

59

ORIGINAL

Dove
NY *1/8*
1/8 *22* *R37*

OFFICIAL TRANSCRIPT OF PROCEEDINGS
BEFORE THE
Federal Trade Commission

27
27
RC
RC
RC
RC
RC
RC

215-28
DOCKET NO. Trade Practice Conference

In the Matter of:

PUBLIC HEARING ON A PROPOSED TRADE
REGULATION RULE CONCERNING A
COOLING-OFF PERIOD FOR DOOR-TO-DOOR
SALES

Place Washington, D. C.

Date March 8, 1971

Pages 1 thru 162

1237

Alderson Reporting Company, Inc.

Official Reporters

300 Seventh St., S. W. Washington, D. C.

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. - TRADE PRACTICE CONFERENCE

CASE TITLE - Public Hearing on a Proposed Trade Regulation Rule Concern:
a Cooling-off-Period for Door-To-Door Sales

PLACE - Washington, D. C.

DATE - March 8, 1971

PAGES NUMBERED 1 to 162 INCLUSIVE,

which were had as therein appears, and that this is the original transcript thereof for the files of the Commission.

Alderson Reporting Company, Inc.,
Official Reporter

By:

Fred R. [Signature]
(Title of Official)

Manager, Duplicating Department

TABLE OF CONTENTS

<u>TESTIMONY OF:</u>	<u>P A G E</u>
Richard L. Levin, Student from the University of Virginia School of Law	21
Honorable Frank E. Moss, United States Senator from the State of Utah	35
Thomas B. Curtis, Vice President and General Counsel, Encyclopaedia Britannica, Inc.,	45
Donald Elberson, Executive Director, Consumer Assembly of Greater New York	54
Richard A. Givens, Attorney in Charge, New York Office, Federal Trade Commission	87
Benny L. Kass, National Legal Aid and Defender Association	132
Stephen Sheridan, Vice President, Electrolux Division, Consolidated Foods	152

E X H I B I T S

<u>NUMBERS:</u>	<u>P A G E</u>
ELBERSON 1	55
SHERWOOD 1 and 2	62
SHERWOOD 3	63
YOHO 1, 2 & 3	116
KASS 1	144

* * * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE
 FEDERAL TRADE COMMISSION
 ----- X
 PUBLIC HEARING ON A PROPOSED TRADE :
 REGULATION RULE CONCERNING A :
 COOLING-OFF PERIOD FOR DOOR-TO- : Trade Practice Conference
 DOOR SALES :
 ----- X

Room 532, Federal Trade Commission Building,
 Pennsylvania Avenue and Seventh Street, N.W.,
 Washington, D. C.,
 Monday, March 8, 1971.

The above-entitled conference was called to order, pursu-
 ant to notice, at 10:00 a.m.

BEFORE:

WILLIAM D. DIXON, Assistant Director, for Industry Guidance,
 Bureau of Consumer Protection, Federal Trade Commission.

HENRY CABELL, Attorney, Division of Industry Guidance,
 Federal Trade Commission.

APPEARANCES:

HONORABLE FRED B. ROONEY, U. S. Congressman from Penn-
 sylvania

HONORABLE FRANK E. MOSS, U. S. Senator from Utah

RICHARD L. LEVIN, student from University of Virginia
 School of Law

THOMAS B. CURTIS, Vice President, Encyclopaedia Britannica
 Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES (continued):

DON ELBERSON, Executive Director, Consumer Assembly of
Greater New York

FREDERIC SHERWOOD, Ad Hoc Industry Committee

61

BETTY FURNESS, Chairman New York State Consumer Protec-
tion Board

75

RICHARD A. GIVENS, Attorney in Charge, New York Office,
Federal Trade Commission

88

DAVID YOHO, President, Surfa-Shield Institute

114

BENNY L. KASS, Boasberg, Granat & Kass, representing
National Legal Aid and Defender Association

STEPHEN SHERIDAN, Vice President, Electrolux

52

P R O C E E D I N G S

1
2 MR. DIXON: May we come to order please.

3 I am William D. Dixon, Assistant Director for Industry
4 Guidance in the Commission's Bureau of Consumer Protection. I
5 would like to extend my welcome to all of you who have come
6 here to assist the Commission in its task of determining what
7 action, if any, it should take with regard to the proposed
8 trade regulation rule relating to a cooling-off period for
9 door-to-door sales.

