpractice Insurance Crisis: Constitutional Implications*, 55 TEX. L. REV. 759 (1977).

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Thus, although we should in the first instance explore the consensual utilization of these alternate processes, we should not necessarily shy away from the ultimate possibility of a statutory requirement that such processes be exhausted before a court action can be initiated. Of course, such a step should not be taken until we have some persuasive evidence that that avenue promises a more effective and efficient resolution for that particular type of controversy. Unfortunately to date we do not yet have any sophisticated attempts to evaluate the work of neighborhood dispute centers.²⁵

2. ARBITRATION OF SMALL CLAIMS

As pointed out above, arbitration represents a promising avenue for the efficient resolution of relatively small money claims. In Philadelphia County, for example, all money claims below \$10,000 must be presented first to a panel of arbitrators made up of volunteer attorneys who receive a modest fee for each case. To comport with the right of trial by jury²⁶ under the state constitution, the loser is permitted to appeal to the court for a trial *de novo*, but he must pay all costs accrued to the time of appeal. Perhaps because of this condition, only about 10-12 percent of the losers have appealed. As a result approximately 30,000 cases per year are thus disposed of. Similar programs are in effect in California, as well as in specified counties in Ohio and New York.^{26a} An experimental program for compulsory arbitration of certain cases in federal court is presently under consideration. See S. 2253, 95th Cong., 1st Sess. (1977).

Arbitration appears to be a less expensive and more expeditious method of resolving many types of cases. In view of that fact, consideration should be given to a more widespread use of compulsory arbitration. In addition voluntary arbitration should be further

25. Such a product may be forthcoming shortly in the form of the evaluation of the Urban Court in Dorchester, Massachusetts, which was recently undertaken by Prof. William Felstiner under a grant from the Law Enforcement Assistance Administration to the Program for the Study of Dispute Resolution Policy at the USC Law Center in Los Angeles.

26. See Stanley, *The Resolution of Minor Disputes and the Seventh Amendment*, 60 MARQUETTE L. REV. 963 (1977).

26a. See JOHNSON, KANTOR AND SCHWARTZ, note 15 *supra*, chapter 5.

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encouraged, with the state perhaps offering to bear some or all of the administrative costs, so as to remove the present economic disincentive to the use of this method of dispute resolution.

B. Disputes Between Individuals and Organizations

Many of the complaints by individuals in a complex modern society are not against other individuals, but against large organizations, both public and private. For example, a welfare recipient may feel that her grant was improperly determined. Or a prisoner may have a complaint about some aspect of his treatment by the prison authorities. Many of these cases currently find their way into the state and federal courts. Hence some consideration of alternate ways of resolving these disputes appears to be appropriate.

Many of the principles considered above with respect to the resolution of interpersonal disputes in NJCs are applicable here, too. Processes such as mediation and arbitration have obvious applicability also in the context of individual versus organization. But a special threshold issue emerges here: how to find a way to equalize the vast disparity in expertise and power between the individual and the organization, so that any dispute resolution mechanism that is established will have the confidence and trust of the affected individuals.

Linda Singer's presentation focused on two basic mechanisms—ombudsmen and administrative grievance mechanisms. There is now a considerable literature on the former;²⁷ the latter device, though widely used in the labor field, has only recently been applied in other settings (such as schools, prisons and hospitals) and hence is much less well understood. Ms. Singer posited six basic prerequisites of an effective grievance procedure.

1. THE AFFECTED INDIVIDUALS MUST PARTICIPATE IN THE
DESIGN AND OPERATION OF THE MECHANISM

The most effective way to promote credibility in a grievance

27. See e.g., JOHNSON, KANTOR AND SCHWARTZ, note 15 *supra*, chapter 6; GELLHORN, OMBUDSMEN AND OTHERS (1966); GELLHORN, WHEN AMERICANS COMPLAIN (1966); and other references cited in the JOHNSON, KANTOR AND SCHWARTZ bibliography. See also Appendix C *infra*.

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mechanism is to give those affected by it a central role in making it work. This participatory approach enables individuals who must live with the solutions to problems to share a role in developing those solutions, and hence promotes a commitment to it on their part.

2. THERE MUST BE FULL ACCESS TO THE MECHANISM, WITH GUARANTEES AGAINST REPRISAL

Fear of reprisal is the objection to grievance mechanisms most often voiced. Of course, there can never be an absolute guarantee that threats or reprisals will not be applied informally against someone who uses the grievance system, but some safeguards can be built into the mechanism. For example, the importance of ensuring that no record of a grievance be placed in the complainant's central file cannot be overemphasized.

3. WRITTEN RESPONSES (INCLUDING THE REASONS FOR THE DECISION TAKEN) MUST BE MADE TO ALL GRIEVANCES

Assurance that there will be a response to a complaint at every level is a fundamental requirement for an effective grievance mechanism. If the complaint is rejected, a written reply with reasons for the rejection is all the more important. Only in this way can a grievant or other interested party know the grounds on which decisions were based or decide whether an appeal is warranted. Written replies are also needed to determine whether a grievance has been handled properly within established time limits.

4. GRIEVANCES MUST BE RESPONDED TO WITHIN PRESCRIBED, REASONABLE TIME LIMITS; SPECIAL PROVISION MUST BE MADE FOR RESPONDING TO EMERGENCIES

Brief, enforceable time limits are essential at every step in an administrative grievance mechanism. They put all involved parties on notice that they must act on complaints. Mechanisms without time limits are an invitation to responsible officials to avoid dealing with tough questions and issues. Time limits should be realistic,

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but any procedure that requires much more than 30 days is unlikely to be used or trusted.

5. OUTSIDE REVIEW OF GRIEVANCES MUST BE AVAILABLE

Objective review of complaints by impartial outsiders is essential if a mechanism is to be credible to individuals. In addition to providing the unemotional perspective of a neutral party, outside review imposes at the lower levels of a grievance mechanism the necessity of responding reasonably, since unreasonable responses and faulty logic will be detected.

It is not necessary for the opinion of the independent outside body to be binding on administrators for the procedure to be effective. The independence and fairness of the outside review and the good faith of the administrators, rather than the threat of binding sanctions, make mechanisms effective. There is no theoretical reason, however, for not making the decision of the outside reviewer binding in cases involving the application—as opposed to the formulation—of policy.

6. THE MECHANISM MUST BE APPLICABLE TO AS
BROAD A RANGE OF ISSUES AS POSSIBLE AND
MUST CONTAIN MEANS FOR DECIDING WHETHER A
SPECIFIC COMPLAINT IS GRIEVABLE

Once the scope of the mechanism has been agreed upon, the mechanism itself must contain a means for determining whether a specific grievance is grievable. Thus, when a grievance is dismissed because it is not within the ambit of the mechanism, a complainant must be allowed to appeal that ruling through every level of review. The mechanism thus must have jurisdiction over questions of its own applicability.²⁸

28. See, e.g., Keating, *Arbitration of Inmate Grievances*, 30 ARB. J. 177 (1975), for an illustration of these principles at the Karl Holton facility administered by the California Youth Authority. It consists at the first level of a five person committee, one of whom (a middle-management official) acts as Chairman, the other four being voting members—two inmates and two staff members. Review of the decision—or of the opposing views in case there is a tie—by the director of the facility or his delegate is then provided for, and finally

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Varieties of each of the two basic mechanisms (i.e., ombudsmen and grievance mechanisms) were explored in the context of disputes arising in total institutions (prisons, schools, etc.), disputes between citizen and government (e.g., welfare, social security, etc.), and disputes between individual and business organizations (e.g., consumer controversies). It was pointed out that many of these mechanisms are of relatively recent origin and that there is an urgent need for additional research and experimentation on the subject of complaint handling.

A central question with respect to administrative grievance mechanisms concerns their relation to court proceedings. Presumably if a system conformed to basic principles of fairness, such as those elaborated above, then in appropriate cases a judge might be authorized to stay the judicial proceedings for a brief period while recourse was had to the established administrative mechanism.²⁹

While the notion of Neighborhood Justice Centers has, on the whole, been enthusiastically received, the installation of ombudsmen and administrative grievance mechanisms, particularly in total institutions (such as schools or prisons) has been a far slower task. Although such mechanisms hold some promise in terms of the potential reduction of court caseloads—for example about five percent of the current civil litigation caseload in the federal courts involves state prisoners' civil rights cases—the reformation of entrenched bureaucracies is obviously a far more difficult task, and it remains to be seen what progress can be achieved by way of making these institutions more responsive to the grievances of individuals who are affected by them.

recourse can be had to an outside independent three-person review board set up under the auspices of the American Arbitration Association. The decision of this board is only advisory, but the director of the facility must promptly indicate whether he will comply with it, and if not, to state his reasons for not doing so. Thus while the ultimate power of decision remains in the person in charge, aggrieved individuals are given maximum opportunity first to air their views freely in a mediational context and then, if that fails, to have their views presented for evaluation by a disinterested outsider.

29. See H.R. 9400, 95th Cong., 1st Sess. § 5 (1977), so providing for § 1983 prison cases. See also Comment, 35 *MD. L. REV.* 458 (1976).

III

Common Threads, Residual Tensions
and Promising ExperimentsA. *Recurring Themes*

Although the conference dealt with two discrete topics, each of which raises a number of separate issues, many common themes emerged. It may be useful to elaborate some of these here.

1. Perhaps paramount is our vast ignorance—ignorance by the affected parties of what machinery is presently available to aid them in resolving disputes, as well as ignorance by society whether litigants' needs are presently being adequately met. Reference has already been made to the first question and how it might be addressed. Some examples respecting the second type of knowledge-gap may be useful here.

Linda Singer, in her description of prison grievance mechanisms, pointed out that of the cases processed at the California Youth Authority (see note 28) only about one percent go to outside arbitration. Why is that? Is it because the grievance mechanism is so effective or is it because of the burden posed by the arbitration procedure?

Similarly, with respect to small claims courts, reference has already been made (see note 3) to the sharply differential usage rates in various courts around the country. The Ruhnka-Weller study does not really shed much light on that. This issue is, of course, closely related to what has been referred to earlier as "the case of the missing plaintiff." Quite obviously we need to know more

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about why many individuals are not using the small claims court system at all. What are these grievants looking for? Could their objections be met by making specific changes in the procedure or are their objections more fundamental?

With respect to the ombudsman mechanism, we have a number of models. There is the New Jersey Department of the Public Advocate, perhaps the most elaborate, and apparently the only statewide institution. Then there are some local ombudsmen, such as that in King County, Seattle (see Appendix C). And finally there are some ombudsmen attached to particular institutions, such as hospitals or prisons. What are the good and bad features of each? Which model is best for what situation? How does the establishment of an ombudsman compare with the institution of an administrative grievance mechanism? Despite the availability of a good deal of basic learning on the subject, we simply do not know the answers to vital questions like these. Yet for any jurisdiction or organization that is contemplating the establishment of such an institution, such questions are very fundamental.³⁰

Above all we need to develop more systematic methods for measuring the effectiveness and sufficiency of available dispute resolution mechanisms.³¹ This requires first of all some agreement on

30. Perhaps this kind of information gap might be partly remedied by the creation of a Dispute Resolution Resource Center such as is currently being proposed as a joint venture of the ABA, the American Arbitration Association, and the National Center of State Courts. *See also* S. 957, 95th Cong., 1st Sess., CONG. REC. S 18904 (Nov. 4, 1977), proposing to establish such a center in the Department of Justice.

31. For a suggestive example, see the recent Vera Institute of Justice study on Felony Arrests (1977), showing that in over half of the cases studied the defendant and the victim had a prior relationship; 87% of these cases were dismissed by the prosecution for failure by the victim to follow through, thus suggesting a search for a different type of remedy, such as a citizen dispute center. *See also* ALASKA JUDICIAL COUNCIL, THE ANCHORAGE CITIZEN DISPUTE CENTER: A NEEDS ASSESSMENT AND FEASIBILITY REPORT (1977), for a commendable attempt to design a newly recommended citizen dispute center in response to a specific inquiry concerning the unmet dispute resolution needs of the community.

The pending study of the American Bar Foundation of the entire network

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criteria, and then some way of applying those criteria to a variety of mechanisms. Quite aside from these difficulties there lurk beneath the surface all kinds of difficult normative issues, such as: should there be an available remedy for every grievance? What are the costs and benefits of doing so? How much of society's resources should be allocated to dispute resolution as against other social needs?

But even as we are searching for more scientific approaches to the problem of dispute resolution, we must not disregard the obvious. In the words of Chief Justice Burger's closing address to the conference:

... [T]here are many conflicts that fall into today's classification as minor disputes, which no one is solving and which ought to be resolved if we are to avoid the frustrations, tensions, and hostilities that often flow from unresolved conflicts. We do not need to call on psychiatrists or clinical psychologists to tell us that a sense of injustice rankles and festers in the human breast and the dollar value of the conflict is not always the measure of tension and irritation produced. A landlord who delays unduly in repairing a defective radiator or refrigerator can produce unhappy chain reactions on children and adults. A defective roofing or siding job on the home, defective work on the family car or the television set sometimes can produce serious consequences comparable to those of a major illness.³²

2. Another recurring theme is the need early on to involve the affected "community" if we want to develop a system that has acceptability and accessibility. But just how that "community" is to be defined is far from clear. In some situations, there are resid-

of dispute resolution mechanisms in a midwestern city may also provide some helpful insights on this question. See also Steele, *Two Approaches to Contemporary Dispute Behavior*, 11 LAW & SOC. REV. 667 (1977), for a useful appraisal of the existing literature, and the forthcoming volume by Cappelletti and Garth, *Access to Justice: A World Survey*, which will be published in 1978 by Sijthoff (Leyden and Boston) and Giuffrè, for suggestive solutions from abroad.

32. See Burger, *Our Vicious Legal Spiral*, JUDGES' J., Fall 1977, p. 22. For a conceptual discussion of this issue of "avoidance," see Felstiner, *Influences of Social Organization on Dispute Processing*, 9 LAW & SOC. REV. 334 (1974), and the reply by Danzig and Lowy, 10 *id.* at 366 (1975).

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ual ethnic ties that may provide the requisite coherence.³³ In other situations, what may be involved is community in the sense of "neighborhood," thus raising the intriguing question whether the dispute mechanism itself can aid in recreating the sense of community that has been so largely lost in our big urban centers.

As indicated earlier, there is no easy answer to this question of enhanced community involvement. But one need not permit this hurdle to become disabling. There is ample room for—indeed, desperate need of—additional experimentation. Thus, even while working towards the ideal of a community-generated mechanism one can attempt to adapt existing mechanisms in such a way as to make them more reflective of community concerns.

3. A third common theme is that many of our present problems stem from our overemphasis on the traditional adversary system. Whatever one may think of the strengths and weaknesses of that system, it seems clear that it is simply too cumbersome and expensive for most of the disputes with which we are here concerned. As pointed out earlier, this does not mean that the adversary process has no place in resolving "minor" disputes. It does mean that we need some kind of screening mechanism to decide which are the simple disputes that can be resolved by some "rough justice" techniques, and which are more complicated ones that ought to be cast into the full adversary mold. Indeed, ultimately we ought to be aware of the whole range of mechanisms—mediation, arbitration, fact finding, ombudsmen, screening panels, grievance mechanisms—with a view to developing some procedure for assigning each case to that process or group of processes most suited to that particular type of controversy.³⁴

A closely related question concerns the appropriate role of lawyers in an enlightened system of dispute resolution. As pointed out earlier in the discussion of small claims courts, there will be cases where the amount in controversy is so small and the underlying

33. See, e.g., YAFFE, *SO SUE ME—THE STORY OF A COMMUNITY COURT* (1972), describing the work of the Jewish Conciliation Board in New York City.

34. See, e.g., Sander, *Varieties of Dispute Processing*, 70 F.R.D. 111 (1976), for an elaboration of this theme.

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dispute so elemental that there will be no place for the traditional type of adversary legal representation. Other cases involving complex legal issues will require the full measure of the legal process if the litigants' basic rights are to be appropriately protected. The need for some effective way of sorting out these very different kinds of cases is apparent.

The newly emerging modes of dispute resolution pose an immense challenge to the legal profession to come up with creative new solutions for using legal skills to solve society's problems. The utilization of volunteer lawyers as dispute resolvers is one example.³⁵ Another may be the broadened preventive law role made possible by the increasing use of prepaid care plans.³⁶ Both of these examples, and others that may evolve, have important implications for legal education that need to be more fully addressed.

4. Finally, in both areas encompassed by the conference, there is a need for developing mechanisms to bring about greater power equalization.³⁷ This point is immediately apparent with respect to noncoercive processes such as mediation, for quite obviously such techniques cannot work effectively in an atmosphere of gross power disparity. This can be readily seen when it comes to developing workable grievance mechanisms in autocratic institutions like prisons, hospitals, or schools. If such a grievance mechanism is to be at all effective, it must find a way of giving legitimacy to the concerns of those who are affected by the system and who have grievances which they seek to voice.

But the issue of power equalization also has its counterpart with respect to institutions employing adjudicatory processes. Thus in

35. Reference has already been made to the use of arbitrators in the Small Claims Court in New York City and San Jose, and to the use of lawyers to arbitrate small claims in Philadelphia. Some of the Neighborhood Justice Centers also use lawyers or law students as mediators, arbitrators, or fact-finders (see Appendix C).

36. See DEITSCH AND WEINSTEIN, *PREPAID LEGAL SERVICES* (1976); BROWN AND DAUER, *PLANNING BY LAWYERS* (1977).

37. See Galanter, *Why the "Haves" Come out Ahead: Speculating on the Limits of Legal Change*, 9 *LAW & SOC. REV.* 95 (1974), for a perceptive exploration of this general theme.

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the small claims court the issue manifests itself in terms of the question whether institutional plaintiffs should be permitted to use the court, or whether, even though lawyers are generally discouraged, some type of legal assistance or advice should be provided to individual defendants in suits brought by institutional plaintiffs.

B. Dilemmas and Tensions

1. A familiar dilemma in all service organizations with limited resources is how to allocate those resources between the specific and the general, between the short run and the long run. On the one hand there are the recurring disputes between individuals that continue to present themselves at an alarming rate and with which the system must cope quickly and decisively. At the same time, if the mechanism is not to get hopelessly bogged down by the daily grist, some attention must be paid to the more generic problems that are raised by some of the cases. In the context of legal services, this is done through legislative change or test case litigation. Similarly, if we are to lay claim to an effective and readily available system of minor disputes resolution, some attention must be paid to the underlying conditions that create many of these disputes. For example, with respect to consumer credit controversies that represent such a substantial portion of small claims court business, there is a need to determine whether or not unfair consumer practices are being perpetrated by a specific company which ought to be dealt with by a class action or by some other collective approach. But beyond that, we should perhaps explore more fully aggregate, preventive solutions, such as limiting the amount of credit an individual could assume, or requiring a seller to negate the presence of typical defenses such as breach of warranty or violation of consumer protection laws before a collection suit could be brought. Similar approaches could be pursued in other areas.³⁸

2. Another dilemma that was much discussed at the conference is whether we should opt for or against resolution of these minor

38. Indeed, the statutory development of rent withholding is a good example of such a solution. This general approach is more fully developed in Ehrlich and Frank, *Planning for Justice* (Aspen Institute Occasional Paper 1977).

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disputes by courts. The question obviously requires some refinement. For the typically small, simple dispute over money due (say between a painter and houseowner) the small claims court still appears to be an effective and expeditious mechanism. But it should be supplemented with other techniques such as arbitration, either by offering those as alternatives within the court (as in New York City) or by establishing a pervasive system for the compulsory arbitration of small claims, as in Philadelphia and a number of other jurisdictions.

When it comes to other types of disputes—minor criminal matters, squabbles between family members, complaints about governmental unresponsiveness—then an initial resort to nonadjudicatory techniques (whether in or out of court) may often be preferable. As pointed out earlier, this is particularly true where we are dealing with individuals who are involved in long-term relationships, since a mediated solution in which both parties attempt to work out a mutually acceptable resolution holds far more promise of providing a long-term solution to the underlying controversy.

Such mediative resolution may be readily provided through a Neighborhood Justice Center or, in the case of a grievance against an organization, by utilizing an administrative grievance mechanism or ombudsman. Whether or not these mechanisms should be under the auspices of the court becomes an essentially political issue. To be sure, they normally gain thereby in authority and prestige. At the same time, in some quarters there is a distinct distrust of established institutions, and the acceptability of the mechanism thus may be enhanced if it is more closely tied to the community. These considerations must be carefully balanced in each specific situation. In any event the ultimate issue is not so much whether minor disputes should be resolved by courts as what is the *process* most appropriate to each particular dispute in question.³⁹

39. Of course, as pointed out at the outset, some seemingly minor disputes entail major complex legal issues, and hence require the full authority of the court. Consider, e.g., the case of a girl baseball player complaining about exclusion by the local Little League that is cited by Smith, note 2 *supra*.

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C. *Promising Experiments*

Given our vast ignorance on so many fundamental questions of dispute resolution, everyone can make up his or her own list of viable experiments. By way of recapitulating some of the earlier themes, it may be useful to assemble here some that seem promising at least to the writer of this report.

1. We might attempt to utilize the Small Claims Administrator mechanism described in the Yngvesson and Hennessey article (note 9 *supra*) with a view to developing a flexible intake and after-process adapted to the needs of the particular case. Such an experiment might also help to shed some light on the question of institutional plaintiffs in small claims court. For example, one might conclude that there is a feasible compromise between allowing all these cases in small claims court or forcing them all into the regular court.⁴⁰ The compromise would consist of allowing these cases to be brought in small claims court but not commingling them with the typical individual-versus-individual case, but rather requiring them to be handled as part of a separate "calendar" where the defendant would have access to competent legal advice and the proceeding would be before a judge who would be alert to the issues likely to arise in that kind of case.

Moreover, gaining some useful experience with a flexible intake mechanism would have relevance far beyond the confines of the small claims courts. Indeed perhaps it might be the first step towards testing the feasibility of a multifaceted dispute resolution center involving initial analysis of the dispute with a view to utilizing the process best suited to its resolution. Thus if it were a dispute between two neighbors, it would be referred to neighborhood mediation. If it were a small claims case of the simple individual-versus-individual variety, it would be referred to the small claims court. If it were a case of governmental unresponsiveness, it would be referred to the ombudsman.⁴¹

40. Judge Shea's proposal to give the defendant removal power represents another compromise worth exploring.

41. See, e.g., Sander, *Varieties of Dispute Processing*, 70 F.R.D. 111 (1976).

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2. A virtually infinite number of intriguing experiments are made possible by the NJCs about to be established.⁴² For example, we might seek to determine the comparative efficacy of an NJC connected with a court as against one closely affiliated with the community which it was designed to serve. Similarly we could try to learn something about the relative advantages and disadvantages of having lay or professional dispute resolvers. Or we might seek to put to an operational test a question that has long divided the theoreticians—whether it is advisable to combine in one dispute resolver different functions such as mediation and arbitration.⁴³

3. There is ample room for experimentation, too, with respect to developing the most effective mechanisms for resolving disputes between individuals and organizations. As pointed out earlier, we need to know more about the comparative efficacy and cost of alternative mechanisms such as ombudsmen and administrative grievance procedures. In what situations, for example, would one be preferable to the other? And within each mechanism, there is a host of questions unanswered by empirical research centering around optimal composition, jurisdiction and procedures. The ultimate unanswered question, of course, concerns the effectiveness of such mechanisms in providing more expeditious and acceptable dispute resolution while at the same time helping to relieve the caseload pressure on the courts.⁴⁴

42. Many of the alternative possibilities are canvassed in MCGILLIS AND MULLEN, note 19 *supra*.

43. See, e.g., Sander, note 41 *supra*, at 122.

44. It is possible, however, that we will ultimately have to choose among the diverse motivations for providing alternative modes of dispute resolution (e.g., relief of court congestion, facilitating access to "the system" by disputants, and providing more effective dispute processing) because they will to some extent be in irreconcilable conflict.

