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OFFICIAL TRANSCRIPT OF PROCEEDINGS
BEFORE THE

Federal Trade Commission

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DOCKET NO. 215-28

In the Matter of: COOLING OFF PERIOD FOR DOOR-TO-DOOR SALES

Place Chicago, Illinois

Date March 23, 1971

Pages 608-778 plus A

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C E R T I F I C A T E

This is to certify that the following pages and related exhibits are a transcript of hearings before the FEDERAL TRADE COMMISSION in the matter of:

DOCKET NO. -

CASE TITLE -- COOLING OFF PERIOD FOR DOOR-TO-DOOR SALES

PLACE - Chicago, Illinois

DATE - March 23, 1971

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By:

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BEFORE THE
FEDERAL TRADE COMMISSION

COOLING OFF PERIOD FOR DOOR-TO-DOOR SALES

Room 204-A,
Everett McKinley Dirksen
Building,
219 South Dearborn Street,
Chicago, Illinois.

Tuesday, March 23, 1971.

Met, pursuant to adjournment, at 10:00 o'clock a.m.

BEFORE:

WILLIAM D. DIXON, Hearing Officer.

APPEARANCES:

HENRY CABELL, Esq., for the Federal Trade Commission.

JEROME LAMET, Esq., for the Federal Trade Commission.

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4 ORANTE C. RONIONE, 219 Circle Forest Park,
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23 Adams, Chicago, Illinois 60603.

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1 APPEARANCES: (Continued.)

2 PAUL E. HAMER, Village of Wheeling, 255 West Dundee
3 Road, 60090, Wheeling, Illinois.4 AUSTIN CONE, 3601 West Devon, Chicago, Illinois
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8 SALLY GOODYEAR, Chicago Tribune.

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10 Illinois 60645.11 EDWARD H. EULENBERG, Chicago Daily News, 401 North
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13 JAMES EGAN, 135 Hawthorn, Glencoe, Illinois 60022.

14 DIANNE MCKAIG, Michigan Consumers Council, 525
15 Hollister Building, Lansing, Michigan 48933.16 WILLIAM LEMKE, Professor of Law, 41 East Pearson,
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22 Stewart, Chicago, Illinois 60637.23 EDWARD McCULLOUGH, Law Student, Loyola University,
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P R O C E E D I N G S

HEARING OFFICER DIXON: May we come to order, please.

This is a continuation of a public hearing relating to the proposed trade regulation rule concerning a Cooling-off-Period for Door-to-Door Sales, which adjourned yesterday.

My name is William D. Dixon. I am Assistant Director for Industry Guidance in the Commission's Bureau of Consumer Protection.

To my right is Mr. Henry Cabell, the attorney in the Division of Industry Guidance who has been responsible for developing this Rule and these proceedings.

The gentleman to my left is Mr. Jerome Lamet, the attorney in the Chicago Office who has been in charge of developing these hearings.

Our first witness this morning is Diane McKaig. Whereupon,

DIANE MCKAIG,

was called as a witness, was examined and testified as follows:

DIRECT EXAMINATION

MRS MCKAIG: My name is Diane McKaig. I am from the Consumer Council in Michigan which was established by legislation to protect the individual consumer.

We have had a comprehensive program for only a year and in that time we have dealt with about 800 cases.

1 It is primarily from that viewpoint we are represented here
2 today.

3 I am pleased the Federal Trade Commission is taking
4 up the subject of door-to-door sales since it has been a
5 source of never-ending trouble to both the consumers and
6 the Consumer Protection Agency.

7 In Michigan it seems as soon as we take care of
8 a certain abuse on an individual grievance, six others pop
9 up to take its place.

10 We think one of the problems with door-to-door
11 sales is it is based on the precepts something is sold
12 that the buyer doesn't want.

13 Door-to-door vendors can -- so that he can sell
14 his product, he must create the customer's supposed need
15 and desire for the product. To accomplish this, the vendor
16 often resorts to a variety of questionable tactics including
17 high-pressure, enticement gimmicks, and outright misrep-
18 resentation. And, since many door-to-door sales involve the
19 sale of goods on a hit-and-run, future delivery basis, the
20 industry lends itself to the practice of unloading inferior
21 merchandise at inflated costs.

22 Inasmuch as door-to-door selling does lend itself
23 to abuses, and since there is no effective way to police
24 every doorstep, obviously the only way to eliminate the
25 problem is to prohibit door-to-door selling altogether.

1 Many localities have attempted in effect to do just
2 that, by a variety of local regulations. But since there
3 are a few businesses that have adapted the door-to-door sales
4 technique to the legitimate marketing of their product, we
5 face the problem of how effectively to regulate out the
6 undesirables while not unduly hindering the legitimate.
7 Considering the scope of the problem, this is no small
8 order.

9 Through our complaint service, the Michigan
10 Consumers Council has had contact with many of the problems
11 which consumers experience with door-to-door sales.

12 Out of 800 complaints addressed to our office in
13 the past year, 68 or eight and a half percent were from
14 consumers with problems resulting from door-to-door sales.

15 We do not suggest that these figures represent a
16 statistically reliable sampling. However, they are sufficient
17 to convince us that abuses of door-to-door selling comprise
18 a significant portion of current consumer problems. And since
19 only a fraction of the consumer grievances in Michigan come
20 to our attention, we anticipate that we have seen merely
21 the tip of the iceberg.

22 We find that a multitude of things in the way of
23 goods and services are sold door-to-door.

24 In our complaint files, magazine subscriptions
25 and encyclopedias head the list.

1 The list also includes vacuum cleaners, sewing
2 machines, cookware and cutlery, home improvement jobs,
3 home fire alarm systems, discount buying services, photo-
4 graphic services, greeting cards, and cemetery plots.

5 But more important than identifying goods and
6 services sold, our experience with consumers has served
7 clearly to identify the specific types of abuses inherent
8 to door-to-door selling. We find that these fall mainly into
9 five categories.

10 High Pressure: Probably the most common and
11 widely recognized abuse, is the blitzkrieg technique.

12 High pressure, in one degree or another, is an ele-
13 ment in virtually all of our direct selling complaint cases.
14 One consumer after another reports that they have been pressured
15 into signing a sales contract by a barrage of fast talk,
16 colorful brochures, and the sheer staying power of the
17 salesman, who just wouldn't leave until a sale was made.

18 Essentially, the high pressure salesman is trading
19 on the inherent good manners of people. It's always em-
20 barrassing to ask someone to leave your house. Knowing this
21 a door-to-door salesman will stay, and stay, and stay until
22 he thoroughly wears down a consumer's sales resistance.

23 Also the high pressure salesman is taking advantage
24 of what amounts to a basic inequity of bargaining between
25 himself and the consumer.

1 A good salesman is highly trained in how to "make
2 the kill." He may deliver his sales pitch a hundred times a
3 week; so he knows all the angles.

4 The consumer, of course, is a novice and is certainly
5 not on equal bargaining ground with the experienced salesman.
6 There is an inherent unconscionability about such sales
7 contracts issuing from such circumstances.

8 By the way of example, a complainant from Hamilton,
9 Michigan told us of a cookware salesman who called when his
10 daughter was the only one home. This salesman high-pressured
11 the girl, who was a minor, into a sale and even convinced
12 her that it was all right to sign her father's name to the
13 contract.

14 A consumer from Onstead, Michigan, told us of his
15 experience with another type of high-pressure tactic, the
16 scare tactic. Frightened by the salesman's story and
17 pictures of small children burning to death in their beds,
18 the consumer purchased an expensive home fire alarm system.
19 After the system was installed the consumer discovered that
20 it did not work as represented.

21 Another offense is blatant misrepresentation by
22 the salesman. This, of course, is verbal misrepresentation
23 and hard to prove. Even though the consumer has been lied
24 to verbally, he is stuck with a piece of paper and bound by
25 the legal implications thereof.

1 A consumer in Dearborn, Michigan, was told that she
2 was purchasing a well-known brand of cookware. It actually
3 turned out to be a different, lesser-known brand.

4 In this same case, the price in the contract was
5 greater than that verbally quoted to the consumer, and the
6 contract itself was found by the Michigan Attorney General's
7 office to be in violation of the State Retail Installment
8 Sales Act on three counts.

9 Misrepresentation of purchase price is common in
10 magazine subscription sales. A customer may be told verbally
11 that he will be paying so much a month for his subscription,
12 while the actual contract requires that he pay that same
13 amount on a weekly basis.

14 We have received a number of complaints against
15 a company for whom this sort of a thing is apparently
16 standard operating procedure.

17 Misrepresentation of course can be of a much more
18 subtle shade, and as such sometimes all the more devastating.

19 The encyclopedia salesman is usually an artist
20 at subtle, psychologically aimed misrepresentation.

21 The consumer is led to believe that the presence
22 of a set of reference books in his home is going to enhance
23 his children's chances of performing well in school and thus,
24 by implication, advancing into college and into well paying
25 careers. This is a tremendous play on family ego and on a

1 parent's regard for the welfare of his children.

2 As to inferior merchandise, remember that mer-
3 chandise sold door-to-door is very often purchased sight-
4 unseen. When the goods are ultimately delivered, it is not
5 uncommon for them to be much less than anticipated: of
6 inferior quality, sometimes even defective.

7 A consumer in Sumner, Michigan, purchased a sewing
8 machine from a door-to-door salesman. Shortly after delivery
9 the machine stopped working. The consumer was unable to
10 obtain the promised warranty service.

11 She could not locate the salesman who had sold
12 the machine to her, and the manufacturer had gone out of
13 business. Because it was an off-brand machine, she had a
14 difficult time finding anyone who would service it.

15 Generally speaking, we have found that high quality,
16 brand name merchandise is seldom peddled door-to-door, and
17 that the warranty on inferior, off-brand merchandise is
18 usually meaningless.

19 Overpricing -- merchandise sold door-to-door is
20 often grossly overpriced. The lady who bought the sewing
21 machine referred to above paid \$280. Comparative shopping
22 could have produced a comparable, name-brand machine for
23 half that price.

24 Often a consumer pays an exorbitant price for a
25 product or service, which he subsequently learns is useless

1 to him. Many an encyclopedia set just gathers dust.

2 A Lansing complainant reports that he paid \$500
3 for a membership in a discount buying club which purported-
4 ly would have enabled him to purchase all sorts of durable
5 goods at great savings.

6 Of course, many name-brand items which are fair
7 traded are not available to him through this service. As
8 it turned out, he didn't have occasion to use this service,
9 certainly not to the extent of making up his \$500 membership
10 fee.

11 Another consumer paid \$300 for an anti-bed-wetting
12 device for her child. The device turned out to be totally
13 useless. It was supposed to shock the child out of his
14 habit. It shocked him all right, so traumatically that the
15 habit is worse than ever.

16 Gimmicks -- the last abuse we mention is the use of
17 gimmicks to induce the customer to listen to the sales pitch
18 or to clinch the sale.

19 A common door opening gimmick is "you have been
20 specially selected to participate in our program."

21 And we are all familiar with the old encyclopedia
22 salesman's gimmick, "we will place this set of books in your
23 home free of charge, if you permit us to use your name in
24 our advertising.

25 All you must do is pay a modest charge for the

1 annual yearbook to keep your set up to date." This "modest
2 charge" generally amounts to \$500 on a three-year contract,
3 or the usual price of the set.

4 Then, of course, there is the referral sales gimmick
5 which, though illegal in many localities, is still in use.

6 These, then, are some of the offensive practices
7 of door-to-door selling.

8 As a remedy, the Commission has proposed a rule
9 providing a three-day cooling-off-period. The rule stipulates
10 that the purchaser has the right to cancel the transaction
11 if he notifies the seller of this desire within three busin-
12 ess days of the date of the transaction.

13 Also, it is required that the consumer be informed
14 by the seller, both verbally and in writing, of this right.

15 We do not think that this rule is strong enough.

16 As we mentioned, 68 of our consumer complaints in-
17 volved door-to-door selling.

18 We looked at each file in relation to the Commission's
19 proposed rule, and we noted that in only seven of those 68
20 cases, had the consumer himself petitioned the seller within
21 three business days for rescission of the transaction,
22 always without result.

23 We conclude that the proposed rule would have helped
24 out only seven of these people.

25 It would also be reasonable to assume that a notice

1 of the cooling off period, printed in the contract, might
2 prompt reconsideration of the part some additional consumers
3 who wouldn't otherwise have petitioned for a rescission
4 within three days.

5 Some consumers could have been prompted to realize
6 that they had in fact been high-pressured into purchases
7 they never would have made on their own. Thus, a few more
8 people could benefit.

9 But remember that the effectiveness of the proposed
10 rule depends entirely upon the very indefinite expectation
11 that the consumer is going to absorb and fully comprehend
12 the rule, and is going to exercise an expected degree of
13 vigilance and initiative.

14 This is a kind of a negative option procedure -
15 contact us if you don't want the product or service. And
16 such negative option devices, as the Commission itself
17 has pointed out in the past, tend to favor the seller.

18 It has been our experience that many consumers do
19 not comprehend sanctions available to them, even when those
20 sanctions are spelled out to them in writing.

21 Consumers in Michigan still sign blank contracts
22 which bear the required clause "do not sign this contract
23 before you read it or if it contains blank spaces."

24 Remember also, that when a consumer puts his name
25 on a contract he has usually been the subject of a rather

1 thorough "sell job."

2 He has probably convinced himself that he really
3 needs what he is buying and that he has made a smart deal.

4 Presumably he has signed the contract after reading
5 it thoroughly, including any cooling off period clause.

6 We question whether he is going to be inclined,
7 within three days, to admit that he has made a mistake.

8 Then, of course, if he signed without reading the
9 contract, the chances are that he won't read it later. The
10 salesman may, or may not, orally inform him of his rights
11 to cancel.

12 We realize that the Commission does not suppose
13 that its proposed rule would prove an answer to all door-to-
14 door sales problems. However, while the proposed rule is
15 a move in the direction of a solution, we would recommend
16 a bolder move.

17 For example, we mentioned that the proposed rule is
18 a negative option favoring the seller, and suggest that the
19 Commission consider a rule stipulating a positive option; in
20 other words, that unless the purchaser sends the seller
21 written verification of the sale, the transaction is void.

22 Granting the purchaser three days time for consider-
23 ation and positive verification would circumvent the
24 hinderances of negative option.

25 Failing this, another alternative might be considered.

1 Many consumers realize no apparent cause to cancel a door-to-
2 door sale until after delivery of the merchandise.

3 If the merchandise is less than anticipated, is
4 defective, or incomplete, then the consumer realizes a very
5 real cause to cancel. But if three days have gone by since
6 the original transaction, this consumer is going to find
7 cancellation very difficult.

8 We submit, therefore, that consideration might be
9 given to a rule that affords cancellation within three
10 business days or three days after actual receipt of the
11 goods.

12 In summary, as we stated at the outset, the many
13 problems which consumers experience with door-to-door selling
14 certainly do warrant the attention of this Commission.

15 We support the intention of the Commission's
16 proposed cooling off period rule and recognize that it
17 would assuredly be a benefit to some consumers.

18 But we are hopeful that we have spoken as well to
19 the limited effectiveness of the proposed rule, suggesting
20 alternatives which would allow for positive verification
21 by the purchaser, or cancellation after receipt of goods.

22 Again, we have appreciated this opportunity to appear
23 and speak on this issue.

24 HEARING OFFICER DIXON: Thank you, Mrs. McKaig.
25 Mr. Cabell.

EXAMINATION

1
2 MR. CABELL: Mrs. McKaig, with regard to your
3 suggestion that the cooling off period commence upon
4 delivery of the goods, have you considered the problem
5 when a consumer buys a particular service such as the
6 installation of a fence or the installation of some other
7 product in the home.

8 MRS. MC KAIG: When the consumer makes a positive
9 act, he goes downtown or calls this person who is going
10 to install the fence, this person needs the fence. He
11 wants to buy a fence and says, "Please come down and
12 talk to me about putting in a fence," that is completely
13 different from the door-to-door home improvement man
14 that comes by and says, "Gee, your fence is falling down.
15 Let me sell you one."

16 It depends upon who initiates the transaction.

17 MR. CABELL: Well, in that instance how would
18 you work this cooling off period?

19 MRS. MC KAIG: I think the positive act of the
20 consumer would take care of it. The law could be written
21 so the consumer asked for the purchase rather than being
22 asked to sell would eliminate most of the problem.

23 MR. CABELL: Has your state given any consideration
24 to banning door-to-door selling altogether?

25 MRS. MC KAIG: Actually we are doing quite a bit

1 about it. We have a bill pending to ban deceptive practices.
2 Any deceptive practice would make a contract cancelable.

3 MR. CABELL: We have a provision in this proposed
4 rule which provides in substance that the salesman must
5 identify himself and state the purpose of the contact to
6 make a sale. He is supposed to do this initially.

7 Now, a number of industry members have recommended
8 as alternative to this that the salesman simply be forbidden
9 to use any sort of deception to gain entrance into the home.

10 Do you care to commend on that?

11 MRS. MC KAIG: I think it would be useful to the
12 person who comes to the door to know who they are dealing
13 with.

14 If we have a salesman selling X product, that
15 should be stated. But I am not too hopeful that would be
16 easy to police.

17 We find so many misrepresentations: two weeks after
18 the fact, we can't reconstruct it. One man says something
19 and another man says something else. It is one word against
20 another.

21 MR. CABELL: Do you believe the oral cancellation
22 should be retained in the rule?

23 MRS. MC KAIG: I would retain it but it would be
24 helpful to follow up with a written cancellation. We can't
25 prove the oral cancellation.

1 We have better luck with things in writing.

2 MR. CABELL: Thank you.

3 HEARING OFFICER DIXON: Mr. Lamet.

4 MR. LAMET: Yes. Let me ask, under your suggestion
5 the rule be reversed from a negative to a positive, would
6 it be your suggestion there would be a three day period;
7 that within three days unless the consumer says, "I want
8 the goods," that the sale is automatically cancelled.

9 MRS. MC KAIG: That is right.

10 MR. LAMET: You are proposing.

11 MRS. MC KAIG: It is.

12 MR. LAMET: Would you say that three-day period
13 is enough time or should it be a different period?

14 MRS. MC KAIG: Three days effective would be
15 all right, as long as you make it a positive verification
16 be needed.

17 MR. LAMET: Going somewhat into what Mr. Cabell
18 was saying concerning the question of delivery, we have
19 had other witnesses, incidentally, testify in a similar
20 vain. They feel the cooling off period ought to start
21 with the delivery of the goods.

22 Would you think it would be possible to exempt
23 services and say only those things that actually involve
24 the sale of merchandise and would the three-day cooling
25 off period begin at the time of delivery with regard to

1 services, the alternative would be at the time of the
2 contract, would that be feasible?

3 MRS. MC KAIG: That would be feasible but it might
4 be better to provide, except in cases of emergency, the
5 fence would be put up three days after the contract was
6 entered into. In that event you would still have full
7 time for positive verification.

8 I think it is a completely situation where the
9 consumer calls the plumbing company and says, "My bathtub
10 is leaking," because he initiated that he wants it.

11 No one is trying to put in a new bathtub.

12 MR. LAMET: That means it doesn't bother you that
13 even in the case of the fence, even though he has started
14 to put up the fence or has put up the fence, the three day
15 cancellation period is still in existence, it is your
16 testimony, apparently what you are saying is the seller
17 has come to the door of the consumer and therefore, he must
18 trade at his jeopardy in a sense.

19 MRS. MC KAIG: Or wait three days to put up his
20 fence.

21 MR. LAMET: Have you had an opportunity to look at
22 the arbitration provision (c)?

23 Do you have any comment on the provision in the
24 rule which calls for arbitration at the home of the con-
25 sumer for any of the disputes?

1 MRS. MC KAIG: We have nothing similar. We had
2 nothing from our files to bring to that.

3 MR. LAMET: Do you have a cooling off period in
4 the State of Michigan?

5 MRS. MC KAIG: No.

6 MR. LAMET: Thank you, Mrs. McKaig.

7 HEARING OFFICER DIXON: Thank you, Mrs. McKaig.

8 (Witness excused.)

9 HEARING OFFICER DIXON: Next is Mr. Paul Hamer.

10 Whereupon,

11 PAUL HAMER,

12 was called as a witness, was examined and testified as
13 follows:

14 DIRECT EXAMINATION

15 MR. HAMER: Good morning, Mr. Chairman.

16 My name is Paul Hamer, H-a-m-e-r.

17 I am the Village Attorney for the Village of
18 Wheeling, Illinois. I have been authorized by the
19 corporate authorities of the Village of Wheeling to
20 appear here today and testify in favor of the proposed
21 bill.

22 The Village of Wheeling is a fast-growing suburb
23 of northwest Cook County which has been plagued by door-
24 to-door sales solicitors.

25 We enacted three ordinances in the Village of

1 Wheeling, that being a licensing ordinance, second, an
2 unwanted or uninvited solicitation ordinance identical to
3 that upheld by the United States Supreme Court in the case
4 of Biard versus City of Alexandria.

5 We enacted an ordinance which prohibited trespassing
6 on private property.

7 The validity of all these ordinances were all
8 challenged by a door-to-door solicitor and the Appellate
9 Court here held that the Village of Wheeling was without
10 the statutory authority to enact all three ordinances.

11 Since that time the Illinois Legislature seen fit
12 to permit the municipalities to enact a trespass ordinance
13 and to date this ordinance has remained unchallenged.

14 However, we are still plagued by these hit and run
15 mass solicitations.

16 The previous witness testified as to the manner
17 in which this is done. They will obtain a group of 20
18 or 30 young people and they will besiege a community en
19 masse for a two to three day period.

20 I would like to give some examples of the door-to-
21 door solicitors which were brought to my attention during
22 the course of examining the citizens of the Village of
23 Wheeling in preparation for the trial of the case I previous-
24 ly mentioned.

25 In one case the gentleman was at home preparatory

1 to bringing his wife home from the hospital. There was a
2 knock on the front door and a representative of a solicitor
3 was there from the baby studio wanting to take pictures of
4 the newborn baby.

5 I don't know where they got their information from,
6 but at any rate, the baby was stillborn. It was dead.

7 Can you imagine the reaction of the housewife had
8 she been home just fresh from the hospital with this memory
9 still fresh in her mind of the baby dying, being confronted
10 with a baby photographer to take a picture of the newborn
11 babe.

12 The gentleman testified he did all within his
13 power to keep from killing the man right on the spot.

14 Another instance, a man was sleeping. He worked
15 on the night shift on one of the railroads. He testified
16 the doorbell rang at his house for several times. After
17 an extensive length of time he finally got up, went to the
18 door and it was an encyclopedia salesman.

19 He advised the encyclopedia salesman he had already
20 purchased a set through his weekly purchases at one of the
21 chain food stores.