10 At the outset I would like to introduce Mr. Henry
11 Cabell, the attorney in the Division of Industry Guidance, who
12 has been in charge of developing this Rule and these proceedings.
13 He may well have questions of his own as we go along.

14 This public hearing is being held pursuant to the pro-
15 visions of the Federal Trade Commission Act and the provisions
16 of Part 1, subpart (b) of the Commission's Procedures and Rules
17 of Practice. Notice of the hearing, which is part of the offi-
18 cial record, was originally published in the Federal Register
19 on September 30, 1971, and copies were furnished to all inter-
20 ested or affected parties of which we had knowledge.

21 A subsequent notice of postponement was published on
22 January 26, 1971, announcing the hearings which are commencing
23 this day. This latter notice also announced that additional
24 hearings would be held in Chicago, Illinois, beginning on
25 March 22, 1971.

1 Briefly stated, the proposed rule we shall consider
2 here today provides that it constitutes an unfair and deceptive
3 act or practice for any door-to-door seller to fail to afford
4 to each such buyer a period equivalent to three business days
5 in which to cancel the contract of sale in the manner prescribed
6 by the rule.

7 If a rule on this subject is promulgated, it may be
8 relied upon by the Commission in any subsequent adjudicative
9 proceeding and would apply with like force and effect to all
10 persons engaged in the practice who are subject to the Commis-
11 sion's jurisdiction. The Commission, after consideration of all
12 relevant matters presented during the course of this proceeding,
13 may adopt and publish a rule, together with a statement of its
14 basis and purpose, which will be published in the Federal
15 Register.

16 If any of you have any reason to believe that the rule
17 should become effective at any specified time, if indeed you
18 believe it should become effective at all, you should state
19 your views here for the record and give your reasons therefor.
20 In all respects this is your opportunity to present data views
21 and arguments in favor of or in opposition to the proposed rule
22 as set out in the notice or you may recommend revisions of or
23 deletions from the rule.

24 Trade Regulations rules serve the purpose of informing
25 all interest and affected parties as to their obligations under

1 all interested and affected parties as to their obligations
2 under the law. It is understood that your presence here and
3 statements given are voluntary. Any questions we may ask are
4 not designed to entrap any witness or to provoke argument, but
5 are solely for the purpose of eliciting the information neces-
6 sary for the Commission to make a proper determination of the
7 issues involved in this proceeding, for it is on this record
8 that the Commission will largely rely.

9 Our interest in this proceeding and in its subject
10 is prospective. We are not attempting here to obtain evidence
11 to use as the basis for litigation. On the contrary, our objec-
12 tive is to avoid the need for future conflicts of that nature.
13 Persons making statements are not placed under oath nor are they
14 subject to cross-examination. However, if you have any ques-
15 tions as to some things which may be said, please direct them
16 to the Chair and we will attempt to obtain the answers for you.

17 You can appreciate, of course, that in any hearing of
18 this type certain ground rules must be established to assure
19 an orderly proceeding. When you are recognized to speak, please
20 give your name and identify, and identify the organization or
21 the group which you represent. In making oral presentations,
22 please confine your remarks to the type necessary to convey
23 your views. If you have already filed a written statement, it
24 is a matter of public record and it is not necessary to repeat
25 the statement verbatim to assure that it receives full considera-
tion.

1 A stenographic report of the hearing will be made and
2 arrangements for the purchase of copies of the transcript may
3 be made with the reporter attending this hearing.

4 The first witness for this morning is the Honorable
5 Fred B. Rooney, United States Congressman from the State of
6 Pennsylvania.

7 MR. ROONEY: Mr. Chairman, I do have a prepared state-
8 ment and with your permission I am going to use part of it and
9 I would like the entire statement included in the record.

10 MR. DIXON: All right, sir.

11 DIRECT TESTIMONY OF HONORABLE FRED B. ROONEY,
12 U. S. CONGRESSMAN FROM STATE OF PENNSYLVANIA

13 MR. ROONEY: Mr. Chairman and Members of the Federal
14 Trade Commission:

15 I am deeply grateful for the opportunity to appear
16 before you today to express my enthusiastic support for the
17 rule-making procedure in which you are engaged. This proceeding
18 is one more in a long list of recent Commission activities to
19 protect the consumer's right to fair and honest treatment in
20 the marketplace, and I want to pay my particular gratitude to
21 Attorney Charles Simon and also Attorney William Morrischak,
22 who have been of great help to me in my office in my investi-
23 gation of magazine sales.