Conclusion

In his concluding address to the conference, Chief Justice Burger commended the conference "for being venturesome and imaginative in seeking ways to reduce social irritations and tensions with minimum delay, complexity, and prohibitive expense to those who can ill afford it" and expressed the hope that its fruits would be "concrete experiments and accomplishments." The challenge remains.

Appendix A

NATIONAL CONFERENCE ON MINOR DISPUTES RESOLUTION

SPEAKERS AND TOPICS

Major Addresses

Robert B. McKay

"Minor Disputes and Other Major Problems"

Paul Nejelski

"The Federal Role in Minor Dispute Resolution"

Hon. Warren E. Burger

"Our Vicious Legal Spiral"

Topic I

"Small Claims Court: Problems and Prospects"

Moderator: Hon. Felice K. Shea

"Summary of Small Claims Project of the
National Center for State Courts"

John C. Ruhnka, Project Director and
Stephen Weller, Assoc. Project Dir.

Commentators: Hon. Earl Warren, Jr.
Professor Norman C. Amaker
Rhoda H. Karpatkin

APPENDIX A

Topic II

"Some Promising Alternative Dispute Resolution Mechanisms"

Moderator: Professor Earl Johnson, Jr.

1. "Informal Grievance Mechanisms Outside the Courts"
Linda R. Singer
2. "Diversion of Small Disputes into other Forums:
Community Mediation—Arbitration"
Joseph B. Stulberg

Closing Panel Discussion

Moderator: Talbot D'Alemberte

Panelists: A. Leo Levin

Ronald L. Olson

Hon. Arlin M. Adams

Professor Lewis B. Kaden

Sandra DeMent

Theodore R. Tetzlaff

Concluding Comments: Frank E. A. Sander

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American Judicature Society
Chicago, IL

Appendix C*

Alternative Dispute Mechanisms

PREFACE

The following compilation of alternative dispute mechanisms is provided to demonstrate the state of the art and to aid those who may be interested in establishing comparable mechanisms. The listing is arranged both by nature of the dispute (e.g., consumer issues) and by type of process used (e.g., arbitration).

The focus here is on innovation. Hence some mechanisms of the more traditional variety (such as administrative review boards) are not included. Moreover, this listing is intended to be suggestive rather than comprehensive. The one exception is the listing of neighborhood mediation programs. In view of the high current interest in these programs, we have attempted to be more inclusive here.

The American Bar Association's Special Committee on Resolution of Minor Disputes, which has prepared this compilation from data supplied to it by the listed projects, has been acting as a resource center and clearinghouse while researching and developing alternative dispute mechanisms. In order that the Committee may continue to fulfill this clearinghouse role, the Committee would appreciate being advised of newly developing projects. Information should be sent to: Ernest S. Zavodnyik, Special Committee on

*Prepared by: Fred Dellapa, Frank E. A. Sander, Debra Weiss Goodstone, Special Committee on Resolution of Minor Disputes.

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Resolution of Minor Disputes, American Bar Association, 1155 E. 60th Street, Chicago, IL 60637.

ACTION LINES

Approximately 350 newspapers maintain action lines which respond to requests from individuals for help in obtaining information or resolving disputes. Assistance may be given in the form of information, referral or direct contact with the parties involved in order to resolve the problem. Many radio and television stations also have Action Lines. *See also* JOHNSON, KANTOR AND SCHWARTZ, *OUTSIDE THE COURTS* 70-74 (1977).

ARBITRATION MECHANISMS

Arbitration as an Alternative (4A) (see mediation)

AUTOCAP (see intra-industry)

California Youth Authority (see prison)

Citizen Dispute Settlement Center, Miami (see mediation)

Community Arbitration Program (see juvenile)

Compulsory Arbitration of Small Claims (see small claims)

Delaware Family Court (see family)

Institute for Mediation and Conflict Resolution (IMCR) (see mediation)

New York Department of Corrections (see prison)

Philadelphia Municipal Court—Arbitration Tribunal

This project, totally operated and funded by the courts, handles all private criminal complaints which become classified as civil upon consent to arbitrate. All parties and witnesses must testify under oath. Decisions are compulsory and may be enforced through contempt of court. Two-year follow-up on all cases.

John Kelly, Director
Philadelphia Municipal Court
Arbitration Tribunal
City Hall Annex, 12th Floor
Juniper and Filbert Streets
Philadelphia, Pennsylvania 19107
(215) 686-2910

ALTERNATIVE DISPUTE MECHANISMS

Rochester Psychiatric Center Grievance Procedure Project (see mental health)

San José's Neighborhood Small Claims Court (see small claims)

Topeka Consumer Small Claims Arbitration Board (see small claims)

CONSUMER MECHANISMS

See Intra-Industry Mechanisms

Mediation

Small Claims Courts

COUNSELING MECHANISMS

*Division of Family and Neighborhood Services,
Newark, New Jersey*

This project offers counseling by professional counselors; no mediation/arbitration. Also handles landlord/tenant problems and insufficient fund cases.

Eleanor M. Lyle, Director

Newark Municipal Court

Family and Neighborhood Services Division

City Hall Annex, Room 102

Newark, New Jersey 07102

(201) 733-6679

Family and Neighborhood Dispute Program, Jersey City, New Jersey (see mediation)

FAMILY MECHANISMS

Family Court, Delaware

As of June 1, 1977 Family Court instituted an arbitration program to handle problems regarding juvenile delinquencies, some adult misdemeanors against juveniles and some intra-family disputes. Upon the filing of a complaint, Family Court determines its suitability for arbitration, and if suitable, notices are sent to both parties. The defendant may elect the arbitration procedure and if he/she does so, a two-tier process is begun. The first stage is before an arbitration interviewer (counselors with degrees in social work) and the interviewer makes recommendations. The second stage is

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before a hearing officer (lawyer, law school graduate or law student) who may abide by, modify or reject the recommendation. Arbitration is binding.

William Davies, Director of Legal Services
 Dennis Reardon, Master
 Family Court
 600 Market Street
 Wilmington, Delaware 19801
 (302) 571-2200

HOUSING MECHANISMS

Housing and Urban Development (HUD)
Mandated Grievance Procedures

Chapter VIII of Title 24 (Part 866) establishes grievance procedures for any public housing agency (PHA) tenant "with respect to PHA action or failure to act in accordance with the individual tenant's lease or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status."

The first step provides for attempted settlement through informal means without a hearing. If resolution does not occur at that stage then a hearing is set. In the event the hearing still leaves complainant unsatisfied, judicial review or a trial de novo may be sought.

INTRA-INDUSTRY MECHANISMS

AUTOCAP, the automotive consumer action program, sponsored by the Automotive Trade Association Managers and the National Automobile Dealers Association, is a volunteer intra-industry program for handling automotive complaints at the state and local levels. A consumer affairs panel is established, usually composed of both automotive and truck dealers and consumers to review automotive complaints. The form and assistance offered varies somewhat from office to office (e.g., arbitration, license revocation, etc.) Offices located in many major cities. A complete listing is available from:

ALTERNATIVE DISPUTE MECHANISMS

G. Alan Marlette, Director of NADA/NTAM Relations
 National Automobile Dealers Association
 8500 West Park Drive
 McLean, VA 22101
 (703) 821-7000

FICAP, sponsored by the Southern Furniture Manufacturer Association and the Southwestern Furniture Manufacturers Association, provides for resolution of disputes regarding defective furniture less than one year old, once the retailer and manufacturer have failed to resolve the problem. Complaints must be registered through the mail to the Advisory Panel of seven, which then makes recommendations. FICAP members have the responsibility to heed those recommendations.

Nancy High, Executive Director
 FICAP
 P.O. Box 951
 High Point, North Carolina 27261
 (919) 885-5065

Ford Consumer Appeals Board

Ford Motor Company has instituted a grievance procedure to assist owners in resolving disputes regarding their Ford automobile, whether in or out of warranty.

First the local dealer and the Ford Motor Company are given an opportunity to resolve the problem. If not resolved at those levels, the dispute is submitted to a five-member panel consisting of one person from each of the following: a Ford dealer, a Lincoln-Mercury dealer, a consumer activist, a state official and a vocational training instructor. Decisions of the panel are binding on Ford Motor Company and its dealers. Presently the program is operating only in North Carolina.

Ned Smith
 Director of Customer Relations
 Ford Motor Company
 (313) 337-6905

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ICAP, the Insurance Consumer Action Panel, sponsored by the National Association of Mutual Insurance Agents and the White House Office of Consumer Affairs, offers a panel to resolve disputes for persons having problems with property and casualty insurance policies.

If the dispute cannot be resolved at a local level, it is submitted to the panel for arbitration. Decisions are not binding. Presently operating in Michigan, Mississippi, Montana and Utah.

Patricia Borowski, Administrator

ICAP

Investment Building

Washington, D.C. 20005

(202) 347-8030

MACAP, the major appliance Consumer Action Panel sponsored by the Association Home Appliance Manufacturers, the Gas Appliance Manufacturers Association and the Retail Merchants Association, provides consumer assistance with problems regarding major appliances, i.e., compactors, dehumidifiers, dishwashers, disposers, gas incinerators, home laundry equipment, ranges, refrigerators and freezers, room air conditioners and water heaters. MACAP requests that the consumer first contact the manufacturer to obtain satisfaction and if none is forthcoming, MACAP steps in. Initially (Communication Phase) MACAP contacts a high level executive of the appropriate appliance company and informs it of the problem. Generally, the problem is resolved at this stage. However, if not resolved, MACAP will make specific recommendations to the manufacturer regarding the problem and best ways of resolution.

James F. Nolan, MACAP Staff

20 North Wacker Drive

Chicago, Illinois 60606

(312) 984-5800

Mail Order Action Line, Direct Mail/Marketing Association

Mail Order Action Line, sponsored by Direct Mail/Marketing Association which consists of 1700 member firms, is a national pro-

ALTERNATIVE DISPUTE MECHANISMS

gram to assist consumers having difficulties with mail orders. Action Line will intervene on behalf of the consumer, upon receipt of a written complaint, against both member and non-member companies.

Richard Dematteis, Supervisor
Mail Order Action Line
Direct Mail/Marketing Association
6 East 43rd Street
New York, New York 10017
(212) 689-4977

JUVENILE MECHANISMS

California Youth Authority (see prison)

Citizen Dispute Settlement Center, Duval County (see mediation)

Citizen Dispute Settlement Center, Orlando (see mediation)

Community Arbitration Program

The Anne Arundel County office of the Juvenile Services Administration instituted the Community Arbitration Program in 1974. If a youth is alleged to have committed a delinquent act (of a misdemeanor nature) included on the list of offenses which may be heard by arbitration, and the police officer is satisfied that the child was probably involved in the case, the officer issues a juvenile citation. After receiving the signatures of the child and parent, a hearing is set for seven working days later. The victim/complainant also receives a copy of the citation and may attend the hearing. The community arbitrator is an attorney and following arbitration he may: (1) close the case for insufficient evidence, (2) continue the case for further investigation, (3) plan an informal adjustment (e.g., require restitution, community service) or (4) forward the case to the state attorney's office.

Kay Peacock, Director
Community Arbitration Program
50 Cathedral Street
Annapolis, Maryland 21401
(301) 263-0707

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Florida Juvenile Arbitration Bill

Provides for establishment of county arbitration programs to hear cases involving juveniles accused of minor offenses. Provides that participation in such a program is voluntary on behalf of the juvenile's parents or guardian. Provides for review of arbitration awards by the appropriate intake officer and the state attorney at the request of any interested party, including the complaining witness and victim. Requires funding of such programs to be through federal grant or county appropriation. Effective July 1, 1977.

King County Juvenile Court Conference Committees

Juvenile Court Conference Committees are designed to help the child and his family find a solution to their problems and remedy minor delinquencies before they become serious enough to require official intervention by Juvenile Court. They are sponsored by local community youth councils, handle referrals of minor delinquencies from authorized law enforcement agencies and schools, and are composed of concerned dedicated citizens who are carefully screened, oriented and trained. The committee may recommend remedies to the family, arrange appropriate restitution, recommend a special school program for the youth, or whatever other changes are indicated.

Superior Court of the State of
Washington for the County of King
Juvenile Court Department
1211 East Alder Street
Seattle, Washington 98122
(206) 323-9500

LANDLORD/TENANT MECHANISMS

Boston Urban Court (see mediation)

Citizen Dispute Settlement Program, New Brunswick, New Jersey
(see mediation)

Division of Family and Neighborhood Services, Newark, New Jersey
(see counseling)

ALTERNATIVE DISPUTE MECHANISMS

Housing and Urban Development (HUD) Mandated Grievance Procedures (see housing)

Institute For Mediation and Conflict Resolution (IMCR) (see mediation)

MEDIATION MECHANISMS

Many of the projects listed here essentially deal with family and neighborhood interpersonal disputes by offering mediation and referral. Thus they are mostly examples of what has been recently referred to as a neighborhood justice center. When the program includes, but is not limited to, such disputes and resolution techniques an additional heading will be given.

Arbitration as an Alternative (4A)

Community Dispute Services, Rochester, New York

This project is constantly expanding its horizons and offers assistance in many areas. Covers not only interpersonal criminal matters, but also problems regarding city regulations and bad checks. Has newly instituted mechanism to handle citizen complaints against police. The project also has a Rochester Housing Authority component which handles tenant grievances against housing management with regard to evictions and other grievances, except non-payment of rent. Mediation is followed by arbitration when necessary.

Theodore Kantor, Director
Dispute Settlement Center
36 West Main Street
Rochester, New York 14614
(716) 546-5110

Other operating 4A units:

Earl Brown
Akron 4A
177 South Broadway
Room 314
Akron, Ohio 44300

Earl Brown
Cleveland 4A
215 Euclid Avenue
Room 630
Cleveland, Ohio 44114

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Earl Brown	William Allender
Elyria Prosecutor's Office	San Francisco 4A
City Hall	690 Market Street
Elyria, Ohio 44035	Suite 800
(216) 323-5648	San Francisco, California 94104
	(415) 981-3901

Boston Urban Court

This project consists of three distinct components: mediation, victim assistance and disposition. Approaches the ideal of a neighborhood justice center to offer a full range of services under one roof where citizens may go for problem resolution. The sponsor is the Dorchester District Court and the project is housed in a private storefront near the court. Approximately ten percent of caseload is landlord/tenant disputes. Uses lay mediators from community.

Brian Collery, Director
 Urban Court Program
 560 A Washington Street
 Dorchester, Massachusetts 02124
 (617) 825-2700

Citizen Dispute Settlement Center, Broward County, Florida

This project, established through the county commissioners, utilizes volunteer mediators.

Don Grossman, Director
 Citizen Dispute Settlement Center
 611 S.E. 3rd Avenue
 Fort Lauderdale, Florida 33301
 (305) 765-5724

Citizen Dispute Settlement Center, Duval County, Florida

This project is operated and funded by the prosecutor's office and housed therein. Costs come out of the prosecutor's operating budget. Utilizes volunteer community members as mediators. Also has a juvenile component.

ALTERNATIVE DISPUTE MECHANISMS

Mike Weinstein, Director
State Attorney's Office
Duval County Courthouse
220 East Bay Street
Jacksonville, Florida
(904) 633-6910

Citizen Dispute Settlement Center, Miami, Florida

Includes informal handling of some consumer problems. Formal implementation of a consumer mediation/arbitration component is currently underway. Utilizes paid professional mediators. Has expanded with branch neighborhood centers providing easy access to citizens.

Linda Hope, Director
Citizen Dispute Settlement Center
1251 N.W. 12th Street
Miami, Florida
(305) 547-7062

Citizen Dispute Settlement Program, West Palm Beach

This project, instituted in July of 1977, is totally operated and funded by the state attorney's office. Handles only misdemeanor complaints. At this time the project has only one mediator, an assistant state attorney. Hearings are privileged.

Bill Bollinger, Assistant State Attorney
Citizen Dispute Settlement
West Palm Beach Courthouse
West Palm Beach, Florida 33401
(305) 837-2460

Citizen Dispute Settlement, City of Wilmington

This project, sponsored and funded by the Governor's Commission on Criminal Justice under the direction of the city solicitor's office, utilizes law students as hearing officers.

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Robert Kurland, Project Coordinator
 Citizen Dispute Settlement
 City-County Building
 800 French Street
 Wilmington, Delaware 19801
 (302) 571-4200

Citizen Dispute Settlement Program, Columbus, Ohio

This project is administered by the city attorney's office and operated out of the city prosecutor's office. Approximately 10,000 bad check cases are handled yearly in addition to family and neighborhood disputes. Uses law students and social workers as hearing officers.

Larry Ray, Coordinator
 Night Prosecutor Program
 67 N. Front Street
 Columbus, Ohio 43215
 (614) 222-7483

Citizen Dispute Settlement Program, New Brunswick, New Jersey

This project sponsored by Middlesex County handles all private citizen complaints against other private citizens. Landlord/tenant problems comprise eight percent of the caseload.

Judge Thomas J. Shamy, Director
 Carol Smith, Coordinator
 Police Headquarters
 Memorial Parkway
 (P.O. Box 1525)
 New Brunswick, New Jersey 08903
 (201) 745-5428

Citizen Dispute Settlement Program, Orlando, Florida

This project is sponsored by the Orange County Bar Association and utilizes attorneys as mediators on a voluntary rotating basis. Approximately six percent of the caseload is comprised of petty theft. Also underway is a juvenile mediation component.

ALTERNATIVE DISPUTE MECHANISMS

Wil Miller, Director
55 East Washington Street
Suite 402
Orlando, Florida 32801
(305) 420-3700

Citizen Dispute Settlement Project, Minneapolis

Administered by city attorney's office. The project must determine that probable cause exists (using the city attorney's guidelines) prior to having mediation. It has a two-week, three- and six-month follow-up on all cases. Also has counseling groups for battering men and battered women.

Rick Enga, Assistant City Attorney
Office of the Minneapolis City Attorney
A1700 Government Center
Minneapolis, Minnesota 55487
(612) 348-8764

Community Board Program of San Francisco

This project utilizes a group of neighborhood persons trained in mediation skills who will assist parties in resolution of individual and neighborhood disputes. Referral to social services will take place when determined appropriate. Enforcement of resolutions is dependent upon peer pressure.

Ray Shonholtz, Director
San Francisco Community Board Program
149 Ninth Street
San Francisco, California 94103
(415) 552-1250

Community Mediation Center

This project is sponsored by the YMCA. Upon resolution, criminal charges are dropped and the resolution becomes enforceable civilly. Has a written confidentiality agreement with the prosecutor.

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Robert Saperstein
 Community Mediation Center
 356 Middle Country Road
 Coram, New York 11727
 (516) 736-2626

District of Columbia Citizen's Complaint Center

This project provides informal hearings, crisis intervention counseling and issuance of protective orders.

June Parkhurst, Director
 Citizen Complaint Center
 601 Indiana Avenue, N.W.
 Washington, D.C.

*Family and Neighborhood Dispute Program, Jersey City,
 New Jersey*

This project is housed in and sponsored by the municipal court, and city funded. Approximately five percent of the caseload is bad checks. The project also offers alcohol rehabilitation and battered women counseling.

James Caporrino
 Municipal Court of Jersey City
 769 Montgomery Street
 Jersey City, New Jersey 07306
 (201) 547-4311

*Family and Neighborhood Dispute Team, Municipal Court of
 City of Camden*

This project, sponsored by the Camden Municipal Court, receives its funding from the State Law Enforcement Planning Agency. Staff members are located in offices adjacent to the court and clerk's office for easy and efficient intake.

Margaret Milligan, Supervisor
 Municipal Court of City of Camden
 Family and Neighborhood Dispute Team
 Room 323, City Hall
 Camden, New Jersey 08101
 (609) 757-7203

ALTERNATIVE DISPUTE MECHANISMS

Family Counseling Unit, East Orange, New Jersey

This project, housed in the East Orange Municipal Court, utilizes professional mediators.

Shirley Randolph
East Orange Municipal Court
221 Freeway Drive East
East Orange, New Jersey 07018
(201) 266-5073

*Institute for Mediation and Conflict Resolution (IMCR)
Dispute Center*

This project offers mediation followed by arbitration when necessary. All agreements, whether mediated or arbitrated, are written up as arbitration awards so they are within the New York State Arbitration Law (Article 75 of the CPLR) and thus enforceable in the Civil Court. Handles some landlord/tenant disputes.

Ann Weisbrod, Executive Director
IMCR Dispute Center
425 West 144th Street
New York, New York 10031
(212) 690-5700

*Institute for Mediation and Conflict Resolution (IMCR)
Brooklyn Dispute Center*

This project, sponsored by the IMCR and the Victim Witness Assistance Project, is housed in an office building near the courts. Due to the work of the Victim Witness Assistance Project, all cases entering the Brooklyn Criminal Court are screened and a determination is made of their suitability for mediation. Handles primarily felony cases which comprise eighty percent of the caseload, including felony assaults, burglary, robbery, larceny, statutory rape.

Ann Weisbrod, Executive Director IMCR
Duncan Campbell, Director
Brooklyn Dispute Center
50 Court Street
Brooklyn, New York 11201
(212) 834-7400

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Los Angeles City Attorney Hearing Officer Program

This project handles petty theft and local code violations (e.g., building and safety violations, fire code violations, etc.) in addition to traditional neighbor and family disputes. One of the few, if not only, projects which gives Miranda rights prior to hearing.

Los Angeles City Attorney Hearing Officer Program

Cathy Vale

200 North Main Street

1700 City Hall East

Los Angeles, California 90012

(213) 485-5407

Los Angeles District Attorney's Hearing Officer Program

This project is operated by the district attorney's office. In the event a subsequent act violates the agreement reached through mediation, the hearing officer may recommend that charges be brought on the original complaint and on the acts which constitute a violation of the agreement.

Los Angeles District Attorney's Hearing Officer Program

Bill Martin, Esquire

County of Los Angeles

18000 Criminal Courts Building

210 W. Temple Street

Los Angeles, California

(213) 974-3611

Municipal Court Informal Hearing Program, Trenton, New Jersey

This project is sponsored by the Trenton Municipal Court. Staff members screen all incoming complaints at Trenton Police Station for suitability for mediation.

A. J. LiCari, Director

Municipal Court Informal Hearing Program

P.O. Box 1363

870 South Broad Street

Trenton, New Jersey 08625

(609) 989-3720

ALTERNATIVE DISPUTE MECHANISMS

*Office of Dispute Settlement, State of New Jersey,
Department of Public Advocate*

This project, through statutory authority (P.L., New Jersey 1974, Chapter 27) provides for mediation, conciliation and other third party services to community and civic group associations and organizations, and to municipal, county, and state governmental agencies for the purpose of aiding such parties in resolving disputes which involve the public interest, provided that such groups request such services. Part of unique statewide cabinet-level agency.

Stanley C. Van Ness, Public Advocate

J. Stanley Husid, Acting Chief

Office of Dispute Settlement

P.O. Box 141

Trenton, New Jersey 08625

(609) 292-0275

Private Complaint Program, Cincinnati, Ohio

Operates under the auspices of the municipal court prosecutor's office. The clerk's office refers all citizens requesting a private warrant to the project. Handles only misdemeanor complaints. Utilizes only law students as mediators.

Jay Talbot, Executive Director of Cincinnati Institute of Justice
Private Complaint Program

Cincinnati Institute of Justice

222 East Central Parkway

Cincinnati, Ohio 45202

(513) 421-2022

San Jose's Neighborhood Small Claims Court (see small claims)

Note: In December 1977 the Department of Justice, through LEAA, funded three experimental new neighborhood justice centers in Atlanta, Kansas City and Los Angeles.

MENTAL HEALTH MECHANISMS

Rochester Psychiatric Center Grievance Procedure Project

This project, sponsored by the Monroe County Bar Association, utilizes a multi-level appeal process for any patient grievance ex-

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cept those regarding medical treatment, patient abuse or a patient's release (for which jurisdiction lies elsewhere). First, an investigator acts as fact finder and prepares a report for the panel which consists of one staff representative, one patient representative and one arbitrator from the Community Dispute Panel. The panel then evaluates the grievance and forwards its recommendations to the director. If still no satisfaction or compliance, the parties may consent to binding arbitration utilizing a single arbitrator from the Community Dispute Panel. If all else fails, a patient may have a member of a panel of volunteer attorneys set up by the bar association prosecute an appeal to court.