22 The door-to-door solicitor advised him that that
23 set was a cheap set, and it wasn't worth the money he put
24 into it and he should buy his set costing several hundred
25 dollars.

1 Now, the Chief of Police of the Village of Wheeling
2 testified at the hearing that many people posed as solicitors
3 to gain entrance to a house to commit crimes, or in one case,
4 he testified they posed as solicitors to plan proposed crimes
5 to get the layout of the particular apartment.

6 Under our licensing ordinance we introduced into
7 evidence the fact we had rejected over 16 persons with
8 known criminal records. Some of the crimes were deviant
9 sexual conduct, indecent liberties, confidence games,
10 contributing to the delinquency of minors, burglary, fraud,
11 larceny, pimping, breaking and entering.

12 One salesman had 32 convictions of various offenses,
13 yet, the courts here in Illinois have held that the munic-
14 ipalities do not have the right to license door-to-door
15 solicitors.

16 Now, all of these citizens who testified at this
17 hearing testified they were either performing household
18 chores or entertaining friends or neighbors.

19 In one particular case the lady was caring for
20 a sick child at the time of the interruption. They had
21 been annoyed or disturbed by this interruption.

22 The local school superintendent also testified
23 he had been besieged by calls relative to this purported
24 survey that was taking place.

25 In fact, they wrote a letter which we introduced

1 in evidence advising the partents of the school children
2 in our community that no survey was in fact being taken
3 and that the school district had not approved these parti-
4 cular encyclopedia.

5 Now, the technique that was used by these door-to-
6 door solicitors in that case worked as follows. The
7 gentleman testified he had what is known in the trade as
8 the reverse directories put out by one of the phone companies
9 which shows the address of each house on the street by street
10 name and the owner or person who resides at the house.

11 The salesman, before he went to that door knew
12 the name of the person who lived at the house according
13 to this reverse directory. He had in his hand a little
14 pad with that name and that address written on there before
15 hand. He would approach the door and say, ring the bell
16 and address the occupant by his or her name.

17 He states their name and for the most part a
18 lot of these sales persons were in fact school teachers.
19 If they were a school teacher they would say, "I am a
20 school teacher in district 109." They wouldn't identify
21 the area other than that particular school district or
22 some district. Mbst people don't know what school district
23 they live in. They would assume naturally, that it was
24 a sch001 teacher in their district.

25 He said he was calling on the parents of school

1 children in Wheeling. He asked the occupant the name
2 of her children and what grade they are in and whether or
3 not she belonged to the PTA and whether or not her husband
4 is working.

5 The salesman then inquired if the person is a
6 teacher or whether she has any knowledge of the new teach-
7 ing methods that are being used in the school or whether
8 she knows of the new materials being used in the schools.

9 The answers to these questions are written down
10 by the salesman who is taking these notes. Then once
11 inside the door the salesman explained how his material
12 fit in the school curriculum and how the material would
13 aid the child in school.

14 If, for example, a child is at home he would
15 ask the child to read from a sample book and then he
16 goes into his regular sales pitch.

17 In summary, relative to this technique the testimony
18 of the citizens was that the salesman had led them to believe
19 that they were in fact conducting a survey on behalf of
20 the local school.

21 This is why it was necessary for the school superin-
22 tendent to send out these notices to the parents saying
23 there was not in fact a survey being made and too, the
24 representation was made by one of the sales persons the
25 local school district had approved this.

1 They had approved the set of encyclopedias. And
2 the superintendent had to overcome that allegation.

3 Now, your federal proposed law will not prohibit
4 this door-to-door solicitation, but we believe that it will
5 reduce the possible fraud.

6 The Village of Wheeling was plagued by a series of
7 vacuum cleaner salesmen prior to this encyclopedia incident.
8 In that particular case this was the referral sales gimmick
9 by which if you purchased a central vacuum cleaner system
10 -- they had a central vacuum cleaner with pipe running
11 underneath the house into the house walls, you simply took
12 your hose around and plugged in each room like you would an
13 electrical vacuum cleaner. This was the product.

14 I think that the product was around -- cost \$900.
15 You paid the \$900 and then you gave them a list of some
16 25 persons. Then, if one of those persons purchased the
17 central vacuum cleaner system you got \$25 back on your
18 purchase price.

19 As I say, the total contract was priced between
20 \$800 and \$900. The actual same product could be bought
21 in a retail store for \$195.

22 Ultimately we got a ruling here in Illinois on a
23 consent decree on a suit brought by the attorney general
24 to eliminate that referral sales gimmick.

25 Another example of the type of fraud I think your

1 proposed law would aid in reducing is the magazine
2 salesman.

3 We had one lady testify she did not testify at
4 the hearing, but she was one of the witnesses examined
5 prior to the hearing.

6 She testified that the magazine salesman had come
7 to the door in the morning and she had refused to take the
8 subscriptions. The salesman said, "Well, in the afternoon
9 my supervisor will be by to see if I have treated you fair-
10 ly." She had refused the sale in the morning.

11 The so-called supervisor came by in the afternoon
12 and put the high pressure on her. He indicated she would
13 receive the subscriptions free. All that she had to do was
14 pay this handling charge.

15 So, she signed the contract and he said, "Well,
16 you have to give me \$3.95." She said, "Well, I haven't
17 got \$3.95." So, he said, "Well, do you have \$3.95 worth
18 of S & H Green Stamps? I will take the green stamps."

19 Now, perhaps the most enlightening discussion
20 heard on door-to-door solicitations is to be found in
21 the Opinion in Moyne versus Burrough, New Jersey 528,
22 reported at 154, Atlantic, Second, page nine which is a
23 1959 decision of the New Jersey Supreme Court.

24 At page 17 it states and I will quote, "There can
25 be no doubt the business of soliciting and canvassing is

1 a proper subject for regulation under the police powers
2 as is peddling and has been so considered for generations.

3 The way in which the business is necessarily
4 conducted open the way for fraud, deceit and dishonest
5 dealing by the unscrupulous, even though by only a minority
6 of those engaged in it with redress difficult or practically
7 impossible. The solicitor is very frequently a stranger
8 and quickly gone from the locality.

9 The resort may also easily be had in the business
10 by the criminally minded for the purpose of obtaining
11 admittance to private homes and furtherance of the present
12 and future unlawful object."

13 We have carefully reviewed the proposed regulations
14 and believe them to be worthwhile regulations.

15 We suggest three changes, however,

16 We would suggest the amount be reduced to \$5 and
17 we believe that this will cover practically all of the
18 purchases.

19 We would suggest the cooling off period be increased
20 to five working days, on the grounds, for the most part,
21 the husbands are now home. They may be travelling. They
22 may be out of town for one reason or another. They may
23 want to cancel the contract for one reason or another, if
24 the wife is easily swayed.

25 So, we would suggest it be increased to five working

1 days.

2 We also feel the positive option which the prior
3 witness had talked to is a possible alternative which
4 should be explored by the Commission, primarily we feel
5 because there is no meeting of the minds that a contract
6 is really meant to be entered into at that time in the
7 situation where you are almost in a hot box under high
8 pressure to purchase this, whereby, maybe in the calm
9 reflection, and after much discussion with the housewife,
10 the husband is rather irate at this stage of the game.

11 Perhaps that positive option would be an addition-
12 al solution to this.

13 In conclusion, we are of the opinion the enactment
14 of a federal rule would materially aid in reducing fraud
15 in door-to-door sales because of the fact we believe it
16 would deter the fly-by-night operators while not inter-
17 fering with the legitimate operations of the door-to-door
18 salesman who may be authorized by the home owner to call
19 upon them in their home.

20 Thank you.

21 HEARING OFFICER DIXON: Thank you, Mr. Hamer.

22 Mr. Cabell.

23 EXAMINATION

24 MR. CABELL: Mr. Hamer, could you tell us a little
25 more about the Village of Wheeling. What is the economic

1 status of it?

2 MR. HAMER: It is middle class income people. We
3 have a population of about 15,000. It is still growing.
4 Most of our problems were in the early stages when there
5 were large developments coming in, the new homes going
6 up would be besieged by armies of salesmen in all types
7 of rug salesmen, vacuum cleaner salesmen and this type.

8 MR. CABELL: Do you have any idea of the average
9 income range of your people?

10 MR. HAMER: I would say it would be \$9,000 to
11 \$12,000 a year.

12 MR. CABELL: What does this trespass ordinance
13 do you passed. It is still in effect?

14 MR. HAMER: Yes.

15 We enacted the identical law which is under the
16 Criminal Statutes here in Illinois.

17 If the property is posted at the main entrance
18 to the property no solicitor can go on. Once the solicitor
19 goes on the property, if he is asked to leave either orally
20 or in writing and refuses to leave, then he violates our
21 local ordinance.

22 I was also Chairman of the Committee here in
23 Illinois which prepared another type of ordinance which
24 was in effect by the City of Naperville. They have a
25 combination licensing and implied invitation. I forget

1 exactly how it works, but I think if you have for example,
2 a certain type of colored decal on your door or your
3 window, then you are inviting solicitors to come to your
4 house. They can come to your house if they are registered
5 with the City of Naperville.

6 When another color decal is shown then you cannot
7 come on the property. We are advised that has worked very
8 well.

9 We have enacted the model ordinances and submitted
10 them to the Illinois Municipal League. We have given the
11 municipalities the option of selecting one or the other.

12 I do not know how many municipalities here in
13 Illinois have chosen to enact either one or the other of
14 those.

15 MR. CABELL: Have you invoked your trespass
16 ordinance?

17 MR. HAMER: So far it has not been challenged. We
18 give them the warning. We go out there and say, "Here is
19 a copy of our Ordinance." For the most part they will
20 leave the village.

21 We have been besieged here in the last two months
22 by the large groups descending on the village at night. By
23 the time our police officers can get out there they have
24 usually gone from the community.

25 They strike in several hours it seems by the time

1 you get there and trace them down they are usually gone.
2 But so far no one has challenged the validity of our
3 ordinance.

4 We have not made any arrests under our ordinance.
5 We have found it to be effective, merely by serving the
6 warnings.

7 MR. CABELL: What if any effect has the Illinois
8 cooling off law had on the Village?

9 MR. HAMER: Not too much because it is a high
10 amount. Attempts were made to reduce it. I believe it
11 is \$50 in Illinois, the amount.

12 MR. CABELL: Do the people know about it?

13 MR. HAMER: Yes.

14 We try to advise them. Even in our own ordinances
15 we found the people reluctant to file charges.

16 We had one incident where a woman was raped over in
17 Arlington Heights. She refused to even bring charges
18 against the door-to-door solicitor.

19 People do not want to get involved in this thing.

20 We must have talked to 150 witnesses we screened,
21 citizens in Wheeling preparatory to testifying in this
22 case. We interviewed them.

23 We were narrowed down by the court order to
24 introducing only witnesses who could identify that
25 particular salesman or that particular product.

1 So, these people would come up and would be
2 interviewed in the Village Hall, but they would not want
3 to go down to court.

4 We found we had to subpoena the witnesses to
5 bring them into court to enforce a prior ordinance.

6 MR. CABELL: If the people are not using the
7 Illinois cooling off law, why do you think they will
8 use the Federal Trade Regulation Rule?

9 MR. HAMER: One of the problems has been in the
10 enforcement of the Illinois law is that the companies
11 claim they are protected under the Federal Constitution
12 by virtue of the interstate commerce clause.

13 In certain cases the Supreme Court has held this
14 would be an unlawful interference with interstate commerce
15 traffic.

16 That is why I feel the Federal Law would obviate
17 that defense, if you would. I think companies would respect
18 it.

19 MR. CABELL: Did your ordinances pretty much bann
20 door-to-door selling?

21 MR. HAMER: No, the licensing ordinance, there is
22 a rental fee for the identification badge. There was an
23 initial licensing fee such as \$1 a day rental for the badge.

24 The main objection was the fingerprinting. These
25 people did not want to be fingerprinted. Many felt it was

1 offensive to them. The fingerprinting was the stickler
2 in the licensing ordinance.

3 This is how, for example, we picked up all of these
4 offenses. We would send the fingerprints into the FBI and
5 get these reports.

6 We tried to set up guidelines with the door-to-door
7 solicitors here in Illinois at the last session of the
8 legislature or the session before, one or the other; we
9 got no where.

10 One group would say most of their solicitors are
11 women and they don't want to go and be fingerprinted.

12 We just got absolutely no where trying to get
13 legislation through here in Illinois dealing with the
14 licensing of door-to-door solicitors.

15 Most of the people in the industry themselves
16 could not agree on a bill. We had many meetings with
17 the industry and could not agree on a bill.

18 Finally, as a result, we went to the trespass
19 ordinance. The home owner may by posting his property
20 indicate if he wants a solicitor to come on the premises
21 or not.

22 MR. CABELL: On the uninvited situation we have
23 evidence on our record the door-to-door sellers employ
24 all sorts of means to pave the way for the seller into
25 the home.

1 Suppose they run an advertisement in the Sunday
2 Supplement -- get a free estimate for carpets and drapes.
3 So, the consumer calls and the door-to-door salesman comes.

4 Now, in that situation would you exclude the
5 transaction from the cooling off regulation?

6 MR. HAMER: No, I think it should still be subject
7 to that because -- I don't know if any of you gentlemen
8 have been subjected to the pressure tactics, but anybody
9 who has would feel that it is just high pressure sales
10 tactics.

11 I still think in that stage of the game there
12 has been no meeting of the minds on a contract. I think
13 this is why the cooling off period is necessary to reflect
14 on it. Perhaps one or the other of the spouses makes the
15 decision without consulting the other one. The other one
16 comes home, then I feel they should have the right to
17 rescind under the cooling off period.

18 MR. CABELL: While your trespass ordinance would
19 not apply in the situation that you have just mentioned,
20 you still have the cooling off period applicable to any
21 sale made in the home.

22 MR. HAMER: Correct.

23 MR. CABELL: With regard to reducing this limit
24 I believe our rule has \$10 and the Illinois law, \$50; the
25 industry has recommended \$25.

1 Now, our problem here is the routine door-to-door
2 salesman, cosmetics, Fuller Brushes, dry cleaning, dairyman,
3 perhaps the newspaper going out as the subscription prices
4 go up, how do you exclude this sort of a transaction if
5 you lower the limit to \$5?

6 MR. HAMER: Well, I think my suggestion to lower
7 the limit to \$5 to cover the transactions you speak of;
8 the Fuller Brush, the Avon Products. For the most part
9 they would be exempt under the \$10 limit.

10 We won the case against Fuller Brush. They refused
11 to take it up on appeal. I think the purchases in those
12 instances were under \$10 for the most part; a single brush
13 or toothbrush or something of that nature.

14 MR. CABELL: You have had consumer complaints on
15 that type of action?

16 MR. HAMER: Yes.

17 They felt it was an invasion of their right of
18 privacy in their own home. They were annoyed and dis-
19 turbed. They felt this was a nuisance.

20 As I say, we tried to emphasize the point it was
21 a nuisance. It annoyed or disturbed them. They were perform-
22 ing household chores of some kind.

23 Whereas, if you invite a salesman into your home
24 and they say they will be there at 7:00 o'clock, you are
25 prepared and get the house cleaned up. You have set aside

1 most of the household chores for the purpose of talking
2 to the salesman. These were interruptions.

3 MR. CABELL: Thank you.

4 HEARING OFFICER DIXON: Mr. Lamet.

5 MR. LAMET: With regard to the -- following up what
6 Mr. Cabell was talking about; have you had the problem with
7 regard to newspaper solicitation or some complaints for
8 fund-raising or otherwise, newspapers have used the gimmick
9 of soliciting newspaper subscriptions for a short period
10 of time.

11 Has that been a problem?

12 MR. HAMER: Yes.

13 The Chicago American challenged our ordinance
14 alleging freedom of the press as their right to subject
15 the home owner to the high pressure sales techniques for
16 the purpose of purchasing subscriptions to their papers.

17 I feel after reading the Briard decision they
18 may have a protected right, a constitutional right. It
19 is hard for me to visualize it but in the Briard decision
20 which involved a magazine salesman, this was a little
21 different situation. They weren't advocating a cause
22 or anything like that whereas, and this is the argument
23 that we used in the encyclopedia cases, the encyclopedia
24 is not advocating a cause and probably not protected because
25 it is printed material. They have this commercial aspect.

1 The newspapers are borderline situation by virtue
2 of their editorial. We did not challenge or take it up
3 on appeal.

4 MR. LAMET: Were the sales under \$5?

5 MR. HAMER: Yes.

6 We heard testimony yesterday with regard to in-
7 cluding in this three day cooling off period the time
8 it starts would be the time of the delivery.

9 Would you like to make any comment on that?

10 MR. HAMER: I think it would probably be a good
11 thing to include it from the date of delivery.

12 Relative to the fence you talked about earlier
13 I think the consumer would be protected by the implied
14 warranty that that is going to be fit for that particular
15 use.

16 Where the prior witnesses testified the goods
17 were different than the sample it is going to be very
18 difficult to prove, although I think the arbitration
19 clause might be good in that situation.

20 On the large items then I think the implied
21 warranty may be the answer to the situation.

22 MR. LAMET: Thank you, Mr. Hamer.

23 HEARING OFFICER DIXON: Thank you, Mr. Hamer.

24 (Witness excused.)

25 HEARING OFFICER DIXON: Next is Mr. William Lemke,

1 Professor of Law, Loyola Law School.

2 Whereupon,

3 WILLIAM F. LEMKE,

4 was called as a witness, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 MR. LEMKE: Thank you, Mr. Chairman.

8 Mr. Cabell and Mr. Lamet.

9 First, I would like to take this opportunity to
10 thank you for inviting me to testify regarding this trade
11 regulation rule.

12 Secondly, I would like to commend the Federal
13 Trade Commission on coming out to the field to get the
14 views of members of the public who are unable or unwilling
15 to make the usual journey to Washington, D. C, for the
16 purpose of having their views expressed in a situation of
17 this type.

18 We certainly hope that this will be a regular
19 practice by the Commission. We feel it is a very desirable
20 and progressive step.

21 I have not identified myself. I am William F.
22 Lemke. I am an attorney and also, at this time, a Professor
23 of Law at Loyola University School of Law.

24 I appear expressing my own viewpoints. I cannot
25 purport to express or represent the viewpoints of Loyola

1 University School of Law.

2 Prior to becoming a Professor of Law I was an
3 employee of the Federal Trade Commission for a good many
4 years. So, most of my career was spent in the field.

5 Therefore, in the course of this career I feel
6 I have had the opportunity to contact and meet probably
7 meet as many consumers who were shall we say, the victims
8 of house-to-house selling, as I suspect any employee of
9 the Federal Trade Commission.

10 I have seen most of the areas as the Commission
11 has had experience in the field of house-to-house selling.

12 I would not at this time purport to relate specific
13 incidents or particular experiences other than to say that
14 what had struck me throughout that period of time with the
15 Federal Trade Commission with the contacts that I had with
16 with the consumers themselves was that it was rather
17 striking to see that a non-complaining witness was often
18 the one who was most thoroughly deceived by deceptive
19 practices.

20 Many times the witness who would never complain
21 to anyone was really the person who was most generally
22 affected.

23 I recall one instance where an encyclopedia
24 blitz had hit the City of Fort Wayne, Indiana. It was
25 rather interesting to observe that in going through whole

1 communities of very definitely sub-level housing, people
2 who obviously did not have the means to buy the bare
3 necessities of life had been sold a beautiful set of
4 books which in most cases had never been opened.

5 Therefore, the Commission itself is well aware of
6 situation and it has been well covered by other witnesses.

7 What I would like to do is first of all state I
8 heartily endorse the cooling off period trade regulation
9 rule. I think it is a very desirable one.

10 I would like to comment just briefly on what I
11 might say here today about the rule itself leaving the
12 necessity for the rule to have been demonstrated by other
13 witnesses who have already testified.

14 First of all, the definition of consumer goods.
15 I wonder if this might not be expanded somewhat. It would
16 appear to me there is at least a good possibility the
17 definition as currently expressed would not cover some
18 situations as the vending machine type of franchise sale,
19 the sale of Chinchilla rabbits who can get rich quick by
20 raising these.

21 These are old transactions and types of operations
22 which often times involve deception of the consumer and
23 often times may be transactions the consumer under a
24 mature consideration would be very likely to change his
25 mind and as to which he may very well wish to exercise

1 the opportunity to rescind.

2 The other point and definition I note the definition
3 of consumer goods and services reads - "goods or services
4 purchased primarily for personal, family or household use,
5 and not for resale or for use or consumption in a trade or
6 business."

7 I again wonder if this definition of consumer
8 goods and services will cover such situations as the home
9 siding and home improvement situation where the products
10 are purchased for family or home improvement, but perhaps
11 there might be some question as to whether this is for
12 household or family use.

13 I merely suggest these points as possible matters
14 to be considered in the wording of this part of the rule.

15 Unlike the prior witnesses who have testified here
16 this morning, I find the \$10 limit, in my view, is perhaps
17 too low rather than too high.

18 I am concerned in this respect that the Commission
19 may find a great deal of trivia involved and it would be
20 based again, primarily on my own experience.

21 It would be my observation the situations involving
22 the major deception, major desire to reconsider in the
23 consumer home field, home sale field involve items generally
24 somewhat more than \$10.

25 Therefore, again it would appear to me to perhaps

1 to have a strong and meaningful trade regulation rule it
2 would be desirable to set this figure at a slightly higher
3 level.

4 I note the exemption or the exception to a door-to-
5 door sale made in the presence of the buyer's attorney. Of
6 course, I wonder if this situation would be very likely to
7 exist and whether this exception is particularly necessary.

8 In relation to the notice to the buyer which is
9 covered in paragraph 1 of the trade regulation. Paragraph
10 1(a) of the Trade Regulation Rule, I notice the buyer is
11 advised he may cancel this contract or sale for any reason
12 at any time.

13 I would suggest here perhaps the words "for any
14 reason" might be stricken from the rule. It might appear
15 to me this reason for a reason being required by the buyer
16 is not really implicit in the rule. The buyer is supposed
17 to have a cooling off period. I am wondering whether some
18 buyers may feel they must come up with a good reason for
19 cancelling of a contract and thereby through their own
20 inhibitions tend not to cancel or perhaps through the
21 persuasion of an artful seller the buyer will be persuaded
22 not to exercise this option which the buyer is given.

23 The question of oral notice, the notice to buyer,
24 I would agree that the prior witness who indicated she felt
25 written notice are really the most desirable, and perhaps,

1 be used. I do not know if she specifically confined herself
2 to this, but it would be my thought perhaps an oral notice
3 would be more conducive to controversy and have more difficulty
4 of proof than the desirability of including than it is worth
5 and, perhaps, particularly if the buyer is given a notice
6 along with the transaction it would be desirable to specify
7 written notice.

8 Another point on the rule itself is the require-
9 ment the merchandise be returned in its original condition.
10 Again, perhaps this may not always be possible. I am wonder-
11 ing whether amendments of these words to some such phrase
12 as "good condition" might be desirable.