24 In this instance, you are dealing with that portion
25 of the business community which brings the marketplace to the

1 consumer's doorstep, and often into his living room.

2 As I see it, two basic questions confront the Commis-
3 sion as it conducts these hearings this week. The first is
4 whether the proposed regulation of direct selling companies
5 is necessary. The second is whether this regulation goes to
6 the heart of the problem.

7 To answer either of these, it is necessary to explore
8 what problems now exist in direct selling, what the industry
9 itself is doing to solve the problems, and whether, in fact,
10 the direct selling industry can be effective enough, alone,
11 to protect its own image and to afford the consumer the protec-
12 tion he deserves against deception and fraud in his own home.

13 The direct selling field happens to be one in which
14 I have had some experience. This evolves mainly from an
15 investigation of magazine subscription sales practices begun
16 in my office more than two years ago. Despite the fact its
17 main thrust was directed at magazine sales methods, as the
18 investigation gained momentum and attracted attention of the
19 media, the resultant consumer response produced information
20 and complaints about the sales practices of numerous other direct
21 selling organizations, as well as a broad range of other busi-
22 ness activities.

23 I have learned, for example, that some of the most
24 prominent names in the direct selling field adhere strictly
25 to the philosophy "The customer is always right." They place

1 their corporate integrity firmly behind what they sell and the
2 manner in which they sell it.

3 I have learned, too, that still other prominent names
4 in the direct selling field give corporate integrity a great
5 deal of lip service and very little else. They soundly denounce
6 any suggestion their business ethics leave something to be
7 desired and seek, instead, to impugn the integrity of their
8 critics. These firms often have demonstrated they couldn't
9 care less about their relations with the consumer once they
10 have achieved a firm grip on his wallet.

11 When I first began my investigation of magazine sub-
12 scription sales methods, I frankly didn't know the difference
13 between PDS, cash or two-pay sales. In my mind, magazine sales-
14 men were magazine salesmen.

15 But I was quickly advised by magazine industry repre-
16 sentatives there was a very significant difference -- that
17 cash and two-pay sales companies were the so-called "fly-by-
18 night" operators who use traveling crews, hit an area and
19 scorch it and then quickly move on to some other town, while
20 the PDS sales companies were acclaimed as the "good guy" out-
21 fits which established themselves in the local community,
22 joined the Chamber of Commerce and Better Business Bureau, and
23 took an active part in local civic affairs.

24 It was even suggested that I concentrate my investiga-
25 tion on the cash companies and not worry about the PDS agencies.

1 That was all well and good, except for the fact that
2 the complaints of deception and fraud I was receiving involved
3 the "good guys." And if they were so good, why was I getting
4 complaints?

5 To make a long story short, in a seven-page letter I
6 filed with the Commission more than a year ago reporting on
7 some of the results of my own investigation, I stated that a
8 number of "pay during service (PDS)" magazine sales agencies
9 were very deliberately attempting to cloak their shady methods
10 in the respectability of Chamber of Commerce and Better Busi-
11 ness Bureau membership. It is a charge I have documented
12 previously.

13 In addition, I reported to the Commission then how
14 membership in the Magazine Publishers' Association's Central
15 Registry of Magazine Subscription Solicitors -- the agency
16 which administers a "code of fair practices" in the industry
17 -- was being exploited to create an illusion of respectability
18 and honesty for PDS sales agencies. I also filed with the Com-
19 mission a letter outlining the false claims in ads, placed by
20 Central REgistry in police magazines, in which it was claimed
21 that a salesman's Central Registry identification card was a
22 guarantee that salesmen could be expected to deal honestly
23 and fairly with consumers.

24 Here was evidence the industry itself was engaged in
25 deception of the public and, more importantly, deception of

1 law enforcement officials. I am submitting a copy of that
2 advertisement with my statement.

3 Since those ads appeared in police magazines, this
4 Commission has initiated charges of deceptive practices against
5 16 corporations which own or operate PDS magazine sales agen-
6 cies, the Justice Department has charged five of those agen-
7 cies with postal fraud, and numerous states have initiated
8 legal action against one or more of the agencies basically
9 for the same reasons. All of these were members of Central
10 Registry and authorized to have their personnel carry Central
11 Registry identification.

12 Let's carry this a step further. During the testimony
13 which will follow mine, you undoubtedly will be hearing from
14 many firms which represent the direct selling industry. Some
15 of these will be the finest firms ever to engage in business in
16 this country. And some may have had a pretty sorry track record
17 in regard to fair treatment of the consumer.