Mental Health Advocacy Project—Sponsored by

Los Angeles County and Beverly Hills Bar Associations

Acts in a representative capacity, “. . . runs interference between patients and the institution . . .”, and handles disputes in an informal manner. Began in 1975, funded by ABA-BASICS and other private supplemental sources. Provides “lay advocates” to assist residents with matters both related and nonrelated to confinement. Increases the awareness of the members of the bar to the needs of the mentally and developmentally disabled individuals.

Mary Ann Banner, Director
Mental Health Advocacy Project
650 North Spring Street
Los Angeles, California 90014
(213) 620-6200

OMBUDSMAN MECHANISMS*

Connecticut Ombudsman (see prison)

Iowa Deputy For Corrections in Citizen Aid Office (see prison)

Office of the Ombudsman, Seattle/King County

This office, established through ordinance, provides for investigation and resolution of complaints regarding administrative actions.

*For a comprehensive survey of ombudsman and other complaint handling mechanisms, see the annual compilation published by Bernard Frank, Chairman of the Ombudsman Committee of the International Bar Association.

ALTERNATIVE DISPUTE MECHANISMS

Upon receipt of a complaint, thorough investigation is made and written recommendations are published.

Paul R. Meyer, Ombudsman
 Seattle/King County Office of the Ombudsman
 King County Courthouse, Room 213
 Seattle, Washington 98104
 (206) 344-3452

Office of University Ombudsman, University of Pennsylvania (see schools)

Office of the Ombudsperson, University of Michigan (see schools)

PRISON MECHANISMS

California Youth Authority Ward Grievance Procedures

This procedure, effective since 1974 and operating in all California Youth Authority institutions, provides generally for a three-tiered dispute mechanism.

Each institution develops its own format, but the basic format is as follows:

After submitting a complaint a hearing is held before a committee composed of two wards, two line-staff, and a nonvoting chairperson/mediator drawn from middle management. If the ward is dissatisfied with the resolution she/he may appeal to the superintendent. If still dissatisfied, final *advisory* review may be had by an outside neutral arbitrator.*

Connecticut Ombudsman Program

This project, currently serving Somers Correctional Institution and Hartford Community Corrections Center, potentially will serve all Connecticut Department of Corrections Institutions.

An inmate grievance is first filed with the ombudsman. After an interview, the ombudsman may accept or reject the complaint, with no right to appeal. If accepted, the ombudsman reports findings and recommendations to the warden who may accept or reject them.

If the warden rejects the recommendations, the ombudsman may, at his discretion, forward his report to the Commissioner of Corrections, and if still dissatisfied he may seek out the press and the public.

*See Keating, *Arbitration of Inmate Grievances*, 20 ARB. J. 177 (1975).

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Illinois Grievance Procedure for Inmates

The Illinois Grievance Procedure established by statute a grievance mechanism for all inmate complaints. It is in effect at ten Illinois institutions.

First, a specially designated staff person will attempt informal resolution. If that fails, a written complaint may be submitted to the Institutional Inquiry Board (IIB) which must give the inmate a hearing and respond within ten days to the superintendent. The superintendent then has five days to respond and if the inmate is still dissatisfied he may submit his complaint to the director of the department. If the director finds the complaint has merit, he refers it to the three-member Administrative Review Board, which may conduct a hearing and then forwards a recommendation to the director.

Iowa Deputy for Corrections in Citizen's Aid Office

This office, established through legislation, provides an ombudsman for any inmate complaints from any inmate housed in any Iowa jail or correctional institution. Upon receiving a complaint, the ombudsman conducts a personal investigation and then makes an oral recommendation to the warden. If no action is taken on the oral recommendation a written recommendation is then submitted. If the ombudsman is still dissatisfied, appeals may be taken to the Commissioner of Adult Services, then the Commissioner of Social Services, and finally to the governor.

*Maryland Inmate Grievance Commission**

A quasi-judicial body consisting of five members appointed by governor. Considers complaints from all inmates confined in an institution under jurisdiction of Maryland Department of Corrections.

Minnesota Ombudsman for Corrections

The Minnesota ombudsman, established through executive order in 1972 and subsequently through legislation, handles all complaints from all Minnesota Department of Corrections inmates, both adults and juveniles. Complaints are investigated and recommendations are made to appropriate officials. If a superintendent

*See Comment, 35 MD. L. REV. 458 (1976).

ALTERNATIVE DISPUTE MECHANISMS

rejects a recommendation, the ombudsman may take it to the Commissioner of Corrections, and if still dissatisfied, he may appeal to the governor.

New York Department of Correction

Four-tiered grievance procedure pursuant to statute: committees of inmates and staff with rotating chairpeople; warden; central office; nonbinding review by independent commission on correction, which may and does delegate its authority to outside arbitrators.

South Carolina Department of Correction

Four-tiered procedure: inmate-staff committee; warden; commissioner; advisory outside review by community volunteers.

SCHOOL MECHANISMS

Baltimore County Public School's Student's Rights and Responsibilities Grievance Procedure

Baltimore County has established a Student's Rights and Responsibilities handbook which includes grievance procedures. "Procedures for channeling student complaints at the local school level shall be developed by the principal in cooperation with the Student Government. Students shall be informed of the local procedures. If a student complaint, involving the alleged violation of this Bill of Rights or a Board of Education policy or rule, cannot be resolved at the school level between a student and the principal, within a five (5) day period, the student may appeal, in writing, to the appropriate area assistant superintendent who shall render a decision, in writing, within five (5) pupil days of such appeal. Appeal from a decision of an assistant superintendent is to the superintendent of schools, or his designee, who shall render a decision within ten (10) pupil days of such appeal. The appeal is thence to the Board of Education at the time of its next regularly scheduled meeting. Further appeal may be made to the State Board of Education if taken in writing within thirty (30) days following the decision of the local board."

Board of Education of Baltimore County
6901 North Charles Street
Towson, Md. 21204

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Conflict Resolution Team, Prince George's County Public Schools

Prince George's County has a conflict resolution team which provides "county-wide assistance to school personnel concerned about the present school climate and problems resulting from conflicts. Assisting schools in recognizing situations which are potentially critical and developing preventive mechanisms has been the team's major emphasis. However, crisis intervention is provided by the team should the situation arise."

Mr. Robert C. Nabors, Supervisor
 Conflict Resolution Team
 Hill Road and L Street
 Landover, Md. 20785
 (301) 627-4870

Sacramento (Calif.) High School

Experimental grievance procedures featuring student and teacher participation and outside review in process of implementation.

Office of the Ombudsperson, University of Michigan

In 1972, the University of Michigan established the Office of the Ombudsperson which : (1) "assists students with problem resolution, (2) provides direction for the student searching for a University resource, assists in cutting red tape, assures a just settlement for student grievances, (3) guides a student with a complaint through existing channels of redress and/or acts in the resolution of conflict, (4) maintains accurate information about the structure of the institution, (5) provides detailed knowledge of the rules and processes of the University, and (6) initiates referrals as procedurally appropriate." The office will assist with both academic and nonacademic problems.

H. R. Calhoun, Ombudsperson
 Office of the Ombudsperson
 University of Michigan
 3370 Michigan Union
 Ann Arbor, Michigan 48109

Office of the University Ombudsman, University of Pennsylvania

This office acts as a complaint department for any member of the

ALTERNATIVE DISPUTE MECHANISMS

school community (students, faculty, employees) for a wide range of problems (problems with grades, tenure, no pay check, etc.). With the complainant's permission, the office will speak with other involved parties and attempt a resolution. The office has no formal or enforcement powers.

Katharine Fischer, Assistant Ombudsman
University of Pennsylvania
3537 Locust Walk
Philadelphia, Pennsylvania 19104
(215) 243-8261

SMALL CLAIMS MECHANISMS

California Small Claims Court Experimental Project

Chapter 5-B of the California Code of Civil Procedure establishes "procedures and programs in the small claims courts of specified districts designed to stimulate use of those courts, and reduce the number of defaults by untrained individual litigants unfamiliar with the judicial system who might have previously considered small claims courts an inconvenient or unsatisfactory forum for resolution of disputes. . . ."

Compulsory Arbitration of Small Claims

In Arizona, California, Cuyahoga County, Ohio, and Philadelphia, all claims below a stipulated amount must be presented first before an arbitrator. Trial *de novo* is permitted by the losing party (in California only the defendant may appeal) to comply with the constitutional requirement of trial by jury. In Philadelphia, however, the appellant must pay the costs to date. In Arizona, the superior court of a county by majority vote of the judges thereof must adopt the Uniform Rules of Procedure for Arbitration in order to effect compulsory arbitration. For further details, see, JOHNSON, KANTOR AND SCHWARTZ, *OUTSIDE THE COURTS*, ch. 5 (1977).

New York City Small Claims Court

The City of New York provides a simple and effective procedure for handling claims up to \$1,000. Hearings are held during evening hours in each of the five counties of the city. The parties have the

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option of taking their dispute before an experienced volunteer lawyer serving as arbitrator, and if they choose an arbitrator, their case will almost certainly be heard the first time it appears on the calendar. The award of an arbitrator is final, while there is a right of appeal from the decision of a judge. The judge or arbitrator is directed by statute to render substantial justice in accordance with the rules of substantive law, but without regard to most rules of evidence. A neighborhood division of the court meets Thursday evenings in Harlem where bilingual staff and consumer advocates are available to assist litigants.*

San José Neighborhood Small Claims Court

This project, sponsored by the Municipal Court of California, San José Milpitas Judicial District and Santa Clara County Bar Association, provides for mediation (mandatory) and arbitration (voluntary) of statutory small claims (maximum \$750). The project handles claims arising from a wide variety of tort and contract relationships. Auto accident damage claims comprise the largest class of cases (40%). All mediators and arbitrators are experienced lawyers nominated by the county bar association and selected by the court. All decisions are in writing and become judgments of the Small Claims Court. The project is housed in a community facility and has convenient evening sessions.

Judge Robert Beresford
 San José's Neighborhood Small Claims Court
 Municipal Court of California
 200 West Hedding Street
 San Jose, California 95110
 (408) 229-1121

Topeka Consumer Small Claims Arbitration Board

This project, sponsored by the Better Business Bureau of N.E. Kansas and the Topeka Bar Association handles consumer merchant disputes through arbitration.

*See Sarat, *Alternatives in Dispute Processing: Litigation in a Small Claims Court*, 10 LAW & SOC. REV. 339 (1976).

ALTERNATIVE DISPUTE MECHANISMS

Marilyn White, Operations Manager
 Topeka Consumer Small Claims
 501 Jefferson, Suite 24
 Topeka, Kansas 66607
 (913) 232-0454

VICTIM/WITNESS ASSISTANCE MECHANISMS

This subheading, in actuality, does not fall within "dispute resolution." It is nevertheless included herein because ideally a neighborhood justice center could and should have the ability to offer such assistance.

Boston Urban Court (see mediation)

Victim/Witness Assistance Project

This project offers a wide range of services to victims and witnesses of crime, including interviews of all civilian and police witnesses. The interviews obtain information necessary to notify parties of future court dates while avoiding unnecessary appearances. Also established is a standby telephone alert system which gives a witness one hour notice to appear once it is evident that his/her appearance is necessary.

Transportation may be arranged for those requiring it and counseling is also available. A Crime Victim Hotline is maintained seven days a week for those seeking information, counseling, or other assistance. There is also an Emergency Repair Unit providing late night repairs to secure homes and businesses that have been burglarized. Child care is also available for children of those making court appearances, along with a reception center for the witnesses where referral, monetary victim assistance and other services are offered.

Mark Feinstein
 Victim Witness Assistance Project
 50 Court Street
 Brooklyn, New York 11201
 (212) 834-7400

Mr. ECKHARDT. Thank you.
Mr. Dean Determan.

**STATEMENT OF DEAN W. DETERMAN, VICE PRESIDENT,
COUNCIL OF BETTER BUSINESS BUREAUS, INC.**

Mr. DETERMAN. I am vice president, Council of Better Business Bureaus. One of my functions is to direct our national program on consumer arbitration. I will focus my comments in that area. We have had experience in the past 6 years on this program. We have hit a lot of pitfalls; made a lot of changes; and done a lot of things as we have tried to put together a program which meets the interest of the consumer at no cost to the consumer or the taxpayer.

This program has now expanded into 98—as of yesterday—major metropolitan areas. We are running thousands of arbitrations each year generally, which come from the Better Business Bureau's arbitration program. We are using this arbitration program to serve as some final rule in these cases that we get.

We found large acceptance by the business community and others for this program in areas where we have moved. We have about 21,000 businesses as of last year who are precommitted to arbitration. They have agreed to go into the process, but it is up to their complaining customer to make the final decision. They have other alternatives if they wish.

Our program is one where the parties choose their own judge, in effect. The hearing is held at the convenience of the parties. It involves inspection. If the quality of workmanship is at issue, we provide experts, for instance in an auto repair case. The decision of the arbitrator is final and binding. Because it is voluntary, in only six-tenths of 1 percent of the cases has the loser failed to go along with the award. In those cases where the winners have gone to court, the court has upheld the arbitration and award.

The auto industry, this year has moved into this program in a way we have never seen them do before. We have Ford, Chrysler, Volvo, and others moving and testing out our arbitration.

General Motors has made a major precommitment in the Twin Cities area to arbitrate warranty disputes on vehicles which have fewer than 36,000 miles or 3 years of operation. That is a significant program. We are getting a lot of fine statistics and in-depth information from that program. We will be glad to share it with the committee when we get the statistics. It just started about 3 weeks ago, and we are doing a lot of experimenting and testing the waters in this arbitration area. I think you will see and hear a lot about the program in the near future.

I would like to address myself to a few things, including cooperative efforts between the private and public sector. Frankly, we do see a need for government operations in a number of areas where the private sector does not have a mechanism or where there is fraud in the marketplace. We think these are areas where government should move. But the private sector has to be encouraged, as this legislation does. We would all be inundated if the private sector were ineffective. Take a look at the auto manufacturers alone. Each day, there are over 1 million service transactions which take place in this country on automobiles. Actually, it is

much greater than 1 million. Goes into 2 or 3 million a day. The auto industry has thousands of complaint handlers hired on budgets higher than the appropriations contemplated by this legislation. The BBB's and government get only the tip of the complaints iceberg. As we look at the industry, we see much experimentation taking place as well.

Take the Ford complaint program in North Carolina, Congressman Broyhill, it has been highly successful.

The other points I would like to make relate to the mechanism itself. First, one of the things we have seen is that you have to have a mechanism that is noninstitutional and nonlegal in nature.

We find that the public just doesn't accept the legal settings. They avoid lawyers. They avoid legal arguments. They avoid the formal evidentiary matters that go into these things, and other institutional trappings. They really like that informal proceeding that takes place in the evening, weekends; and they like the lay-person arbitrators.

In our largest consumer case involved a home improvement situation of over \$180,000, and both parties insisted they did not want a lawyer as an arbitrator in that case.

In many of our disputes, most of our disputes, in fact, involve a breakdown of communications between the parties, but sometimes you do need expertise. You need inspection. You have quality of workmanship as an issue. So an institution should have the flexibility to go out and actually look at a job, look at what sort of a swimming pool liner was put in, look to see whether that wall-to-wall carpeting in fact was put in properly.

Finally, if inspection sometimes alone is not enough, you have neutral experts around to look at the automobile in depth, to look to see if that brake repair job was done properly. I couldn't do it and most small claims courts judges can't do it, and I think any mechanism ought to provide for something like that.

The fourth area, and I understand you raised this issue yesterday, Mr. Chairman, in this highly mobile society we live in, we have many disputes where the consumer and the business are separated geographically by many, many miles. You have tourists who go through town and have an automobile repair job and they are a 1,000 miles away when that dispute comes up.

We have lots of mail order disputes. That is the highest consumer complaint category in the marketplace today; and you have situations where a landlord might be holding on to a deposit in the former town where the tenant resided. We have all of these situations and I think any mechanism must provide flexibility here.

We have conducted arbitrations on conference phone calls and in writing. We have had one party present at the hearing room while another party is giving his testimony on a telephone squawk box. We have had many situations where we have dealt with situations involving remote parties.

Finally, we have seen too many consumers—and I am sure this has been brought out before—who have dropped out because of the many levels of complaint handling that take place. Folks tend to feel that they have been spun when they have gone to the fifth, sixth, or seventh level of complaint handling. The same is true with the small businessman. He does not have the time to go

through all of these levels. I think an effective mediation system is necessary, and we hope that where any program of finality is put in, such as arbitration, that you do have an effective mediation process that precedes it, but we would like to see a process that has no more than these two levels. I think this basically gives you our view on the kinds of mechanisms you are contemplating.

I will be glad to answer any questions later.

[Mr. Determan's prepared statement follows:]

STATEMENT OF DEAN W. DETERMAN, VICE PRESIDENT, COUNCIL OF BETTER BUSINESS BUREAUS, INC.

Mr. Chairman, I am Dean W. Determan, Vice President, Council of Better Business Bureaus, where one of my major responsibilities is to provide policies and direction for our National Consumer Arbitration Program.

We were pleased to receive your invitation to appear before this Subcommittee to consider the proposed "Consumer Controversies Resolution Act" (H.R. 2482, H.R. 8679 and S. 957). We testified on this measure in the Senate more than four years ago, and your invitation gives us an opportunity to describe the progress that has since been made in private sector dispute resolution. Also, our own experience in establishing and running a National Consumer Arbitration Program provides us with the experience to review certain provisions of the proposed legislation.

We believe this progress report and our experience will be of value to you; however, neither the Council of Better Business Bureaus nor I as its spokesman today are authorized to take a position on this proposed legislation.

The programs and services of the Council of Better Business Bureaus, headquartered in Washington, D.C., are funded exclusively by business in the interest of consumers, just as they are in the 146 Better Business Bureaus and branches in most major metropolitan areas across the nation. Bureaus are engaged in two major efforts:

First, we consumers know how to avoid marketplace disputes by providing the public with information to make them more sophisticated buyers.

Last year 8.2 million oral and written requests for assistance or information on business firms were received from consumers. Our dispute prevention efforts include the broadcast media with hard consumer information being broadcast over 4000 radio stations and all three major networks; also, special children's TV spots using the RIITTS puppets are now seen. Print media are also included as more than 650 newspapers receive our weekly Consumer Tips column, and our own Tips brochures provide consumers with more in-depth information about the most critical service and product areas.

Our second major effort speaks directly to the subject before this Subcommittee. This effort is best described in the broadest category called "self-regulation." It involves the establishment of programs and procedures to stop questionable activities in the marketplace and to deal with consumer complaints about those and other activities. Among the programs in this area is our National Advertising Division, which reviews and receives complaints about regional and national advertising campaigns, and which then undertakes specific actions to stop advertising that is misleading or deceptive. Our advertising standards and trade practices programs, administered by the local Bureaus, are also included in these activities. And our normal complaint handling, mediation and arbitration functions are included.

Last year, Better Business Bureaus handled more than 800,000 consumer complaints by phone and by mail. Our statistics indicate that approximately 77% of these complaints were mediated by the Bureau and settled in one fashion or another, but not always to the complete satisfaction of the consumer.

For the less-than-satisfied consumer or for the consumer complaint which is challenged by the business, more than 100 Better Business Bureaus in major metropolitan areas across the country now are in a position of offering voluntary but binding arbitration. In this program, Bureau staff explain the program to the business and to its complaining customer. If the parties agree in writing, we then conduct a legally binding arbitration hearing to give a final solution to their dispute.

Each party to the arbitration is given an identical list of five arbitrators—all volunteers from the community who have gone through a special training session—together with their qualifications. The parties are told to cross off those who are not acceptable and to give us a 1-2-3 priority listing of those remaining on the list.

Bureau staff will then take the highest overlapping choice and schedule a hearing at the convenience of everyone—often in the evening or on a weekend.

If quality of workmanship is at issue, the arbitrator or a neutral expert provided by the Bureau will inspect the job in the presence of the parties. The actual hearing can even take place at the same time and place as the inspection. We have had arbitrations actually conducted at the site of a home improvement job or in other locations where a product or a repair job could be viewed during the hearing.

After the informal hearing, in which parties may be represented by counsel or anyone else (but seldom are), the arbitrator will give a decision or award that is legally binding on the parties. The case may not be reheard by a court unless bias of the arbitrator or other prejudicial procedures or policies are proved.

This program continues to grow each year. Our status report as of last September shows that Bureaus conducted more than 4,600 cases last year—an increase of over 312% from the year before. More important is that arbitration was offered to the parties in over 34,000 cases, and a large number of these resulted in settlement before the matter came to arbitration.

Today there are more than 4,500 trained volunteers who have agreed to serve as arbitrators. These include housewives, retired persons, government employees, lawyers, teachers, professors and others, who are all unpaid! And because they are unpaid, and because the Bureau's overhead is paid by its business members, there is no fee charged to the consumer, although non-supporting businesses may have to pay a nominal fee.

The business community is beginning to give even more attention to this arbitration program. In some Bureau areas, businesses have precommitted to arbitration any dispute which they and the Better Business Bureau cannot resolve through less formal means, but the customer still has an option to use small claims courts or other alternatives. As of last September, more than 21,000 businesses had signed precommitment forms with different Bureaus, and some businesses such as Whirlpool Company had agreed to arbitrate an unresolved customer complaint anywhere in the nation.

Even in the area of auto service complaints, which most will agree is one of the most critical consumer concerns in the country today, we are seeing an increased number of arbitrations. While we have had a large number of local automotive dealers and other repair shops precommitted to arbitrate in some areas for a long time, today we see increased interest by the manufacturers. Ford, Chrysler, Toyota, Volvo and other companies are testing arbitration on a case-by-case basis, and General Motors has gone into an entire market area to try arbitration on a broad precommitment basis.

Bettin last month in the Twin Cities area of Minnesota, GM has agreed to arbitrate any dispute relating to its warranty and its vehicles within 36 months of purchase or 36,000 miles. In this test project, the factory and its dealers will refer their hardest disputes to arbitration through the Minnesota Better Business Bureau, which is also soliciting complaints from the public. We are taking a hard look at this program, and we are gathering a wealth of data to find out what cases should go to arbitration, how long it takes, what are the results and, most importantly, what does the carowner with a complaint think about the process and its results.

In addition to this potentially exciting test project, we are currently working with Shell Oil Company to arbitrate auto repair complaints arising under its expanding Auto-Care Program and with Exxon to arbitrate unresolved disputes coming from its company-owned service stations in certain market areas. We are also arbitrating disputes involving many other leading companies, which are testing the waters to see if arbitration is the answer to many unresolved complaints, involving many unsatisfied customers.

Government agencies, too, are taking a hard look at this arbitration program with an eye toward how they can utilize it. The Federal Trade Commission has written BBB arbitration into a number of consent orders, which, in effect, precommits the company to go into arbitration if their customer wants to do so. The Attorneys General in several states (Ohio, Texas, Minnesota and Louisiana) have also written BBB arbitration into consent orders with companies that have a record of many unresolved consumer complaints. Small claims courts in a number of jurisdictions have referred cases to BBB arbitration, and the Detroit courts have a cooperative program in which arbitration information is provided to those consumers coming to file their complaints in court. We have entered into a joint arbitration program with the Montgomery County Consumer Protection Agency in the Washington Metropolitan Area, and we have assisted other governmental agencies in setting up their own arbitration programs.

What are some of the results coming from our program? We have arbitration complaints ranging from \$2.98 to \$180,000, but our average case is approximately \$341. This average shows, we think, that a more formal dispute mechanism like arbitration usually attracts complaints that are more substantial than the bulk of complaints coming to a Better Business Bureau. Because our program is voluntary in that business and consumers come into arbitration after an actual dispute has occurred, we find an extremely low number of losers who refuse to go along with the arbitrator's decision. Our latest statistics reflect that approximately six-tenths of one percent of arbitrators' decisions were ignored by the losers, and the courts have upheld all such decisions without a rehearing when the winners have taken their awards to court.