13 I am thinking perhaps, the home freezer situation
14 where the buyer is delivered food items and so on along
15 with the appliance he purchases. Conceivably there may
16 be situations where he would be unable to return this
17 merchandise, always back to its original condition. Perhaps
18 some other phraseology might be considered.

19 Also, in relation to the buyer's notice, the buyer's
20 right to keep merchandise. I believe it is provided that
21 if the seller does not pick the merchandise up within 20
22 business days after cancellation, then the buyer will have
23 a right to retain the merchandise, and I assume without cost
24 to the buyer.

25 I would urge or suggest that perhaps some requirement

1 should be made that the buyer at least make the merchandise
2 at least reasonably available to the seller for pick up
3 purposes.

4 I think here there is some possibility of buyer
5 fraud involved in the situation like this. If a mere flat
6 period of time is provided and the buyer does not make it
7 possible for the seller to pick up the merchandise, then
8 perhaps it is not what the rule would desire.

9 The comment I feel is of some importance and I
10 would envision a Trade Regulation Rule as really having two
11 primary purposes.

12 One, it would furnish a guideline and direction
13 for members of the various industries which would be sub-
14 jected to and under the jurisdiction of the Commission in
15 relation to the Trade Regulation Rule.

16 Obviously it can be of great value and of course,
17 I should not overlook the fact it would also would be a
18 guideline and provide direction to the consumer who is
19 also the party involved in the buyer-seller relationship.

20 It appears to me along with providing these
21 guidelines, it will be necessary for the Commission to
22 vigorously enforce Trade Regulations rule which it adopts.

23 It may well be that you might say the legitimate
24 group of merchandisers which may well constitute by far
25 the majority of the merchandisers in any type of merchandising

1 activity will scrupulously observe the trade regulation
2 rule. But, I would suggest that based on prior experience,
3 certainly of the Commission, there is a certain fringe element
4 which ordinarily is responsible for violating any of the
5 Commission statutes or regulations.

6 This element is not particularly concerned with
7 trade regulation rules or statutes or anything else, unless
8 they are subjected to a strong enforcement.

9 This particular element I suspect is very well
10 aware of the fact the Federal Trade Commission has proceeded
11 in many, many cases against the deceptive selling tactics in
12 the encyclopedia business and the deceptive selling tactics
13 used in the home siding business or in the cooking utensil
14 industry.

15 I would like to close this statement by urging
16 that along with the adoption of the very desirable trade
17 regulation rule that there be a strong enforcement in the
18 program.

19 Thank you, very much.

20 HEARING OFFICER: DIXON: Thank you, Mr. Lemke.

21 Mr. Cabell.

22 EXAMINATION

23 MR. CABELL: Mr. Lemke, from your testimony here
24 this morning it is apparent you made a pretty thorough
25 analysis of the rule.

1 So, I would like to ask you this question. Basically
2 the rule gives the consumer a three day cooling off period
3 to cancel the sale.

4 Now, in its evolution to this point, and, if we
5 adopt the many suggestions we have received in the course
6 of the hearing to expand the coverage it seems to me as
7 some people are seeking to make this rule a vehicle for the
8 regulation of the door-to-door sales industry.

9 I wonder what you think about a simple and clear-cut
10 rule in which we have eliminated all sorts of words and
11 verbiage and would simply give the consumer a right to cancel
12 a door-to-door sale without any arbitration provision and
13 without any provision for a sale made in the presence of a
14 buyer's attorney; without any provision about the pick up
15 or return of the goods?

16 MR. LEMKE: I do not know whether you are saying
17 a right to cancel at any time.

18 MR. CABELL: Within three days?

19 MR. LEMKE: And retain the merchandise, it has
20 been delivered?

21 MR. CABELL: No, just to give the consumer a right
22 to cancel a sale within three days and let the rule end
23 there.

24 MR. LEMKE: Again, if there were limits on the
25 amount involved. I can't basically see any objection. I

1 think it should be limited however, when you get to what
2 I would regard as trivia area purchases. I am not so sure
3 it is desirable.

4 MR. CABELL: Thank you, sir.

5 HEARING OFFICER DIXON: Mr. Lamet.

6 MR. LAMET: Mr. Lemke, do you believe if the
7 Commission would adopt a rule of that kind, this rule as
8 it is presently stated, of course, attempts to get the
9 buyer, notice to the buyer as to his rights.

10 Do you believe if we just adopted a rule that
11 said the buyer has a right to cancel within three days
12 that would be any different situation than that the State
13 of Illinois has right now without any notice provision
14 being included?

15 In your experience with the Commission in calling
16 on these door-to-door salesmen, consumer salesmen; did
17 they know about their rights under the contract?

18 MR. LEMKE: Well, I am assuming, Mr. Lamet, maybe
19 I misunderstood the question, the buyer would be notified
20 of this right and this perhaps would be included in the
21 sales contract or in some other form they would be aware
22 of it.

23 Am I correct in that?

24 MR. LAMET: Either way.

25 MR. LEMKE: I would say generally speaking the

1 consumer would not be aware of such a rule or right unless
2 it was brought to his attention.

3 The consumer does not have the opportunity to
4 become informed for example, I suspect probably most con-
5 sumers in Illinois are unaware of the cooling off period
6 unless it has been brought to their attention.

7 MR. LAMET: The experiences that you have had in
8 talking to consumers, assuming for a moment that you did
9 have notice of cancellation within three days of the trans-
10 action and this was prior to the delivery of the merchandise,
11 would that have helped many of these consumers.

12 We have heard testimony here today as you know,
13 and yesterday too, that we should include the three day
14 cooling off period should start the day the goods is deliver-
15 ed in some instances.

16 MR. LEMKE: I don't know.

17 It is hard to analyze what a consumer would do
18 it would seem to me in many cases if you were aware of
19 this option certainly you would be helped.

20 I suspect in a good percentage of the cases it
21 would be desirable to rescind. The consumer is aware of
22 his making a wrong decision before three days have elapsed.

23 Normally it has been suggested the housewife
24 makes a purchase or the husband makes a purchase and
25 then we have the meeting of the minds when the two of them

1 get together. At this point if there were the opportunity
2 to rescind, I suspect in many cases it would be exercised.
3 But here again, this is where the enforcement by the
4 Commission would have to come into play.

5 There are many consumers who would just not take
6 advantage of the notice to cancel.

7 MR. LAMET: Mr. Lemke, would you state what
8 dollar amount you think the rule should be limited to.

9 MR. LEMKE: I would say \$25. I am not particularly
10 firm on it. It is \$50 in Illinois; perhaps that is a little
11 too high. But usually in a situation of \$10 or less you
12 do not get into the situation where the salesman stays
13 there all night. He can't make a living that way. That
14 is not going to be the type of situation where you could
15 call it extreme high pressure.

16 MR. LAMET: Thank you.

17 HEARING OFFICER DIXON: Thank you, Mr. Lemke.

18 (Witness excused.)

19 HEARING OFFICER DIXON: We will now take a five
20 minute recess.

21 (Short recess taken.)

22 HEARING OFFICER DIXON: Come to order, please.

23 Our next witness is Mr. Lee Ellis, Village Manager,
24 Village of Winnetka.

25 Whereupon,

1 STATEMENT OF LEE ELLIS,
2 VILLAGE MANAGER, VILLAGE
3 OF WINNETKA

4 MR. ELLIS: My name is Lee Ellis. I am the
5 Village Manager of Winnetka, Illinois, a suburb and commun-
6 ity of 14,000 to the north of Chicago.

7 We have previously filed with you a resolution
8 duly adopted by our Village Board of Trustees, supporting
9 the proposed rule.

10 I won't bother to re-read that resolution for
11 you at this time.

12 Our concern in terms of the experience we have
13 relates principally to the magazine salesman and the problems
14 they have presented to us.

15 Ours is a mature community, so we are not bothered
16 by the siding people and some of the others.

17 The problems, just to give you a feel of the
18 scope run something like this; here is the case of a
19 salesman convincing a 12 year old girl to forge her mother's
20 signature to a check for \$101.10 for the purchase of magazines.

21 Here is a case of an 80 year old woman who is
22 high pressured into buying magazines totalling \$232.50.
23 The salesman was not satisfied with that and came back
24 on two more occasions in this particular case and rather
25 than try to sell magazines they were seeking a solicitation
of cash donation to a home for the needy which never was

1 identified.

2 They were not satisfied with miling the woman of
3 \$200, they wanted more.

4 The third example is a case of outright theft.
5 There was some reference to this earlier in the testimony
6 today that in this case the salesman, while the housewife
7 had gone to get her checkbook, stole credit cards from the
8 household. He made the mistake of trying to use the credit
9 cards and was apprehended.

10 All of these problems of theft, fraud, coercion,
11 deception have been practiced in our community, almost
12 exclusively as I have said by the magazine type salesman.

13 The people in our community complained bitterly
14 to me. We are not effectively able to deal with this kind
15 of a salesman. They hide behind the Freedom of the Press
16 arguments. These are the encyclopedia salesmen and refuse
17 even to be registered -- we have a requirement that peddlers
18 be registered.

19 We are effectively unable to cope with the problem
20 on the local level, being the low Governmental rung of the
21 ladder.

22 We do need help. Our Board of Trustees has asked
23 me to come here today and to thank you very much for calling
24 the hearing and allowing it to be held here in Chicago, and
25 to give us the opportunity to tell you we very much endorse

1 what you propose to do.

2 Thank you.

3 HEARING OFFICER DIXON: Thank you.

4 Mr. Cabell.

5 EXAMINATION

6 MR. CABELL: Mr. Ellis, can you tell us the economic
7 level of the people in your Village?

8 MR. ELLIS: Rather high, sir. I don't have any
9 official figures, but I have been told the median income is
10 above \$20,000 a year.

11 MR. CABELL: Is there a very high percentage of
12 old people there?

13 MR. ELLIS: Not a very high percentage; no, sir.

14 The preliminary census figures I have seen are
15 on the order of eight to ten percent over 65.

16 MR. CABELL: Has the Illinois three day cooling
17 off period been of any benefit?

18 MR. ELLIS: No, sir, largely because of ignorance,
19 I believe.

20 MR. CABELL: Why do you think your people would be
21 more likely to know about the Federal Trade Regulation Rule
22 than --

23 MR. ELLIS: The notice provision, sir, we think is
24 important on the contract. The notice provision would bring
25 this to light. If we had such a regulation, we have been

1 dealing so long with this exemption by the press, the
2 published word. It has been exempt from the regulations
3 in the past effectively. Our people have called me and
4 my answer is, I can't help you.

5 This would be a completely new regulation and it
6 should be helpful to us. It would give power to regulate
7 where there is none now.

8 We could, locally, of course, it would mean
9 national publicity and we would support it locally.

10 MR. CABELL: Do you have any recommendations regard-
11 ing the dollar limit on the rule?

12 MR. ELLIS: You can see from the figures that I
13 have cited here, even with magazines we are dealing with
14 fairly high dollars.

15 The type of a salesman trying to sell these things
16 is not satisfied with a \$10 sale. He wants more. \$25 might
17 be on the upper limit of that. I would say that \$10 is the
18 lower limit.

19 MR. CABELL: Thank you.

20 HEARING OFFICER DIXON: Mr. Lamet?

21 MR. LAMET: No questions.

22 HEARING OFFICER DIXON: Thank you, Mr. Ellis.

23 (Witness excused.)

24 HEARING OFFICER DIXON: Our next witness is Mr.

25 George P. Graves, Chief of Police of Western Springs, Illinois.

1 STATEMENT OF GEORGE P. GRAVES,
2 CHIEF OF POLICE, WESTERN SPRINGS,
3 ILLINOIS

4 MR. GRAVES: Gentlemen, I am George P. Graves,
5 Chief of Police of Western Springs, Illinois.

6 I have been Chief five and a half years and a
7 police officer in my community for 12 and a half years.

8 As Mr. Ellis stated, my primary problem in door-to-
9 door sales is with the magazine salesman.

10 In preparing to come here today I went back through
11 my records on a yearly basis on my problems with door-to-door
12 salesmen.

13 I think first off I would want to give you a brief
14 description of what our observations have been relative to
15 the people who make up the door-to-door salesman crew.

16 They are generally from out of state. They
17 generally represent companies who don't have offices in
18 our state.

19 It is not uncommon for us to have a crew of
20 magazine solicitors in the California licensed vehicle
21 with people from all types of states all numbers of states
22 and identification from numerous states such as I have a
23 crew currently in my community today.

24 My problems have been this; the magazine solicitor
25 generally does not tell the people that he is there to sell
magazines.

1 Some of the door opening experiences I have had
2 going back to our first experienced we documented back in
3 1965 was a solicitor representing himself as a Job Corp
4 worker. They represented themselves as being from the
5 Office of Economic Opportunity or that they were from
6 Poverty Appeal Programs.

7 The problems that we experienced in 1965 primarily
8 were in the area of deceptive practice whereby people were
9 asked to sign contracts just to prove to the crew managers
10 who follow through later that the man had in fact called on
11 the house and unknown to the people they were filled out at
12 a later time with high dollar value of purchases, Mr. Ellis
13 had mentioned before. I think the highest was for some
14 \$256, with the magazines to be purchased over a three year
15 period of time.

16 I also had problems with the high pressure sales
17 tactics. We have had problems with the solicitors having
18 consumed alcohol and becoming rather belligerent with the
19 residents of the home.

20 Generally they called during the day when the
21 housewife is home alone and usually busy with their own
22 work and they interrupt the work of the housewife and often
23 times just to get rid of the salesman they will sign the
24 document or make some token purchase and he will be on his
25 way.

1 In 1966 we had the same experience, reference, high
2 pressure tactics and drinking solicitors. We had a problem
3 where solicitors would state that they were registered with
4 the Central Registry of Magazine Solicitors out of New York
5 City which is an industry attempt, I believe to regulate the
6 conduct of soliciting for all firms.

7 In 1967 we had a problem with an encyclopedia firm
8 who would offer a free cookbook. Of course, it ended up
9 the resident would end up with a cookbook which was not
10 really free. There would be strong, strong, high pressure
11 sales tactics to purchase this particular item because you
12 want your children to be better than somebody else. You
13 want them to be in the green group and not in the red group
14 as some schools might classify a student by abilities.

15 It was in this year we began to start an id-
16 entification registration program whereby we issued an
17 identification to the solicitor with his picture displayed
18 thereupon on their garment when they called the home our
19 residents would know they are registered with us.

20 In 1968 we had quite a bit of activity with the
21 various solicitor firms. Again, we had high pressure sales-
22 men and some people called saying in fact they were being
23 terrorized.

24 Also, in 1968 at this particular time I was
25 personally threatened to have a racial demonstration in one

1 of my local institutions because the institution refused
2 to cash the checks of the crew manager upon receipt of the
3 checks from the people of the community.

4 This demonstration never did come off, but there
5 was a strong indication it was going to come off with several
6 hundred minority group people brought to the institution and
7 cause disturbances.

8 In 1969 we had the same problem again, except we
9 ran into high pressure tactics where they misrepresented
10 their purpose.

11 We had the problem this year when people would
12 pay by check or cash, in full, we had a great number of
13 non-delivery of merchandise by the magazines that had been
14 ordered.

15 It turned out the people made the sales in cash
16 and did not turn the sales into the crew manager. They
17 cashed the checks themselves or had the checks made out to
18 them instead of the company. The checks were made out to
19 the individuals who had made the sale.

20 These are some of the instances we have had with
21 the door-to-door salesmen.

22 This continued in 1970 and currently in 1971. The
23 problems are in the sales approach. If they are rejected
24 we seem to have a great deal of emphasis then placed on the
25 fact if a man, if he is in a minority group, the person is

1 not buying because he is prejudiced or has some racial bias.

2 I have brought with me documented statements from
3 citizens of my community that we have worked with in the
4 past stating that this is a fact.

5 When I was home on vacation a sales crew was
6 working in my community. The salesman did not use that
7 tack when I would not buy magazines myself, personally. I
8 didn't buy because he felt that I was racially oriented and
9 refused on that basis.

10 He had a black folder and he said, "You don't have
11 to be afraid of this because it is black, too." There seemed
12 to be a great deal of racial incident mentioned in it.

13 In my work as the Chief of Police I have many
14 opportunities to discuss problems with the Chief of Police
15 throughout the State of Illinois. You can be assured it
16 has been a problem for many communities.

17 Some of the instances you may be familiar with.
18 Recently in 1970 where a woman and her daughter were
19 murdered in a West suburban community.

20 Another incident I know of where a party posing
21 as a cosmetic saleswoman entered a home knowing there would
22 be no sale. This party had refused the sale previously.
23 The woman asked if she could use the washroom and the party
24 so allowed.

25 As the lady walked into the house to use the washroom

1 she noticed the insurance salesman was approaching the
2 property and she held the door and let him in. They were
3 talking about their insurance business. The insurance man
4 made note of the fact the party had been in the washroom a
5 long period of time. When they went to investigate they
6 found it was in fact a man and not a woman and he had
7 completely removed his clothes and was apparently planning
8 a sexual attack on the woman.

9 As to the Federal Trade Regulation Rule that has
10 been proposed I would say I support it as it is. I think,
11 perhaps, some consideration should be given to the lowering
12 of the figure to \$5. Most of the people who seem to be
13 bilked in our community if it is only \$10 to remove the
14 salesman from their premises.

15 A great deal of the problem results when the
16 husband gets home that evening to find out the wife has
17 signed some particular contract and when the figures are
18 checked it is found the figure is much higher than is
19 intended.

20 I would think the part of the regulation that
21 has reference to the oral cancellation would be a very
22 serious problem for us to cope with. It is a matter of
23 whose word and who said it and who said what.

24 I think the person would or should be orally
25 advised that she has the ability to withdraw from the

1 contract as well as having the printed word on the contract.
2 Perhaps it does not have to be the lengthy verbiage that
3 is now proposed, but it should be spelled out so the person
4 has knowledge they may withdraw from the purchase.

5 You see, at the time the person does not have
6 a great deal of time to make the decision. The salesman
7 makes the sale and that same day generally the crew manager
8 will follow through with a verification which may be in
9 only half an hour's time.

10 Another problem in our community is where these
11 salesmen have been housed in the motels have been a dis-
12 orderly conduct situation. There has been damage to
13 property and things of this sort.

14 The Central Registry of Magazine Solicitors in
15 New York has been of some help to us in our community in
16 that they availed themselves to report to us whether or
17 not the companies are in fact registered with them or
18 their salesmen are registered with them.

19 However, I find the disciplinary section of this
20 particular organization is made up of the heads of the
21 various publishing firms.

22 Recently, after a continued activity of what I
23 considered malpractice on the part of salesmen I wrote to
24 this organization and I asked if I could not appear before
25 them and receive some kind of a reasonable explanation as to

1 why they continue to certify salesmen who continue to
2 violate the regulations. This correspondence went unanswer-
3 ed.

4 I think I should tell you my community has
5 approximately 13,000 people. We are about 14 miles from
6 the Chicago Loop on the Burlington Northern Route. Our
7 income is said to be \$15,000 average.

8 HEARING OFFICER DIXON: Thank you, Chief.

9 Mr. Cabell.

10 EXAMINATION

11 MR. CABELL: Have your people made any use of the
12 Illinois cooling off law?

13 MR. GRAVES: Yes, sir, some of my citizens have.
14 They have primarily been informed of it only upon receipt
15 of a complaint informing them of their rights.

16 We have also attempted through a local publication
17 to keep them advised of their rights and of the solicitors'
18 rights. This publication is mailed to them quarterly.

19 MR. CABELL: Thank you.

20 HEARING OFFICER DIXON: Mr. Lamet.

21 MR. LAMET: Chief, would it be possible for us
22 to have the documents that you have brought here to the
23 hearing today and have them entered into the record.

24 Are you prepared to do that?

25 MR. GRAVES: These are the only copies that I have.

1 These are letters from my citizens. I brought them as
2 samples. I will be more than happy to make copies and pro-
3 vide them to you.

4 MR. LAMET: That would be fine, Chief.

5 MR. GRAVES: Another problem we have had is what
6 we call cash crews. These are magazine solicitor crews
7 that come to your community normally late at night and,
8 apparently because of a low gross they come to a community
9 and maybe in a half hour or 45 minutes attempting to increase
10 their sales. We have had experiences with that.

11 We have difficulty in ascertaining who they are
12 they are. I brought copies of these.

13 In one case I brought with me and I will send
14 a copy to you was a sexual advance to a woman in the evening
15 whose husband was gone and he demanded hard liquor for re-
16 freshment.

17 MR. LAMET: Let me ask you this, one of the problems
18 with regard to the magazine salesmen is the consumer has
19 found later on the man sold them and the magazines really
20 did not show up. In other words, it was a non-delivery
21 problem.

22 MR. GRAVES: Yes.

23 MR. LAMET: It has been suggested today and
24 yesterday the cooling off period on a -- should start on
25 the day of delivery of the merchandise. Of course, in this

1 instance it would probably be the the first day you got the
2 first magazine.

3 Would you like to comment on whether that would
4 solve that particular problem?

5 MR. GRAVES: I think it would be a real problem
6 for the magazine industry. There would be a question as
7 to how long the sale is going through the administrative
8 process, through the publisher, through the distribution.
9 I think it may be a problem for the magazine industry as
10 well as the consumer.

11 I have currently a woman brought a problem where
12 she purchased magazines and actually forgot she purchased
13 them and she found she did not receive the merchandise over
14 a long period of time. It was very difficult to handle
15 that.

16 Too, we have the problem these crews are only in
17 the area a few days generally. Many violations of the law
18 are brought to our attention and the violators were non-
19 existent or out of our area. We do not know where they are
20 at.

21 I think the magazine industry should take a
22 serious look at itself and try to upgrade its standards
23 of salesmen and its purposes so they properly present their
24 products.

25 We in law enforcement had to improve our image and

1 instance it would probably be the the first day you got the
2 first magazine.

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18 are brought to our attention and the violators were non-
19 existent or out of our area. We do not know where they are
20 at.

21 I think the magazine industry should take a
22 serious look at itself and try to upgrade its standards
23 of salesmen and its purposes so they properly present their
24 products.

25 We in law enforcement had to improve our image and

1 standards so we could give a better service.

2 MR. LAMET: I think you did mention the fact that
3 when you did get a complaint from the consumer at that time
4 you indicated they had a three-day cooling off period under
5 the Illinois statute.

6 Are you testifying prior to telling them that they
7 were not aware of that right?

8 MR. GRAVES: Yes.

9 MR. LAMET: You think the people out there are not
10 aware of the three-day cooling off period?

11 MR. GRAVES: The only time they are aware of it
12 is when they have called us and have complaints over the
13 fact they received misrepresented products. We then inform
14 them they have that right.