18 Yet, the industry, I presume, may caution the Commis-
19 sion against harsh and unjust treatment of an entire industry
20 when what you really have in mind is the control of abuses by
21 a very small minority, or by that elusive segment of the indus-
22 try so commonly described as the "fly-by-night" operators.

23 Permit me, Mr. Chairman, to remind you the PDS segment
24 of the magazine sales industry was neither a small minority nor
25 a fly-by-night operation. It is represented by some of the

1 largest and most prominent publishing houses in the entire
2 country.

3 In my view, then, it is absolutely essential that the
4 Federal Trade Commission proceed with the regulation of door-
5 to-door sales.

6 To address myself to the second question, I believe,
7 concerns the Commission during these proceedings. I believe
8 the regulations proposed are sound exactly as written. But
9 certainly the Commission could find many areas in which to
10 expand upon these very basic limitations on direct sales tech-
11 niques. These should not be considered the ultimate solution,
12 but rather, a stepping stone toward a better solution.

13 All too often a knock on the American householder's
14 door is the consumer's introduction to the business world's
15 lowest form of practitioner -- the petty thief, the forger, the
16 shyster, the professional con artist and worse.

17 A survey made by Colonel William Durrer, Chief of
18 Police in Fairfax County, Virginia some time ago found that
19 35 percent of all door-to-door salesmen who worked the county
20 during a one-year period had police records and that some of
21 these records were three pages long.

22 I will submit a random sampling of the records of 74
23 of those salesmen with my testimony today.

24 These individuals travel door-to-door through urban
25 neighborhoods and rural communities alike, almost shoulder-to-

1 shoulder with the most forthright and honest of the door-to-
2 door sellers. Few consumers can make the distinction and thus
3 avoid the perils of dealing with an unscrupulous salesman.

4 Obviously, adequate control of consumer abuses cannot
5 result from crackdowns on individual industries in which
6 abuses are rampant. Under pressure, the perpetrators of those
7 abuses merely switch their sales talents to some other product
8 or service.

9 Thus, the only answer is to set down some basic regu-
10 lations for the conduct of all sales in the direct selling
11 field. And the first line of consumer defense is to have the
12 right during a specified period of time to cancel a contract
13 without obligation.

14 The cooling-off period proposed by the Commission is
15 a positive response to that need. It allows the consumer to
16 revoke decisions made in haste, often because of pressure,
17 or cajoling or even intimidation during a confrontation with a
18 salesman.

19 And if it is to have any value, the cooling-off period
20 must apply to all contracts executed away from the seller's
21 place of business, whether or not the contract resulted from a
22 prearranged appointment with the consumer. This is the loophole
23 which some firms engaged in direct selling often attempt to
24 establish in any regulation of their sales.

25 Numerous local ordinances intended to register or

1 license door-to-door sellers are grossly ineffective because
2 they fail to encompass sales which result from an initial
3 mail or telephone solicitation, a positive response to which
4 brings the salesman to the consumer's home.

5 For example, almost all PDS magazine subscription
6 sales -- some of them involving contracts for \$400 to \$500
7 worth of magazines, books and merchandise -- begin with a tele-
8 phone call to the prospective subscriber. Often, he is told
9 he has been selected or designated to receive some form of free
10 merchandise. When he agrees to have a representative visit his
11 home to deliver his merchandise or other gift, he finds that
12 visit results in a high pressure sales pitch to induce the con-
13 sumer to sign a contract.

14 I anticipate, too, that proposals will be heard to
15 increase the dollar value of contracts covered by the rule
16 from the \$10 level proposed to some higher figure. I do not
17 intend to address myself to that subject today specifically
18 because I believe the Commission has access to vastly broader
19 information in this area than I.

20 Instead, I simply want to point out that a survey of
21 consumer complaints in my own files indicates that 56 percent
22 of all magazine subscription contracts sold by traveling cash
23 and two-pay crews have a dollar value of between \$10 and \$25,
24 while an additional 24 percent have a value under \$10. Thus,
25 if the limit were raised to \$25, for example, without some

1 other provision to specifically encompass magazine sales, 80
 2 percent of all door-to-door magazine contracts sold by cash
 3 crews would not be subject to the cooling-off period. advertise
 4 out and I want to draw your attention, too, to the importance
 5 of Part (g) of the proposed rule -- that is, the section
 6 requiring positive disclosure of the purpose of the seller's
 7 contact with the consumer. incidentally, I neglected to mention in the prepared
 8 testimony that there are a great many unscrupulous direct sellers
 9 pushing anything from magazines to expensive photographic
 10 equipment and vacuum cleaners who depend heavily upon confus-
 11 ing the consumer in order to secure a signature on a contract.
 12 My files are filled with examples of sales pitches concealed in
 13 phony surveys, contests and research endeavors. an Association
 14 of quality. Often the salesman may embellish this pitch with phony
 15 claims that he is a student working his way through college,
 16 or that he is supporting some charity, or even a Government
 17 program such as Head Start, the Job Corp or Community Action
 18 Programs.