Although it is sometimes difficult to determine who the winner really is in some cases where there appears to be a "split award," our figures continue to show a fairly even division of awards between businesses and consumers, with each receiving about 40% of the decisions and the remaining 20% being split in some fashion. We also have found that areas where an effective mediation system is in place tend to have a higher number of awards to business because the mediation efforts have often resulted in a greater number of business settlements before arbitration.

Based on our experience in complaint-handling through mediation and arbitration, we have the following observations about the legislation before this Committee:

First, we wish to commend the language of all proposed bills to the effect that "effective consumer redress will be brought about only through a cooperative functioning of both public and privately-sponsored mechanisms." We believe that any system of redress must encourage efforts of the private sector, which currently handles, and handles well, the vast bulk of consumer complaints in the marketplace. All of the governmental complaint handling agencies at the federal, state and local levels combined receive fewer consumer complaints than the Better Business Bureaus, and we receive only a small fraction of the total, because business is doing an increasingly good job of taking care of their own customers.

If this were not the case, most companies would not stay in business very long. If you were to go into the consumer relations department of our major automotive companies, you would find thousands of hard-working people with budgets far exceeding the amounts contemplated in this legislation, all functioning to deal with the complaints that arise from the hundreds of thousands of auto repairs which take place daily. You will find the automobile industry has been moving to streamline their complaint operations and trying out new programs to make their own customers more satisfied. If this were not the case, Better Business Bureaus and governmental agencies would themselves be inundated with automotive complaints.

Such efforts by that industry and other segments of American business must be encouraged. The first step at resolving consumer dissatisfaction is the responsibility of business itself through self-regulation. Only when business cannot resolve the dispute, is there a clear need for governmental action.

Government should and must be capable of dealing with all violations of law, such as fraud in the marketplace. Government mechanisms, too, should exist to handle consumer grievances with those businesses that refuse to cooperate voluntarily with responsible private sector mechanisms. And government may have to establish proper forums where no effective private sector mechanism exists.

The private sector, we believe, has a much larger role. It should be responsible for handling the great bulk of consumer grievances, as it does today in individual companies; and business-sponsored mechanisms, like Better Business Bureaus, can identify potential violations of law for referral to government. BBBs can make every effort to extend to all consumers our services, including cooperative efforts with governmental agencies such as our arbitration program.

Second, our experience with arbitration over the years has taught us other lessons which we wish to share with you in your deliberations about dispute settlement mechanisms:

(1) A workable public mechanism should strive to be non-institutional and not overly "legal" in nature. While safeguards must exist to ensure that legal rights of the parties are not denied in any dispute resolution setting, we have seen a tendency on the part of participants in arbitration hearings to avoid lawyers, legal arguments, formal evidentiary hearings and other institutional trappings of courts. If given a choice, most consumers and many businesses are quick to cross-off as unacceptable any lawyers on their lists of potential arbitrators.

For example, in our largest award to date—\$180,000 in a home improvement situation—both the homeowner and the contractor were represented by attorneys, but they insisted that the arbitrator not be a lawyer.

We have had fine cooperation from the organized bar in establishing our programs in all areas. In fact, in the State of Kansas and in several cities, all of our arbitrators are volunteers from the bar association. But we had to train a large number of volunteer arbitrators in one western city because the all-lawyer pool was unacceptable to many consumers and businesses. Most of our arbitrations today are being conducted by non-lawyers, and their decisions are generally fair and equitable. Indeed, we would welcome an in-depth review of our arbitrators' decisions to prove that responsible non-lawyers in a non-legal setting can dispense justice as well as lawyers in a legal setting, at least in the kind of disputes that come from typical marketplace transactions. We think this concept of "people's justice" will grow significantly in the future.

(2) Although most disputes involve a breakdown of communications between the parties, many consumer complaints are concerned with product quality or with the quality of workmanship in a repair situation. Any dispute mechanism handling such disputes should be flexible enough to permit an inspection of the product or job by the decider. Often such an inspection is determinative of the result.

For example, we conducted one arbitration in a graveyard, because the survivors complained that the gravestone company had not done a proper job of lettering on the tombstone of the deceased! And we have conducted many arbitrations at the consumer's home to check out swimming pool liners, waterproofing jobs, new roofs, additions, wall-to-wall carpets, reupholstered furniture and many other complaint situations.

(3) Sometimes inspection, alone, is not enough to determine whether a quality job was or was not done. A mechanism should have access to a pool of neutral experts to be on call for the arbitrator or decider in those situations where expertise is needed. Auto repair cases often require the evaluation of an expert, who ideally should not come from a competitor's shop. In one Bureau area, the local stock car drivers association has volunteered its membership to review auto repair jobs. In other areas we have turned to persons retired from business or to teachers who, for example, teach auto mechanics in local trade schools and high schools.

(4) Another area requiring flexibility by a dispute mechanism is dealing with disputants who are geographically separated. In our mobile society, we often have complaints involving a consumer whose marketplace problem concerns a distant mail order company, or, a repair bill in a city through which the consumer was traveling, or a former landlord holding a security deposit in a distant location. In our arbitration program, we have conducted hearings by conference telephone calls; we have had one party present at a hearing with the other party on a "squawk box" phone hook-up; and we have had arbitrations conducted by mail.

(5) Finally, we have seen many consumers who drop out of dispute-handling operations when there are too many levels of mediation, which have the result of forcing all but the most persistent complainant out of the process. Many small businesses, too, cannot afford the extra time involved in multiple level dispute resolution. We feel mediation is an important step in any complaint resolution, and it should be a component part of any mechanism, but it should be a single process, conducted quickly and fairly.

In summary, Mr. Chairman, the business community is expanding and extending its efforts to provide voluntary service to consumers for the redress of grievances. Through individual corporate programs, collective industry-wide endeavors, and the network of Better Business Bureaus, complaint-handling mechanisms are resolving an increasing volume of product and service difficulties faced by American consumers. These privately supported actions are a visible demonstration of the rising determination by the private sector to improve the marketplace and to be increasingly responsive to the consumer. Whenever possible this first line of complaint settlement should be recognized and strengthened in the interest of both parties and in the general public interest.

Where this means is followed through to the available stage of finality, i.e., arbitration, it can be expeditious, informal, equitable and at low cost to consumers and taxpayers. Where this process cannot be conclusive, the controversy should be referred to the available public authority. Likewise, in instances where fraud and illegalities are involved, the jurisdiction must be in the public sector. Where the public agencies and processes have inadequate resources to function effectively, they require thoughtful attention.

We believe that effective collaboration between the public and private sectors, in their respective spheres, can be accomplished to the benefit of the consumer, the businessman and the taxpayer. This goal is completely congruent with the purpose of these bills:

"To promote commerce by establishing a national goal for the development and maintenance of effective, fair, inexpensive, and expeditious mechanisms for the resolution of consumer controversies. . . ."

Mr. ECKHARDT. Mr. Broyhill.

Mr. BROYHILL. Let me just quickly go down the panel and make sure that we get in the record the position that each one of you have on two or three issues that have been mentioned.

One, of course, is the definition of disputes that would be covered by this program. I have got your first name. It is Arthur?

Mr. BEST. Arthur Best.

Our position representing the New York City Department of Consumer Affairs is that legislation should restrict its focus to consumer controversies. The reason for that is not profound. In the words of my torts professor, we can't teach everything every day, and we would adapt that to say that the consumer controversy area is large enough and substantial enough to deserve the full attention of this legislation.

Mr. BROYHILL. Should landlord-tenant problems be included?

Mr. BEST. Yes.

Mr. BROYHILL. Mr. Schultz, what is your response to that question?

Mr. SCHULTZ. The Chamber's position, Mr. Broyhill, in all due deference to your bill is to support S. 957 with its breadth, which would include all minor disputes, including landlord-tenant disputes. Although one of our members' basic concerns is to provide consumer satisfaction, not only for the quality of goods and services, but also to process and redress consumer-business disputes, our members are also concerned with the administration of justice. At the chamber, we are very cognizant of the fact that our society has become more litigious than ever before, and many of these minor disputes could be transferred to small claims courts or to informal mechanisms which in turn, would alleviate the courts' burden. Therefore, we would like to see all minor disputes encompassed, which is why we support S. 957.

Mr. ECKHARDT. Would you yield at that point? Would you include domestic relations disputes?

Mr. SCHULTZ. A noneconomic dispute such as that?

Mr. ECKHARDT. Yes.

Mr. SCHULTZ. We probably would.

Mr. BROYHILL. Ms. Page?

Ms. PAGE. The position of the Association would be to include as many disputes as possible of this nature that could be handled by the mechanism.

Mr. BROYHILL. Mr. D'Alemberte.

Mr. D'ALEMBERTE. It is our view that the definition in S. 957 is the proper definition.

Can I just comment on some testimony that I think you got yesterday from the consumer agency administrators?

I noticed part of that testimony urged that if the consumer dispute resolution techniques were in place, that they then could be adapted to serve other kinds of disputes. That may be correct, and that does in fact work both ways. If you get the dispute resolution techniques in place, there are many places where a broad-based mechanism does best serve the consumer, because the

consumer knows that there is one place to go for a variety of problems. I have some personal doubts, these are not ABA doubts, but some personal doubts, about housing courts, for instance, and I have the same personal doubts about pure consumer devices.

I think it is somewhat confusing to the person who has a wide range of problems, and that all of these problems are probably better handled if you have a single place to go where you get disputes resolved.

I think that we need to see a great deal of experimentation and see what does work. I may be wrong. Housing courts may work and may be the best way to handle those types of problems. Narrow dispute mechanisms may work. That may be the best way to resolve problems, but I don't see much chance to do anything through this legislation other than to encourage a great deal of broad experimentation, and we can look back some years from now, hopefully not too long, given the speed with which this committee is acting, and see what does work and learn a great deal.

Mr. BROYHILL. Professor Johnson, would you want to share with us some of your experiences in response to this question or this issue?

Mr. JOHNSON. I think that what Mr. D'Alemberte has said is very much the same thing that I would say, that is, that we have yet a great deal to learn in this field, and that we should not foreclose options, including the option that a mechanism may simultaneously serve consumer grievances, landlord-tenant grievances, interfamily grievances, et cetera, and I think that we have to have a piece of legislation as broad in scope as this one is.

Mr. BROYHILL. Mr. Determan.

Mr. DETERMAN. Our expertise is in the area of consumer complaints, and I really feel that a consideration of this type requires response from somebody with somewhat more breadth, such as the ABA and others, who have addressed this issue. Frankly I think it is a public policy issue for you to decide.

Mr. BROYHILL. The next question I have for the panel, and I appreciate your response to that, is how broad a program should we be enacting here?

As I understand the Senate-passed bill will be funding really experimental programs in each of the several States, whereas the bill that I have introduced would actually be much broader than that, that is, that it would be encouraging the States, providing seed money to encourage the States, to set up programs in the States that would be serving large numbers of people in many different areas of the State, rather than setting up one experimental program in a State that might serve one community.

So could we go down through the panel again, and see if we can get the responses to how broad a program do you think that we should be enacting here, putting into place?

Mr. Best.

Mr. BEST. I would respond that from our point of view, the difference is not crucial. With the amount of money that is at stake, at least initially, all that any city might hope to derive from the legislation would be money for perhaps one or two programs. Whether they were thought of as experimental or not might not be so consequential. In general, I would make the point that there will

never be an end to the need to experiment and conduct research, but we should recognize that there are a number of ideas that have been tested fairly well, that we know do work, and the goal with respect to those ideas is to put them into place so that they will be available to more people.

Mr. BROYHILL. Mr. Schultz.

Mr. SCHULTZ. Mr. Broyhill, we support the establishment of experimental-type programs, with one or two innovative programs established in a given State or local community rather than the establishment of broad-scale, statewide programs.

We never envisioned a program that broad or that extensive. Instead, we are hoping for this program to serve as an incentive, as a catalyst, to spur States and local communities and nonprofit organizations to establish similar programs. We are hoping, and it is the intention of the bill, that after 4 years the States will take it upon themselves to administer these programs and to establish and improve them on their own. This legislation is basically designed just to get the program off the ground and to provide the catalyst needed to establish these programs.

Mr. BROYHILL. Ms. Page.

Ms. PAGE. I would say that our emphasis would be more on the quality of the program, whatever it is, rather than on the breadth of the program, or on the jurisdiction which administered it. So that I wouldn't want to voice a preference as to whether the method endorsed in one bill is preferable to that of the other, because I think the quality of the program itself is the thing that we really focus most on.

Mr. BROYHILL. Mr. D'Alemberte.

Mr. D'ALEMBERTE. Mr. Broyhill, with the limited amount of money that is involved, I don't see much possibility of this legislation doing anything other than funding a fairly limited number of experiments.

I don't see a broad delivery of these programs, whatever the definition is, without a great deal more money being authorized. I guess I would change my mind if you told me an awful lot more money would be available. I really do like the broad approach of S. 957. I think the ABA, however, would actively support an amendment increasing the authorization above the \$15 million level, but I am led to believe this might not be possible. Those are the facts. If we are dealing with limited funds, I think we get the best return spending those funds on programs that then attract attention and then hopefully get the State replicating those with their own money, and we have seen some of that happen already.

Mr. DETERMAN. I think even in our limited area we see the need for a lot of experimentation, a lot of different approaches, a lot of different things to be tried, and there are a lot of unanswered questions even within the mechanisms that exist. I would like to find out, for example, whether lay persons give just results? If you have a judge who is not a lawyer, does he come out with the same kind of justice that a lawyer does or a judge? I think we have got to take a hard look at this. We have got thousands of decisions being made by lay persons, and we think, we hope that they give full legal rights to the parties, but we would like to find out, and we

think the bills as designed, all of them, would provide for that sort of experimentation and research.

Mr. BROYHILL. Then the last question is, should the program be in some way tied to the legal system, or is it going to be a mediation and arbitration system by itself, or should it be in some way tied to the court system through Small Claims Courts and so forth?

Would you comment on that?

Mr. BEST. Yes.

We advise consumers who come to our department that they should allow us to attempt one effort at mediation in their dispute. If that effort at mediation does not produce a satisfactory result, we ordinarily advise them to represent themselves in the New York City Small Claims Court.

I think that that is consistent with the point that Mr. Determan made earlier this morning, that one of the worst things that can happen to a consumer with a problem is to be shunted from one third party to another third party, and get the kind of runaround that buyers complain about when businesses do it to them. We believe that one attempt at mediation is desirable in most problems, and that if that attempt fails, recourse to courts is the most appropriate step. For this reason, the programs we are discussing today ought to be defined broadly enough to include both courts and nonjudicial mechanisms.

Mr. BROYHILL. Your program is not tied to the court system. You are not part of the court system.

Mr. BEST. That is correct.

Mr. BROYHILL. In other words, you offer information and advice on how to get into the court system, but you are not part of the court system itself.

Mr. BEST. That is exactly right. We have some employees located in one of the New York City small claims court branches, the Harlem branch, and they act there purely as advisers.

Mr. BROYHILL. Mr. Schultz.

Mr. SCHULTZ. Mr. Broyhill, we support a three-part program. Initially, we would hope that consumers would go directly to the companies in question and try to seek redress on a face-to-face complaint handling basis. However, we realize that sometimes disputes will not be handled satisfactorily intracompany. Should that happen, we recommend that the dispute be handled on a mediation or arbitration basis by a third party complaint resolution service. However, should formal adjudication be necessary, we would certainly support the establishment and the improvement of small claims courts throughout the country. However, we emphasize that those court procedures should be fair, should be dignified, and at a minimum cost to the consumers. We would like to see evening and weekend hours, improved accessibility, perhaps by having the small claims courts housed in public libraries and other public institutions. That is basically our position. Above all else, we are looking for a program that is expeditious and fair.

Mr. BROYHILL. Ms. Page.

Ms. PAGE. I think that one of the basic considerations in tying it to the court system is the fact that you would be adding an additional burden to the court system, and most of the alternative methods are devised and have been developed to alleviate court

congestion. While I think that the mechanism should not be tied to it, I don't think that courts should be excluded from it.

I don't think that attorneys, for example, as part of the whole legal process, should be excluded from activity under the bill either. The enforcement aspect of the bill I think is very, very important, because you can have the most magnificent mechanism in the world developed, but if there is no collection, then it is just the same as if there had been no mechanism at all. So that I think that where it is essential for enforcement to be via the courts, I think that there should be access to the courts.

One other alternative would be to set up separate enforcement mechanisms, either separate and apart from the courts, or connected in some way with the courts themselves, without possibly burdening the courts additionally.

Mr. BROYHILL. Mr. D'Alemberte.

Mr. D'ALEMBERTE. I will defer to Professor Johnson for elaboration.

Mr. JOHNSON. In a paper I prepared for the National Center of State Courts on this issue, I noted that this is an issue to be confronted on a State-by-State basis as to whether eventually certain mechanism should be included under the judicial branch or under the executive branch or somehow completely independent of any branch of government. It is an issue that really has to be faced further down the road, and that for the present time we should be having experimentation both inside the courts and outside the courts, improvements in small claims courts and specialized courts at the same time we are experimenting with alternatives completely outside the court structure.

Mr. BROYHILL. Mr. Determan.

Mr. DETERMAN. I would go along with what Ms. Page said. That is I would like to see the mechanisms outside the courts generally, but you must have the courts there to enforce with the final word. They have got to be there overseeing in some fashion.

Mr. BROYHILL. Thank you, Mr. Chairman.

Mr. ECKHARDT. I gather from all of your testimony, that the bill would provide for a type of institution that might embrace three functions. One would be that of information and publicity, two would be mediation, and three would be some manner of voluntary adjudication.

I gather, Mr. Best, that the New York Department of Consumer Affairs primarily embrace the first two.

Mr. BEST. I believe that is correct, Mr. Chairman.

Mr. ECKHARDT. But, Mr. Determan, I understand that your program places strong emphasis on the last.

Mr. DETERMAN. That is right.

Mr. ECKHARDT. Adjudication through arbitration.

Mr. DETERMAN. The first and last. I think you have got to publicize whatever you have.

Mr. ECKHARDT. I am interested in certain aspects of this business of a prior agreement by merchants or manufacturers and others who sell to the public, and I suppose landlords to a certain extent. You secure the agreement in advance, and then these persons are considered bound to go through the procedures, but the other party may elect whether or not to go through the arbitration procedure.

Mr. DETERMAN. That is correct, and that type of precommitment works with your better businesses, those businesses that have a real desire to put a final solution to their customers' problems. You have got a lot of businesses that don't sign those precommitment forms, and we have been working with them. Again, this is where you have your partnership role or your joint approach of government and the private sector. For example, the Federal Trade Commission has written BBB arbitration into its consent orders with companies that have a high number of consumer complaints. The attorney general of Texas did the same thing with a sewing machine company down in El Paso and we have had the attorneys general in several other States that have done the same thing—in effect, precommitting through consent order a business to arbitration. We would like to see many, many more businesses enter into this type of precommitment voluntarily.

Mr. ECKHARDT. And the voluntary commitment, I suppose, is brought about to a very large extent by the first proposition, that is information and publicity.

Mr. DETERMAN. To a large extent, that is true, I think.

Mr. ECKHARDT. I wonder. You brought out one thing that I think is extremely important with respect to certain types of disputes. We have a very mobile society. Therefore, in some cases, a dispute may occur in a given State, and may technically and legally constitute a claim which is within a given jurisdiction, and within the venue of that State or a certain portion of that State, while the person who has been injured may be in another State. This is especially true with respect to landlord-tenant situations and may present some enforcement problems for the attorney general of the injured party's State. You even mentioned the question of retention of deposits.

It has concerned me that the landlord is most always the stronger party with respect to the original contract. I have never seen a contract for rental of premises that was not drawn most favorably to the landlord, and frequently there is a clause in the contract stating that the question of whether or not the deposit will be returned is one to be determined by the realtor who actually continually represents the landlord. Of course, the realtor is not going to see that tenant again because that tenant may be someone who may have moved out of the State, but he will see the landlord again, and he does business with him, and he is not, I wouldn't say, exactly an unbiased arbitrator on the question of whether or not the landlord gets enough money to not only repair the normal wear and tear on the premises during the rental period, but also to refurbish it for his next rental.

How do you get by that kind of thing in your landlord-tenant situation? Do you really get many landlords that agree to this?

Mr. DETERMAN. Not an awful lot. We had one situation in New York City last year where we had a class action arbitration, where a number of tenants agreed to arbitrate with the landlord on this whole issue of the retention of security deposits. The interesting thing is that the landlord is giving up certain legal rights in a situation like this. He is in effect giving up, if he goes into arbitration like this, his legal contractual rights given by the lease that he

has signed with all of these tenants. It does not have the same legal effect as if he were in court.

In effect, the arbitrator deals with the lease just as if it were another piece of evidence, and comes down with what is considered to be an equitable or fair, reasonable judgment.

Mr. ECKHARDT. In other words, this agreement to arbitrate is an overriding agreement——

Mr. DETERMAN. That is right.

Mr. ECKHARDT [continuing]. To permit a just application——

Mr. DETERMAN. Precisely.

Mr. ECKHARDT [continuing]. Of considerations between the landlord and the tenant.

Mr. DETERMAN. And for the landlord who wants to stick to his rental agreement with the tenant, in many instances they go to their lawyer and they look at it and they say "Well, we are not going to arbitration on this because the courts are probably going to come back and give us a much better break than an arbitrator will." Of course, it is going the other direction in the courts today too, in terms of these leases.

Mr. ECKHARDT. And, of course, the landlord has the money, so he doesn't have to go to court to get it. It is the tenant that has to go into court to recover.

Mr. DETERMAN. This is true in most of our consumer complaints, Mr. Chairman. In the majority of cases the business has already been paid and is going into a proceeding of this type to see whether or not some of the money that has been paid is to be given back.

Mr. ECKHARDT. That would be true in your mail order case.

Mr. DETERMAN. Exactly.

Mr. ECKHARDT. I understand in the District of Columbia there is almost a pattern of landlord retention of deposits, on the assumption that the landlord will have to clean up, repair the house, and put it in a situation where it is rentable, even though the difference between the situation which existed at the beginning of the tenancy and that which existed at the end was due to normal wear and tear.

I know in the Magnuson-Moss Act we really established a requirement that if a warranty is to be called a full warranty or is not to be labeled by some term that indicates it is much less than a full warranty, that certain reasonable standards be adopted, and we either spell those out or spell out guidelines which the Federal Trade Commission shall further amplify.

I am wondering if it might not be helpful in a landlord-tenant situation, if something similar to that were done. I am not suggesting necessarily that this be in a Federal statute, but at least that it be encouraged at Federal or perhaps at a State level.

I would think particularly in the landlord-tenant situation, it would be very difficult to work out a fair means of arbitration of the matter when the original contract is written so favorably to the landlord.

Mr. DETERMAN. Again if you are arbitrating, you don't apply that contract under——

Mr. ECKHARDT. That is true but how do you get the landlord to agree to put himself in a worse position? First, he has the deposit.

Mr. DETERMAN. Maybe Ms. Page can address herself to this, but I suspect that there are many lease contracts that do call for arbitration through the American Arbitration Association in various situations, aren't there?

Ms. PAGE. There are some. Some of our landlord-tenant type situations come through special programs. Those might have to do with housing developments, and they might also be involved in the same type of issue, the return of security or some other problems, the tenant has respecting the premises of the landlord.

Mr. ECKHARDT. But, Ms. Page, would that not tend to be most often the case in situations where the tenant for one reason or another is in a stronger position in the original negotiation with respect to the contract rather than the ordinary landlord-tenant dispute?