15 We have also attempted to educate them then through
16 the news media and also to work it out that way.

17 Let me make one other comment. Earlier a witness
18 testified as to the newspaper solicitation in the community.
19 That has not really been a problem in our community. We
20 found the publication mentioned earlier worked closely with
21 us and in cooperation with us relative to their solicitation
22 for increased circulation.

23 MR. LAMET: Chief, what organization was it that
24 you wrote to requesting to appear?

25 MR. GRAVES: It was the Central Registry of

1 Magazine Solicitors. It is called the Magazine Publishers
2 Association, Incorporated. They are located in New York.
3 I think they were at 575 Lexington and they have moved. It
4 is an organization that serves sort of as a policeman for
5 the agency. They advertise the fact people registered with
6 them are competent salesmen and solicit and represent
7 reputable firms. They are issued an I. D. Card which they
8 show to represent that they are supposedly trained salesmen
9 representing a bona fide company.

10 They serve as I understand somewhat as a dis-
11 cipline organization. When they receive complaints on
12 magazine solicitors they attempt to intercede with the
13 home or parent company in making corrections of violations
14 that are reported to them.

15 HEARING OFFICER DIXON: You wrote to them requesting
16 an opportunity to appear to tell your story?

17 MR. GRAVES: Yes. I asked them in correspondence
18 last year if they would allow me, I was going to be out
19 east for a meeting, if they would allow me to appear before
20 their board and to explain my story to them.

21 I was just curious as to how they could continue
22 to give central registry certification to a firm who con-
23 tinually violated their own rules.

24 As of this time I find a large percentage of the
25 people who comprise the board are really the presidents and

1 vice-presidents of the circulating company.

2 HEARING OFFICER DIXON: What response did you get
3 to that letter?

4 MR. GRAVES: I did not get any response. I
5 followed up with it and never did receive the invitation
6 to go up and talk to them. They all said they had my
7 letter and they were sorry for the delay, it was a communi-
8 cations problem in their system.

9 HEARING OFFICER DIXON: That ended it?

10 MR. GRAVES: Yes, sir.

11 HEARING OFFICER DIXON: Thank you, sir.

12 (Witness excused.)

13 HEARING OFFICER DIXON: Santos Perez does not seem
14 to be here.

15 Next will be Mrs. Elizabeth McCarthy.

16 STATEMENT OF ELIZABETH MC CARTHY

17 MRS. MC CARTHY: I am Elizabeth McCarthy. I am
18 speaking for a client of mine. I am a social worker. My
19 client is not here today.

20 The incident occurred when my client wrote to
21 a company, a motel management training company requesting
22 written information in pamphlet form regarding their training
23 program they advertised.

24 At that time someone called her and requested to
25 come out and explain it to her rather than to send her the

1 information. She did say that he could come out.

2 When he came out his sales tactics were such, he
3 said that he came out to evaluate her ability to become a
4 motel manager.

5 He did not ask for any credentials, previous job
6 experience. My client had once worked as a lamp wirer. He
7 relied upon the psychological aspects of my client being
8 a divorcee. She was receiving Social Security and Veterans
9 benefits for herself and her two minor children.

10 He indicated such things as a guaranteed job for
11 her life and she would have security.

12 He further indicated she would be doing her race
13 a favor by joining his or accepting the opportunity to
14 become a motel manager because black people had traditionally
15 not been involved in this type of a profession.

16 At that time I did not know the Illinois law
17 allowed for the two day cooling off period. When she came
18 back for her next interview with me, she was seeing another
19 social worker for reasons I cannot explain, I did not know it
20 but I did know she had already signed the contract.

21 Eventually through an attorney we got it straighten-
22 ed out and she paid only \$200 on a \$600 contract.

23 I have chosen this as one incident although I
24 have known of quite a few others that have come to my
25 attention as a social worker.

1 Our procedure at this point is to refer them to
2 a legal advice clinic.

3 HEARING OFFICER DIXON: Thank you.

4 Mr. Cabell.

5 EXAMINATION

6 MR. CABELL: For whom do you work?

7 MRS MC CARTHY: I work for Hull House Association.

8 MR. CABELL: Is that a private --

9 MRS. MC CARTHY: Yes, it is.

10 MR. CABELL: Do you recall where your client saw
11 this advertisement to which she responded?

12 MRS. MC CARTHY: I believe it was in a magazine.
13 I am not absolutely certain.

14 I have neglected one very small point I think is
15 very essential. My client has a paralyzed ligament in her
16 throat. That is probably why she isn't here today. She
17 begins speaking and gets anxious and her voice goes away
18 completely. Her voice is always very difficult to hear.

19 A tracheotomy has been recommended for her but
20 she would not accept it. In my opinion, this is a definite
21 handicap to a position such as a motel manager.

22 MR. CABELL: Is this a local school?

23 MRS. MC CARTHY: No, it was not.

24 MR. CABELL: It was a home study course?

25 MRS. MC CARTHY: Right.

1 MR. CABELL: Do you believe the three-day cooling
2 off provision in our rule would be of assistance to situations
3 like this?

4 MRS. MC CARTHY: Yes, but it wasn't within three
5 business days by the time that she came back to me. As a
6 social worker even if I had known about it, I could not have
7 helped her with my ignorance.

8 MR. CABELL: Do you recall if this school was
9 accredited by any of the accrediting associations?

10 MRS. MC CARTHY: Quite frankly, I did not even think
11 about that. I was thinking more in terms of she had already
12 signed the contract. I don't know.

13 MR. CABELL: I think it would be more helpful if
14 you would send us a little more detail about this including
15 the names and the name and the address of the school if you
16 can recall it.

17 MRS. MC CARTHY: Yes, I certainly will.

18 We have it on file at the Legal Advice Clinic.

19 MR. CABELL: Thank you.

20 HEARING OFFICER DIXON: Mr. Lamet.

21 MR. LAMET: You said you had other people come to
22 you about door-to-door sales. Could you give us some idea
23 of some of the other cases.

24 MRS. MC CARTHY: Yes, someone is now soliciting in
25 the community soliciting for the sale of grapefruit by the

1 case as a guarantee to dieting problems. The grapefruit is
2 something like \$15 a case. I suggested to my clients they
3 talk to their doctor about the value of grapefruit used for
4 dieting.

5 In addition to this many people have been caught
6 in the magazine sales routine. The approach is it is
7 primarily for the postage involved in mailing the magazines
8 to them.

9 Other instances have included drapery selling of
10 poor quality where a high price is paid. Since it is a
11 Chicago Housing Authority Project the salesman will know
12 the measurements of the windows and he comes in and the
13 drapes fit, which is of course, an advantage when you go
14 to buy something.

15 Those are the blatant instances that come to mind.

16 MR. LAMET: Could you describe the types of
17 clients you have.

18 Are these people who are low income? What kind
19 of clients are you dealing with at Hull House?

20 MRS. MC CARTHY: This is a black community. It is
21 a very poor community to be qualified for Chicago Housing
22 Authority.

23 There is a quality of wanting a better life in
24 the community. I think this contributes to their being
25 able to willing to -- excuse me, I am not well prepared; I

1 wish I were. They are being taken by the salesman and
2 because the salesmanship is very good. These are beneficial
3 things that we all want. Their educational level is low.

4 For the most part the people I serve are just
5 beginning to be able to buy things and it is that kind of
6 a community.

7 MR. LAMET: Well, now, as you know under the Trade
8 Regulation Rule it would require the buyer be given a
9 written notice and also, an oral notice with regard to the
10 three-day cooling off period.

11 MRS. MC CARTHY: Yes.

12 MR. LAMET: The question is whether or not we
13 should include the oral cancellation notice.

14 MRS. MC CARTHY: Yes.

15 MR. LAMET: With regard to your clients would there
16 be any difficulty with just a written notice. Do they all
17 read?

18 MRS. MC CARTHY: No.

19 They would be helped with the written notice, but
20 I would prefer the oral notice be included.

21 MR. LAMET: Would they understand what a three-
22 day cancellation privilege is?

23 MRS. MC CARTHY: The individual might not but I
24 believe the husband when he comes home at night would or
25 the neighbors would talk with them within three days.

1 And this happens. The wife goes to the coffee clutch with
2 her next door neighbor. Quite frequently another neighbor
3 has had a similar experience in the past. She begins to
4 explain just what happened.

5 I think in this instance the written notice of
6 cancellation would be helpful. There is also included in
7 the rule a statement with regard to arbitrating disputes.

8 MR. LAMET: Have you had an opportunity to look at
9 that?

10 MRS. MC CARTHY: Yes, I have.

11 MR. LAMET: Would you have any comment on that?

12 MRS. MC CARTHY: I --

13 MR. LAMET: Have you any comment on the settling of
14 consumer disputes by arbitration with regard to the people
15 you deal with?

16 MRS. MC CARTHY: In looking back now I believe that
17 is when the attorney I mentioned in the first case I brought
18 did. He arbitrated both between my client and the seller for
19 what seemed to be a reasonable settlement. She had already
20 paid \$140 as of the time of the signing and she opened or
21 paid for all courses not opened. The rest that had not
22 been opened were turned back. She would not have to pay
23 for those.

24 MR. LAMET: You feel he really arbitrated the dispute
25 between the two parties?

1 MRS. MC CARTHY: Right.

2 MR. LAMET: When you clients become aware of the
3 fact they have been taken by some form of consumer fraud
4 whether that be door-to-door or some other type, do they
5 know that they have a right to go to court and sue on this
6 and collect and get their money back or have some recourse
7 from the courts.

8 Do they discuss their rights as far as the courts
9 are concerned with you.

10 MRS. MC CARTHY: For the most part, no; 99 percent
11 of the time, no. What happens is we are explaining our
12 rights after the fact in which case I also are able to
13 point out that there are attorneys they can afford to take
14 it to if they so wish.

15 MR. LAMET: Do they usually go to the attorneys
16 after they do that?

17 MRS. MC CARTHY: About 50 percent of my clients
18 have utilized the Legal Advice Clinics.

19 MR. LAMET: Why have the other 50 percent not
20 utilized it?

21 MRS. MC CARTHY: They feel it would not be helpful
22 to them.

23 MR. LAMET: Thank you, Mrs. McCarthy.

24 HEARING OFFICER DIXON: Thank you, Mrs. McCarthy.

25 That concludes the schedule for this morning. The

1 hearings will now adjourn to reconvene at 2:00 o'clock p.m.,
2 this afternoon.

3 (Whereupon, at 12:05 o'clock p.m., the hearing in
4 the above-entitled matter was recessed, to reconvene at
5 2:00 o'clock p.m., the same day.)

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AFTERNOON SESSION

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2 HEARING OFFICER DIXON: The hearing will come to
3 order please.

4 This is a continuation of the public hearings of
5 the Federal Trade Commission's proposed trade regulation
6 rule concerning a cooling off period for door-to-door sales.

7 For the benefit of those who were not here before
8 my name is William Dixon, Assistant Director of Industry
9 Guidance in the Commission's Bureau of Consumer Protection.

10 To my right is Mr. Henry Cabell, the attorney who
11 is in charge of developing this rule in these proceedings
12 and to my left is Mr. Jerome Lamet, the attorney in the
13 Chicago office who is in charge of these hearings.

14 Our first witness for this afternoon is Eve
15 Galanter, President, Consumer Federation of Illinois.

16 STATEMENT OF EVE GALANTER,
17 PRESIDENT, CONSUMER FEDERATION
OF ILLINOIS.

18 MRS. GALANTER: My name is Eve Galanter. I am
19 President of the Consumer Federation of Illinois.

20 The Consumer Federation of Illinois, consisting
21 of families, labor, civic, community and cooperative or-
22 ganizations throughout Illinois, seeks to advance and
23 protect the interests of the more than 11 million consumers
24 in our State.

25 We commend the Federal Trade Commission for holding

1 this hearing in Chicago in order that we may directly
2 communicate our concerns and our commitments to increased
3 consumer protection.

4 One of our purposes as a voluntary citizens or-
5 ganization is to serve as a clearing house for consumer in-
6 formation.

7 In the past years, this has been more widely inter-
8 preted by consumers who have come to us with a great variety
9 of unresolved problems and complaints.

10 A frequent source of complaint arises from un-
11 satisfactory experiences with door-to-door salesmen. It is
12 unfortunate that all of these complainants are unable to
13 be here today to testify in their own behalf. But the reasons
14 for the absence of some of them is also an indication of
15 the urgency and need for the regulation you are proposing.

16 Those people are not here today, because many of
17 them are welfare recipients, already attempting to live on
18 a restricted budget, who have been persuaded, cajoled, mis-
19 led, and often coerced into purchasing items from a door-to-
20 door salesman, and they fear that public disclosure of
21 their names might mean retribution by the welfare department.
22 It could mean, they believe, a decrease in their allotments.
23 But then, why did they buy?

24 Mrs. H., a widow with three children, was told by
25 a glib salesman that he had been informed that her children

1 were exceptionally bright (he never disclosed who told him),
2 and, for that reason he had come to offer her the opportunity
3 to provide these exceptional children with the additional
4 education they deserved.

5 All the things she -- an uneducated woman -- was
6 unable to teach them, could be taught by a set of encyclo-
7 pedia.

8 The set was described as a "ticket to college" and
9 insurance against a future of welfare dependency for her
10 family.

11 Mrs. H. had informed the salesman that she was
12 receiving welfare and could not afford such a purchase
13 early in the conversation, but the salesman's arguments
14 and warning that if she didn't purchase the encyclopedia
15 that evening, she would never have another opportunity to
16 do so, finally clinched the deal.

17 Mrs. H. says that she knew it was a lot of money,
18 \$568.00, and that such books must be very, very costly, but
19 that the future of her children was at stake and that even
20 the salesman knew how bright they were.

21 It was the \$568.00 indebtedness, however, that
22 worried her and caused her telephone call to us later that
23 week.

24 Knowledge of her right to a "cooling off period"
25 would have provided Mrs. H with the protection she so des-

1 perately needed from the unseemly tactics of a door-to-door
2 salesman.

3 Mrs. G had been in Chicago only one month when a
4 friendly Spanish-speaking salesman called on her. He was a
5 welcome guest to Mrs. G. who can speak very few words in
6 English. The salesman said that her neighbors had suggested
7 he call on her and welcome her to the community. He was
8 "muy simpatico" related Mrs. G., as he warned her about
9 trying to shop for household necessities in stores where
10 no Spanish was spoken and where she would surely be "robbed".

11 Instead, he was willing to show her, in her own
12 apartment, the kinds of pots and pans she should have in
13 her kitchen -- used in almost every kitchen throughout
14 America.

15 And, Mrs. G., absorbed in his obvious concern
16 for her, bought over \$200 worth of these "American" pots and
17 pans. She even invited him to return at some later date.

18 After attempting to thank one of her neighbors for
19 this friendly deed, she discovered that the salesman was
20 unknown to her neighbor and that he had made many misrep-
21 resentations.

22 She immediately thought of telephoning the
23 salesman. But no telephone number was listed on her piece
24 of paper -- only the amount of her indebtedness and her
25 name.

1 Mrs. G. is still paying for the pots and pans
2 she could have purchased for under \$50 in most stores.

3 Mrs. H and Mrs. G are but two examples of the many
4 consumers for whom I am the spokesman today.

5 The poor and the uneducated are not the only ones
6 who suffer from the abuses of some door-to-door salesmen.
7 Some of our complainants, with incomes alloweing them to
8 be homeowners, were similarly misled into a wide variety
9 of purchases by door-to-door salesmen.

10 What homeowner is not a prospective customer for
11 new vinyl siding, a vacuum cleaning system, paved driveway,
12 landscaping or a huge freezer stocked with "quality" meats
13 for life?

14 On March 8, 1971, in the Business and Finance
15 Section of the Chicago Daily News, I noted the following
16 item: "G. B. Frank, Inc., is marketing a pocket-sized
17 charge-card imprinter called the Port-a-Print Pocket
18 Imprinter. It's designed so that door-to-door salesmen
19 can crank out charge-card sales in the customer's home."

20 Door-to-Door sales, whether consummated in the
21 apartment of a poor, uneducated consumer or cranked out on
22 a portable charge card imprinter in the presence of a
23 homeowner, must be regulated in such a manner as to provide
24 the greatest possible protection for that consumer.

25 The Consumer Federation of Illinois endorses all

1 aspects of the Trade Regulation Rule concerning a cooling-
2 off period for door-to-door sales as proposed by the Federal
3 Trade Commission.

4 We would like particularly to emphasize the
5 importance of:

6 One, the right to cancel a contract or sale by
7 telephone as a valid alternative to written cancellation
8 alone as stated in the printed "Notice to buyer."

9 Second, orally informing each buyer prior to signing
10 a contract or purchasing goods or services of his right to
11 cancel.

12 Three, revealing clearly to the prospective buyer
13 at the time of initial contact, that the purpose of the
14 contact is to sell goods or services and expressly stating
15 the nature of these goods or services.

16 Four, honoring a timely notice of cancellation by
17 a buyer and upon such notice, returning to him all notes or
18 any other paper indicating indebtedness in connection with
19 the cancelled sale, thereby precluding the assignment of
20 such papers to a third party.

21 Five, not allowing this Rule, when adopted, to
22 supersede or pre-empt state or local laws wherein the
23 consumer is afforded either greater protection or access
24 to remedies.

25 The Consumer Federation of Illinois commends the

1 Federal Trade Commission on its proposed Trade Regulation
2 Rule, and its efforts to provide the consumer with increased
3 protection.

4 We strongly urge its early enactment.

5 Thank you.

6 HEARING OFFICER DIXON: Thank you.

7 Mr. Cabell.

8 EXAMINATION

9 MR. CABELL: Miss Galanter, a number of people
10 have testified here earlier have suggested that the oral
11 cancellation provision may not be in the best interest of
12 the consumer because he would have no way to prove he
13 actually made the telephone call.

14 Would you agree with that aspect of the matter?

15 MISS GALANTER: That aspect of the matter was
16 considered also. I think the fact I chose of course, these
17 two instances or case histories that were examples of cases
18 -- one example is the case where a person who wanted to
19 make the telephone call and was unable to do so his first
20 thought was to make the telephone call and not of sitting
21 there and trying to write a letter, something which would
22 have been foreign to a foreign speaking person.

23 We believe that the problems that might arise
24 from attempting to prove having made a telephone call would
25 be greatly overcome by just the ability to have this valid

1 alternative of sitting down and writing a letter. For some
2 of our citizens the problems of merely getting out to mail
3 such a letter, we think this would be -- you know, the problems
4 in trying to prove these would be greatly overshadowed by
5 just having such an alternative available.

6 MR. CABELL: Do you think there is a need to have
7 the notice printed in more than one language?

8 MISS GALANTER: I would say that perhaps a notice,
9 if the notice would be oral notice, the written notice and
10 the oral notice were to coincide, if the oral notice was
11 being given by the Spanish speaking salesman in handing
12 a document written in English might provide some difficulties.

13 I would say if there should be a second language,
14 indeed, the second language would be Spanish.

15 HEARING OFFICER DIXON: Mr. Lamet.

16 MR. LAMET: Mrs. Galanter, I would like you, if
17 you would to tell us whether the Consumer Federation of Ill-
18 inois attempts to settle consumer disputes between buyers
19 and sellers.

20 Are you doing any of that work in your Federation?

21 MISS GALANTER: Yes, we are.

22 MR. LAMET: How is it working out?

23 MISS GALANTER: We are right now receiving up to
24 about 100 complaints a week in terms of volume. Many people
25 have been to larger agencies and not found any settlement or

1 resolution.

2 Our normal procedure is to immediately write to
3 the business involved with a copy of the telephone conver-
4 sation of the complainant or a copy of whatever communication
5 we have from them in writing setting out the facts.

6 These are the facts as we know them now as
7 communicated to us by the complainant. We would like, as
8 soon as possible, to have you respond to this so we can
9 resolve any particular disagreement as quickly as possible.

10 The procedure then in the last six to ten months
11 with great consistency we have had within ten days a response
12 from the business, telling us that -- setting out what their
13 view of the circumstances. Very often the very same view;
14 occasionally, a very different version of the circumstances.

15 We then write another letter asking them if there
16 is some way any difference between the two versions of this
17 story, the two situations, they are either wanting their
18 money or the complainant wanting the product he thought he
19 was purchasing or the repairs he thought he had ordered and
20 resolving it for both of them.

21 What we have done in the majority of cases is
22 reach some kind of compromise when feasible to resolve the
23 problem for the consumer.

24 MR. LAMET: So, in a sense you are arbitrating the
25 disputes between buyers and sellers?

1 MISS GALANTER: That is right.

2 MR. LAMET: Would you like to comment on the
3 provision of the rule with regard to arbitration on door-to-
4 door sales.

5 Does your Association have any particular position
6 on this?

7 MISS GALANTER: The Consumer Federation of Illinois
8 is endorsing the entire Trade Regulation Rule, including the
9 arbitration aspect.

10 You are quite correct in saying we are already
11 engaging in a very small scale in some kind of arbitration,
12 very successfully I believe.

13 I think it is showing and I think in the last
14 year that such things can be done successfully. Both
15 consumer and seller are willing to arbitrate the issues.
16 I think that this is one of the very few recourses available
17 to the consumer.

18 MR. LAMET: That is my last question. In your
19 experience in your associations with handling of consumer
20 disputes, why don't some of the consumers use the law,
21 courts in order to satisfy their demand or to get their
22 recourse.

23 Why don't they go to Small Claims Court and file
24 a suit?

25 MISS GALANTER: In many disputes they have no idea

1 that such a right exists for them, Mr. Lamet. For many
2 people the law is as on the books and the law the way it is
3 now to them, it really doesn't make much sense to these
4 consumers.

5 I might give you an example of some of the
6 problems that go into Small Claims Court. A consumer who
7 had had a difficulty with a car and having it repaired and
8 got what she considered to be an astronomical bill for the
9 repair of her car and she refused to pay the bill. It was
10 turned over to a collection agency. She refused to pay.

11 She was sent a court date. She called me at
12 our office and said, "I'm going into court tomorrow. My
13 friends told me that I don't need a lawyer because the
14 plaintiff always wins."

15 It is very frightening to think of consumers
16 who have to have this particular image on the courts and
17 their role in the courts. To them it is an experience and
18 they really have absolutely no idea how to cope with it.

19 HEARING OFFICER DIXON: Miss Galanter, would the
20 consumers that you are talking about understand this three
21 day cooling off period?

22 Would they read it in the contract and make use
23 of it?

24 MISS GALANTER: I think the combination of being
25 told about it and reading it, yes, I think very definitely.

1 I think the term itself is sufficiently easy to understand.
2 The notion to just have time to just cool off.

3 I have talked with many of these people, two of
4 whose cases I have spoken about today. I explained why I
5 wanted them to come and I explained about the proposed
6 cooling off period. This made a great deal of sense to
7 these people, to have time to sit down and really think
8 about it. They really understood this. It made a great
9 deal of sense and said, "Why didn't I know about this
10 before."