19 The misrepresentations are endless. Disclosure that
 20 the salesman is, in fact, selling a specific product or service
 21 would help reduce such misrepresentations. To require oral
 22 disclosure of the salesman's name and the name of the company
 23 which employs him would make the rule even better. and you pay
 24 him or her. That concludes my testimony, Mr. Chairman, and at this
 25 point I would simply like to call your attention to the attach-
 ments.

1 There are two pages of copies of the various creden-
2 tials which one magazine sales girl used during the course of
3 her sales activities, a copy of the Central Registry advertise-
4 ment published at least four times in Law and Order Magazine,
5 and a sampling of police records of 74 door-to-door salesmen who
6 canvassed residential neighborhoods in Fairfax County, Virginia.

7 Incidentally, I neglected to mention in the prepared
8 testimony that the Magazine Publishers Association does not
9 recognize a 72-hour cooling-off period for cancellation of
10 magazine contracts. It is a problem that many individual agen-
11 cies or dealerships have a poor record of performance in in
12 terms of honoring the cancellation period.

13 I was advised this morning the American Association
14 of Publishers, Inc. has endorsed a concept of a cooling-off
15 period after several individual members of the direct selling
16 industry observe a cooling-off period at the present time.

17 This concludes my testimony and thank you, Mr. Chair-
18 man.

19 Mr. Cabell, any questions?

20 MR. CABELL: Yes, sir. Could you describe the two-
21 pay sale to which you referred?

22 MR. ROONEY: The two-pay sale is a sale made by a
23 salesman who gets the initial part of the contract and you pay
24 him at a later date, within 30 days, for the other part.

25 MR. CABELL: Thank you. In the course of your

1 investigation, did you find that the sellers took any means
2 to -- any particular means to enforce the contracts that were
3 made in the home? By that I mean did they resort to a suit
4 or did they rely solely upon threatening letters either from
5 their own office or something else?

6 MR. ROONEY: A combination.

7 MR. CABELL: They actually did file suit to enforce
8 these contract?

9 MR. ROONEY: They have in many instances.

10 MR. CABELL: Now, the proposed rules give the con-
11 sumer several alternative means to notify the seller that he
12 wishes to cancel. One of these is an oral notification and I
13 wonder if you have any comment on that in the light of your
14 statement that a number of companies did not honor their own
15 self-imposed cooling-off period?

16 MR. ROONEY: I think with the proposed rule of the
17 FTC, I think they will honor a moral cancellation. Certainly
18 the salesmen in many instances of information we had said,
19 "Well, if you want to cancel, you can cancel after a certain
20 period," and the individual tries to cancel and the company will
21 not honor the cancellation or the request.

22 I have documented several cases in which this has
23 happened.

24 MR. CABELL: With regard to the applicability of the rule
25 it has been urged that if a seller has an established retail

1 business in the community and send salesmen out to the home
2 in response to requests, and by "seller" in this instance I
3 refer to your established retail stores, do you think the
4 rules should apply to sales of that type? do. I think when
5 the wife MR. ROONEY: No, I don't. I think individual companies
6 in individual neighborhoods and cities throughout this country
7 have established a reputation of giving the customer good
8 service and I don't necessarily see that they should be included
9 in the proposed rule. It is absolutely essential to
10 accomplish MR. CABELL: Thank you very much.

11 MR. ROONEY: I might say, further, Mr. Cabell, for
12 further information of people that are interested, many people
13 asked how I got involved in this. There was a little girl
14 19 years of age that was pregnant and her husband was drafted
15 into the Service a couple of years ago and he signed a con-
16 tract thinking he was signing for two magazines and, as it
17 turned out, he for \$40 that was sent and it turned out his wife
18 began to receive six or seven magazines and she received a
19 bill for something like \$240, and she certainly could not
20 live on the private's salary in the Army and expecting a child.
21 So she wrote to the company to try to cancel the contract and to
22 try to get some money back, and the company refused. She
23 renewed She wrote a letter to the Eastern Express Action Line
24 and this is the beginning of the investigation which drew
25 national attention.