For instance, if there is some association negotiating for the tenant, or if there is some provision by which the government is subsidizing the rent and therefore insists on a fair deal, that sort of thing would seem to be possible. But it is hard for me to think of a case where a landlord would use the American Arbitration Association unless it were a rather large tenant who held a strong bargaining position in the original negotiation.

Ms. PAGE. Quite correctly, as you have said, some of those leases, which name Triple A, do involve large commercial enterprises, but others of them, for whatever reason, have included the American Arbitration Association as the remedy or as the place where they are to seek their remedy.

Mr. ECKHARDT. How much does it cost to arbitrate such a matter, for instance, in an ordinary tenancy?

Ms. PAGE. If the arbitration were under our straight commercial rules, there would be a flat initial fee, \$100 or \$200, for the use of the process itself. In the normal commercial type dispute, there is an additional amount, depending upon the amount of money sought in the claim, or if there is a counterclaim asking for money, then there would be an amount of money asked for and payment of the administrative fees to handle that part of it.

Where we work in the consumer areas, however, we have special fees.

First of all, the programs which involve consumer type disputes are financed. I mean clearly they would have to be financed, because for the average consumer who has, for example, a small landlord-tenant dispute involving maybe \$150 or \$200 as the amount of security, it would be uneconomical for that person to have to pay the \$200 fee, so that where we deal in the consumer area, there is a special program which is financed either by a municipality, by grant or something of that sort, and the cost to the consumer is minimal or none at all, as under the homeowners warranty program which falls under the Magnuson-Moss Warranty Act, so that the person to whom the program is aimed is taken into consideration in terms of setting the fee for the use of the process.

Mr. ECKHARDT. I address this to the entire panel.

What sort of records are kept with respect to the types of complaints and the persons who are the subject of the complaints, and to what extent is there publicly available information concerning these records?

Mr. BEST. Mr. Chairman, our department keeps full records of the names of businesses complained against, and the dispositions of those complaints. Those records are open to the public. A serious problem though is that few members of the public take advantage of them, and public interest groups in the New York City area themselves do not seem to avail themselves of this resource.

It seems to me that that kind of information would be valuable in a number of ways. One is to identify persistent wrongdoers, and another is to identify kinds of transactions that lead to persistent problems, with a view towards using that identification as a way of coming up with legislative proposals or substantive law changes.

Mr. ECKHARDT. What about the Better Business Bureaus?

Mr. DETERMAN. We keep complete records of all complaints in all the cases, all the way through these arbitrations.

They are private proceedings, however. Arbitration is a private contract between two individuals, and we don't publicly release any of the record relating to arbitration, but everything that happens before arbitration is open to press, public, governmental agencies and others, and have frequently been subpoenaed in trials of one type or another. Also, we publish national statistics on these complaints.

Mr. ECKHARDT. Suppose I want a plumbing job done at my house, and I want to be sure that I don't get a plumber that is always in dispute with persons?

Mr. DETERMAN. I would advise you to get a plumber that has had a dispute and it has been resolved right. I distrust the person who has never been involved in a dispute, Mr. Chairman. Last year we had about 8.1 phone calls and letters to Better Business Bureaus for information about businesses. Let's assume, you get three bids from three plumbers for your plumbing job. You say to the BBB: "Give me the reports on Plumbers X, Y, and Z" and we will tell you how many complaints they have had, whether they have adjudged them properly, whether they are precommitted to arbitrate any dispute and things of that type.

Mr. ECKHARDT. Can one call into the New York agency and find out that information?

Mr. BEST. Yes, Mr. Chairman, that information and also information about whether the business has a license, if it is a business that operates in a category, such as home improvement where a license is required.

Mr. ECKHARDT. I cannot help but feel in this discussion that the major problem lies in situations where there is a disparity of bargaining power, and it would seem to me that this occurs often in the consumer complaint field. Mr. Broyhill asked the question as to your recommended breadth of the operation. It would seem to me that if there is a priority as to what should be dealt with by a procedure of this nature, it ought to lie in the situation where the purveyor of goods and services is relatively large and relatively remote from the neighborhood or the community, or one may say the reach of the other party, rather than in which the two parties are relatively equal in position.

I gather that the bar association is not altogether in agreement with that because you recommend a broader scope of these agencies.

Mr. D'ALEMBERTE. Yes, sir. I think that the disparity in bargaining power illustrates one of the problems with minor disputes. Some of those disparities really need to be dealt with in substantive legislation.

As I listened to you talking about landlord-tenant disputes, I found myself not in strong agreement because I was thinking about some of the things we try to do in the State legislature to remedy some of those problems through changes in substantive law.

I am not sure we will remedy some of the ones you have talked about, but we have dealt with some of those substantively, which I think is preferable to attempting to resolve a substantive law question through altered procedures.

But isn't there another kind of disparity, another kind of injustice; even where the system itself would give people forums for dispute resolution, where both parties are equal, it does not really give them any resolution?

We let people go down to a JP court and complain about their neighbor, but all that is going to come out of that is a judgment or a fine against the neighbor. However, those two neighbors will go back and live under circumstances that may be actually worsened by the experiences they have had with the system. Thus, although the system provided what we might call justice, it did not really provide a lasting resolution.

Mr. ECKHARDT. But to get relief, you would probably have to go to the JP court or the small claims court or some court anyway, wouldn't you? I mean you might be able to mediate the question, and in that way weed it out?

Mr. D'ALEMBERTE. What we are seeing from what has been done so far—and I emphasize that very little has been done compared to what might be done if you were to pass this legislation—but what we believe we are seeing is a rather good result through mediation, and that it produces results better than those that lawyers and courts can give, and as lawyers we don't object to that.

We are beginning to recognize some limitations on what courts can deliver. So there still may be a limitation, even where there is no disparity in bargaining power, in a case where the system asks a citizen to take his neighbor down and have his neighbor adjudicated, because they are still going to be neighbors and they are going to go back living side by side, but the underlying dispute remains unresolved. Mediation in our judgment, will turn out to offer a much better result than adjudication. Furthermore, that same citizen, having used a dispute resolution center, may well go back to that center for consumer matters, landlord-tenant matters, and other matters, and that as a result, breaking these things apart into these specialized agencies may not be the best way to go. It may be, but that is why we like the general experimental approach here.

Mr. ECKHARDT. Is there any further comment amongst the panel?

Mr. JOHNSON. I just wanted to point out that using the test of a bargaining disparity between the parties, you really include not just consumer cases, but if you applied that test, you would really have to encompass most kinds of disputes that come to the courts, because a prevailing characteristic of most litigation is disparity between the parties: Employer versus employee, landlord versus

tenant, et cetera. I have had many women's groups and others say to me that there is disparity when it is a husband versus a wife, particularly when the husband is the chief wage earner and he holds most of the property. So it is not just the consumer versus the big institution that presents that problem of bargaining disparity.

Mr. ECKHARDT. I don't suggest that all cases are consumer cases in which there is a disparity, but I merely suggest that virtually all consumer cases involve that.

Mr. JOHNSON. Oh, yes, that is true.

Mr. ECKHARDT. And one question that arises in my mind concerns the result when we must elect to resolve those disputes where there is the least disparity. First, the near equality of bargaining power presents the greatest likelihood of dispute resolution without resorting to any Government-sponsored procedure. Second, the very availability of the forum may actually generate some disputes that are handled in a quasi-formal manner which might be resolved even more informally if there were not a forum to go to. What I am suggesting is that I don't think we can do everything by formal social processes.

The question is how far should we go?

I think you have given us a very enlightening discussion. I thank you very much for participating together on the panel.

[The following letters and statements were received for the record:]

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING,
Seattle, Washington, July 11, 1978.

HON. NORMAN D. DICKS,
Representative, Sixth District of Washington,
House Office Building,
Washington, D.C.

DEAR NORM: The "Dispute Resolution Act", S. 957, was passed by the Senate on June 29, 1978. I have read the Act as it appears in the Daily Congressional Record—S10149-S10151, June 29, 1978, and I wholeheartedly endorse it. From my 23 years as a trial judge for the State of Washington, I know that a pervasive and compelling need exists in Washington and in the United States to facilitate access to fora which will expeditiously and fairly resolve disputes. I urge you vote in favor of this bill.

Many sections of S. 957 are especially laudible. The findings as set forth in Section 2 are completely accurate. Today, many grievances are inadequately resolved (Sec. 2(a)(2)). The collective potential impact of leaving even the most minor of disputes unresolved is ominous for our culture (Sec. 2(a)(3)).

The bill recognizes in Sec. 2(a)(7) that the resolution of disputes must be effected through a cooperative effort of the public and private sectors. Access to court is a fundamental constitutional right yet resort to the courts must not be the only method of resolving disputes. The resolution of minor disputes through private and public extra-judicial mechanisms will lighten the present onerous burden on the courts, thus freeing them to deal quickly and effectively with disputes unresolvable by other means.

Convenient access by all persons to expeditious and fair means of resolving minor controversies "arising in the course of daily life" (Sec. 3(d)) is a fundamental necessity to "establish justice" as mandated by the U.S. Constitution (Preamble). Expanding the scope of possible methods of obtaining justice will be one more step in achieving "equal protection under the law" as mandated by the 14th Amendment and 5th Amendment to the Constitution. The problem revolves around this question: Shouldn't people with minor disputes, such as those who are close to resolution of a problem or where the parties basically agree on most aspects of their dispute but need someone to help with some loose ends or when the economic or social stakes are minimal, have methods of resolution of their disputes equivalent to the methods available to people who, when they deem their disputes major enough,

resort to the courts? Clearly, the answer is yes. S. 957 provides a starting point to develop such mechanisms.

Section 4 of S. 957 indicates the criteria for Dispute Resolution Mechanisms. It stresses procedures which are easy to understand and use (Sec. 4(a)(2)) and reasonable and fair rules and procedures (Sec. 4(a)(5)). Ease of comprehension and use is of primary importance. Comprehensibility will help people utilize these services. Access to legal assistance is paramount. Disputants must be assisted to prepare before the resolution session and to know their rights before the resolution session. Such help might help them realize resolution of the dispute could be achieved by a short conversation with the other party. Sec. 4(a)(5) also ensures "due process of law" and "equal protection of the law" since the law will be available and applicable to the disputants, if they so desire.

Section 4 of S. 957 also requires reasonable and fair rules and procedures which would "encourage" resolution by informal means (Sec. 4(a)(5)(g) and "encourage" the finality of the resolution. Resolution by informal means should be encouraged, rather than mandated. Otherwise, there are severe Constitutional questions which arise. Further encouraging people to view the resolution as final is critical, otherwise the courts will be clogged with requests for trial de novo. But again the encouragement should be "encouragement" and *not* coercion, otherwise Constitutional rights may be violated.

Funds disbursed under the act may be used to compensate personnel involved in the resolving of disputes (Sec. 7(d)(1) (A) and (B)). This provision is especially important since it is necessary to provide means by which dispute resolution systems may operate. Without proper funding, it is difficult to see how the dispute resolution systems could operate.

S. 957 also requires that information of alternative redress mechanisms be available (Sec. 4(a)(5)(g)) and that research may be funded (Sec. 7(d)(1)(E)). Information dissemination is critical. Many cases come to trial which may be resolved by alternative mechanisms. Yet, the parties fail to utilize these alternatives since they have no knowledge of them. Research is essential, not only to determine effectiveness of programs but also to determine which promote justice.

Unfortunately, S. 957 presently has some flaws. I will mention them briefly. The bill in many places seems to focus on mechanisms to resolve "disputes involving small amounts of money" (See Sec. 2(a)(1), Sec. 2(a)(6), Sec. 3(d), Sec. 3(g)). The focus should be on minor disputes. Minor disputes involve not only small stakes, but also situations in which the parties could be brought together since their differences are not very great or intense. This approach is hinted at in Sec. 2(b) (available to all) and in Sec. 3(d) ("involving small amounts of money, or otherwise arising in the course of daily life"). This approach ought to be written into the bill so as to (1) broaden its impact and (2) obviate questions of its constitutionality.

I urge you to vote in favor of S. 957 as a necessary step in revitalization of our system of justice.

If you have any doubts or questions, I would welcome the opportunity to discuss it with you on the telephone or at lunch.

Best regards.

Very truly yours,

GEORGE H. REVELLE.

COX, LANGFORD & BROWN,
Washington, D.C., July 17, 1978.

Re: H.R. 2482 and H.R. 2965 (Resolution of Controversies Involving Consumers); S. 957 (Dispute Resolution Act)

Hon. BOB ECKHARDT,

Chairman, Subcommittee on Consumer Protection and Finance, House Committee on Interstate and Foreign Commerce, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing on behalf of the Consumer Electronics Group of the Electronic Industries Association (EIA/CEG) for which I am Special Counsel. EIA/CEG represents manufacturers of consumer electronic products such as television receivers, radios, phonographs, audio systems and tape recorders. EIA/CEG represents substantially all of the domestic manufacturers of television receivers and also some Japanese manufacturers which have facilities in the United States.

The Board of Directors of EIA/CEG wishes to go on record as supporting the above legislation on resolution of consumer controversies. Hearings are scheduled before your subcommittee on July 20th and 21st.

We agree that it is desirable to encourage inexpensive and expeditious consumer dispute settlement mechanisms at the state and local government level.

We particularly endorse provisions in this type of legislation which:

a. make clear that the mechanisms which would be funded do not include consumer advocacy activities in judicial and regulatory proceedings but are for the purpose only of resolving private disputes,

b. permit the use of dispute resolution mechanisms by the business community.

We would appreciate it if this statement could be included in the public record of the hearings on this legislation before your subcommittee.

Sincerely,

J. EDWARD DAY.

CONSUMERS UNION,
PUBLISHER OF CONSUMER REPORTS,
Washington, D.C., July 31, 1978.

Hon. BOB ECKHARDT,

Chairman, Subcommittee on Consumer Protection and Finance, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Consumers Union¹ is pleased to submit these comments on H.R. 2965, H.R. 2482, the "Consumer Controversies Resolution Act," and S. 957, the "Dispute Resolution Act." All three bills would establish grant programs to assist the States, localities, or nonprofit organizations in providing "effective, fair, inexpensive and expeditious" mechanisms in which to solve small disputes.

H.R. 2965 and H.R. 2482 establish virtually identical programs. The significant difference in the two House bills is the designation of the granting agency—one would place authority in the Federal Trade Commission and the other in the Department of Commerce.

S. 957, as passed by the Senate, is quite different from its House counterparts. It establishes a Resource Center and grant program within the Department of Justice—a program which differs in many fundamental respects from the House bills, both substantively and in its technical administrative provisions. Unlike the House bills, S. 957 establishes a program which does not treat consumer controversies as a matter of priority concern. And, unlike the House bills, it reflects a tendency to centralize authority for dispute resolution in Washington rather than at the State and local level. Consumers Union generally endorses the concepts contained in the House bills. We also would endorse S. 957 if the current draft were amended to adequately address the concerns expressed below.

The need for consumer controversies resolution programs

The need for mechanisms for the redress of minor disputes has been well-documented in legal literature.² Provision of redress for small causes has had a considerable history in Anglo-American law. In England, small debt courts were created by statute in 1606.³ In the United States, early attempts to provide simple justice for small claims led to the establishment of the rural justices of the peace courts. However, in 1913, Roscoe Pound offered these comments on the adequacy of the then existing minor claims resolution system:

A problem is to make adequate provision for petty litigation, to provide for disposing quickly, inexpensively, and justly of the litigation of the poor, the collection of debts in a shifting population, and for the great volume of small controversies which a busy, crowded population, diversified in race and language, necessarily engenders. It is here that the administration of justice touches immediately the greatest number of people.⁴

¹ Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide information, education, and counsel about consumer goods and services and the management of the family income. Consumers Union's income is derived solely from the sale of *Consumer Reports*, its other publications and films. Expenses of occasional public service efforts may be met, in part, by nonrestrictive, noncommercial grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports*, with more than 1.8 million circulation, regularly carries articles on health, product safety, marketplace economics, and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

² See, for example, Yngvesson and Hennessey, "Small Claims, Complex Disputes: A Review of the Small Claims Literature," *Law and Society*, Winter 1975, and the bibliography contained in Johnson, Kantor, and Schwartz, *Outside the Courts: a Survey of Diversion Alternatives in Civil Cases*, published by National Center for State Courts (1977).

³ "Small Claims Courts," 34 *Columbia Law Review* 932 (1934).

⁴ Pound, "The Administration of Justice in the Modern City," 26 *Harvard Law Review* 302, 315 (1913).

In 1913 the first operating small claims court was established in Cleveland. In the same year, the first statutory small debtors court began operation in Kansas. The idea proliferated so that a small claims court system now exists in nearly every state.

Small claims courts attempt to provide legal redress to those claimants who are likely to be discouraged by the delay, the expense, and the procedural technicalities of trial court proceedings. However, in recent times the small claims courts, themselves, have become the object of scrutiny and criticism.⁵ Thus, all three bills before the Subcommittee set forth goals of ensuring all potential small claimants forums capable of rendering effective, inexpensive, accessible and fair justice—goals which represent traditional American concepts of equal justice.

The two House bills pending before the Subcommittee largely reflect the recommendations set forth in two seminal studies. In 1971, a Presidential Commission was established to study thoroughly the inadequacy of then existing procedures for resolving disputes arising out of consumer transactions. The National Institute for Consumer Justice, a nonprofit private corporation, was established and in 1972 published its report on small claims courts in the United States.⁶ Another nationwide study was carried out by the Small Claims Courts Study Group which published its report entitled, "Little Injustices: Small Claims Courts and the American Consumer" in 1972. Both of these studies were concerned chiefly with only one class of small disputes—those between individual citizens seeking resolution of disputes arising in the marketplace—consumer controversies.

S. 957 reflects compromises reached in the 95th Congress between the Senate and the Administration. As a result of these compromises, settling consumer disputes as the primary object of the legislation has been reduced. Instead, S. 957 attempts to establish procedures for the resolution of all types of small disputes.

As a compromise bill, S. 957 represents many divergent views within the Administration, ranging from those who would like to clear the judiciary's workload to those of idealists who would seek to insure all potential litigants access to the full panoply of American judicial protection.

Scope

While certain provisions of the current version of S. 957 represent substantial improvement over previous drafts of the bill, we have serious doubts about the efficacy of attempting in a \$15 million program to solve problems pertaining to all kinds of minor dispute resolution. We would strongly recommend narrowing the focus of this modest program and restoring to the bill its original emphasis on those minor civil disputes which usually occur between buyer and seller in the marketplace.

The arguments for establishing a broadly based dispute resolution program within the Department of Justice are (1) that all small dispute resolution procedures are virtually the same and (2) that the "fractionation" of disputes into substantive categories would not be cost effective nor would it reflect sound management principles. However, including domestic and neighborhood quarrels and minor criminal cases in one forum with consumer controversies neither addresses real world problems nor reflects sound principles of dispute resolution. The needs of a recently separated husband and wife locked in an emotional child custody battle for a forum to settle various issues are not the same needs as those where a consumer contends a term of an automobile loan from the local bank violates a provision of the Truth-in Lending Law. In the former case, social workers, representatives from the community and others who understand the dynamics of separation and divorce may be needed to facilitate dispute settlement. However, in the consumer's case, a judge who has the ability to read the law and apply it to the case would probably be the arbiter of choice. Social workers anxious to smooth the ruffled feelings of the consumer and the banker would be viewed as superfluous, if not downright irritating. Thus, the requirements and resources needed to resolve one type of small dispute are not necessarily the same as those needed to resolve another.

Indeed, one should not assume that small disputes necessarily mean "simple" disputes and for that reason relegate all of them to non-judicial forums. Such

⁵ However, the assumption that small claims courts are functioning ineffectively has been called into question by the results of an empirical study of 15 small claims courts across the country. The report concluded that "the reform effort must not assume that the traditional court system cannot handle [small] disputes." See Ruhnka and Weller, "A Preliminary Report on an Empirical Study of Fifteen Small Claims Courts," prepared for the National Conference on Minor Disputes Resolution sponsored by the American Bar Association, New York, May 1977.

⁶ National Institute for Consumer Justice, *Staff Studies on Small Claims Courts*, Boston, Massachusetts, 1972. Both the "Findings and Purpose" and "Goals" sections of H.R. 2965 and H.R. 2482 closely follow the recommendations of the NICJ staff studies on small claims courts and, accordingly, consumer disputes are afforded priority attention.

relegation to non-judicial forums is precisely what could happen, however, under S. 957. In testimony before the Subcommittee, Assistant Attorney General Meador stated that the Department's conception of Neighborhood Justice Centers almost certainly would be designated as a national priority project. While Neighborhood Justice Centers may be appropriate for resolution of minor domestic relations cases or juvenile delinquency cases, they may be singularly undesirable for consumers seeking to enforce a statutory right under the Magnuson-Moss Warranty Act, or the State's mini FTC Act, or local consumer protection law.

Experimentation with mechanisms employing varying degrees of formal procedures clearly should be encouraged under this program, but hard won consumer rights and remedies should not be foregone simply for the sake of informality.

The use of federal funds for assisting the States and local governments in improving dispute resolution for their citizenry are most appropriately confined to consumer disputes. Traditionally, the criminal law, landlord and tenant law, and domestic relations law are matters of State, not federal concern, while marketplace disputes have shown an increasing disregard for state boundaries as consumers cross state lines to make purchases and manufactured goods are distributed nationally or regionally. As stated in Section 2 (a) (5) of both House bills, the resolution of consumer disputes has a direct impact on interstate commerce and, thus, the subject is appropriate for federal intervention and assistance. However, the use of federal funds for the resolution of domestic relations matters or small criminal matters should be lower priority for this program.⁷

Thus, Consumers Union would recommend that the purpose and definition sections of the Senate passed bill be amended to ensure that the Department of Justice provides grants primarily to those mechanisms capable of handling small disputes involving marketplace transactions. The legislation should emphasize the clear need for mechanisms capable of handling consumer disputes. If the resources and expertise offered by such mechanisms also lend themselves to the solution of other minor disputes, such as those between landlord and tenant and neighborhood disputes, that would provide a windfall benefit, but these kinds of dispute settlements should not be the focus of the program.

The grant program established by S. 957 represents overcentralization of control in the Federal Government over minor dispute resolution

As drafted, S. 957 requires the National Resource Center to designate certain deserving concepts as "national priority projects." Section 6(b)(5). Under section 7 of S. 957, one half of the money appropriated under the Act is to be directed to such "national priority projects." The other half of the money may be spent according to the discretion of the Attorney General. Section 7(e)(2). The only restrictions on such discretionary actions by the Attorney General are the very broad admonitions contained in Section 4 of the Senate bill.

The argument made in favor of this administrative scheme is that designation of national priority projects would ease federal administrative burdens by ensuring some uniformity in the grant application process. Obviously, yet another unwieldy federal bureaucracy should not be established to administer this program. However, administrative convenience engendered by uniform grant applications may not be as worthy a goal as allowing the States and localities the flexibility to respond to the needs of their citizens through the most appropriate vehicle for a particular region or demographic group. Nor should innovation be stifled by directing half the small amount of available funds to projects based on principles preconceived in Washington.

Consumers Union favors the approach taken in the two House bills which set forth specific substantive goals for the mechanisms to achieve, but leave the specific delineation of the means for achieving those goals to the applicant. More specific statutory guidance with respect to substantive goals should also ensure that the federal money is wisely spent by the Attorney General and the program administered consistent with the Congressional intent.

The House bills also require active consumer and other public input with respect to the management of the grant program. Sections 5(a) and 5(b)(5). S. 957 merely requires that the applicants for federal money provide a formal statement with respect to the participation of interested parties, including consumers, in the formulation of the grant application. At the federal level, the Attorney General is required to consult with the Federal Trade Commission, but the bill does not require the participation of representatives from the States, local governments, or the public. Such participation should be required in this experimental program in order

⁷ The proposed National Institute of Justice within a reorganized Law Enforcement Assistance Administration would be the more appropriate federal agency for assisting the States and localities with minor domestic relations or criminal problems.

to ensure that federal money is spent on programs which meet the actual needs of citizens in a given locality, not just the preconceptions of the Attorney General (or, more likely, a Justice Department employee) in Washington.