11 So, it is something when presented to them they
12 were indeed capable of comprehending. I think they could
13 have provided themselves with the kind of protection they
14 needed.

15 HEARING OFFICER DIXON: One other question with
16 respect to the people with whom you worked. What difference
17 would it make to them if the salesman were required initially
18 at the door to make this disclosure of who they are and
19 what they are there for?

20 MISS GALANTER: I think the nature of the door-to-
21 door salesman coming in to in many cases the privacy of
22 a person's home with either a statement such as, "You know
23 your neighbors have said that I should come welcome you to
24 the community," thereby wiping out whatever initial
25 defenses these people might have against a stranger coming

1 into their homes making a pretense of awarding a free gift
2 or taking a survey or taking two or three hours in someone's
3 home discussing the filling out of the questionnaire it gets
4 around to the point, "You know, I would like to sell you
5 something now that we have become such great friends."

6 I think that this would make a great deal of
7 difference if immediately these people were aware that
8 this is going to be a selling and buying situation and
9 not any other categories that it could be put, surely not
10 just a social visit by a neighbor.

11 HEARING OFFICER DIXON: Do you think a lot of
12 them would be turned away?

13 MISS GALANTER: I think that you would be giving
14 the people the opportunity to decide for themselves immediate-
15 ly whether or not they would turn this person away.

16 HEARING OFFICER DIXON: Thank you.

17 (Witness excused.)

18 HEARING OFFICER DIXON: The next witness is Joseph
19 P. Preloznik, Director of Judicare.

20 STATEMENT OF JOSEPH F. PRELOZNIK,
21 DIRECTOR, JUDICARE.

22 MR. PRELOZNIK: Good afternoon. My name is
23 Joseph F. Preloznik.

24 I am a director of the Wisconsin Judicare program.
25 The Wisconsin Judicare Program is a legal assistance pro-
gram sponsored by the State Bar of Wisconsin and funded by

1 the office of Economic Opportunity.

2 Many of the clients our program serves have problems
3 with door-to-door sales. I am also a member of the Advisory
4 Consumer Council of the State Department of Agriculture in
5 Wisconsin.

6 I am also a member of the task force that was
7 recently appointed by Governor Lucey for the purposes of
8 recommending consumer protection legislation to him.

9 The cooling off period of three days as it applies
10 to door-to-door sales has been clearly needed for many years
11 although most of the attention for this need has developed
12 only recently.

13 As early as 1944, the courts were aware of the
14 abuses that were taking place in the consumer area, and in
15 Charles of the Ritz Distributing Company vs FTC (1944),
16 143 F. 2nd 767 the court said:

17 "The law is not made for experts but to protect
18 the public -- that vast multitude which includes the
19 ignorant, the unthinking and the credulous, who, in making
20 purchases, do not stop to analyze."

21 Today, we have also come to realize that there
22 are other factors which may induce persons to purchase
23 items that they do not want and do not need.

24 They may be too shy or timid to tell the salesman
25 to leave their homes, and may sign a contract, essentially

1 undread or misunderstood, merely to get the man out of the
2 house.

3 They may be fearful, and sign to accomplish the
4 same end. And, as the court stated in the Ritz case they
5 may merely be unable to understand just what they are doing
6 at the time.

7 Although the FTC proposal will not solve all of
8 the problems of today's beseiged consumer, the proposed
9 statute will undoubtedly help a great deal.

10 This can be amply illustrated by Wisconsin's
11 experience with regulations affecting home food freezer
12 plans.

13 When Wisconsin first began providing legal assistance
14 through the program numerous complaints were received as to
15 the high pressure tactics of salesmen selling home food
16 freezer plans.

17 There were also many complaints of overcharging,
18 poor food, poor service and questionable weight of the
19 food delivered.

20 Since the adoption of rules by the State Department
21 of Agriculture, the complaints have just about disappeared.

22 Since Mr. Milan of the Wisconsin Department of
23 Agriculture is here this afternoon to testify in person as
24 to the regulations adopted and their experience, I will
25 limit my comment on that regulation to the extent that it is

1 similar to the one proposed here by this commission.

2 While the proposed regulation is worthwhile and
3 should be supported, there are a number of areas in which
4 it could be strengthened.

5 Definition of "Door-to-Door Sale" and seller should
6 be broadened to include the transient or the itinerant
7 merchant who sets up his business in a motel or temporary
8 location.

9 Experience in Wisconsin has shown that many con-
10 sumers are victimized by merchants who temporarily locate
11 in a community and employ questionable, high pressure sales
12 techniques of the kind deplored in "Door-to-Door Sales".

13 I note that the proposed regulation uses cancellation
14 instead of affirmation in voiding the contract. The National
15 Consumer Act takes the position that with respect to outside
16 transactions, or "door-to-door" as is noted in this proposed
17 regulation, the burden should be on the seller to show that
18 he has an agreement and requires an additional act by the
19 buyer before there is such an agreement.

20 The National Consumer Act employs cancellation only
21 as to inside transactions which are sales made at the seller's
22 place of business.

23 By using affirmation instead of cancellation, much
24 of the concern for notice which was mentioned by the previous
25 speaker or witness is eliminated as the seller will need a

1 further act by the buyer before he has an agreement.

2 The Task Force on Consumer Protection, appointed by
3 the Governor of the State of Wisconsin, has recommended that
4 the Governor support legislation providing a cooling-off
5 period of three days, such as is proposed in this regulation.
6 The proposed recommendations to the Governor include the
7 suggestions made here.

8 It is my belief that the provisions that deal with
9 the elimination of the cognovit note and prevent the buyer
10 from waiving the rights he receives under the regulation are
11 important and necessary.

12 While cognovit notes are not being used as exten-
13 sively as they were before the Wisconsin Legislature made
14 them unavailable for use in garnishment actions, cognovit
15 notes are still used in limited circumstances in Wisconsin.

16 Finally, the section which provides that the
17 contract cannot be assigned for five business days could be
18 strengthened by eliminating the Holder in Due Course
19 Doctrine as to these transactions.

20 Assignment has posed a problem for the buyer because
21 defenses the buyer could have raised against the seller were
22 not available because of the Holder in Due Course Doctrine.

23 In Wisconsin, there appears to be substantial
24 support from all areas of the business community that the
25 Holder in Due Course Doctrine should not be available to

1 transactions made outside of the seller's place of business.

2 The Governor's Task Force on Consumer Protection
3 has unanimously agreed to recommend to the Governor the
4 repeal of this doctrine.

5 It is the opinion of that committee and myself that
6 it will not affect the business world adversely and will
7 provide a measure of protection that the consumer should not
8 be without.

9 HEARING OFFICER DIXON: Thank you, sir.

10 Mr. Cabell.

11 EXAMINATION

12 MR. CABELL: Mr. Preloznik, in the course of this
13 Judicare Program do you have occasion to defend a number of
14 consumers who have been caught in these contracts?

15 MR. PRELOZNIK: Yes, we have. It arises generally
16 in a number of ways, usually when the person becomes so
17 heavily in debt that he needs assistance; there are garnish-
18 ments pending, there are law suits pending at this point
19 and then the client usually comes into the law office and
20 needs help. Generally it is much too late for the type of
21 assistance we have been talking about here.

22 MR. CABELL: What economic level are these people,
23 primarily?

24 MR. PRELOZNIK: All the people our program serves
25 under OEO are those who meet the poverty guidelines.

1 We also get complaints from those who do not
2 qualify for our program because our program is sponsored
3 by the State Bar. We find those types of problems have
4 been recommended to private counsel as opposed to taking
5 care of it ourselves.

6 MR. CABELL: It has been suggested even if this
7 rule were adopted the people who need it the most wouldn't
8 be aware of it and if they were aware of it they wouldn't
9 understand how to exercise their rights under it.

10 MR. PRELOZNIK: This is one of the reasons why
11 we concluded an affirmation is much more effective than
12 cancellation.

13 MR. CABELL: The type of a person we are talking
14 about wouldn't this really mean the seller would have to
15 go back and if not resell the product or service fill out
16 the form for the consumer or take it to mail for him?

17 MR. PRELOZNIK: Yes, absolutely, but it would give
18 the individual an opportunity to think over what he had
19 done and it would eliminate some of the notice.

20 It was pointed out to me that some of the
21 encyclopedia salesmen cleverly put a label over that
22 part so it is not really easily read or seen.

23 Again, some of those notices problems would be
24 eliminated where it would require the salesman or the seller
25 to go back to the buyer and get him to affirm before it can

1 be legitimately called a contract.

2 This also takes care of your problem of assignment
3 which you referred to; the contract cannot be assigned for
4 five particular days as long as there is no contract there
5 is no ability to assign. Then it automatically takes care
6 of itself.

7 MR. CABELL: One of the things that concerns me
8 about the affirmative approach you and some of the other
9 witnesses have recommended is how do you distinguish the
10 transactions where the consumer has actually invited the
11 salesman into the home.

12 I am not talking about a phony advertisement or
13 anything like that but a legitimate transaction the person
14 needs a rug, she calls the local Sears or Montgomery Ward
15 and says, send someone out with some rug samples. I want
16 to buy a rug.

17 MR. PRELOZNIK: If you are concerned about this
18 small segment we could perhaps include in the legislation
19 unless the individual was specifically invited into the
20 home by the buyer.

21 But I wouldn't negate the entire concept of
22 affirmation as to all the other transactions in which they
23 are not invitees.

24 I think that the bulk of the situations occur
25 where there is no invitation.

1 MR. CABELL: The thing that disturbs me about this
2 is we see a whole range of selling practices. Some companies
3 put the burden of getting into the house on the door-to-door
4 salesman. He goes down the street banging on doors and he
5 gets into so many they know how many he is going to get in.

6 Other companies will attempt to pave his way into
7 the home ranging from a simple device to a very elaborate
8 one which may well result in the consumer inviting the man
9 into the homes. Once he gets there all these practices we
10 have heard described so graphically are employed.

11 I think your proposed regulation could be clarified
12 because I can see some difficulty when you describe the
13 door-to-door sale, I think it would be important to know
14 whether it is initiated other than in the home.

15 For example, an automobile salesman, the person
16 may go to the car dealer and the matter may be consummated
17 at the buyer's home. I think perhaps some consideration
18 ought to be made where the sale is initiated and the manner
19 in which it is initiated to give the kind of protection we
20 are talking about.

21 If it is initiated by the buyer, I think the buyer
22 then perhaps ought not to be in a position where affirmation
23 would be his relief, but perhaps, at that point, cancellation
24 could be considered.

25 It would be considered in Wisconsin, for example,

1 cancellation would be used on all inside transactions. We
2 have not come up with a recommendation at this time.

3 MR. CABELL: The only problem we have you see is
4 distinguishing the situation in which the consumer actually
5 initiated the contact and the situation in which he has
6 been inveigled; how do you draw the distinction between the
7 advertisement in the Yellow Pages of the Telephone Directory,
8 for example, and the advertisement in the Sunday supplement
9 in the newspapers.

10 MR. PRELOZNIK: I don't think it is necessary.
11 I think the high pressure salesman is capable of exerting
12 all types of pressure even though the initial act was
13 initiated by the buyer.

14 I think in many instances even in the department
15 store sales there is the kind of high pressure tactic that
16 there should be some relief available to the consumer. It
17 may not be as harsh as affirmation, but I think there ought
18 to be the cancellation relief even in the situations where
19 the buyer initiates it.

20 There is high pressure tactics involved and there
21 is a great deal of that. Many of our credit problems are
22 debtor problems that our program has experienced are as the
23 result of people overbuying and very often they are over-
24 buying because there are effective sales techniques employ-
25 ed and employed on consumers and people buy more than they

1 ought to.

2 Had they considered I am sure that they would
3 probably have cancelled.

4 MR. CABELL: Thank you.

5 HEARING OFFICER DIXON: Mr. Lamet.

6 MR. LAMET: Is there something about the sale being
7 made in the home that makes it unique?

8 You mentioned there might be some pressures
9 exerted in the store. Is there something about the
10 environment of the home itself that makes this rather
11 unique?

12 MR. PRELOZNIK: Yes.

13 As I indicated we find that younger people are
14 overwhelmed. They can be intimidated. Older women have
15 been intimidated by aggressive salesmen. They are willing
16 to sign anything just to get rid of the salesman.

17 Once they sign the particular contract the question
18 is how do you revoke. Generally, if they have given a
19 down payment they are not able to get that back. Many
20 of them can't afford legal assistance.

21 The prior witness indicated many of them really
22 don't understand they have a legal problem that can be
23 resolved.

24 Our program has made an effort to explain the
25 rights of the consumer, but very often people are ashamed

1 that they have been taken advantage of and as a result,
2 are unwilling to even talk about it to their friends.

3 We find out only much later where there are debtor
4 kind of problems mount to such an extent they need a Chapter
5 13 or a bankruptcy or they have had a garnishment action
6 taken against them.

7 MR. LAMET: Now you have testified that the State
8 does have a law with regard to freezer food plans and it
9 has been fairly successful, in eliminating many of the
10 problems.

11 We have had testimony here before concerning the
12 possibility of the problems concerning the trade regulation
13 rule perhaps preempting the state regulation.

14 Would you like to comment on that. You already
15 have one law on the books and it is my understanding from
16 your testimony that you are considering a broader cooling
17 off period for the entire state.

18 MR. PRELOZNIK: As it applies to Wisconsin it may
19 not have as much impact as it would in other areas.

20 When I testified in support of this I am also
21 mindful many states have had absolutely no protection and
22 may not have that kind of protection; therefore, it is
23 sorely needed.

24 MR. LAMET: What period is your Advisory Committee
25 considering with regard to cooling off for all sales? The

1 same thing you have in the freezer food plan?

2 MR. PRELOZNIK: Three days.

3 Three business days.

4 The National Consumer Act had recommended ten
5 days. The committee thought that was unduly long although
6 the National Consumer Act has a provision whereby a waiver
7 could be established in an emergency situation.

8 Our committee was of the opinion that by eliminating
9 any possibility of waiver and utilizing three days could
10 accomplish the most effective protection for the consumer.

11 HEARING OFFICER DIXON: Thank you, Mr. Preloznik.

12 (Witness excused.)

13 HEARING OFFICER DIXON: The next witness is Mr.
14 Dan Milan, Director, Bureau of Consumer Protection, Wisconsin
15 Department of Agriculture.

16 STATEMENT OF DAN MILAN,
17 DIRECTOR, BUREAU OF CONSUMER
18 PROTECTION, WISCONSIN DEPART-
19 MENT OF AGRICULTURE

20 MR. MILAN: My name is Dan Milan. I am the Director
21 of the Bureau of Consumer Protection, Wisconsin Department
22 of Agriculture.

23 In order that we might get some perspective as
24 to why the Department of Agriculture is interested in
25 consumer protection in Wisconsin, the Department of Agri-
culture has the primary responsibility for enforcement of
trade practice laws. We will get into all forms of business

1 transactions other than banks, savings and loans, insurance
2 and public utilities. Beyond that we have a very broad
3 jurisdiction.

4 One of the reasons I was asked to testify here
5 today I believe was to stress the importance of trade
6 practice rules.

7 As has been mentioned, the Wisconsin Department of
8 Agriculture, by statute, has been given the authority to
9 hold hearings and develop the general orders which are the
10 same which you would call trade practice rules with this
11 exception, by State law a violation of one of our general
12 orders is an offense, it is not a mere guide. It is an
13 offense and it can result in violations of the Code. It can
14 result in very stiff civil forfeitures and injunctions and
15 criminal prosecution or private damage suits.

16 Under the statute people who have been damaged
17 are entitled to double damages, plus attorneys' fees and
18 costs.

19 I believe it is very important for the regulatory
20 agencies to define what is unfair, what is deceptive, what
21 is misleading. It is an important regulatory tool as well
22 as providing protection for consumers and legitimate business-
23 men.

24 Further, it provides guidance to courts and local
25 prosecutors when you define what is an unfair trade practice.

1 because I don't think the courts and many local prosecutors
2 at this stage are that -- recognize that growing area of
3 consumer protection.

4 I am sure what constitutes unfair business
5 practices. Our Wisconsin business experience has been
6 that we have issued what we would call consumer protection
7 trade practice rules. Among them are the freezer, meat
8 and food service plan.

9 We have one on building and home improvements,
10 Gasoline advertising, real estate advertising, deceptive
11 offers of employment, referral selling plans and chain
12 distributor schemes.

13 Some questions have come up specifically as to
14 what we have experienced in Wisconsin Administrative Code
15 AG-109. That is the freezer meat and food service plan.

16 Now, just by way of explanation understand this
17 rule covers two different industries one of which is called
18 the freezer meat or carcass meat sellers and the other is
19 what you would call the food service plan.

20 This is the type of a plan where you might pay
21 a membership plan fee and they are entitled to certain
22 alleged benefits.

23 To start out with I would estimate there are
24 probably more than a dozen food service plan operators
25 in Wisconsin when this was being so considered, but they

1 were causing a great deal of problems, as has been mentioned.

2 After they went into effect we noticed the
3 number of complaints has gone down steadily. We certainly
4 still get operators who come in and some are legitimate,
5 many come in from across the State line and we try to get
6 on them right away.

7 What was the result of this? For one thing the
8 Code what it does is has a cooling off period, and it
9 destroyed negotiability really on promissory notes and
10 the commercial paper.

11 It would be my opinion the destroying of
12 negotiability was probably the major factor in cutting
13 down on the fraudulent and deceptive operators because
14 they simply weren't able to get financing.

15 This is the key. However, I don't want to play
16 down the aspect of the desirability of a cooling off provis-
17 ion in our code. I think it is important.

18 A third factor which perhaps also added to the
19 decline of some of the operators was the bad reputation the
20 industry was getting. I think the people were pretty well
21 aware of this. When we had prosecutions and we publicized
22 the code, this also helped knocked them off.

23 The legitimate operators still in Wisconsin so
24 far as I know the cooling off hasn't hurt them one bit.

25 I want to stress the complaints about the high

1 pressure tactics that are occurring at homes are not
2 imaginary. People are not being given time to think about
3 the deal they are entering into or to compare values or to
4 check on representations made.

5 I think perhaps one question came up from one
6 of you gentlemen as to the distinction about a home sale
7 presentation. People are in a position where most of the
8 time they are more courteous to ask a salesman to leave or
9 pick up the phone and call the police if he doesn't leave.

10 Furthermore, they really don't have time to compare
11 values or check on the representations that are made. The
12 pressure is there whether it is high or low-keyed and they
13 say it is a "once in a lifetime deal" and the salesman will
14 not be coming back this way.

15 I think there is a distinction there that there
16 are actual cases of late hours of people, the salesman will
17 spend all hours of the night just to get the people to sign
18 and people don't examine the documents until after he leaves.

19 One recommendation that I would make relates to
20 a realistic recognition that the type of sales requiring
21 a cooling off period does not necessarily those that would
22 be customarily classified as home solicitation sales or
23 door-to-door sales.

24 There is an increasing amount of installment
25 contract selling being perpetrated outside the area or situs

1 of the consumer's home. This is a normal result really
2 of the increased adverse publicity given to the so-called
3 door-to-door or home solicitation sales and consumer abuse
4 or consumer fraud which end up with the same type of problems
5 as the home solicitation sales are being consummated outside
6 the home of the consumer, a temporary sales location.

7 I think the cooling off legislation or rules directed
8 at the situs of the contract or the so-called bifurcated sale
9 in which part of the transaction may take place in the home
10 such as the initial contact, the sales or bait presentation
11 and the actual contract signing may occur elsewhere.

12 In other words, I think the rule should cover
13 locations where the buyer's signature is obtained other
14 than at the home which are not the seller's fixed or regular
15 place of business and would include transient or types of
16 sales.

17 I am going to deviate from my comments and specific
18 provisions of your proposed code just to give an example
19 of what I am talking about, on these transient sales. They
20 are very real and they are increasing in number.

21 This is an actual case which occurred in the last
22 month, two months. Our investigators picked up the trail
23 of some encyclopedia salesman. They were going around the
24 college campuses. Their method of operation was this, they
25 would send out a post card which on top would say, "final

1 notice. Your name is entered in our national contest. You
2 are a winner of a valuable prize and you also qualify for
3 some other type of an award. No purchase or obligation is
4 involved. We must hear from you before the expiration date
5 given below along with our notice." Please call such and
6 such a person between such and such hours.

7 The thing that happened, these were sent out
8 perhaps a week, two weeks in advance. The two salesmen
9 would then come to a motel. They would set up in separate
10 rooms and they would start running the prospects through.

11 They made a sales presentation and it was replete
12 with misrepresentations. I won't go into the details, the
13 precise deception and fraud and misrepresentations.

14 Subsequently, the buyers would try to cancel and
15 this is what happened in their own words, and I will read
16 from a statement that was taken from one of the college
17 students that happened to sign up. I will delete names,
18 but I will give the picture.

19 When this was talked about the next morning I
20 decided I didn't want the deal and I called the motel to
21 see if I could cancel the contract. The woman that answered
22 the phone told me that X salesmen were not there.

23 On the following morning I got a ride to the motel
24 and I went there to see if they were still there but it
25 appeared that the room was being cleaned and obviously were

1 out a day after the sales meeting.

2 After our investigators and the local policemen
3 listened to the sales pitch and intervened. They got out
4 after that.

5 Action is still going to be taken. When I arrived
6 home I received a phone call from the encyclopedia company,
7 no name was given as to who was calling, the person calling
8 to confirm these things I was to receive.

9 I asked if there was any way I could get out of
10 the contract because I was going into the Peace Corps and
11 I didn't think that I could make the payments. The voice
12 on the phone said that I had signed the contract and never
13 really answered my request.

14 I asked them if they had already sent my card in
15 to have me ship me the books and he said they already sent
16 a card in. I was not aware that I supposedly had four days
17 to cancel because that portion of the card or contract or
18 on my copy had a sticker reading "special delivery," pasted
19 over it.

20 Now, if this particular contract provided for
21 this encyclopedia company the provision was this agreement
22 will be verified within four business days to secure your
23 final acceptance. Right over the portion of the contract
24 was put a special sticker. This is no accident. It appear-
25 ed on several contracts.

1 If you want this in your record you can have
2 them. I would be happy to submit them as an exhibit.

3 Again, I stress I think as you get more and more
4 cooling off regulations that are directly only to the situs
5 of the home you are going to have the unscrupulous companies
6 setting up shop in a temporary, transient locations; you
7 are going to have the same problem all over again unless
8 it is covered in your Code.

9 Another point that I would like to make in your
10 definition of consumer goods and services, it would be our
11 opinion that such goods and services should also include
12 those that are leased.