Goals

Section 8 of H.R. 2965 and Section 7 of H.R. 2482 establish very specific substantive goals that the mechanisms funded under the bills are expected to implement. The specific means for achieving such Congressionally mandated goals are left largely to the judgment of the applicants for funds. In Section 4 of S. 957, certain of these meritorious provisions have been collapsed into a single provision, deleted, or changed to reflect the narrow interests involved in hammering out the compromises reached in the Senate. We would recommend that the Subcommittee consider further refinements of the legislation in order to ensure that federal funds are spent on the most effective mechanisms.

Consumers Union would recommend the addition of a provision similar to that contained in H.R. 2482, Section 7(4)(F) which requires a mechanism to identify patterns or practices of abuse or fraud, to maintain open records of closed cases, to seek to correct patterns of product or service deficiency, and to provide other law enforcement agencies with information so that they, in turn, can perform remedial or deterrent tasks more effectively. Such an approach would benefit not only the actual claimants who bring a dispute to a given mechanism but also a much larger class of consumers by encouraging the early detection and prevention of unfair practices.

Section 4(a)(5) of S. 957 contains hortatory language which seems to suggest that Congress approves those mechanisms which permit the business community to use their services and recommends them as models worthy of nationwide emulation. However, several states have responded to allegations that their small claims courts have become little more than glorified debt collection agencies either by prohibiting business entities from appearing as plaintiffs or by limiting the total number of filings by any one person to certain small number per year. While such a prohibition *may* have the effect of funneling consumers as defendants into more expensive trial courts, our federal system requires that such policy decisions concerning the jurisdiction of the various state courts remain matters of state prerogative. This language should be clarified in order to demonstrate that it is not the Congress intent to make such states ineligible for funding under the Act.

S. 957, like its predecessors, requires provision of "assistance to persons seeking the resolution of claims," including the provision of paralegal assistance where appropriate. Section 4(a)(2). This provision should be retained. The high cost of obtaining adequate legal representation is part of the problem of small dispute resolution. Several states have attempted to rectify the imbalance which results when only one party is represented by an attorney by banning lawyers entirely from the small claims court and letting the parties go at each other on a *pro se* basis. Such a ban has, in turn, created the phenomenon of the professional business defendant who also can outmaneuver the unrepresented consumer in the court room. Thus, the answer may lie not so much in rules on the appearance of attorneys but in assuring that consumers are adequately advised by well-trained paralegal personnel.

At present, many commentators remain undecided with respect to determining the appropriate role for attorneys in various types of dispute settlement mechanisms. However, Section 7(d)(2) of S. 957 would prohibit the use of federal funds appropriated under this Act for the compensation of attorneys. Apparently, this provision was inserted in the Senate in order to assure that the funds appropriated under this bill would not be used as a "back door" mechanism to fund legal service attorneys. However, the proscription of the use of funds for attorneys providing assistance "in any adversary capacity" is overbroad. We would recommend deleting the section in its entirety and leaving the decision as to the proper role for attorneys in dispute resolution mechanisms to local decision makers.

In summary, we support the passage of a small dispute resolution bill which will fund primarily consumer dispute resolution mechanisms and which will allow the states, localities, and nonprofit organizations the flexibility to select innovative and sound consumer dispute resolution programs truly responsive to local needs. We appreciate this opportunity to provide these comments on H.R. 2482, H.R. 2965, and S. 957 and hope they will be useful to you in obtaining the enactment of an effective dispute resolution program this year.

Sincerely,

SHARON NELSON,
Legislative Counsel.

J. C. PENNEY,
August 4, 1978.

Hon. BOB ECKHARDT,
Chairman, Subcommittee on Consumer Protection and Finance, U.S. House of Representatives, 1741 Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The JCPenney Company is pleased to submit its written comments on S. 957, H.R. 2482 and H.R. 2965, legislation to provide consumers with quick and inexpensive methods for settling disputes involving small amounts of money.

The JCPenney Company is a major retailer of apparel, home furnishings, leisure time goods, automotive products, household durables, drug store merchandise, food, and insurance, serving consumers through more than 2,000 stores as well as catalog operations, in the United States and through stores in Belgium. With annual sales for this past fiscal year in excess of \$9 billion, the Company is one of the largest retailers in the world.

We believe that the Company's success is largely due to its concern for consumers—the customers upon whose patronage a retailer must depend. It is because of this concern that the Company supports the basic legislative goals of the bills now under consideration: to assure consumers convenient access to controversy resolution mechanisms that are effective, fair, inexpensive, and expeditious.

The legislative proposals currently under consideration seek to achieve these goals by providing for financial assistance to states to develop, improve or maintain such systems. In order to qualify for assistance, the state must submit a plan for controversy resolution mechanisms that meets criteria set out in the bills. S. 957 would, in addition, establish a Dispute Resolution Resource Center within the Department of Justice to serve as an information clearing house, to research improvement of dispute resolution mechanisms, and to provide technical assistance to states. The Company believes that the existence of fair, effective and inexpensive mechanisms for the resolution of small claims would benefit both legitimate business and the public, and that mechanisms short of full-scale court litigation, such as arbitration or conciliation or the like, are appropriate methods of resolving such small monetary disputes.

The Company would like to offer some suggestions of ways in which these basic legislative goals may be better achieved. Primarily, the Company believes that any bill should assure that business itself is afforded a reasonable time within which to resolve any customer complaint. This would, in fact, ensure that a controversy does exist. The bills do encourage the use of informal means of resolution, such as mediation or arbitration, but the procedures of any state plan would be ineffectively employed if they must be called into action needlessly. The Company believes that a provision requiring that the consumer first make his or her complaint known to the business involved and giving the business a reasonable opportunity to resolve the complaint is an important one, since needless court or arbitrator conference time could be avoided and the business would, therefore, be able to cure such complaints quickly "in house" and hopefully without losing the customer's goodwill. Many businesses have instituted procedures designed to assure that customer complaints are "quickly and effectively settled to the customer's satisfaction." The JCPenney Company itself has such a plan.

A brief description of the Penney plan will demonstrate that a business plan should be allowed a reasonable opportunity to achieve resolution before other means are employed.

Every item bought at JCPenney or The Treasury stores, or catalog is covered by either the Company's general satisfaction policy or a specific warranty. Specific warranties, covering certain merchandise and packed with the item, protect customers against defects and failure of products to perform. All items not covered by specific warranties are covered by the Company's general satisfaction policy. If such an item of merchandise fails to satisfy a customer, the Company will make every effort to satisfy the customer through exchange, repair, full or partial refund or credit, whichever is right and reasonable. In fact, no one can say no to a customer request for an adjustment or refund without the store manager's knowledge and approval. In those few cases where customer satisfaction may not be achieved at the local level, the problem may be referred to the Company's headquarters. In addi-

tion, many customer irritations are avoided by the existence of the policy that customers may obtain adjustments for merchandise or service at all JCPenney stores or The Treasury stores even though the purchase was made in another JCPenney or The Treasury store or through the catalog. This is true even if the consumer returns the merchandise or requests service at a store that does not stock the item.

The Company would also urge that the criteria for consumer controversy resolution mechanisms include the provision that the forms used to institute the resolution mechanism process provide for clear identification of the controversy and/or item of merchandise about which the complaint is being made. Adequate identification of the nature of a complaint is, of course, an element of due process, but more importantly, the mechanism itself will operate more effectively if both sides are aware of the precise nature of the complaint.

Finally, the bill and its legislative history should emphasize that the overall legislative goal of assuring fair resolution mechanism systems—fair for both sides of the controversy—should be kept in mind at all times. The opinions and views of business groups as well as consumer groups should be sought with respect to the institution or operation of a state plan envisioned by the bills. For example, Section 5(d) of H.R. 2482 provides for review of any state plan by the director upon the complaint of an affected consumer. Any affected person or business should have an equal right to petition the director for such a review.

Again, the Company commends the basic legislative goal of assuring consumers convenient access to controversy resolution mechanisms that are effective, fair, inexpensive, and expeditious. In addition to making these views known to this Subcommittee, we are also filing comments with the Subcommittee on Courts, Civil Liberties and The Administration of Justice, which also has these bills under consideration.

Respectfully submitted.

RICHARD C. DARLING,
Administrator, Federal Government Relations.

STATEMENT OF PAUL WAHRHAFTIG, DIRECTOR, GRASSROOTS CITIZEN DISPUTE
RESOLUTION CLEARINGHOUSE, AMERICAN FRIENDS SERVICE COMMITTEE

We at the Grassroots Citizen Dispute Resolution Clearinghouse are submitting this written testimony to the hearing on S. 957. It is based on a long history of involvement in citizen dispute resolution programs.

Our program through its predecessor, the Pennsylvania Pretrial Justice Program of the American Friends Service Committee first published on community mediation in 1973 and has continued to explore and expand the concepts of mediation as an alternative to the traditional court system in settling people disputes. Among our publications are, *Readings on Community Mediation of Interpersonal Disputes*, (1973), *Citizen Dispute Resolution Workshop Report* (1976), *Citizen Dispute Organizer's Handbook* (1977), "Citizen Dispute Resolution, A blue Chip Investment in Community Growth," in *The Pretrial Services Journal* 1978 as well as *The Mooter*, a quarterly publication circulated internationally concerned solely with community based mediation programs as an alternative to the courts.

One of the aspects of informal dispute resolution techniques that has attracted us over the years is their ability to concentrate on "people" disputes and to strive forthrightly for solutions without becoming enmeshed in a traditional legal categorizing process (plaintiff-defendant, juvenile-adult, civil-criminal—consumer.) They work with just plain problems.

Criminal vs. noncriminal

In a hypothetical case Charles Cheapskate a TV set owner enters Sandy Sharp's TV repair shop to pick up his repaired TV set. Cheapskate, angered because Sharp seeks to charge him for unauthorized repairs snatches the TV set away, runs from the store with it and pays nothing. That night Sharp breaks into Cheapskate's house, takes back the TV set and punches Cheapskate in the nose. In law school, we would say "What are the possible legal actions and remedies?" In mediation we ask, "How can we settle this dispute?" It is unclear under S. 957 whether this should be handled in a center sponsored under the act. Is the dispute primarily civil? Are not burglaries, robberies and assaults important? Although the bill does not specifically rule out criminal matters, all discussion is about civil. A reasonable interpretation by an administrator might be that criminal matters were not intended and therefore this case should not be handled.

Rather than leave it to a faceless administrator to rule on what Congress meant by not mentioning "criminal" in the statute, Congress should state its intent clearly in the legislation. Dispute center jurisdiction should be omnibus so people can be encouraged to come to it if they have a problem.

One of the hopes of informal dispute resolution is that it will be geared to people and their problems. Once we start having to close the doors of our center because "your case does not fall in our category. . . . please try the other dispute center down the street," we are putting people through the same bureaucratic mazes that the conventional court system uses to discourage the average complainant.

Community base

We at the Grassroots Clearinghouse are convinced that one of the prime benefits from informal dispute resolution is an opportunity to return primary dispute resolution responsibility to the community. Through small neighborhood oriented, citizen controlled mediation units, community resources as well as official ones can be brought to bear to solve problems. As governmental resources shrink it becomes clearer that communal and neighborhood problem solving resources must be strengthened—government can not afford to do it all.

To put it another way, let us now repeat the lessons that should have been learned in the criminal area from LEAA. The system was failing in crime control. LEAA provided additional monies to the same governmental units which were failing us. The result is that they were enabled to fail us in a more grand style! Rather, community institutions should be developed and given a chance to handle problems that have been relegated to the public sector. To some extent S. 957 recognizes this thrust by permitting monies to be distributed to non-governmental units. However, the monies will be administered by a governmental unit. In particular, by the Justice Department which has structural ties to the present court system. It will be natural for the funds to be primarily focused in that governmental arena.

Our recommendations are: (1) That administration of monies under this Act not be housed in the Justice Department but in an independent agency set up or designated for the purpose. That agency should have strong representation on its controlling board from non-governmental and community groups. (2) A specific percentage of the funds should be mandated to go to non-governmental organizations as a minimum. We recommend 50%.

S. 957 represents a possibility of creatively using federal funds to strengthen local citizen problem-solving capabilities—particularly if our suggestions are adopted.

STATEMENT OF THE CONSUMER PROTECTION CENTER

Administered by Consumer H-E-L-P, a non-profit research and development corporation, the Consumer Protection Center of The George Washington University National Law Center Was established in 1970 to affect the administration of justice in the consumer field. Law students working in a clinical program supervised by Donald P. Rothschild, Professor of Law and president of Consumer H-E-L-P, staff the Center's two complaint handling projects and participate in various consumer research activities conducted by the Center. Students working on the Center's informal dispute mechanisms, the Consumer H-E-L-P Hotline and Contact 4, WRC-NBC/TV's community ombudsman, receive consumer complaints, classify those complaints, and mediate the disputes involved. The Center's statistics for both projects indicate that over 75% of all complaints received are resolved to the satisfaction of both parties. (See attached appendixes A and B)

Consumer H-E-L-P is a telephone "hotline" service which uses a standardized complaint taking and coding system designed to detect fraudulent practices in the marketplace. Complaints alleging fraud are fed into a computer, and the resulting reports are used as a pre-investigative tool by the U.S. Attorney's office and the D.C. Metropolitan Police Department. This system was developed under an LEAA grant.

Law students staffing Contact 4 work with Lea Thompson, WRC-TV/NBC's consumer reporter, in resolving the problems of viewers who have neither the skills nor financial ability to advocate effectively for themselves. Complaints received by Contact 4 serve as the basis for reports aired three times a week on WRC-TV/NBC's emmy award-winning consumer program.

The Consumer Protection Center supports the passage of a Consumer Controversies Resolution Act, and we appreciate being given the opportunity to comment on the proposed bills, S. 957, H.R. 2482, and H.R. 2965.

In considering these three bills, we have isolated five major areas of concern which we would like to address specifically. These issues include the scope of

problems that funded mechanisms will handle, the standards to be required of federally funded mechanisms, the allocation and permissible use of funds, the state role in the implementation of the Act, and which federal agency should administer the Act.

Scope of problems funded mechanisms will handle

We urge federal funding under the CCR Act be limited to mechanisms operating to resolve consumer disputes. Landlord-tenant disputes should be included within the purvey of consumer complaints. The dearth of inexpensive and effective mechanisms for the resolution of consumer disputes is well documented, and the CCR Act was specifically introduced to ameliorate this deficiency.

The expansion of the bill to provide funding for mechanisms addressing such a broad spectrum of complaints as "disputes involving small amounts of money and arising in the course of daily life" effectively dissipates the potential beneficial effects of the Act. The minimal funding provided under the Act is not sufficient to address the hodge podge of consumer, employment, neighborhood and domestic relations disputes encompassed by the phrase "arising in the course of daily life." Other forums are available for these disputes of ongoing relationship, and it is not clear that they will respond well to the informal dispute processes envisioned by the Act. The inclusion of diverse noneconomical disputes will decrease the ability of the dispute center to develop the specialization necessary to an effective mechanism. Dispersing the scope of complaints will require a wide variety of expertise and substantial support services. This process should be added incrementally as the initial program becomes established.

Consumer problems are in particular need of redress because of the unequal bargaining position of purchasers of goods and services vis-a-vis businesses. The consumer's weak bargaining position, his/her ignorance of his/her rights and obligations, and the scarcity of convenient and inexpensive dispute resolution centers combine to discourage the assertion of consumer rights. Increased presentation of consumer claims is essential to the regulation of abusive marketplace practices which affect all consumers.

While federal laws like the Truth in Lending Act and the Magnuson-Moss Warranty Act indicate that federal government can provide guidance to the states in the areas of consumer concern, the side expansion of subject matter proposed by S. 951 will constitute an intrusion into traditionally local concerns like family and neighborhood problems. Most localities have developed their own procedures for resolving these problems and may object to the establishment of federally funded alternative mechanisms.

Dispute resolution mechanism criteria

All of the bills propose standards which should be met by state systems receiving funding under the Act. The mandatory character of these standards differs in the three bills under consideration. These criteria are called "goals" in the Broyhill bill and "requirements" in the Murphy bill. S. 957 states that state systems are encouraged to meet specified "dispute resolution criteria" outlined in the bill. One of the major purposes of the Consumer Controversies Resolution Action is to encourage innovation and experimentation in informal dispute resolution, therefore, we do not believe that satisfying specified criteria should be *mandatory* to a receipt of funding under the Act. However, the fulfillment or nonfulfillment of these standards by a state system or an individual mechanism should be *one of the major factors* considered in funding determinations.

In addition to the valuable criteria already included in the House and Senate bills, we suggest the expansion of some of the proposed standards, as well as inclusion of other additional provisions. The proposed bills include a provision providing for a public information program to inform potential users of the existence of dispute resolution centers. We would like to emphasize the importance of this provision, and we urge that all dispute resolution centers receiving funding under the Act be required to engage in extensive publicity. Programs that are not publicized are under-utilized, and do not reach a cross section of citizenry. Additional criteria should specify that all applicants for funding should consult with a citizen advisory committee. Such an advisory committee should be substantially involved in the development of the dispute resolution center, and should have a membership representative of the community with prominent minority, low income, and other disadvantaged consumer participation. Low income consumers, for example, are subjected to a different marketplace than their middle class counterparts, and their consumer problems require special techniques and procedures. These distinctions also exist for elderly and handicapped consumers.

Employment of the dispute resolution centers by the business community should be restricted, and businesses should be required to pay a fee for the use of the mechanism. Limitations on free business use are essential to insure that consumers have adequate access to the dispute center. A survey of Washington, D.C. Small Claims Court cases in June 1972 revealed that corporations brought 2200 of the 2900 cases filed, and the proposed mechanisms should not become a collection device for creditors. U.S. tax dollars should not be supporting the business community which has sufficient resources to fund these actions.

Dispute centers should maintain open records to guarantee fair proceedings, and to insure that law enforcement officers follow-up on fraudulent practices. The development by the mechanism of a system to report fraudulent practices in the marketplace to law enforcement officials should also be encouraged. Speedy resolution of complaints should be encouraged, and applicants should include in their proposals for funding estimated dispute resolution time schedules. A relatively high jurisdictional amount is desirable for funded small claims courts; any limit less than \$1000 would restrict the usefulness of the mechanism.

The availability of support services for consumers is essential to a fair resolution of disputes. Support services should include para-legal and investigator assistance, as well as help with the execution of judgments. Certainly two-tiered procedures which provide skilled mediation services as well as compulsory adjudicative process have much to recommend them to the consumer. Our experience shows that the majority of problems can be resolved through negotiation techniques. This is especially true with problems arising with legitimate merchants, as distinguished from fraudulent activities outside traditional marketplaces.

Allocation of funds

All of the proposed bills will provide funding for both state entitlement and discretionary grant programs. The House bills limit the discretionary grant money to 25% of the total appropriation while S. 957 specifies that half of the total grant appropriation to be awarded will be discretionary. We support a discretionary grant allocation of 50% of the total appropriation because this will encourage experimentation and the development of innovative projects. The state grant money should be distributed on the basis of population density, the need for dispute resolution centers, state financial need, and program quality. We cannot support equal distribution of the grant money among the states because funds should be allocated on a competitive basis according to need, desires, and program quality. In disbursing these non-discretionary funds, special consideration should be given to mechanisms emphasizing mediation procedures, and to non-profit organization applicants. The former are worthy of encouragement because they are inexpensive to operate and boast a high resolution rate, while non-profit organization applicants are often less able to obtain funds than their state and county counterparts even though they have quality mechanisms. Funding should be available to dispute resolution mechanisms already in operation, for the administration of the surveys states are required to make, and for the development of dispute mechanism center plans. Business sponsored mechanisms should not be eligible for grant money under the Consumer Controversies Resolution Act.

The initial appropriation for administration should be substantial the first two years, but should be reduced to no more than 10% of the total appropriation after the first two years.

The State Role

The House bills properly provide for active state involvement in the administration of CCRA. While S. 957 provides for funding individual mechanisms directly with state entitlement funds, only state programs to develop dispute resolution centers are eligible for non-discretionary grant money under the House bills. We support the latter approach in order to encourage the development of a state system of informal dispute resolution centers controlled, operated, and funded by state and local government. Individual mechanisms independent of the state systems would not be seriously disadvantaged by this proposal because they will be eligible for discretionary funding which will constitute 50% of the total appropriation. The responsibility for comprehensive surveys of dispute resolution mechanisms within the state should rest with the states and not with the Federal dispute resolution resource center. The survey design should be federally standardized to ensure uniformity, but the state administrator should collect the data and report to the federal agency resource center. Under our view the federal government should design the survey and receive reports from the states. However, the state should collect the information from local mechanisms within the states. This would give the local mechanism information about its project, the state information about

activities within its jurisdiction, and the federal agency a natural overview. In this manner lines of relevant communication would be facilitated. We also support the active supervision of grant applications by the state administrator envisioned by S. 957 as a practice which will foster state and federal government cooperation.

Administration of the act

The Department of Commerce, the Federal Trade Commission, and the Department of Justice are the proposed federal administrators of the CCRA. The Department of Commerce has not demonstrated itself to be an interested supporter of consumer concerns, and the effectiveness of the federal *consumer* dispute resolution resource center would be seriously diminished if it were established in the Department of Commerce.

In contrast the Federal Trade Commission has established itself as an advocate of consumer interests. Organized on an administrative law (rulemaking) model, the FTC is ideally suited to administer this Act which emphasizes resolution of disputes through alternatives to litigation. For example, FTC's experience with Magnuson-Moss mechanisms in developing models and formulating standards has provided them with the necessary expertise to supervise the dispute resolution center program. Although the FTC has expressed its willingness to act as a consultant to the administering federal agency in the development of standards, it is hesitant to undertake the additional responsibility of distributing the grants. Chairman Pertschuk envisions potential conflict between the FTC's enforcement responsibilities and a grant allocation program. We support the National Consumer Agency Administrator's recommendation that the Resource Center director be independent of enforcement activity pressure in order to ensure the absence of impropriety in the distribution of grant money. Although the FTC does not have DOJ's grant allocation experience, they have developed some expertise through the administration of public participation grants.

As the litigating arm of the federal government, the Department of Justice should not administer an Act whose primary thrust is the development of alternative dispute resolution procedures. Not unexpectedly, DOJ has tended to promote law enforcement litigation programs and has had little experience in consumer disputes. The Department of Justice may be tempted to use CCRA as a vehicle to expand its innovative Neighborhood Justice Center program at the expense of other promising programs.

Accordingly, the Consumer Protection Center supports the delegation of all *administrative* functions to the FTC. Alternatively, we suggest the FTC be given all rulemaking responsibilities. We further suggest that a tripartite funding committee made up of representatives from the FTC, DOJ, and consumer representatives be charged with the distribution of grant funds.