13 We are informed by members of the Advisory Council
14 and through our own experience that leasing is a current
15 trend. We anticipate many of the same misrepresentations
16 and deceptions and frauds will be adopted to the leasing
17 field.

18 Therefore, I would urge you to give consideration
19 to just adding the word "leasing" into your definition of
20 consumer goods and services and then correct it of course,
21 throughout the Code.

22 I would have a comment in your definition of
23 door-to-door sale, why should sales made in the presence
24 of attorneys be excluded.

25 I think, while as a practical matter this circum-

1 stance would appear to be remote, that is, have an attorney
2 present. I can assure you that it may be difficult for
3 anyone, including attorneys, including myself, I am also
4 an attorney, to see the gimmick when you first look at the
5 thing. Sometimes it is very difficult at first glance to
6 see what the gimmick is on the sales presentation when it
7 is made.

8 As far as your definition of business place -- or
9 excuse me, business day, this is satisfactory and may be
10 more precise if the rule read, legal holiday instead of
11 just holiday.

12 With respect to your notice to the buyer, I have
13 mixed emotions on this. I think that you have done a good
14 job in laying out the things a buyer can do, but it seems
15 to me it is a little too long and would tend to be confusing.
16 I am not sure people would take the time to read through
17 that lengthy a document.

18 As to the paragraph on arbitration I would have
19 this question: Does this preclude the buyer from bringing
20 a law suit for damages?

21 In other words, is this an estoppel so to speak.
22 Does it bind him to arbitration. If so, I don't think this
23 should be so. I believe if a person wants to bring a lawsuit
24 he should be able to do so.

25 In Wisconsin there are some remedies along the lawsuit

1 route.

2 I would stress, I believe it is very important
3 the rule, and yours does have a provision which restricts
4 waiver of the right of cancellation because one of the
5 first thoughts of a seller, especially the unscrupulous
6 ones is to stop or set up some sort of an estoppel or waiver
7 agreement.

8 I urge you to keep that in there.

9 As far as the provision of orally informing the
10 buyer of the right to cancel, I would think from an enforce-
11 ment standpoint, from a regulatory agency standpoint it is
12 probably going to be difficult to enforce unless we get
13 a pattern of testimony where people are saying the salesmen
14 are not doing this and we are able to establish a pattern.

15 Furthermore, what does it mean when you say you
16 have to orally inform the buyer. Does that mean he has to
17 read the entire notice.

18 If this is what you mean maybe you could sharpen
19 up the language a little bit on that score.

20 I think it is important to have a provision where
21 the salesman says right off what he is there for. It has
22 been our experience the initial contact is where people
23 get their first impression as to what's going on. I think
24 if the salesman is required, is going to misrepresent, if
25 a salesman calls at the home he ought to start right off

1 what he is there for.

2 We think that -- some people have said the cooling
3 off period should run from the time he is advised of his
4 monthly payments and the company that would collect those
5 payments.

6 In other words, I think it is all right the way
7 you have it starting to run three days afterwards. I just
8 bring up the point some people think it should be starting
9 to run from the time they receive their first payment from
10 the finance company, when they receive their first payment
11 book from the finance company.

12 To sum up the argument, it is frequently heard
13 direct sales companies are being picked on. It is said
14 merchants operating at a fixed location use bait advertising
15 and selling tactics and may result in just as much injury
16 to the consumer.

17 This may be true, however, the remedy must be
18 fashioned to meet the particular circumstances or tactics
19 involved.

20 Bait selling can be controlled by surveillance
21 and other investigational techniques of the regulatory
22 agencies.

23 The same regulatory law enforcement measures
24 cannot as a practical matter be used where business is
25 conducted on a door-to-door transient level of location.

1 Thank you.

2 HEARING OFFICER DIXON: Thank you, sir.

3 Mr. Cabell.

4 EXAMINATION

5 MR. CABELL: I would like to have those documents
6 if you will hand them to me when you finish I will have them
7 introduced into the record.

8 I have no questions.

9 HEARING OFFICER DIXON: Mr. Lamet, do you have any
10 questions?

11 MR. LAMET: No, no questions.

12 HEARING OFFICER DIXON: You raised one question,
13 Mr. Milan about whether or not the proposed rule would
14 foreclose the buyer from filing suit and the proposed rule
15 dealing with arbitration.

16 Are you aware of the fact arbitration at the buyer's
17 option?

18 MR. MILAN: Perhaps I missed that.

19 HEARING OFFICER DIXON: And it reads, "Fail to
20 include in each door-to-door sales contract a clear and
21 conspicuous statement that the seller agrees to arbitrate
22 any dispute arising under the contract at the buyer's
23 option."

24 MR. MILAN: I take it back. I guess I missed that,
25 sir.

1 HEARING OFFICER DIXON: Thank you, sir.

2 (Witness excused.)

3 HEARING OFFICER DIXON: One other question. Do
4 you have any information as to how these lease arrangements
5 work and what type of products are being leased.

6 MR. MILAN: Well, we don't have a lot of information
7 at this point. But we have been informed by attorneys on
8 our advisory council who are in this, in commercial trans-
9 actions and quite knowledgeable tell us that this is the
10 coming field.

11 As more regulations are put on selling techniques
12 on the sale, many companies are going to revert to some
13 other form of then getting their merchandise out.

14 All I can say is that we are informed and we are
15 starting to work on it and check into it, that leasing is
16 the coming thing. If it is not covered there is going to
17 be a great big loophole.

18 HEARING OFFICER DIXON: Several other witness have
19 testified to the same effect. It must be new. All of them
20 are somewhat hazy as to exactly how it is done and what type
21 products are being leased.

22 But your suggestion as I understand it would be
23 the definition of sale would be expanded to include, lease.

24 MR. MILAN: That is true.

25 HEARING OFFICER DIXON: Thank you.

1 (Witness excused.)

2 HEARING OFFICER DIXON: With the permission of
3 the other witnesses, Mr. Shipman who is scheduled last
4 today and has connection problems and has asked to come
5 next.

6 I will call Mr. David Shipman.

7 STATEMENT OF DAVID SHIPMAN,
8 CHAIRMAN, FEDERAL BAR ASSOCIATION
9 COMMITTEE ON ARBITRATION

10 MR. SHIPMAN: Mr. Dixon, Mr. Cabell, Mr. Lamet,
11 a word of apology, I notice the excellent materials prepared
12 by the other speakers; unfortunately, a little bug got ahold
13 of me about ten days ago and I was in the hospital last
14 week and couldn't prepare properly.

15 Mr. Lamet asked me to testify anyway, and I made
16 some rough notes here this afternoon.

17 I have been asked to concentrate on the arbitration
18 clause.

19 First, a bit of bibliography about myself and
20 about my interest and philosophy, because I think one must
21 evaluate the contributions of the witnesses in a case like
22 this with their experience and their prejudices.

23 I am a lawyer who has practiced in the City of
24 Chicago for some 35 years. I am also an arbitrator, a
25 Master in Chancery in the United States District Court
and now Special Master.

1 I have also acted as a referee. I will try to
2 explain the difference if it is relevant to the discussion.

3 Now, the general practice of law, I don't believe
4 I am the best lawyer in town, I am not saying this to be
5 funny, or the best arbitrator in town, or even the most
6 experienced among the upper ten percentile, but I think I
7 am perhaps one of those few who has perhaps really been
8 around and experienced trial work and arbitration work,
9 Master's Work and as a lawyer presenting before Masters in
10 Courts and as an active arbitrator.

11 I have handled cases never for any labor union.
12 I have been a business lawyer. I happen to number among
13 my clients one of the largest corporations in the country.
14 I worked for Clarence Darrow and Samuel Insull, not at the
15 same time but I did a job for each of them.

16 I once sued a cleaner who wrongfully disposed of
17 a \$2.50 pair of gloves of a student nurse. We put him out
18 of business for a week until he paid it with costs.

19 I was also successful after fighting 21 years in
20 recovering an award of almost \$1 million.

21 I say this because I was involved in doing it and
22 got a very substantial fee in recovering this award. In-
23 cidentally, it was on behalf of an inventor who couldn't
24 finance the litigation and he made an invention and died
25 penniless. It took me doing that all over again if I got

1 \$2 millinn for it --

2 Now, my philosophy is that and arbitration is
3 part of my philosophy, I have what these people now call
4 a hang up or my bag on arbitration.

5 I think it is not Utopia. Utopia is a misleading
6 thing. Utopia is a beautiful thing. Plato had one one.
7 St. Thomas had one and Bellamy had one and Butler had one.
8 The Communist Party has got one and even the Nazis had
9 one.

10 The problem is how do you get from here to
11 there. Usually you get there, you just never get there.
12 You get into either tyranny or chaos.

13 We have some things to work with in this society
14 of ours. As a lawyer I have been trained to understand
15 these things, to transmit them to anyone that is interested.

16 I think that our judicial system, for instance,
17 is a tremendous and sacred thing, particularly in the due
18 process provisions it makes for the protection of people
19 accused of crimes and people involved in satisfying civil
20 rights and people who are sued.

21 There are very many, and perhaps, a majority, I
22 don't know of great Judges, but this legal system, and I
23 am an officer of the court and as I have indicated I am
24 a Master in Chancery of the Federal Court. I am an officer
25 in the federal court.

1 I think the judicial system is facing a breakdown.
2 I have a clipping from Chief Justice Burger. We just can't
3 keep up with this wonderful legal system of ours with the
4 burgeoning of the social and physical and material and
5 development of our society.

6 People go day after day without receiving justice
7 and sometimes receiving a great deal of injustice. There
8 has got to be a way out of this.

9 The legal system can grow and I think it will
10 grow one way, one road I think in that direction is the
11 road of arbitration.

12 I think that one of the things that arbitration
13 -- one of the things we have to do in arbitration which
14 will contribute to it also, is to restore the confidence
15 of our people, of our young people, of our old people, in
16 our institutions and our Government leadership and our
17 educational leadership.

18 What I am particularly interested in is our
19 business leadership.

20 Now, this has broken down. I am a lawyer with
21 a lot of education and I am afraid to enter into a contract
22 to purchase without thorough examination. There are still
23 a few good old institutions like Marshall Field or Zenith I
24 have a lot of confidence in. I hope that they can continue.
25 There are many good businessmen I am sure, just as there are

1 many good people who buy merchandise. Probably you
2 gentlemen know this better than anyone else because this
3 is your field.

4 The competition of the bad one, the competition
5 of the crooked ones, the competition of the incompetent
6 ones or the ignorant ones drags the whole level down.

7 Now, what we have got to do is to restore this
8 confidence. I heard some of these idealistic young people
9 and if I had to trade between idealistic young person or
10 a practical old person I would take the idealistic young
11 person because they are going to become practical later.

12 We want to give the customer the option of suing
13 as well as of going to arbitration. Actually your rule
14 provides that and I say that is all right, but I wouldn't
15 make too much of a point of that because there are some
16 customers that make it very difficult for the seller, not
17 very many I am sure, but there are all victims of this
18 process.

19 Arbitration is not going to turn the tables but
20 it is going to be one of the ways and that is why I am
21 interested. I want to do my little bit. I want to work
22 with the system.

23 I think the differences between litigation and
24 arbitration and things arbitration can do, I think I made
25 it clear I sympathize with the seller who wants to render

1 a service or provide a commodity and make a profit and
2 in sympathy with the buyer who wants competent services
3 and decent merchandise and are willing to pay a reasonable
4 price for it.

5 Now, I do not think this is new to anyone here,
6 litigation involves delay. As I have mentioned it took
7 me 21 years to get the rights for this inventor and he
8 died after 10 years and his sister who was the only heir
9 died a few years after we collected and it is expensive
10 litigation and you just can't afford to litigate for the
11 kind of grievances the average small person runs into.

12 I know as a lawyer, I am not trying to run down
13 lawyers, but we have to make a living. We have to pay
14 our help, we have to pay our offices. We just can't get
15 involved. Many of us are willing to give a certain amount
16 of our time and this is relevant also then to the question
17 later on as to what will be the charge for arbitration.

18 As soon as you get involved in litigation almost
19 inevitably you are at war with all of the war psychology,
20 the conflict psychology.

21 I had a case as a Master and a man came to me
22 and he said, "I haven't slept for five years. I thought
23 they were going to kill me." Now, this is how bitter
24 the legal conduct got and it started with something little
25 and developed into a lawsuit.

1 When you deal with arbitration you deal with the
2 kind of a situation which could be very simple and very
3 prompt. An arbitration can take an hour, it can take 15
4 minutes, sometimes it will take longer.

5 I think anyone who has any familiarity both with
6 arbitration and with litigation would say that arbitration
7 is incomparably short, shorter proceeding.

8 Now, arbitration also is a very inexpensive
9 proceeding. It is true the cost of litigation is concealed
10 because the Government pays so much of it. Maybe something
11 can be done about that.

12 Also, in connection with arbitration almost every
13 one I have had has been a friendly situation. I am not
14 a man of the cloth but sometimes I feel the thrill the
15 man of a cloth may feel when a couple of people come and
16 say, "We will see Father so and so; Rabbi so and so and
17 let him settle it." This is the general atmosphere that
18 should in turn and often does more exist in arbitration
19 that doesn't exist in law.

20 Now, there is another thing arbitration can be
21 confidential. A businessman may find an advantage in
22 the arbitration procedure as it is confidential. It is
23 quiet. He gets no adverse publicity someone is suing him
24 for \$1 million because that iron was used and someone burned
25 the house down or something like that.

1 Furthermore, arbitration enables agreement. I
2 do not think this point is usually touched on. I think it
3 is extremely relevant here. For this reason I have read
4 the literature of the Publishers Association; it is excellent.
5 They don't provide for arbitration. I would like to state I
6 think that it is in their interest to do so.

7 First, because there is a reaction building up
8 and it is unjust against the good sellers, there is a
9 reaction building up in the public and in the Government,
10 yes and the relatively conservative Government we have now,
11 in favor of class suits. Lawyers have plenty of material
12 to work on and I wish I were a young lawyer, I would work
13 on it myself; exemplary damages, conspiracy and other
14 remedies against sellers.

15 Now, if I were in the selling business or as a
16 seller if a client asked my advice I would say, "Heck,
17 arbitration is a wonderful way out for you. If you don't
18 have it you are going to have something very much worse."

19 I am not mentioning protests or what.

20 I will mention very briefly, I hope that I am
21 not taking too much time, one of the experiences I had
22 points this up. Three or four years ago you may remember
23 -- Jerry, you are familiar with this, you can stop me if I
24 am getting out of line, three or four years you may remember
25 there were a number of rent strikes against "slum landlords."

1 I was representing a Government agency together
2 with some associates of mine and reviewing the correspondence
3 there was a financial agency which happened to take over this
4 distressed financial property. We inherited a little village
5 of 84 townhouses.

6 This letter disclosed that there was a strike up
7 there. They weren't paying their rent. The recommendation
8 was to throw them out.

9 I immediately got in touch with Washington and
10 made an investigation. We started to negotiate with these
11 people. It is a long and interesting story but I just
12 want to point up the arbitration angle. We finally were
13 able to communicate with these people represented by a
14 very sharp union lawyer and we worked out what was considered
15 a model landlord-tenant relationship or arrangement.

16 Where arbitration came into the picture was that
17 it was about 3:00 o'clock in the morning. The chairman of
18 the bargaining committee for the tenants was much younger
19 and stronger than I was. We were really pretty woozy and
20 they were thinking; these people were very bright. I just
21 didn't have the stamina to continue on with this to get
22 an agreement.

23 So, I made a little speech about arbitration, and
24 about how labor and business use arbitration not only in
25 the process of carrying out the contract but in the process

1 of getting the contract.

2 In other words, we got to a point in negotiations
3 where they just have to, you know end it up and end the
4 strike and make a settlement. They said, well, we will
5 leave it to arbitration.

6 So, perhaps we can use arbitration, I suggest
7 this to the sellers, too, for those details upon which we
8 come to agree and if we can't agree on all these details,
9 if we can agree on general principals as specific as
10 possible, if we can and let arbitration carry forward in
11 the interpretation of the agreements.

12 As a lawyer I recommend arbitration clauses in
13 any agreement I have. I recommend it in closed corporations
14 and what are extremely tragic is the partnerships. One
15 partner dies and one wife says she will sell the business
16 and the other says something and something happens and
17 then they get into court. They are in court for five, 10,
18 15 years and the business goes to pot.

19 When the arbitration clause is there and not used
20 to go back to the tenant situation, these people had a
21 grievance procedure to come into our headquarters and fill
22 out a complaint and one, two, three steps and then we will
23 arbitrate.

24 They never used it. They settled it on the ground
25 the man we appoint everyone knew the thing would be settled

1 and settled darn quick.

2 So, I think I am addressing myself largely to
3 the business firms. I say to them, you want to welcome
4 arbitration. It is going to make your customers happier.
5 It is going to do away with a great deal of litigation. It
6 is going to do away with changes of common law and legislative
7 law that will be adverse to you. It will build up your
8 reputation.

9 Now, arbitration depends on confidence in exchange
10 for these wonderful protections and due process under our
11 Constitution that someone back in England and Great Britain
12 did some years ago due to these things we have these wonderful
13 protections. They are extremely costly.

14 They are so costly what is the use of having
15 the protection in exchange for these wonderful protections
16 and due process of our constitution, and they are so costly
17 what is the use of having the protection when you just can't
18 get justice.

19 In many situations you are perfectly willing, I
20 know I am in most situations to say, I will give up all
21 this due process which requires a record and review and
22 all the technical rules of evidence and 10 or 15 years
23 and all the legal fees, I will give it up because I have
24 confidence in the institution here that will provide an
25 impartial person to hear my claim in summary fashion, according

1 to law, equity and conscience and dispose of it.

2 I would like to see this arbitration become
3 completely voluntary. In the sense we say compulsory
4 arbitration, it is a contradiction in terms. The thing
5 that makes the arbitration constitutional is **that** you
6 voluntarily agree to waive these procedural protections of
7 due process, by agreeing to arbitration. That is the way
8 it should be.

9 Now, the question is can you force someone to
10 arbitrate. Now, I do not want to be playing antics with
11 semantics the way Sidney Harris says. There is a serious
12 constitutional question in my mind when you try to force
13 someone to give up his procedural protections and arbitrate.
14 I am not saying you can't do it under the rules, I don't
15 frankly know enough about the powers and sanctions of the
16 Federal Trade Commission where you have very good lawyers.

17 I know that we have very good lawyers representing
18 the American Arbitration Association. I think this problem
19 can be met. If the leaders of industry would agree to sit
20 down and work out a sensible arbitration clause.

21 This particular arbitration clause is a good one
22 in the sense it shows a good heart and needs some work and
23 I will make one or two suggestions. I think if they don't
24 agree I think that either your lawyers will have to tell you
25 this, you can force them to because of some section you have

1 in situations like this when the industry is in this
2 shape or by providing a minimum of review. You can have
3 what you call compulsory arbitration which is really a kind
4 of mini-administrative procedure where the review is limited
5 to in effect I am speaking roughly and I can't give Mr. Lamet
6 the case if I haven't already done so, one case in New York
7 you can limit it to, if the arbitrator seems to be acting
8 fairly and not irrationally that the court says it is all
9 right if you provide a review of that nature.

10 Then it will probably held constitutional. This
11 is not a considered opinion. It is just a hunch I have I
12 have already suggested to Jerry, but I think along those
13 lines you will find the solution if you don't find a better
14 one.

15 Now, as to the expense of arbitration I know and
16 I have talked and I act on a panel of arbitration for labor
17 cases for commercial cases for International Law and I am
18 also on the panel of the Chief Judge of the United States
19 Court of Appeals in our district.

20 I was talking with the Regional Director of the
21 AAA here and I mentioned to him I thought that \$50 was
22 quite a charge for somebody who has or thinks he is cheated
23 of \$10.

24 Also, I am sure there are lawyers who would
25 devote some time free of charge to act as arbitrators.

1 I want to say just as emphatically, it would be unfair if
2 this thing works to make a permanent arrangement expecting
3 lawyers to give their time and effort and the money they
4 need to run their offices more than anybody else.

5 But I am sure there are lawyers that would give
6 all the time necessary to get a thing like this underway
7 and to provide you with some experience.

8 As to the cost it strikes me in some of these
9 cases economies can be effected in arbitration. Maybe
10 it isn't necessary to have an arbitrator or lawyer whoever
11 else the arbitrator is travel to 134th and Ewing, if there
12 is such a location or somewhere south, east or west and
13 hold the arbitration. Perhaps there could be a central
14 place or places at a given time and the people could
15 present their claims for arbitration, perhaps 50 of them
16 can be handled in one afternoon, at a very low cost and
17 perhaps the American Arbitration Association would consider
18 say sharing in these reductions.

19 Now, this is what I think in a general way that
20 which I think about arbitration.

21 If I may make one suggestion; the American
22 Arbitration Association has been in business I think in
23 its present form since the 1920's, but it succeeded other
24 organizations of a similar nature. I think maybe they go
25 back to the Middle Ages.

1 The stock in trade of the American Arbitration
2 Association is the confidence and it is the only stock in
3 trade, the confidence of the people who use it.

4 The American Arbitration Association wouldn't
5 last a week if the unions and the employers and the business
6 people and the lawyers who use it thought they weren't
7 absolutely fair, and competent. This is their stock in
8 trade and this is something we should play on in the
9 development of our economic and social society.

10 They have developed rules governing arbitration;
11 they have developed a clause, a very simple clause that
12 can be used which will provide that they will run the
13 arbitration and their rules will be effective to govern
14 the absence of that you get into all kinds of hassles about
15 how the arbitrator should be or what rules would apply.

16 These are the thoughts I would like to convey or
17 hope to convey. I hope some of them have been of some
18 value.

19 I have told Mr. Lamet I would be glad to do
20 whatever else I can in here or in Washington in connection
21 with the development of the arbitration procedures in the
22 rule and as well as in other areas.

23 HEARING OFFICER DIXON: We appreciate that, Mr.
24 Shipman.

25 You also mentioned you had not had time to prepare

1 your statement due to other reasons, so, I tell you now
2 this record will remain open for at least another 30 days,
3 so, if you want to develop these thoughts for the written
4 record we will be very happy to receive it.

5 MR. SHIPMAN: I understand some transcripts are
6 being made, maybe someone will be kind enough to lend me
7 a transcript so I know what I have already said.

8 HEARING OFFICER DIXON: All right, Mr. Shipman,
9 thank you, sir.

10 (Witness excused.)

11 HEARING OFFICER DIXON: We will now take a five
12 minute recess.

13 (Short recess taken.)

14 HEARING OFFICER DIXON: On the record.

15 Our next witness is Kenan Heise, Chicago Today.

16 STATEMENT OF KENAN HEISE,
17 CHICAGO TODAY.

18 MR. HEISE: My name is Kenan Heise, H-e-i-s-e.

19 I want to apologize for not having a voice today,
20 however, I have Dianne Witkowski with me to read my state-
21 ment.

22 I will use my voice to answer any questions anyone
23 might have.

24 I would also like very much to thank you for
25 having me here to speak today.

1 STATEMENT OF KENAN HEISE,
2 AS READ BY DIANNE WITKOWSKI.

3 MISS WITKOWSKI: Last year, as editor of the Action
4 Line column in Chicago Today newspaper, I handled 3,000 to
5 5,000 complaints dealing with door-to-door salesmen and
6 their firms.

7 Because the newspaper took an interest in these
8 problems, we were able to resolve many of them. But never
9 did we get the feeling we were stopping the situation from
10 coming up again in next week's mail.

11 We have warned people about specific companies,
12 about certain practices and about the necessity of
13 checking with a financial or legal advisor before signing
14 any contract. We have told them repeatedly what has
15 happened to people who didn't take these precautions.

16 We know such advice has helped. We have also
17 learned why it hasn't been more effective.

18 Ask any housewife if she wants to spend \$450 for
19 pots and pans and she'll ask you back whether you are
20 out of your head. But twist it into a few dollars a week,
21 throw in the idea that she'll get a membership in an
22 organization that allows her to buy everything from
23 diapers to a car wholesale, wear her resistance down
24 and pressure her to the point where she will be relieved
25 to get rid of you and you have a sale.

1 Afterwards, she will be able to sort out the
2 facts that the salesman's approach adroitly minimized
3 or evaded. A hopped-up husband will often help her.

4 In Illinois, she can then get out of it -- if the
5 husband is direct enough to contact the firm in writing
6 within three days.

7 Such firms have learned to get around "the problem
8 of the angry husband." They want him there for the sales
9 pitch.

10 A firm such as Mr. & Mrs. International, for
11 example, say they have a present from a donor (for a recent
12 marriage or birth) and want to deliver it when both husband
13 and wife will be home.

14 The point I want to make very clearly is that it
15 is not simply lack of knowledge on the customer's part
16 that gets him to buy something he doesn't want from a
17 door-to-door salesman at a price his family can't begin
18 to afford.

19 People who write to our column display a fantastic
20 sense of confusion as to why they made the deal. It is very
21 common for us to hear, "I was frightened of the man." "I
22 didn't know how to get rid of him." "I didn't know I was
23 signing a contract."

24 "He asked me to sign a slip so he could show his
25 boss."

"I really felt sorry for her." "He was so kind."

1 "I was lonely and he was somebody to talk to."

2 Afterwards, comes the reality. "I can't afford
3 it." "I just lost my job." "My child is very sick and
4 needs hospitalization." "I'm getting married."

5 Many, at this point, add that the encyclopedias,
6 books or pots and pans have never been taken out of the
7 box.

8 The companies talk of those people as welshers
9 and are simply people unwilling to carry out their part
10 of the agreement, while the company is living up religiously
11 to its obligations.

12 As usual, the firm's arguments are an attempt to
13 lead directly away from the central issues.

14 The individual has been persuaded to buy items
15 he or she can't afford -- especially if the least financial
16 setback hits him.

17 Too often, it is also something such people don't
18 need and won't use. They buy out of confusion, pressure and
19 a vague sense of obligation to the character that the
20 salesman tries to portray to them.

21 We have, of course, had plenty of complaints of
22 very crass actions by door-to-door salesmen. The perennial
23 one is the salesman who sells magazines to the person who
24 cannot speak English or to the individual on a temporary
25 pass home from a mental hospital.

1 There are, too, of course, the thieves who take
2 the customer's money and never send the magazines. We
3 know a quite intelligent Catholic priest who complained to
4 us he had been taken over for \$180 by such a magazine
5 salesman.

6 The simplest tool that the door-to-door salesman
7 can use against a prospective customer is the lie. He
8 can say and some do, that no matter what the contract says,
9 the individual can get out of it if he wants or needs to.
10 People under pressure believe that.

11 The facts are that hustlers who can't make it
12 any where else -- people fired for dishonesty, young
13 people without responsibilities, cheats and thieves --
14 are given almost any opportunities they want to go into
15 people's homes with a contract in their hands selling
16 anything from home study courses to cemetery lots. They
17 are under only one pressure -- to sell -- and they will
18 lie to do it.

19 The companies act self-righteous when they are
20 caught with such an employee openly and brazenly deceiving
21 people. Yet, they know who their hustlers are long before
22 it comes to a head.

23 Many of them are their top salesmen. Certainly,
24 they are the ones with the most complaints against them.

25 The Government has to start holding these companies

1 responsible for such employees. It is not enough that
2 such a company purge itself by firing a man after he has
3 been caught by some Government agency or Action Line column.

4 The Federal Government should require that all
5 door-to-door salesmen working for larger firms or going
6 from one state to another be bonded so that one, they can't
7 slip away after raping an area and two, they will meet at
8 least the minimal responsibility standards of bonding.

9 On a state or federal level, there also has to
10 be some kind of uniformity of licensing for door-to-door
11 salesmen. Currently, more affluent suburbs force such
12 salesmen to sell elsewhere, exclusively in middle or
13 lower middle areas because of their strict rules and en-
14 forcement concerning door-to-door sales.

15 Either the wealthy should get the opportunity to
16 get taken by door-to-door salesmen or the poorer people
17 should be better protected from them. One of the two --
18 not one to the detriment of the other.

19 I have a selfish interest in all of this. I'd
20 like to see it so that next year I'd only get 2,000 or
21 3,000 complaints against firms that sell door-to-door
22 salesmen.

23 These merchants at your door step can fulfill an
24 excellent function in society. I may say that I myself
25 started when I was five years old selling woodfibre flowers

1 door-to-door during the depression.

2 I don't recommend that society encourage that form
3 of child labor, but there does have to be room for the
4 little guy with a product to sell that isn't available
5 in the supermarket or even the company which aggressively
6 wants to take its wares to the people, be they magazines
7 or encyclopedias.

8 But experience has more than taught that customers
9 in such situations now lack basic protection from fraud
10 and deceit.

11 A situation exists whereby a contract can be
12 signed and the firm can use the full force of the courts
13 which can be pulled in after the facts, by the company,
14 then the Government has the obligation before hand to
15 check the ground rules.

16 The FTC as the empowered arm of the Government
17 has to make it very clear to companies that such door-to-
18 door sales must bespeak a free and voluntary act on the
19 part of the purchaser.

20 He doesn't need time to "change his mind," he
21 needs several days rather to make it up away from pressures
22 that have nothing to do with his needs, wants or financial
23 capacity.

24 Illinois has such a period and our column has been
25 a party to helping many people make use of it. We've also

1 seen that it doesn't always answer the need.

2 It may be difficult for people to understand
3 about others or themselves that they don't always mail
4 letters as quickly as they want or need to.

5 Some people have a hard time getting to a post
6 office to mail a registered letter when they work the same
7 hours as the Post Office is open.

8 The answer is obvious that a person should have
9 the right to cancel via telephone. For many -- especially
10 those who have difficulty writing -- it is the only answer.

11 The option should be open -- particularly in large
12 cities -- that the person can write or call a Government
13 agency such as the FTC, attorney general or consumer
14 complaint office and cancel through them so that it can
15 be a matter of record, something not afforded by a direct
16 phone call or non-registered letter.

17 Even more radical solutions ought to be considered
18 at this point.

19 Basically, we should consider whether or not door-
20 to-door selling employing legally binding contracts should
21 simply be banned.

22 People could still go door-to-door promoting
23 encyclopedias, but they would have to go to a store or
24 office to make the actual purchase.

25 Magazines could be subscribed to in a person's

1 home, but on a cancelable basis. These contracts are
2 thorns in the laws of this nation and some friend is
3 going to do more than keep pulling them out. He is going
4 to remove the bramble bush.

5 I suggest that friend be the Federal Trade Commission.

6 MR HEISE: Thank you.

7 HEARING OFFICER DIXON: Thank you, both.

8 MR. CABELL: No questions.

9 HEARING OFFICER DIXON: Mr. Lamet.

10 EXAMINATION

11 MR. LAMET: In your contacts with the people
12 involved in door-to-door sales could you tell us if there
13 was a printed notice on the contract and they were told
14 orally about the three day cooling off period, would they
15 have actually cancelled the contract?

16 MR. HEISE: There are people who wouldn't and
17 there are people who if they were told that, I mean, we
18 get many, many people coming back to me and the company
19 replies back, sends a photostatic copy of such a
20 contract and the person was told at the time, there it
21 is in large print.

22 They still do not cancel and the person wants to
23 cancel later, very shortly after. I think the visibility
24 of this problem is in the middle class and it exists
25 tremendously among the lower economic class.

1 Let me give you a dramatic example in Englewood,
2 a black family and the boy had been shot in a bar and
3 in two hours a representative of a funeral home soliciting
4 in the same sense magazine salesmen solicits came to that
5 home, sold that family a funeral that they couldn't possibly
6 afford. Eight days later they still hadn't buried that
7 boy because they wanted cash to bury him.

8 The woman borrowed some money from the loan sharks,
9 it still wasn't enough and that is where I did come into
10 it, I did loan them enough money and finally got the guy
11 in the ground.

12 So, this kind of a problem does exist and it is
13 much more dramatic than the visible problems that we see
14 with the magazine salesmen or the home study courses,
15 etcetera and etcetera.

16 I think we have to cut deeply and we need a
17 radical solution and rather than solutions that use technical
18 terms to explain to the people.

19 MR. LAMET: Do you think the statement included
20 in the rule is too technical?

21 Will people read it or is it too long?

22 MR. HEISE: No, that is not the point. The point
23 is we can't be too optimistic about it. If we do enforce
24 this; if we get this rule in effect we have got to be looking
25 to the less visible aspect of the problem and see what we
can do there.

1 HEARING OFFICER DIXON: Thank you, Mr. Heise.

2 (Witness excused.)

3 HEARING OFFICER DIXON: Our next witness is Mr.
4 Charles Betz, representing the Water Conditioning Foundation.

5 STATEMENT OF CHARLES BETZ,
6 WATER CONDITIONING FOUNDATION

7 MR. BETZ: Good afternoon.

8 My name is Charles Betz. I am here this afternoon
9 representing the Water Conditioning Foundation, an organization
10 which I serve as a director.

11 I am also President of Lindsay Division of Ecodyne
12 Corporation which manufactures water conditioning equipment.
13 Ecodyne in turn is a wholly owned subsidiary of Trans Union
14 Corporation.

15 Perhaps you are more familiar with home water
16 softeners than other types of water conditioning equipment.
17 If you have lived in one of the many hard water areas of the
18 country you, and certainly your wife, are well aware of
19 our products and the benefits of soft water which our
20 industry provides.

21 With me today are Bradley Burnside, executive
22 director of the Water Conditioning Foundation, and Thaddeus
23 S. Snell, our general counsel.

24 The Water Conditioning Foundation is a trade
25 association representing some 60 manufacturers of water

1 conditioning equipment and supplies which account for over
2 70 percent of sales of water softeners in the United States.

3 In addition to water softeners, our industry makes
4 equipment which removes iron, sulphur and other undesirable
5 elements from water, reduces acidity and corrects unpleasant
6 tastes, odors or colors.

7 Although the basic product in our home equipment
8 line is the water softener, the fact that we can do and are
9 asked to do many things to improve water quality for home
10 use points out the complexity of the problem with which
11 the Commission is faced when it undertakes to regulate "door-to-
12 door sales."

13 As an initial impression, it may appear that a
14 sale made in a home is simply a sale made in a home. If
15 it can be so simply identified and if there is a need for
16 regulation, then regulation itself is a simple matter.

17 Nothing could be further from reality. There is
18 no more similarity between sales made in the home than there
19 is similarity between sales made in the home than there
20 is similarity between the products which are sold to a home-
21 owner or between the salesman who sell such products.

22 To even think of home selling as an "industry"
23 is fallacious, and I believe the personalized, technical
24 aspects of the particular products which we sell will
25 point up the distortions which result from attempting to

1 lump together all selling which is done away from a business
2 establishment.

3 Water conditioning equipment ranges in retail price
4 from \$125 to over \$700 for the more sophisticated fully
5 automatic equipment which fills a variety of needs.

6 Water conditioning equipment is distributed through
7 six major channels of distribution. These are:

8 One, direct to appliance stores.

9 Two, direct to other types of retail establishments.

10 Three, to plumbers.

11 Four, to farm cooperatives.

12 Five, to home builders for installation as original
13 equipment in newly constructed homes and, six, independent
14 dealers specializing in sales, installation and servicing
15 of water conditioning equipment.

16 The large bulk of in-home sales are made by the
17 independent dealers who specialize in water conditioning
18 equipment. Members of our foundation spend a great amount
19 of money training and qualifying their personnel.

20 These dealers employ over 25,000 individuals for
21 in-home selling. Of course, the number of people in the
22 industry affiliated with and affected by in-home sales is
23 many times that number. In-home sales total at least \$40
24 million annually.

25 In talking with you today, I would like to

1 concentrate on the more personal factual aspects of our
2 industry and the effect of the proposed rules on us.

3 I will not even attempt to discuss those objections
4 to the proposed rule based on such legal points as:

5 One, the FTC's authority to impose such a rule;
6 or, two, the question of duplication of preemption of
7 other already existing legislation; or, three, the con-
8 stitutional questions, as these "legal" objections, as I
9 like to call them, are clearly presented in the written
10 statement of the Water Conditioning Foundation which we
11 have filed with the Commission.

12 Instead, I will discuss the practical application
13 of these rules, which I believe would be ruinous to the
14 water conditioning industry.

15 I will divide my comments into two categories:
16 One, general comments on the overall theory of the proposed
17 rule; and, two, specific comments on various provisions of
18 the proposed rule.

19 At the outset, I want to make it clear that the
20 WCF members do not condone fraudulent sales or sales made
21 by means of deceptive or unfair practices.

22 We want to see the unethical door-to-door salesman
23 disappear from the American scene as he reflects his bad
24 image upon all in-home sellers.

25 However, we believe just as strongly that unethical,

1 fraudulent, unfair or deceptive sellers are not found
2 exclusively selling in the home. Regardless of the sales
3 medium, such practices should be eliminated.

4 Of course, while we are realistic enough to
5 recognize that all unethical salesmen will not be eliminated
6 in the foreseeable future, we seriously object to burden-
7 some regulation upon honest, ethical salesmanship based on
8 the place where the sale is made.

9 As a matter of social philosophy, it is certainly
10 a responsibility and a fine objective of the Commission to
11 protect the consumer from unfair and deceptive acts and
12 practices.

13 However, it is also a basic objective of the
14 Commission to promote equal opportunity between sellers
15 so that competition may be fostered on a fair and equitable
16 basis without discrimination in any form.

17 It is, therefore, somewhat startling to find the
18 Commission proposing a Trade Regulation Rule which would
19 condemn certain acts and practices and impose certain
20 specific requirements on sales made in a home when such
21 acts and practices are not condemned and such specific
22 requirements are not imposed upon sales made at a business
23 establishment.

24 The clear implication of this regulation is that
25 the Federal Trade Commission with all of its prestige as

1 the protector of the consumer, is saying to the consumer
2 "don't buy from those fraudulent, deceptive, dishonest
3 salesmen who call on you at your home; do your buying at
4 an established place of business."

5 It is equally startling that such a result is
6 being accomplished not through normal judicial processes
7 where the accused is confronted by the accuser and the
8 evidence against him, but in a proceeding where the accused
9 is invited to come and defend himself against charges which
10 are not defined, which he has had no opportunity to in-
11 vestigate, and the magnitude of which is not disclosed.

12 I would be the first to admit that there may have
13 been some salesman of water conditioning equipment somewhere,
14 sometime who went further than he should have gone in his
15 desire to make a sale.

16 I would like to ask the representative of any
17 business establishment in this country to stand up and
18 say with all honesty that "This has never occurred in my
19 store."

20 Does the Commission propose to sterilize all
21 salesmen?

22 Selling is by definition the art of persuading
23 a prospect to buy some type of goods or services.

24 Selling is not simply writing up an order, filling
25 in the blanks, or taking the money from someone who has already
decided what he wants to buy.

1 Such people are clerks or cashiers. You find
2 them at the check-out counter of every mass merchandising
3 establishment. Is this the only way merchandise is to be
4 sold?

5 As long as there are salesmen, there is going to
6 be persuasion. If the consumer must be protected from
7 persuasion, then we must not only eliminate the salesmen
8 but advertising and promotion as well.

9 But if the salesman is to remain, then he should
10 be viewed for what he is, and he should not be regimented
11 down to the minutest detail, from describing the content
12 of his opening statement, to his closing remarks, and then
13 telling him that once he has made a sale he must encourage
14 the customer to change his mind.

15 If salesmen are to be so regulated, then all
16 salesmen should be so regulated and not just those who
17 make their living by calling on the customer in his home.

18 After all what is really so bad about in-home
19 selling?

20 Let's look at the Water Conditioning salesman.
21 The water conditioning equipment salesman, who makes in-home
22 sales is not the invisible, non-locatable salesman who is
23 dropped off in a neighborhood, canvasses the area, makes
24 his sales, and disappears, never to be seen or heard from
25 again.

1 The water conditioning equipment salesman is a
2 member of the community. He works out of an established
3 sales office. He represents a company listed in the
4 telephone directory. He can be found easily and makes him-
5 self readily available to serve a customer.

6 The water conditioning equipment he sells is not
7 a standard item. These units vary in size, capability,
8 cost, and performance. It is important for the customer to
9 get the proper unit, the unit that is capable of filling
10 his needs.

11 The proper piece of equipment cannot be determined
12 without knowing details such as the number of people in the
13 family, their ages, the number of bath rooms in the house,
14 and the number of faucets in the house. The type and
15 location of the plumbing must be examined to determine the
16 cost of installation.

17 Finally, the water must be analyzed for hardness,
18 taste, acidity, color and odor. All of these things can
19 best be done at the home by trained sales personnel.

20 So few calls are made "cold" as to be almost
21 totally nonexistent. Almost all calls at homes are made
22 as the result of ads, inquiries or responses of some kind
23 showing interest in an analysis of water, a demonstration
24 of water conditioning equipment or the benefits which
25 water conditioning can provide.

1 The water conditioning equipment salesman, a
2 specialist in his field, is providing a valuable service that
3 cannot be duplicated in a business establishment -- why
4 penalize him for providing a valuable service.

5 We simply do not subscribe to the philosophy that,
6 once a sale has been made, and an agreement negotiated and
7 signed, the buyer should then be encouraged to change his
8 mind.

9 How many stores permit you to buy merchandise,
10 take it home, try it out, install it, often another party
11 is involved, i.e., plumbing contractor or professional
12 installer is required, and then change your mind, and
13 call them to come and get their merchandise, take it out
14 if it has been installed and refund your money in full
15 without even a service charge or a cancellation penalty of
16 some kind?

17 Under the proposed Rule, several days after his
18 water softener has been installed the purchaser can call
19 up and say "come take it out, "I've changed my mind."

20 This could be almost a week later, with holidays
21 and weekends.

22 Is this a right which he should have as a matter
23 of public policy, even in the absence of any fraud, deception
24 or misrepresentation? If so, should he not have this right
25 regardless of where he buys the water softener?

1 The Commission proposes to define the offense as
2 the failure to permit the customer to change his mind, the
3 failure to make a particular point at the very beginning
4 of an opening statement, or the failure to use a certain
5 size type, or a certain color of ink, or certain specific
6 words in a contract.

7 There is no reason why these requirements
8 could not be made universally applicable to all salesmen.
9 A contract is a contract, and the size of the type, the
10 color of the ink and the precise form and location of
11 words can be controlled just as easily when the contract
12 is signed in a store as when it is signed in a home.

13 I would like to reiterate that our industry does
14 not condone deceptive practices or fraudulent tactics.

15 I dare say that the overwhelming majority of dealers
16 who sell primarily in the home do permit a customer to
17 change his mind and cancel the sale without penalty until
18 the equipment is installed, and after it is installed
19 probably would take the equipment back with a reasonable
20 service charge for removing the equipment.

21 We also are aware of the existence of laws in a
22 number of communities and states imposing some restrictions
23 on in-home selling.

24 These facts are not justification for this type
25 of regulation, in our opinion.

1 I confess that in my lifetime I have made a few
2 purchases that I later regreted, that most of them were
3 made in stores or automobile showrooms and being human,
4 perhaps I like to think that I was high-pressured into
5 buying something, or that the product was misrepresented,
6 or that in some other way I was "sold" on something that
7 I really didn't want.

8 However, I equally candidly say to you that I do
9 not think that the weaknesses and foibles of human nature
10 that can be eliminated by a Trade Regulation Rule.

11 False, misleading and deceptive acts and practices
12 are already outlawed by the Federal Trade Commission Act.

13 We simply do not believe that the circumstances
14 justify the Commission in telling a large segment of American
15 industry how, when, where and pursuant to what kind of a
16 contract it can sell its goods as long as such practices
17 are not, in fact, deceptive, false or misleading.

18 As to the specifics of the Proposed Rule, I will
19 make only a few comments.

20 We have reviewed Mr. Sherwood's suggested Alterna-
21 tive to the FTC's Proposed Trade Regulation Rules.

22 With certain exceptions, our industry would not
23 find the alternative rule impractical provided it was
24 applied on a uniform basis to all engaged in selling water
25 conditioning equipment regardless of where the sale was made.

1 We cannot accept the basic premise that in-home
2 selling is guilty and in-store selling is not.

3 We cannot accept the proposition that home
4 solicitation sales should be regulated whereas sales from
5 a business establishment should not be regulated to the
6 same extent.

7 If regulation is only applied to sales made in
8 the home, it would severely penalize those selling in the
9 home, it would severely penalize those selling in the home
10 giving a substantial competitive advantage to retail outlets
11 for the equipment which we also manufacture. Our industry
12 strongly supports equality of opportunity in the market
13 place.

14 We further suggest that, before these Trade
15 Commission Regulation Rules have any application, there
16 should be some evidence of fraud, deception or misleading
17 acts or practices in connection with the sale.

18 If, for example, access to the home is gained
19 by fraudulent means then the penalties imposed would be
20 justified.

21 However, the mere fact that a purchase is con-
22 summated or a contract signed in a home is not, in our
23 opinion, sufficient justification for this type of pre-
24 determination that a violation of the Federal Trade
25 Commission Act is conclusively presumed to have occurred.

1 We believe that under any circumstances regardless
2 of where water conditioning equipment is purchased, there
3 should be some penalty imposed on the buyer for cancellation
4 of the contract except where fraud, misrepresentation or
5 deception is involved.

6 We suggest that such a penalty be the downpayment,
7 but not to exceed 10 percent of the purchase price, if
8 the cancellation option is exercised prior to installation
9 of the equipment. This would have a tendency to discourage
10 a buyer from entering into a series of contracts cancellable
11 with no penalty; simply taking advantage of this cancellation
12 option.