Appendix B

CONSUMER PROTECTION CENTER

COMPLAINT CATEGORY REPORT DATA TOTALS THRU 07/21/78

COMPLAINT CATEGORY	DC	X	MO	VA	OTHER	TOTAL
0100-0100	41	31	46	34	26	181
0200-0200	196	48	115	28	62	449
0300-0300	108	49	74	34	26	291
0400-0400	190	39	167	35	91	522
0500-0500	52	37	50	35	29	203
0600-0600	179	33	208	38	99	557
0700-0700	222	35	178	28	106	569
0800-0800	180	38	143	31	99	551
0900-0900	52	39	33	37	29	291
1000-1000	29	43	16	27	13	128
1100-1100	25	56	12	27	13	133
1200-1200	50	42	38	32	19	181
1300-1300	23	46	15	30	11	125
1400-1400	356	40	341	38	161	936
1500-1500	41	25	64	39	37	206
1600-1600	60	35	53	31	29	208
1700-1700						
TOTAL	1816	39	1566	33	859	4710

CONSUMER PROTECTION CENTER

RETAILER SERVICE CATEGORY REPORT DATA TOTALS THRU 07/21/78

COMPLAINT CATEGORY	DC	X	MD	VA	OTHER	TOTAL
NO COMPLAINEE NAMED	15	33	11	24	6	13
AGRICULTURAL PRODUCTION AND SERVICES	1	8	5	42	1	8
BLOG CONSTRUCTION-GENERAL CONTRACTORS & OPERATIVE BLDGRS	12	27	25	57	5	11
CONSTRUCTION - OTHER THAN BLDG CONSTRUCTION-GENERAL CONTRACTOR	10	59	4	24	2	12
CONSTRUCTION - SPECIAL TRADE CONTRACTORS	66	44	55	36	28	19
RAILROAD TRANSPORTATION	1	50	0	0	0	1
LOCAL/SUBURBAN TRANSPORTATION	6	38	12	2	13	2
MOTOR FREIGHT TRANSPORTATION & WAREHOUSING	12	28	12	32	7	13
WATER TRANSPORTATION	0	0	0	0	0	0
TRANSPORTATION BY AIR	0	0	1	50	0	1
TRANSPORTATION SERVICES	12	52	5	22	1	4
COMMUNICATION	5	36	0	0	4	29
ELECTRIC, GAS, AND SANITARY SERVICE	22	50	10	23	8	18
WHOLESALE TRADE	68	62	20	18	13	12
BUILDING MATERIALS-HARDWARE/GARDEN SUPPLY	2	50	2	50	0	0
GENERAL MERCHANDISE STORES	114	33	3	20	4	27
FOOD STORES	43	100	59	37	18	7
Automotive Dealers	117	22	215	41	132	25
Automotive Accessories	76	62	26	21	11	9
FURNITURE-HOME FURNISHINGS, EQUIPMENT STORES	251	40	259	41	94	15
EATING AND DRINKING PLACES	4	29	7	50	3	21
RETAIL STORES MISC	95	22	106	24	80	18
BANKING	24	35	20	29	21	31
CREDIT AGENCIES OTHER THAN BANKS	86	44	73	37	30	15
SECURITY AND CUMMODITY BROKERS-DEALERS, EXCHANGES	1	50	1	59	0	0
INSURANCE AGENTS-BROKERS, & SERVICE	42	46	4	31	4	15
HOUSING AGENTS-BROKERS, & SERVICE	96	45	59	28	51	24
MOBILE HOMES	15	44	9	26	9	26
MOBILE HOMING HOUSES, CAMPS & OTHER LODGING	83	59	35	25	21	15
PERSONAL SERVICES	116	48	65	27	38	16
BUSINESS SERVICES	170	34	193	106	21	25
Automotive Repair, Services & Garages	74	45	48	29	30	18
MISCELLANEOUS REPAIR SERVICES	0	0	0	0	0	0
NOTION PICTURES	8	31	9	35	6	23
AMUSEMENT & RECREATION SERVICES, EXCEPT MOTION PICTURES	54	53	24	20	23	0
HEALTH SERVICES	28	60	0	19	6	13
LEGAL SERVICES	4	33	3	25	5	42
EDUCATIONAL SERVICES	0	0	1	50	0	0
MUSEUMS-ART GALLERIES-BOTANICAL & ZOOLOGICAL GARDENS	46	38	49	41	23	19
MEMBERSHIP ORGANIZATIONS	5	23	7	32	8	36
PRIVATE HOUSEHOLDS	13	41	8	25	8	25
MISCELLANEOUS SERVICES	28	58	9	19	4	8
EXECUTIVE, LEGISLATIVE, & GENERAL GOVT, EXCEPT FINANCE	1	100	0	0	0	0
JUSTICE, PUBLIC ORDER, AND SAFETY	2	67	0	0	1	33
NONCLASSIFIABLE ESTABLISHMENTS	0	0	0	0	0	0

TOTAL 1824 39 1357 33 857 10 455 10 4693

CONSUMER PROTECTION CENTER

PRODUCT SERVICE CATEGORY REPORT DATA TOTALS THRU 07/21/78

COMPLAINT CATEGORY	DC	X	NO	X	VA	OTHER	TOTAL
0000-0000	6	33	1	6	3	17	8
0100-0190	332	30	425	38	244	22	117
AUTOMOTIVE & TRANSPORTATION							
0200-0299	105	56	37	20	32	17	15
COMMERCIAL							
0300-0390	376	43	281	32	153	16	62
FINANCIAL							
0400-0490	15	33	13	29	7	16	10
FOOD & HOUSEHOLD SUPPLIES							
0500-0590	122	43	85	30	57	20	17
HEALTH, MEDICAL & PERSONAL SERVICES & PRODUCTS							
0600-0690	114	40	115	41	44	16	9
HOME REMODELING, CONSTRUCTION & MAINTENANCE							
0700-0799	484	36	449	33	215	16	196
RETAIL							
0800-0899	164	49	90	27	67	20	15
SERVICES							
0900-0999	26	38	21	31	12	18	9
NOT ELSEWHERE CLASSIFIED							
9000-9099	86	49	53	30	26	15	12
REPAIR							
9100-9110	0	0	2	100	0	0	0
DEBT CONSOLIDATION							
9150-9150							
TOTAL	1830	39	1572	33	860	18	470
							10 4732

STATEMENT OF RAYMOND SHONHOLTZ, ESQ., DIRECTOR OF THE COMMUNITY BOARD PROGRAM, SAN FRANCISCO, CALIF.

There is a growing recognition that not every conflict requires for its resolution the formality of the judicial system. The adjudication of every dispute through an adversary model imposes a rigidity and formality upon conflict resolution that is not necessary in a significant percentage of cases. Moreover, and perhaps more critical, such a monolithic approach to conflict resolution forecloses many disputes from ever entering the judicial system and leaves other disputes entering when they have reached a crisis dimension. The criticalness of this latter situation arises from the reality that many urban communities and neighborhoods in America are forced to "tolerate" a high level of civil conflict and minor criminal incidents.

A broader approach to conflict resolution is urgently needed. Such a system needs to address itself to the limitations of the existing system in order not to repeat them. New forums for conflict resolution need to be placed where the problems and conflicts are located. These forums should be developed so as to be early intervention and prevention systems in the communities. Since some of the limitations of the existing system center on its formality, professionalism, coercion, recordkeeping, and state authority it would be appropriate to implement a community conflict resolution system that avoided these user restraints.

To encourage the broadest use of the new forum churches, schools, community organizations, and businesses need to be supportive and educated on ways the forum could be useful. Distribution of material to homeowners and residents within the community is also essential if the potential client community is to be made aware of the existence and function of the new forum. These institutions and neighbors generally will relate most positively to a forum that is voluntary in participation, does not maintain elaborate records, and is neither formal or overly professional in the delivery of its service.

Achieving the degree of participation and support by the above community organizations, churches and businesses requires that the forum be able and willing to resolve a wide-range of conflicts. Lay people do not make legalistic distinctions regarding disputes. To impose such restrictions would limit the effectiveness and long-term viability of the new forum. It would be short-sighted for a new forum, striving for local and participant legitimacy, to turn away people with cases the forum can readily resolve. This is particularly the case with minor criminal matters. These cases often involve conflicts between parties who know one another, which can be effectively resolved through a process of conciliation rather than adjudication.

The above remarks suggest that amendments be made to the bill that would clearly state the value in having some of the forums located in urban communities or neighborhoods and resolving a wide-range of disputes. The bill as it presently reads places a heavy emphasis on consumer and monetary transactions and makes no statement as to where these new forums are to be located.

Accordingly, the following amendments are suggested;

To Section 2, Findings and Purpose: (a) Findings, add:

(8) The resolution of civil disputes can be unnecessarily costly, complex, and inadequate in a formal institutional setting where the parties involved are in an adversary posture, subject to formalized procedures with the attendant constraints and restraints.

(9) The resolution of criminal matters can be costly and complex and in many instances is inadequate in a formal judicial proceeding where the procedures and the attendant limitations are not equipped to adequately examine the circumstances surrounding the conduct to the end of promoting public safety and private harmony.

Neighborhood dispute resolution forums can themselves, and as guidelines to other dispute resolution forums, subserve the interests of the citizenry and promote quick and voluntary resolutions of civil claims and certain criminal matters.

(11) Neighborhood dispute resolution forums can meet the needs of their neighborhoods by providing private forums in which persons may voluntarily participate in the resolution of both civil claims and criminal matters in an informal, personal atmosphere without restraint or intimidation. A noncoercive dispute resolution forum in the neighborhood may provide a valuable prevention and early intervention problem solving resource to the community.

To Section 3, Definitions, add:

(h) "Civil" means matters which may involve minor criminal conduct not reported to a public agency, or referred by a public agency to a dispute resolution forum.

This language is suggested in the event that the direct inclusion in the bill of criminal matters proves difficult to achieve.

To Section 4, Criteria for Dispute Resolutions Mechanisms, add to (a):

(6) The resolutions of disputes and conflicts that arise out of community wherein the dispute resolution forum is located.

(7) Training of persons to serve in the capacity of dispute resolvers.

(8) An educational/informational component that serves to inform the client population of the availability and service of the new forum.

To Section 6, Dispute Resolution Resource Center (b) (5) add after the word "Commission" the following:

"and known commentators and directors of dispute resolution programs,"

To Section 7, Financial Assistance, add to (c):

(7) Designate and describe the community or neighborhood the forum will serve; and,

(8) Describe the manner in which it shall select and train neutral mediators and conciliators.

And to Section 7, Subsection (d)(1):

(H) Designing and implementing a training component for volunteer conciliators and mediators; and

(I) designating and implementing an informational outreach component.

And to Section 7, Subsection (f):

Strike the limitation of 90% funding in the second year, 75% in third year, and 60% in the fourth year. It will take any new dispute resolution program almost a year to be reasonably operational. It will not have generated a sufficient case load or impact to justify or encourage local participation. This requirement should wait until the completion of the second year. Accordingly, the following is recommended:

100% for the first two years, 90% in the third year, and 75% in the fourth year. This arrangement would afford realistic planning, development and implementation time, and afford the forum a real opportunity to develop alternative funding resources. The latter cannot be adequately achieved in the first year.

The above suggested amendments are offered to strengthen the Dispute Resolution bill, and to provide it with a more distinct depth and direction. Consistent with this intent, another issue or question needs to be raised. This question concerns the suitability of engaging the Department of Justice with primary programmatic responsibilities in implementing the Dispute Resolution Act (Sections 5 and 6).

The question, I believe, is an honest one. The Department's primary mission is not in directing programs. Its effort in this direction through the Law Enforcement Assistance Administration has come under criticism from many quarters, including President Carter. The subject matter of the bill is new and unique. The Department not only has no particular expertise in this non-adversary field, it arguably has interests quite distinct from the development of an informal, conciliatory dispute resolution system. Further, to the degree that the Act will fund community or neighborhood based programs the Department has limited experience in this area.

Finally, from a conceptual view point it seems misplaced to have the leading law enforcement agency running a "non-law" mediation program. The problems that this emerging field will experience, the type of attention it will need from its funding sources, the nature of the regulations directing it, the type of evaluation imposed, and the matter in which it is publicized, and by whom, will collectively have a dramatic impact of the full development of the emerging field of alternative dispute resolution.

It would seem that another agency or corporate non-profit that is either attuned to the needs of this field and desirous of fully developing it or incorporated for these purposes would be a more suitable agency for the delivery and promotion of this new field than the Department of Justice. These questions seem particularly germane in light of the recent initiatives by the Department of Justice to establish three dispute centers.

This legislation and others like it within the field of alternative dispute resolution will stimulate new advances in the resolution of conflicts. Consumer disputes, neighborhood problems, civil incidents, and minor criminal complaints can and will be resolved within these new entities. The potential for the involvement of citizens in these new forums is realistically high. The ability of the American citizen to handle much that agencies and the existing system strive, but are unable, to handle needs to be recognized and supported. This bill with the suggested amendments would make a meaningful contribution toward the active involvement of citizens in

their everyday conflicts and provide an accessible forum for the resolution of all types of local disputes and conflicts.

STATEMENT OF MARK BUDNITZ, EXECUTIVE DIRECTOR, NATIONAL CONSUMER LAW CENTER, INC.

The National Consumer Law Center, Inc. has been providing specialized legal assistance to lawyers for low income consumers since 1969. We currently receive funding from the Legal Services Corporation to render such assistance, from the Community Services Administration to assist lawyers for the poor with energy problems, from the Federal Trade Commission to represent low income consumers in rulemaking proceedings and from the Law Enforcement Assistance Administration to study consumer fraud. We have published two model consumer statutes as well as model utilities regulations. We have published a four volume Consumer Law Handbook as well as numerous articles. In addition to assisting scores of legal services attorneys on hundreds of cases each year, our assistance is frequently requested by Congressional committees, state Attorneys General offices, public counsels, state legislators, etc. An attorney from NCLC was a member of the Board of Directors of the National Institute for Consumer Justice which conducted the most comprehensive study of small claims courts ever done.

As Executive Director of the Center, I am generally in charge of implementing the Center's work program. More importantly for purposes of this statement, I am specifically responsible for the Center's substantive work in the area of small claims courts. In this connection I answer all the requests legal services lawyers make of the Center relating to small claims courts, monitor legislative developments, and so forth. I am a member of the Steering Committee of the Litigation Section's Committee on Consumer Rights of the American Bar Association. This committee is currently developing a project to experiment with various ways of handling small claims cases. I am also a member of the Small Claims Committee of the Massachusetts Public Interest Group. Finally I have represented many low income clients in small claims courts over a period of several years.

The National Consumer Law Center supports the objectives of the Consumer Controversies Resolution Act. For too long, consumers have been denied access to effective, inexpensive and fair mechanisms for resolution of their disputes with businesses. There are still areas of the country which do not have small claims courts, and those which do exist often have become little more than collection mills for business. The approach of this Act is to encourage states to develop sound dispute mechanisms by supplying federal funds while leaving the details of each state system to the discretion of local jurisdictions.

Because local conditions and resources vary greatly from place to place, we believe it would be inadvisable for federal legislation to condition receipt of funds upon observance of detailed Congressional requirements regarding the exact structure of consumer controversy resolutions mechanisms. In addition, there has not been enough experimentation and study of different strategies and procedures for anyone to be confident that any particular structure is invariably the best.

However, we believe the Act must be strengthened by inserting additional minimum standards and safeguards to insure that federal money is not spent to create or perpetuate systems which do not adequately serve the needs of consumers.

Diversion of Consumers From Judicial Hearings and Decisions Based on Law

The Act should contain safeguards to prevent funding systems which unfairly deny or delay a consumer's opportunity to appear before a judge. From several quarters, proposals have recently been made to solve the problem of court congestion and of judges being bothered with "small" cases, by directing those cases to others. In regard to the federal courts, the suggestion has been made to refer Truth in Lending cases to magistrates. A bill submitted last month by Senator Garn would provide for federal funding to states which establish controversy mechanisms for dealing with disputes over the collection of debts. S. 1130, Fair Debt Collection Practices Act, 123 Cong. Rec. No. 53, March 25, 1977.

The U.S. Chamber of Commerce has proposed a Model Small Claims Court Act which in several respects is designed to keep cases away from the judge if at all possible. For example, a trial before a judge is recommended "only when an irreconcilable dispute exists." Model Act, Comment to Section 5.1. A judge may impose mandatory mediation, and arbitration is also encouraged. Mediators and arbitrators are not required to base decisions upon the law. Many low income, poorly educated and timid consumers will be afraid to file suits under the Model Act because they risk being held in contempt of court if the judge finds they didn't try hard enough

to settle the case before filing in small claims court. Sections 4.2, 5.2 Comment, 7.3 Comment. The Model Act fails to account for situations in which the consumer has valid reasons for not contacting a merchant to try to resolve a dispute. See Informal Dispute Settlement Mechanisms under the Moss-Magnuson Warranty Act, 40 Fed. Reg. 60200, n.82 (December 31, 1975) (hereafter referred to as Warranty Mechanisms).

One common result of these proposals will be to deny most consumers the opportunity to have their cases decided by a judge. This is the inevitable effect of forcing the consumer to go through alternative procedures such as business sponsored mechanisms, mediation and arbitration. Low income consumers, single parent heads of household, and the elderly lack the time, patience and resources to persevere through a multi-layered process. Consequently, many drop their claims altogether before getting to a judge. Warranty Mechanisms, 60196, 60200, n.84. Alternatively, both consumer plaintiffs and defendants are cajoled or pressured into settlements far less favorable than they deserve.

The language of S. 957 should be strengthened to prevent funding to states which, like the Chamber's Model Act, unreasonably exclude potential consumer plaintiffs and which unreasonably deny or delay the consumer's day in court before a judge by requiring arbitration and mediation.

Federal Judge Leon Higginbotham has expressed my concern:

* * * By all means let us reform that process, let us make it more swift, more efficient, and less expensive, but above all let us make it more just. * * * Let us not, in our zeal to reform our process, make the powerless into victims who can secure relief neither in the courts nor anywhere else. Higginbotham, "The Priority of Human Rights in Court Reform," 70 FRD 134, 159.

Mediation and arbitration can be excellent ways to afford consumers fair and swift relief in urban areas with congested small claims courts and a long delay between filing a claim and getting to trial. However, these mechanisms can also be inappropriate in many cases and subject to abuse. For example, most non-lawyer mediators and arbitrators cannot decide cases in accordance with substantive law because present consumer law is far too complex. The best they can do is to base decisions upon "common sense" or a "rough sense of justice."

A consumer complaint based on allegations of a merchant's misrepresentations is probably governed by the state's contract law as well as a fairly new Unfair and Deceptive Acts and Practices Law. The latter often incorporates by reference the regulations, orders and decisions made pursuant to the Federal Trade Commission Act. A complaint in regard to the quality of merchandise often is governed by the terms of the Uniform Commercial Code, and the federal Magnuson-Moss Warranty Act. The former's provisions can in most cases be applied correctly only by reading the interpretations of the Code made by the local jurisdiction's courts. The latter must be read in conjunction with lengthy and complex FTC regulations. Any case involving credit must apply federal Truth in Lending, the arcane FRB Regulation Z, and state Retail Installment Sales Acts. In light of the need to understand and interpret such complicated statutes, court decisions and regulations, non-lawyer mediators and arbitrators are clearly unqualified if cases are to be decided under the law.

The Chamber of Commerce directly meets this problem in its Model Act, concluding that arbitrators (and presumably mediators), even if they are lawyers, cannot "realistically" be expected to be able to decide cases based on the substantive law. Therefore, they are authorized simply to follow "good common sense." Comment to Section 5.2.

S. 957 would permit funding of state plans following the same approach and this will be detrimental to consumers. As Senator Ford stated when introducing his bill, these cases "may be legally complex." Cong. Rec. S3794, March 9, 1977. Common sense does not provide any guidance in striking the delicate balance between the need for a free marketplace which is not unduly tied down by legal constraints, and the need to protect consumers from unfair and abusive practices. We have left it to our legislatures to determine that balance, and the courts are supposed to enforce that balance by applying the law. S. 957 should not provide the occasion for depriving consumers of their opportunity to have the law applied to their controversies. The Act should be amended to prohibit mandatory mediation or arbitration. Arbitrators and mediators should always be lawyers. See "Redress of Consumer Grievances, Report of the National Institute for Consumer Justice, Recommendations 21 and 22 (hereafter referred to as NICJ). Consumer controversies should be resolved in accordance with applicable consumer protection laws.

One other feature of mediation and arbitration deserves mention: both occur in private. This can be beneficial to consumers because it is less formal and formidable

than a public courtroom. However, the private nature of the proceedings can also enable unscrupulous businesses to avoid the public and judicial scrutiny which a courtroom hearing necessarily involves. The version of the Consumer Controversies Resolution Act considered by the Senate last year, S. 2069, sought partially to avoid this result by declaring that a resolution mechanism is responsive to national goals, *inter alia*, if it

provides for the identification and correction of product design problems and patterns of service abuse by (A) maintaining public records on all closed complaints; (B) bringing substantial authority and meaningful influence to bear on compliance to correct patterns of product and service deficiency; or (C) providing information to government agencies responsible for the administration of applicable laws so they can perform their remedial deterrent tasks more effectively. Sec. 8(B)(6). Cong. Rec. S13303, August 4, 1976.

S. 957 should contain a comparable provision to insure that cases involving gross abuses and patterns of improper business conduct are dealt with in a manner which will deter their reoccurrence rather than being hidden in private arbitration or mediation proceedings.

Consumers need support services

Consumers, particularly those of low socio-economic status, will not use consumer controversy resolution mechanisms unless a great deal of support is provided. Studies have shown that the small claims court and other mechanisms will continue to be used primarily by business against consumers unless consumer claimants are informed about the use of these mechanisms, assisted in preparing their cases, and assured of an effective procedure for collecting judgments. The Act should contain additional minimum standards to require an adequate level of these support services for consumer plaintiffs. Moreover, consumer defendants must also be assisted. The Act authorizes funding of mechanisms which allow businesses, including assignees and collection agencies, to use the resolution mechanisms to sue consumers. Unless consumer defendants are guaranteed sufficient support services, the mechanisms cannot be consistent with the Act's purpose of assuring all consumers fair resolution systems and of promoting "better representation of consumer interests."

The Act does provide minimum standards for resolution mechanisms in Section 7, but these should be strengthened in the following ways: Subsection (b) (2) provides for paralegal assistance. However, as Professor William Statsky stated in testimony before the 93d Congress on a precursor to the present bill: "The keynote of effective paralegal participation in the delivery of legal services is training." Hearings Before the Subcommittee on Consumers of the Committee on Commerce. 93d Congress, Second Session on S. 2928, March 27, April 17, 18, 1974 (hereafter referred to as 1974 Hearings). If a consumer does not have a lawyer, it is crucial that the consumer have the assistance of a skilled paralegal, not just a former assistant clerk or a clerical persons who has been given the title of paralegal in order for the state to receive funding under the Act. Therefore, the Act should require at least a training program in which paralegals would be instructed so they can meaningfully assist consumers.

Section 7(b) (3) provides that the mechanisms be open during hours and on days that are convenient for consumers. Busy courts should also schedule cases so a person is not instructed to come to court by 9:00 a.m. only to wait until 3:00 p.m. for his or her case to be called. In addition, when introducing the bill, Senator Ford mentioned courts "located miles away from the consumer's residence" as an important deficiency in present systems, and Senator Metzenbaum noted the inaccessibility of these resolution proceedings in rural areas. However, the bill does not require the state plan specifically to address how the state will bring mechanisms within the geographical reach of those now excluded. At a minimum, the recommendation of Charles McKenney of Sears, Roebuck Co., should be followed. He suggested requiring a suit brought by a business to be filed in the district where the consumer resides. 1974 Hearings, p. 114. See also, NICJ, Recommendation 12.

Section 7(b)(4) provides that adequate arrangements for translation be provided. This should be strengthened by requiring in Section 7(a)(2) that the public information program include projects specifically aimed at and in the language of non-English speaking consumers. Section 7(b)(4) should require that translators be available to assist parties in filing papers, preparing their cases, presenting their cases at the hearing and in proceedings to collect judgments. Brochures should be published explaining the use of an procedures employed in the various mechanisms available, and these should be published in languages other than English, where a sizable number of the local population speaks other languages. Finally, court forms, especially the summons, should at least have a warning in languages other than Eng-

lish, that the document is important and a translator is available at the office of the dispute resolution mechanism to explain the document.

Section 7(b)(6)(D) permits assignees or collection agencies to use the mechanisms "but only in a manner consistent with the purposes of this Act." The Act leaves to the state's discretion whether or not to permit lawyers to represent parties. However, if the mechanism is to present a fair procedure, provision must be made for consumers to be represented when the opposing party is a business, assignee or collection agency. Many large retail stores, utility companies and collection agencies use small claims courts regularly and employ very experienced, highly skilled non-lawyers to represent them. NICJ Staff Study on Small Claims Courts, p. 204. Consumers, particularly the indigent are at a distinct disadvantage trying to proceed alone against such an adversary. The Act as presently drafted does not require a level of assistance which assures that consumers will be adequately protected under these circumstances.