13 Actually in our industry, this often would impose
14 no penalty on the buyer as there frequently is no downpayment.

15 We are of the firm conviction that some further
16 obligation should be imposed upon the buyer who does not
17 exercise the cancellation option until after the equipment
18 has been installed with the buyer's knowledge and permission.

19 Obviously, installation of water softeners cost
20 money. The seller is hardly in a position to refuse to
21 install equipment if the buyer wants it installed.

22 If the equipment is installed, whether it be
23 purchased from a store or from a salesman who calls at
24 the home, and the buyer subsequently decides to exercise
25 his option to cancel the contract, we strongly recommend

1 that the buyer should be required to tender payment for
2 the reasonable cost of installing and removing the equipment
3 with his notice of cancellation.

4 The amount could even be set out in the contract
5 so the buyer would know in advance what this charge would
6 be. If the buyer is not willing to make such a payment,
7 then the contract should not be cancelled and any notes
8 given should be fully negotiable.

9 Of course, we certainly recommend that this
10 installation charge also be waived and uncollectable in
11 case there is fraud, deception or misrepresentation in
12 connection with the sale. These comments relate to Point
13 13 of attachment II to Mr. Sherwood's letter to the
14 Commission dated March 4.

15 We also take exception to the provision referred
16 to as Point 8 in Mr. Sherwood's attachment II, as we do
17 not believe that the right to cancel should be over-promoted.

18 If the text of the notice is under a sub-heading,
19 is in type no smaller than the rest of the contract, and
20 is in language consistent with the rest of the contract,
21 and is in language consistent with the rest of the contract,
22 we think the objective of protecting the consumer has been
23 adequately accomplished.

24 Subject to the above comments and reservations,
25 we want to commend Mr. Sherwood's letter, Alternative,

1 Proposal and analysis which we believe is constructive
2 and forthright in its objective.

3 If the Commission surmounts the legal questions
4 which have been raised and is disposed to proceed on some
5 basis with a Trade Regulation Rule, we urge that serious
6 consideration be given to the suggestions presented by Mr.
7 Sherwood, and to his reasoning with the amplification and
8 modifications which I have suggested.

9 I appreciate the opportunity to appear before you
10 today, and thank you for your attention and interest.

11 If you have any questions, we will be more than
12 happy to try and answer them for you.

13 HEARING OFFICER DIXON: Thank you.

14 Mr. Cabell?

15 EXAMINATION

16 MR. CABELL: Mr. Betz, we have heard a number of
17 industry members state your thoughts that this proposed
18 rule amounts to an arbitrary and discriminatory action on
19 door-to-door sellers.

20 My question is this, what is your real objection
21 to this rule. We have a cooling off law in 22 states, we
22 have one in three cities; we have it in the Truth-in-Lending
23 Act. You have a similar provision in the Uniform Commer-
24 cial Code.

25 What is your real objection to this rule?

1 MR. BETZ: The real objection would be that --
2 there are several things in here such as it appears a total
3 endorsement of the regulation when it is first considered
4 is one which is about in-home selling and in fact, that
5 is the best place for the sale of our product. This is
6 one of our objections.

7 I think the other one is in the case of a three-
8 day waiting situation where people buy such a unit in most
9 cases they say, "I want it hooked up tomorrow."

10 Well, if you go ahead and do that and you got this
11 three day cancellation or longer situation, people could
12 go down and shop. They could go to many competitors of
13 ours and they may find one they can buy from for \$20 less
14 and then take this out because he made a deal to me that
15 is more to my liking or something of this sort.

16 So, you get all of these things that make it
17 restrictive.

18 MR. CABELL: You also voiced an objection to the
19 provision in the rule that requires the salesman to state
20 the purpose of his call.

21 At the same time you say most of the salesmen
22 in your industry are invited to the home.

23 I find it hard to see why if the salesman has
24 been invited to the home, the consumer opens the door and
25 he says, I am so and so a salesman from the so and so water

1 conditioning company. This is what they do.

2 MR. BETZ: This is what they do.

3 MR. CABELL: What is your objection to the provision
4 in the rule that requires you to do that.

5 MR. BETZ: I don't know. Maybe I don't understand
6 the rule completely. It seems to me if you go to the --
7 if you are a homeowner and you go to your door and I am
8 there and say, I am Charley Betz from the Lindsay Company.
9 I am here to sell you a water softener, I raise an objection
10 right there.

11 MR. CABELL: Even if I have called the Lindsay
12 company and said I want to talk to someone about your water
13 softener.

14 MR. BETZ: If that is the case I would simply be
15 restating the fact I am here at your request and that
16 wouldn't be a problem.

17 MR. CABELL: I don't think it would be either.
18 You told us that that is a typical way that your salesmen
19 get into the home.

20 Now, you repeatedly referred to the expense and
21 risk the seller might have in taking this equipment out
22 after it has been installed.

23 MR. BETZ: Right.

24 MR. CABELL: If he is afraid the purchaser is going
25 to cancel why doesn't he wait three days to put it in?

1 MR. BETZ: The reason I stated a moment ago, you
2 now have an agreement and you bought this water softener
3 and it is a great product and during the next three days you
4 call up and shop all over the place and someone makes a
5 deal with you for \$5 less or \$20 less than or someone of
6 this sort, there is no deception whatsoever in this situation;
7 yet, this may be the one reason you take the sale out or
8 change your mind.

9 MR. CABELL: That is one of the basic objections
10 we have on this record. Time and time again the consumer
11 doesn't have an opportunity to shop and compare prices.
12 That is one of the reasons given in support of the three
13 day cooling off period.

14 MR. BETZ: Well, everyone has a right before
15 signing the contract to say, fine, you just leave it
16 here. I will look around a little bit and come back
17 tomorrow. If they signed the contract then it is a deal.

18 MR. CABELL: I do not see any real difference if
19 a man signs a contract and you tell him he has three days
20 to think this over.

21 MR. BETZ: We don't invite it and I do not think
22 you would either if you were in the selling end of it and
23 invite someone to go ahead and shop in the situation you
24 presented. It is equipment that has been recommended. It
25 is designed for a particular case and need and the one he

1 comparing might be entirely different. It just doesn't
2 measure up to be good, sensible salesmanship.

3 MR. SNELL: May I make a comment on that.

4 I think our particular point on that particular
5 issue, Mr. Cabell that you are mentioning is that we
6 think that the sale of this equipment should be treated
7 equally regardless of where it is sold.

8 If you enter into a contract to buy this equipment
9 in a store, you can't change it later. If you enter into
10 the same contract to buy it in the home you have a period
11 of three business days which could be five or six days to
12 change your mind.

13 Now, if it is a good idea to give this time to
14 change your mind, we simply say that this idea should be
15 universal and it should not be imposed exclusively on the
16 in-home seller.

17 That is our position. If it not a good idea then
18 we do not think that it should be imposed on us at all.
19 If it is applicable to everybody it seems to me that you
20 have more shoppers.

21 You do not get a chance to change your contract
22 on an automobile sale or any other purchase involved in
23 a contract in any business establishment after you sign
24 the contract. You can shop as much as you want, but when
25 you sign a contract it is our position it should be a

1 contract. If it can be cancelled it should be cancellable
2 by everybody.

3 HEARING OFFICER DIXON: In that same line there
4 is one thing that troubles me from the language you yourself
5 use. I take it you don't find any real difference in
6 substance between the situation that exists in direct selling
7 and that which exists when you are selling the same product
8 in the store.

9 You have described the direct selling involves
10 truly the art of salesmanship. If that situation is true
11 and in your language, why should we regulate in stores sales
12 where a person who takes the order there is in your words,
13 not a salesman but a clerk or an order taker.

14 MR. BETZ: I think Mr. Dixon that is used as a
15 purpose to sterilize the salesman and so that any salesman
16 whether in the store or in the home would be merely an
17 order taker or clerk or cashier.

18 Our point is that even those companies who sell
19 units such as this in the store have to go to that home
20 sometime before that unit is installed to make certain
21 the plumbing is as reported to them so they can make a
22 proper installation charge, and also, that it is a proper
23 size unit for the installation.

24 Another point is that in many cities the municipal
25 water supply may be eight or ten wells providing the water

1 supply to that city so that the water that may be on your
2 street would be different from the water that is on your
3 street and maybe still in the same neighborhood. One unit
4 would not serve both locations. That is why we feel it is
5 important.

6 HEARING OFFICER DIXON: What I was trying to get
7 at was not the peculiarities of sales of water conditioners,
8 but the reasons why we should apply the same rule in this
9 regard in stores as to in-home sales where they are not
10 limited to any particular product.

11 I am thinking of a practice that covers products
12 across the board.

13 MR. BETZ: I do not see why there should be any
14 discrimination on in-home sale as compared or contrasted
15 to a store. That is my question.

16 HEARING OFFICER DIXON: I guess my question is,
17 isn't there a difference between the situation where I go
18 to the store looking for a product and the salesman comes
19 to my home and is uninvited.

20 MR. BETZ: Well, I know you have experienced many
21 different kinds of sales people in the store and out of
22 stores. You go into a store and many times you will be
23 buying a different product because the salesman did a
24 pretty good job of selling you. That can occur in the
25 store as well as in the home.

1 HEARING OFFICER DIXON: Mr. Lamet.

2 MR. LAMET: I have only one question somewhat
3 connected to what Mr. Dixon has referred to; do you believe,
4 Mr. Betz, that the fact you are invited or not invited, I
5 don't know if there is a difference -- do you believe there
6 is somewhat a kind of a privilege to be able to consummate
7 that sale within the home itself, within the environs of
8 the buyer's home itself?

9 Do you think that might be a special privilege
10 that the seller is getting that the store does not have?

11 MR. BETZ: I do not think it is a special privilege
12 wherever the sale is made. The sale is made when a man
13 makes up his mind he is going to make that purchase, no
14 matter where it is.

15 MR. LAMET: As to the members of your association,
16 do they maintain stores?

17 Do they actually maintain some display centers
18 that people can come in? Do they all do that?

19 MR. BETZ: I would say that the biggest percentage
20 do, yes. Probably 90 percent of them have store displays.

21 MR. LAMET: Why do they then limit, those who
22 do engage in the store activity, why do they engage in the
23 door-to-door solicitation?

24 Why don't they just send out advertising asking
25 the people to come to their store and view the devices in

1 the store?

2 MR. BETZ: For every advertisement that you make
3 the fall-out is very small unless it is directed some way
4 and followed up in some way to be able to measure the value
5 of advertising, it is very difficult as compared to an
6 actual invitation to come into the home.

7 MR. LAMET: So, there is an advantage to actual
8 get in the home to make the sales pitch?

9 MR. BETZ: Only -- our product is sold through
10 creating an awareness or creating the knowledge there is
11 such a thing as soft water. This is how you obtain it and
12 these are the benefits to be derived.

13 Many people in the large retail stores have an
14 opportunity to sell this product in the store and consummate
15 the deal in the store, when really he should go to the
16 home too and do certain things to make certain there is
17 the right application of the unit.

18 MR. LAMET: Are you saying that the stores are
19 at a disadvantage with regard to selling this particular
20 item?

21 MR. BETZ: You can close a deal when a man is
22 at his home and he is ready to buy.

23 MR. LAMET: I am referring to the fact, I think
24 you testified earlier that in order to properly demonstrate
25 the use of this product you really should do it in the home.

1 Didn't you testify to that?

2 MR. BETZ: No, not in the use of the product but
3 to make sure it is the right product for the application
4 and the water is tested and they have the right unit for
5 the application.

6 HEARING OFFICER DIXON: Thank you, gentlemen.

7 (Witnesses excused.)

8 HEARING OFFICER DIXON: Next is Mr. Alvin Freidman,
9 Vice-President of the Amalgamated Trust & Savings Bank.

10 STATEMENT OF ALVIN FREIDMAN,
11 VICE-PRESIDENT, AMALGAMATED
 TRUST & SAVINGS BANK

12 MR. FREIDMAN: My name is Alvin Freidman.

13 Gentlemen, the proposed FTC regulation is designed
14 to provide the consumer with some meaningful and readily
15 available relief. Once he has succumbed to the high
16 pressure sales pitch of a door-to-door salesman, but has
17 subsequently had time to mull over the transaction and
18 realize he has made an unwise and unwanted purchase, paid
19 an unconscionable price or unnecessarily burdened his
20 family with a long-term expenditure.

21 It should be noted the actual dollar losses to
22 consumers through deception, fraud and misleading practices
23 in door-to-door sales run into millions of dollars annually.

24 Consumers traditionally have the expense of
25 litigation, loss through over prices and shoddy merchandise,

1 loss through garnishment, and even the possible loss of
2 a job. These problems are particularly of particular
3 disadvantage to the poor, the uneducated and the aged.

4 No individual preys upon the elderly, the poor,
5 the ignorant or the gullible or the soft-hearted as much
6 as the unscrupulous door-to-door salesman of products ranging
7 from encyclopedias, magazines and kitchen ware to sewing
8 machines, vacuum cleaners, furniture and siding.

9 A distinct advantage of the proposed Rule is that
10 the remedy is self-executing. It is readily available to
11 all buyers, regardless of their socio-economic status or
12 level of education.

13 Experience has taught us, especially in the consumer
14 field the remedies are illusory unless it is automatic.

15 Federal regulation is needed since the States are
16 in no position to enforce the needed regulations.

17 As of 1968, six states had regulatory provisions
18 similar to those now being proposed by the Federal Trade
19 Commission.

20 The State of Illinois is one of those six.

21 During hearings on S-1599, in 1968 before the
22 Consumers Sub-committee of the State Committee on Commerce,
23 William G. Clark, then the Attorney General of Illinois
24 testified the Illinois State Statute regulating door-to-door
25 sales was only moderately effective.

1 Now, there has been some 50 companies who have
2 been enjoined and prosecuted. Clark noted most of the
3 enjoined companies have since moved from Illinois to states
4 which lack such effective consumer protection laws.

5 Unless there is uniformity among the laws of all
6 of the States, strict State regulation can no more -- can
7 be a futile gesture.

8 The door-to-door sales industry is so sizeable
9 and growing rapidly. Something of the magnitude of the
10 business is indicated in a January 1967 New York Times
11 article with the title, "Door-to-Door Sellers move to
12 costlier products," is indicative of the trend.

13 The article quoted the Executive Director of the
14 National Association of House-to-House installment companies
15 as reporting, "Sales of the house-to-house credit selling
16 industry last year were estimated at \$1 billion."

17 He predicted an annual increase of 6 percent.
18 Others have predicted overall sales of this industry both
19 credit and non-credit may exceed \$4 annually.

20 The vast majority of door-to-door salesmen honestly
21 perform a constructive and useful function by conveniently
22 bringing their products to the doors of millions of house-
23 wives.

24 The proposed rule achieves the desired result
25 without infringing on the operation of those legitimate

1 companies. It is not restrictive or punitive but merely
2 protective.

3 Those companies not presently abusing their rights
4 as sellers will not be hurt by the regulations, but those
5 involved in deceptive and fraudulent practices will be
6 deterred.

7 Moreover, this rule will operate to the advantage
8 of the legitimate companies by instilling great public
9 confidence in door-to-door selling as was recognized by
10 Charles E. Swanson, President of Encyclopedia Britannica,
11 Incorporated in a statement issued in the Washington Post,
12 January 8, 1970 Swanson said, "If the proposed rule was
13 adopted consumers will have increased confidence of their
14 rights in the home and will have full and adequate pro-
15 tection."

16 A cooling off period will not eliminate or
17 deter unscrupulous door-to-door selling, but it will offer
18 important additional protection to consumers.

19 It provides a 72-hour warranty against bad judgement,
20 fraud and high-pressure sales techniques which take advantage
21 of the consumers' lack of sophistication.

22 It is a check against the unsolicited "sale."

23 I urge you to adopt the proposed rule.

24 HEARING OFFICER DIXON: Thank you, Mr. Freidman.

25 Mr. Cabell.

EXAMINATION

1
2 MR. CABELL: Mr. Freidman, the proposed rule has
3 a provision providing that notes or other evidence of in-
4 debtedness given by the consumer cannot be negotiated prior
5 to the mid-night of the fifth business day following the
6 date of the sale.

7 Do you care to comment on that?

8 MR. FREIDMAN: I make no comment on that.

9 MR. CABELL: Would you have any objection if the
10 rule were amended to provide that the person to whom it
11 was transferred would take exception to any defenses the
12 consumer might have against the seller?

13 MR. FREIDMAN: Well, I am going to present Mr.
14 Cabell a five-page document which I received in the mail
15 and it bears no signature. We apparently threw away the
16 envelope before we could find out who sent it to us; however,
17 it is an excellent piece which I think will even strengthen
18 to a greater extent the rights of the consumer.

19 It talks about the definition of door-to-door
20 sales. It talks about the definition of consumer goods and
21 services. It talks about the question you made, cancellation
22 within three business days and is transferred to the Holder
23 in Due Course and it ends on page five.

24 I think it is a much stronger piece of regulation
25 than is currently being suggested. I think a great deal of

1 work went into this statement and a great deal of time
2 and a great deal of thought.

3 I think the consumer, particularly the uneducated
4 consumer, the economically deprived will find this piece
5 of literature and the suggestions incorporated in it even
6 greater protection than what the Federal Trade Commission
7 is currently considering.

8 If you do not have it in the record now I will
9 leave it and say that it certainly has my blessings, whatever
10 that may be worth.

11 Thank you, sir.

12 MR. CABELL: Thank you.

13 HEARING OFFICER DIXON: Mr. Lamet.

14 MR. LAMET: Mr. Freidman, in the banking community
15 itself do you think they would be bothered -- we have asked
16 you with regard to the rule, would they be bothered by the
17 so-called Holder in Due Course Provision?

18 Would the banks themselves be reluctant to take
19 this kind of paper?

20 MR. FREIDMAN: I don't know. I am sure I can't
21 speak for the banking community. I could say this to you
22 that for six or seven years the banking community and the
23 sales community and other aspects of the financial industry
24 or institutions fought vigorously and foolishly the acceptance
25 of Truth-in-Lending Legislation. It was supposed to create

1 all kinds of problems for everybody, including the consumer.
2 The consumer is not going to take advantage of the provisions.
3 It would bring tragedy to the financial community, to the
4 sales community.

5 That is why, time and time again for 67 years this
6 law could never be put on the books. We all know, fortunate-
7 ly, it is on the books today and the tale of woe has not
8 come to pass.

9 The financial community was not put out of
10 existence, was not discriminated against -- the banks or
11 the small loan companies or any other financial institutions.

12 It has not put the legitimate retailers out of
13 business. Fortunately it has put the unscrupulous out of
14 business. The hue and cry was there was going to be a
15 tragedy.

16 We hear the same kind of rhetoric about the Holder
17 in Due Course.

18 The Amalgamated Bank, and I am a senior officer,
19 was one of the few banks to testify before the United
20 States Congress. It was in fact, one of two banks to
21 testify in the United States Congress on the Truth-in-Lending
22 Law. There are over 14,000 banks. Unfortunately, that
23 says something as they stayed silent as far as anything
24 about Truth-in-Lending.

25 They were very vociferous as to the ills it would

1 bring both to the consumer and the lenders.

2 So, we have directly and indirectly been involved
3 in this State to try to bring more consumer protection to
4 the consumer be it as through the Holder in Due Course or
5 through any of the other points that could be raised, the
6 question of garnishments and all kinds of problems that
7 exist in this State.

8 So, I think you could see where a feeling that lay
9 in further protection to the consumer. Anything within
10 reason, certainly, but I am sure if you would entertain
11 anything within reason that would help the consumer in its
12 home or elsewhere is something we would certainly endorse
13 and favor.

14 MR. LAMET: One last question, in your experience
15 do banks make any effort whatsoever to scrutinize the type
16 of paper they are buying from some of these sellers?

17 Is there any type of a review of the sellers as
18 far as the sale is concerned or do they just deal with
19 them in a direct dollars and cents basis and not look into
20 what might have happened?

21 Is there any self-regulation?

22 MR. FREIDMAN: I can only tell you this, our bank
23 does not accept any paper. The run-of-the-mill financial
24 institution does accept paper. We do not accept third party
25 paper, because of the fact we are not a party to it at origin.

1 We can't get into it and find out how good or how bad it
2 is.

3 Once you start accepting one piece you have to
4 start taking the good with the bad, otherwise, those who
5 pass it on to you will stop the good from coming, you have
6 got to take the bad. Once you start selecting you are no
7 longer a bank, then they are going to turn off your credit.

8 We had a practice at the bank I think ever since
9 our inception which goes back to 1922, we don't take any
10 third party paper.

11 Most other financial institutions do not --
12 fortunately or not fortunately follow this practice.

13 I think once they are tied up with the idea the
14 concept, the philosophy, then they are stuck with everything
15 that follows because the arrangement is you just can't take
16 the "good stuff" you got to take everything that comes in.
17 So, there is very little they can do at that point.

18 But I would like to see whoever accepts that
19 paper stuck with the same responsibility that the original
20 seller is stuck with. If the original seller made a bad
21 deal, the third party who accepts that paper then in a sense
22 has a legal and social responsibility incumbent upon that
23 transfer to take all the good as well as all the bad, so
24 far as their responsibility to the consumer.

25 HEARING OFFICER DIXON: Are you aware that we are

1 in May holding hearings on another proposed rule to do
2 exactly that?

3 MR. FREIDMAN: No, but I would be happy if notified
4 to come and testify accordingly.

5 HEARING OFFICER DIXON: I will see that you are,
6 sir.

7 MR. FREIDMAN: Very good.

8 MR. LAMET: Thank you.

9 MR. CABELL: Thank you, sir.

10 HEARING OFFICER DIXON: Thank you, Mr. Freidman.
11 (Witness excused.)

12 HEARING OFFICER DIXON: That concludes our schedule
13 for today.

14 These hearings will now adjourn to reconvene here
15 tomorrow morning at 10:00 o'clock a.m.

16 (Whereupon, at 4:38 o'clock p.m., the hearing in
17 the above-entitled matter was adjourned, to reconvene at
18 10:00 o'clock a.m., Wednesday, March 24, 1971, at the same
19 place.)

Ed.

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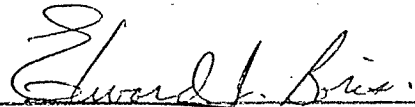
DOCKET NO:

CASE TITLE: Cooling Off Period for Door-to-Door Sales

HEARING DATE: March 23, 1971.

I HEREBY CERTIFY that the proceedings and evidence herein are contained fully and accurately in the notes taken by me at the hearing in the above cause before the Federal Trade Commission and that this is a true and correct transcript of the same.

DATED: 31 March 1971.



(Signature of Reporter)

Edward J. Boris

(Name of Reporter - Typed)

1 North LaSalle Street,
Chicago, Illinois

(Address - Typed)