The Chamber of Commerce's Model Act requires the small claims courts to attempt to retain a lawyer who would serve as court-appointed counsel. This lawyer would be appointed to represent indigent litigants upon request. Persons serving in this counsel role could be full-time salaried court attorneys, legal aid lawyers, upperclass law students, or pro bono attorneys. Section 7.1 of the Model Act. S. 957 should contain a similar provision. If the state allows lawyers to represent parties in the resolution mechanism, the Act should either require a state to have a court appointed counsel, or at least a sound system for referring indigent parties to a panel of pro bono attorneys, to a legal aid office which agrees to take these cases, or to a law school clinic. If the indigent consumer cannot get assistance from any of these sources, the consumer should be permitted to have the case dismissed. Letting lawyers into the mechanism does not automatically defeat the Act's goals of speedy and inexpensive proceedings. Small claims courts have devised methods of allowing lawyers in but limiting their role so they don't delay the proceedings unnecessarily with formalistic legal technicalities. Denying low income consumers ready access to lawyers when they face skilled business adversaries will often defeat the Act's goals of funding mechanisms which will provide fair and effective resolution of disputes.

If the mechanism adopts a rule banning all lawyers, including law students, then the mechanism should be required to establish a system of paralegal consumer advocates who could assume the role of representing consumers. See NICJ Recommendation No. 18.

Section 7(b)(6)(F) states that consumer controversy mechanisms should provide a procedure to insure that default judgments are ordered only if the defendant was given adequate notice of the claim and the plaintiff had established a prima facie case in open court. We urge that this section be strengthened to provide a standard for judging adequate notice. For example, S. 957's precursor, last year's S. 2069, provided that if a person other than the defendant accepted service, the judge must find a relationship between that person and the defendant sufficient to assure that the defendant in fact received notice. Section 8(c)(6)(A). S. 2069 also required the judge to find that the defendant understood the nature of the claim and the proceedings. This should be included in S. 957 as well, since businesses, assignees and collection agencies are allowed to use the mechanisms. Low income clients are often baffled by court forms such as the summons, and most courts for some reason seem unable to draft such forms in plain English. One method to ameliorate this problem is to require the business plaintiff to send along with the summons a court-approved explanation of the mechanism's procedure, the defendant's rights, and how the defendant can protect those rights. In California, Sears accomplishes this voluntarily by sending each defendant a copy of the California Department of Consumer Affairs' pamphlet on Consumers and Small Claims Courts. 1974 Hearings, p. 117. This Act should include a provision to assure that any mechanism which receives funds establishes a comparable procedure to assure not only that the defendant receives notice of the claim (see Section 7(b)(6)(E)), but that the defendant is provided an understandable explanation of what is happening. Section 7(b)(1), requiring forms, rules and procedures easy for potential users to understand, is inadequate because it would allow the defendant to receive only a summons, which is inherently intimidating and does not provide the defendant with much of the information he or she needs to protect his or her rights.

Another method to help insure that the defendant understands the nature of the claim and the proceedings is to require bi-lingual court forms and pamphlets.

Mechanisms funded under this Act should be required to adopt methods such as these to prevent default judgments from occurring. When the consumer defendant is defaulted, the Act should require the mechanism to provide a procedure which will allow the defendant to remove the default judgment easily when this is justified.

First, the mechanism should be required to notify the defendant that a default judgment has been rendered, explaining the consequences and what the defendant can do to have the judgment vacated. Second, the defendant should be entitled to have the judgment vacated upon a showing that the plaintiff did not follow required procedures in instituting suit, notifying the defendant, etc. Finally, the judge should vacate the judgment once the defendant makes a minimal showing that he or she has a defense which may require a decision for the defendant or a reduction in damages. Because of the technical nature of removing a default (to be able to show plaintiff did not follow proper procedures requires precise knowledge of those procedures), indigent defendants should be provided counsel for purposes of the hearing to remove the default.

Studies have demonstrated that most consumers do not use small claims courts, and those who use them once, often do not use them again because they are unable to collect their judgments. Section 7(b)(6)(G) fails to provide adequate minimum standards to assure that mechanisms receiving funds will adopt procedures to correct these problems. At the very least, the Act should incorporate the recommendations of the National Institute for Consumer Justice. The NICJ found that many plaintiffs do not understand how to collect judgments. To remedy this, the NICJ suggests that court personnel be available to advise plaintiffs on how to collect judgments and should actually commence the process for the consumer if necessary. Recommendation 26. Although Section 5(f) of the Act authorizes states to use federal funds to compensate personnel who assist consumers to collect judgments, nothing in Section 7 requires the state to have such personnel. Instead, Section 7(b)(2) provides that a mechanism is responsive to national goals if assistance, "including paralegal assistance where appropriate," is available to consumers in collecting judgments. Far more affirmative language is needed. As soon as judgment is entered, the mechanism should take the initiative in contacting and advising the plaintiff on how to collect and how the mechanism's personnel can assist. The Act should require at least this minimal procedure.

Even preferable is the scheme set out in the Chamber of Commerce's Model Act which provides for the court to arrange a judgment satisfaction plan immediately after the judge renders a decision in the case. Section 8.2. (This procedure is followed in some Massachusetts courts.) If necessary, the plaintiff can resort to a salaried court official for enforcement of the judgment. (The NICJ also recommends collection by a salaried collector.)

Consumer plaintiffs and defendants need all of the support services described above. Without them there is great danger that the controversy resolution mechanisms funded under this Act will at best serve upper and middle income consumers who have the education, experience and resources to persist without the services, or at worst serve only the interests of business and collection agencies.

Involvement of low income consumers in planning, execution, and evaluation

Low income consumers need fair, accessible and effective controversy resolution mechanisms more than any other segment of the population. What to others are small claims and judgments, are a month's rent, food and utilities to the poor. In order to assure that the mechanisms funded by this Act are responsive to the needs of the indigent, the Act should provide for greater input from them. In this regard we support Section 5(d)(3) which requires that a state plan include satisfactory assurances that low income consumers have participated in the development of and have commented on such plans. However, Section 5(c)(1) should provide for publication of cooperative agreements in local community newspapers as well as the Federal Register to better assure that those most affected by the grant will be notified. We also believe each state should be required to establish an Advisory Panel which includes low income consumers to help assure that the plan is properly implemented and to provide an institutional framework for continual input from consumers who wish to support improvements as time goes on.

Last year's S. 2069 contained provisions to assure that consumers, particularly low income consumers, have input during the funding agency's review process. For example, part of the State Administrator's annual report had to include comments made by low income consumers on the effectiveness of mechanisms funded under this Act. Section 7(c). S. 957 leaves to the FTC full discretion as to what information will be required in the annual report. We recommend some minimum requirements to guarantee input from low income consumers in the review process. In addition, the state should be required to distribute its annual report widely so consumers can read it and respond to it.

Finally, the Act authorizes funding of nonprofit organizations to accomplish any of the provisions of Section 5(f). I assume this would allow funding of business sponsored mechanisms. We believe the Act should contain minimum standards for

funding of such mechanisms beyond listing the allowable uses of such funds. Our concerns are related to the appearance of a conflict of interest which is inherent in business sponsored mechanisms, and the absence of data demonstrating that consumers are adequately protected in these proceedings. See NICJ Recommendation 3 and accompanying comment; NICJ Staff Studies on Business Sponsored Mechanisms for Redress, p. 119. Compare the strict requirements imposed by the FTC for Informal Dispute Settlements Mechanisms under the Magnuson-Moss Warranty Act, 40 Fed. Reg. 60190 et seq., December 31, 1975. At a minimum, the Act should include last year's S.2069, Section 6(c) provision that grants should not be provided to organizations whose mechanism "does not fairly represent the consumers of the services provided."

The State survey

In addition to the provisions of section 5(e), states should be required to include in their survey an analysis of provisions in their laws which could preclude or hamper a mechanism from achieving the goals of the Act. For example, the state may have statutes, decisions or court rules which exclude or severely limit the participation of paralegals and law students. State law may require a corporation to be represented by an attorney. State laws sometimes make it considerably more difficult to collect judgments from corporations than from individuals or other entities. State law may limit the type of remedy the mechanism can provide so severely that consumers will not be able to obtain meaningful relief. Laws such as these will have a great effect on the state's ability to devise a plan consistent with the goals of the Act. Therefore the Act should specifically require an analysis of state laws which may conflict with the purposes of the Act.

Transfer of inappropriate cases

Some cases are not appropriate for the expedited and more informal procedure of consumer controversy resolution mechanism. This is particularly true for complicated cases, cases where the consumer needs a lawyer and the mechanism prohibits this, and cases requiring the decisionmaker to have substantial legal knowledge to decide the case and the mechanism does not provide arbitrators, mediators or small claims judges who are lawyers. A typical example of an inappropriate case is one in which the consumer needs discovery. He or she needs a copy of the contract, the company's payment records, interrogatories, etc. Without discovery, the consumer defendant often cannot successfully assert legitimate defenses. Another illustration is the defense which rests upon an interpretation of an arcane provision in a Federal Reserve Board Regulation upon which numerous court cases and staff opinion letters have been based. The Act should require that a state mechanism provide for transfer of such cases to the appropriate form if justice requires, unless both parties agree to stay in the mechanism.

Conclusion

While the National Consumer Law Center supports the objectives of this legislation, we urge careful consideration of our recommendations. Adoption of our suggestions would not result in the federal government requiring the states to conform to a rigid nationally imposed blueprint for consumer controversy mechanisms. Rather our proposals are designed to assure that the goals of this Act are carried out.

STATEMENT OF THE NATIONAL CONSUMERS LEAGUE, SANDRA L. WILLETT,
EXECUTIVE VICE-PRESIDENT

Founded in 1899 to defend and promote the safety, health and economic wellbeing of workers and consumers, the National Consumers League is the country's oldest consumer organization. Since its inception, the National Consumers League has fought against abusive and unsafe conditions in the workplace and unscrupulous practices in the marketplace. Leaders such as Louis Brandeis, Felix Frankfurter and Eleanor Roosevelt enabled the League to represent the American worker and consumer most effectively. On the basis of its history of helping to meet consumer and worker needs, the League supports the concept of the Consumer Controversies Resolution Act.

Today the business community and consumer groups find themselves in almost unanimous agreement that our judicial system has failed to provide accessible and effective consumer justice. Agreement is also widespread on the absolute necessity to supplement our judicial system with fair, effective inexpensive mechanisms for the expeditious resolution of consumer grievances.

In the past few years, NCL has devoted much attention to consumer complaint resolution mechanisms. We have closely monitored the development of the FTC

trade regulation rule on independent third party consumer complaint mechanisms under the Magnuson-Moss FTC improvements act. Our General Counsel has served as a member of the National Advisory Committee on arbitration of the Council of Better Business Bureaus; and our research arm the National Consumers Committee for Research and Education, has published a case study describing a typical group of consumer dispute cases that have been arbitrated, showing the nature of the dispute, the arbitrator's disposition, and the reasons for the decision.

This, we have considerable expertise in the area of complaint resolution, and are pleased to submit these comments on the bills before you.

First and foremost, we strongly support federal legislation dealing with consumer complaint resolution. The number of unresolved consumer complaints is well-documented so as to create the need for federal legislation. The fact that successful consumer dispute handling must usually be carried out locally leads one to support the concept of federal financial support to local agencies, including municipal, county and state consumer offices, as well as an attorney general's office. In that sense, the bills before the subcommittee are on the right track.

But there are some major differences, and we should like to make three points.

A. Coverage

NCL believes the Congress should limit this legislation to the resolution of *consumer* complaints. We certainly are willing to concede that numerous other types of disputes (for example, those involving domestic relations, urban problems such as mass transit scheduling, etc.) also may well be worthy of federal assistance. However, a program that attempts to cover *all* disputes will cover *none* of them adequately. There are insufficient funds contemplated in S. 957 to be spread so thinly. This legislation has been before Congress for almost five years now, and it has heretofore been concerned exclusively with consumer complaints; it should continue to be directed to the consumer.

B. Location of the Program

We are deeply concerned that S. 957 would give the Department of Justice the responsibility to administer the proposed grants program. Our concern stems from the fact that the Justice Department has no expertise whatsoever in consumer issues. While it may well be that lawyers are and will continue to be involved in dispute resolution, that fact is not in itself sufficient reason to house the program in the Justice Department. The program would fit much better in an agency like the Federal Trade Commission.

If, for any reason, Congress is unwilling to house the *administration* of the program in the FTC, then at the very least Congress should separate out and give to FTC the authority to promulgate the rules and regulations that establish criteria for receipts of funds. If business sponsored groups such as local better business bureaus are to be eligible to receive funds, it is especially critical that strict guidelines governing independence be developed and enforced. Otherwise the public may rightly question whether these federally-funded dispute resolution bodies are fair and objective.

An appropriate state role in this regard would be to decide, according to federal criteria, which one, or more than one, state, county or municipal office should carry out the program.

The point is, of course, that the questions of administration at the federal level and implementation at the local level should be decided on the basis of which agency or office can best meet the needs for *consumer* controversies resolution.

C. Prevention of Consumer Problems

Recognizing that the funding Congress is likely to authorize for the consumer controversies resolution program will be extremely modest in comparison to the need, we cannot urge that those limited funds be used also to develop preventive mechanisms. However, we are vitally concerned about consumer education and enforcement as valid ways of preventing consumer problems.

To every extent possible, the federal government should aid local offices in their efforts to inform the public about their rights and responsibilities, about preventing problems, and about personally handling minor problems at the local level. Furthermore, from the federal level should give direction and assistance to encourage and enable the local offices to trace pattern of abuse, design legislation as appropriate and enforce federal and local laws so the abuses never occur in the first place.

It is worthy to resolve one consumer grievance after another. However, large numbers of people and the economy as a whole benefit when the problem is prevented.

In summary, the House bills before you (H.R.2482 and H.R. 2965) are much more consistent with what NCL perceives to be in the best interests of consumers than is S. 957. We believe that federal funding to establish consumer controversies resolution at the local level is essential and long overdue. We congratulate you for your sensitivity and leadership, and urge you and your colleagues the best possible legislation to serve the consumer's needs.

STATEMENT OF NATIONAL HOME IMPROVEMENT COUNCIL, RANDOLPH J. SEIFERT,
VICE PRESIDENT AND GENERAL COUNSEL

My name is Randolph J. Seifert, Vice President and General Counsel of the National Home Improvement Council, and I was one of those in attendance at the American Bar Association's National Conference on Minor Disputes Resolution held in New York in 1977. I have served on the Special Committee on Consumer Affairs and on the Arbitration Committee of the Association of the Bar of the City of New York. This statement is submitted in the consideration by your committee of H.R. 2482 and H.R. 2965.

The National Home Improvement Council is a trade association representing more than 40 national members who are primarily engaged in manufacturing products for the construction industries. These national members also include a number of shelter publications dealing with the home and the many concerns of the homeowner.

The Council has 40 local chapters extending from New York and Washington to Seattle and Los Angeles. The chapters number more than 2,000 contractors engaged in home remodeling and improvement. The chapter membership also includes lending institutions, utilities and wholesalers.

This industry has characteristically been the focus of complaints and problems due in part, at least to the deep concern of the homeowner for the high quality of work expected in or around the home. Statistics of The Council of Better Business Bureaus regularly reflect home improvement disputes on the list of complaints dealt with by the Better Business Bureau system.

This industry has cooperated with the Council in bringing a dispute settlement to the marketplace. Thanks to the efforts of that organization, much good has been accomplished in experimenting with, and in utilizing a wide variety of approaches to the settlement of business-consumer disputes.

The passage of the Dispute Resolution Act, as amended in the Senate passed version, would do much to establish procedures for dispute handling in an expeditious and equitable way through a system other than the traditional judiciary.

Much more needs to be done to bring about a speedy disposition of these disputes present in the marketplace which represent in numbers a substantial volume of troublesome business-consumer litigation and which cannot be properly handled by the existing court structure.

The experience of this industry has been especially beneficial where there has been an established complaint mechanism of the Better Business Bureau system: Speedy resolution, at minimal or no cost to the participants, and by general consent, dispositions that seemingly accord with fair play to both parties.

Passage of this legislation in the form of the already passed Kennedy amendment, S. 957 would guarantee that innovative efforts such as those of the BBB systems, would be extended throughout the community.

The participants at the American Bar Association Conference strongly endorsed the concepts found in the Senate passed version of this legislation. And by shifting the oversight process from the Federal Trade Commission to the Justice Department, much private sector criticism has been averted.

This industry welcomes the affirmative approach of the Senate passed Kennedy version of this legislation as a meaningful way of improving dispute handling techniques. We very much endorse the proposed legislation and would hope that this committee would see fit to approve the proposal before it.

Thank you for this opportunity to express our views on this concern of real importance to the community, to the consumers, and to this industry.

STATEMENT OF THE NEW YORK PUBLIC INTEREST RESEARCH GROUP, INC.

The New York Public Interest Research Group, Inc. (NYPIRG) is a nonprofit, nonpartisan research and advocacy organization involved in a wide variety of consumer protection, energy, fiscal responsibility, political reform and social justice issues. It is the largest private advocacy organization in New York State.

NYPIRG has been actively involved in small claims court reform issues for four years. Our survey of one New York City small claims court, released in 1976, is entitled "Winning Isn't Everything," since it found that 44% of successful small claimants never collected their judgments. The study led to NYPIRG's receipt of a one-year grant from Citibank, N.A. to establish a Small Claims Court Action Center which would attack the problem of uncollected judgments through direct client assistance, legislative reform, and educational outreach.

The experience of the Small Claims Court Action Center in its year of operation confirmed the fact that non-collection of judgments is the primary cause for dissatisfaction with the small claims system. The problem has been accorded lip service by reformers in recent years, but has never been adequately addressed by meaningful legislation or by model programs. The reason for this absence may be that the statutory structure of small claims courts in most jurisdictions does not include a specific collection procedure different from the civil court collection procedures. In New York City, for example, Article 18 of the New York City Civil Court Act and the rules promulgated pursuant to it, govern small claims court procedure. They specifically preempt the Civil Practice Law and Rules which establishes civil procedure for New York State courts. Article 18 and the rules specify the simplified procedures for which the New York City small claims courts have gained national recognition: a minimum of forms, the absence of formal rules of evidence, evening court hours, the use of volunteer attorney-arbitrators, discouraging of attorneys by mandating transfer to regular civil court if attorneys appear on both sides, and a prohibition against filing small claims by business entities, assignees and insurers.

The enumerated provisions prescribe procedures for small claims cases up to the receipt of a judgment. But when a winning claimant attempts to get paid by demanding payment from the defendant, and that demand is refused, the claimant must resort to the judgment enforcement sections of the Civil Practice Law and Rules. Those sections usually require the preparation, filing and serving of legal documents, payment of additional fees, and searching public records which are accessible only during daytime hours. For the average citizen, an attorney is usually required to even locate and understand a copy of the statute book.

The contradiction thus encountered by consumers who are led to believe by government agencies, the media, and popular books on consumerism that the small claims court is a "people's court," and then discover that in reality, an attorney's assistance is required to actually recover the money, is a sad and ironic commentary on our legal system.

What is even more unjust is that collection procedures *can* be explained simply to the lay person, and that many consumers can collect their judgments if they are given the necessary information. NYPIRG's Small Claims Court Action Center directly assisted over 1500 consumers to collect their judgments. This number is only a fraction of those who called the Center for assistance. We accomplished this task with only two paid staff, an attorney and an office manager, relying primarily on undergraduate students from colleges in the New York metropolitan area to handle cases. Similar assistance centers were opened by NYPIRG in Syracuse and Binghamton, staffed by CETA employees. And in Albany and New York City, VISTA Volunteers recruited by NYPIRG have opened centers in low-income neighborhoods. The experience of these centers has been that despite the simplified procedures of the New York small claims courts, ordinary citizens need information on all phases of the court process in order to acquire the knowledge and confidence needed to adequately protect their interests in court and collect their judgments.

With this preface, NYPIRG expresses its support for the bills presently under consideration, which reflect a legislative policy in favor of developing new minor dispute resolution mechanisms. However, both the Senate bill, S. 957, and the House bills, H.R. 2482 and H.R. 2965, do not go far enough toward achieving the objective of ensuring that the ordinary citizen is able to vindicate his or her rights as a consumer without the need for an attorney.

S. 957 initially contains two commendable features. It provides for direct grants to organizations to set up resolution programs, rather than providing for a state plan structure. Direct project grants have a greater likelihood of being used for innovative projects. Nonprofit organizations such as NYPIRG have a history of developing and implementing new programs at low cost and high efficiency. The bill also provides for total federal underwriting in the first year of a project, and only slightly smaller federal shares in the following years. This funding scheme encourages nonprofit groups to develop innovative programs which may not otherwise secure adequate support.

S. 957 could be strengthened considerably. Section 4 describes the criteria for dispute resolution mechanisms in the vaguest of terms. Without accompanying

rulemaking power, such as is included in Section b(3) of H.R. 2965, there is no assurance that the actual operation of a program will provide the most-needed servicers to the largest number of consumers. For example, Section 4(a)(2) specifies that a mechanism shall provide for "assistance, including paralegal assistance where appropriate, to persons seeking the resolution of disputes." In contrast, both of the House bills state the section as requiring that "the provision of assistance, including paralegal personnel where appropriate, is provided to persons in pursuing claims and collecting judgments." The House bill's language clearly requires that collection assistance be provided, while the Senate bill's does not, and no means for determining further specificity is provided.

The bill does not require a dispute resolution program to resolve controversies according to substantive law. The absence of such a requirement undermines the hard-won rights of consumers that have been established by federal and state law. Additionally, the requirement that eligible programs must permit the participation of the business community raises problems in New York State. Business entities are prohibited from filing suit in small claims courts. Would the passage of S. 957 exclude New York's small claims courts from eligibility for funding under the act? The experience of those states which permit businesses to sue in small claims courts has been that collection cases crowd the dockets, and business lobbies have prevented citizen-oriented reforms. If businesses are to be participating in federally-funded dispute resolution programs, mass filing limitations should be imposed. At the least, a certain percentage of the available funding should be earmarked for programs developed by non-business organizations.

Section 7(d) of S. 957, which enumerates the purposes for which the funds may be used, strictly limits their expenditure to the direct operations of the dispute resolution programs themselves. No funds are available for publicity, outreach activities, or informational materials such as written or audiovisual aids or public service media announcements. These materials form an essential component of any consumer service if it is to have a widespread and long term effect. By assisting citizens to help themselves and to become aware of their rights as consumers, the impact of any program is multiplied.

In contrast to S. 957, the two House bills provide for a flexible and innovative approach toward developing model programs for minor dispute resolution. Aside from the two undesirable features of providing for a state plan structure and granting smaller federal shares of funding than provided by S. 957, they contain many commendable features.

First, the bills grant rulemaking authority to the administering agency. This is essential to ensure broad public participation in the project development process, as is the requirement for publication of State plans in the Federal Register.

Second, the bills prohibit the participation of collection agencies and assignees in eligible programs, and provide for funding for public education programs and publicity concerning the programs. These two features ensure that serious efforts will be made to grant consumer access to the mechanisms.

Third, the House bills are more specific than is the Senate bill in enumerating the criteria required of programs funded under the act. One example is Section 7(5) of H.R. 2482, which requires eligible small claims court systems to provide for specific procedures intended to improve citizen use of the courts. Specifically, methods for discouraging default judgments and for ascertaining a defendant's proper name are described, among others. These requirements ensure both that the courts are structured in the fairest and most effective manner possible, and that funding is not provided to courts that lack minimum necessary and progressive features.

In conclusion, the New York Public Interest Research Group, Inc. supports the policy underlying these bills. However, without greater specificity in the requirements for eligible programs, and mechanisms for broader citizen participation in the development of the programs, the goal of providing fair, inexpensive, accessible and effective consumer controversy resolution mechanisms will not be achieved.

[Whereupon, at 12 noon, the subcommittee was adjourned.]