1 MR. DIXON: I have a question of the Congressman.
2 Do you think that three days is an adequate period
3 for such a rule?

4 MR. ROONEY: Yes, I do. I really do. I think when
5 the wife or the husband initially signs a contract and they
6 discuss it for a period of three days, I think that is ade-
7 quate.

8 MR. DIXON: The purpose of my question is whether a
9 longer period, if such is adopted, is absolutely essential to
10 accomplish the purpose.

11 MR. ROONEY: Thank you, Mr. Chairman, for giving me
12 the privilege of sitting up here, because I have a sore foot
13 and can't stand.

14 MR. STEELE: Mr. Chairman, may I have the Chair's
15 attention before Congressman Rooney leaves the lecturn for
16 purposes of calling for a point of order.

17 My name is Robert W. Steels, member of the law firm
18 of Howrey, Simon, Baker and Murchison, accompanied by Mr.
19 Joseph King also of that law firm. We appear on behalf of the
20 Hearst Corporation and Periodical Publishers Service Bureau,
21 Inc., who are respondents in FTC Docket 8832.

22 We appear at this point, Mr. Chairman, for the purpose of
23 renewing a previous request which we made on March 1 for adjudi-
24 cative rights in this trade rule, or trade regulation proceed-
25 ings, and particularly we request the right to have this witness

1 sworn as to his testimony, which includes assertions of fact.
2 We request the right to cross-examine him under oath, and we
3 also, among other rights which we have previously set forth
4 in our request to the Commission, dated March 1 -- we request
5 the right for the issuance of Commission's subpoenas asto
6 Congressman's Rooney's files so that we may see these many
7 examples of wrong-doing which Congressman Rooney has pointed
8 out in his statement.

9 Now, Mr. Chairman, as grounds for this somewhat
10 unusual request, and I admit with all due humility it is some-
11 what unusual, because I did not request the right to speak in
12 this proceeding or list myself as a speaker after the Commis-
13 sion's denial of my previous request, nevertheless I feel that
14 the comments which have been made today require me to make a
15 statement and to again request our rights, our full adjudica-
16 tive rights, unless there be prejudice in the proceeding which
17 is taking place in Docket 8832.

18 We have heard companies that are in the PDS business
19 categorized as alleging to be "good guys" and very often not,
20 as companies in Central Registry, as if there is something
21 wrong with Central Registry, apparently guilty of some type of
22 fraud.

23 We have heard the Commission complimented on the 16
24 proceedings it has brought since Congressman Rooney's investi-
25 gation, one of which was brought against my clients. We have

1 heard the statement that almost all PDS sales begin with a
2 telephone call and end with various fraudulent activities.

3 As a respondent and counsel for respondent, I must
4 request the right to refute those facts through sworn testi-
5 mony and with documents from Congressman Rooney's files. I
6 ask the Chair for its ruling.

7 MR. DIXON: Mr. Steele, as you yourself have said,
8 you filed a petition with the Commission on March 1, seeking
9 these same steps, which was denied by the Commission. I out-
10 lined the ground rules at the beginning of this hearing with
11 full knowledge of that action and I think that that has to
12 stand as it was ruled upon by the Commission and will not be
13 changed here by me.

14 I would point out that this particular record, with
15 subsequent hearings in Chicago, will be open for some extended
16 period of time. Any comment you want to file with respect to
17 anything you think, or by any witness, you will have ample
18 time to do so.

19 But insofar as this particular hearing is concerned,
20 I would have to rule just as the Commission did.

21 MR. STEELE: Thank you, Your Honor, for your ruling
22 and we reserve our rights to challenge the proceeding in all
23 due respects on the basis of authority. We reserve our rights
24 on the ground of prejudice to the adjudicative proceedings that
25 continue.

1 MR. DIXON: That is understood.

2 Thank you, Congressman.

3 MR. ROONEY: Thank you.

4 MR. DIXON: Our next witness for this proceeding
5 is the Honorable Frank Moss, United States Senator.

6 Excuse me ---

7 MR. KING: Mr. Chairman, could I suggest we make that
8 stipulation with respect to every witness that appears in this
9 hearing so there is no necessity for Mr. Steele to sit here to
10 challenge?

11 MR. DIXON: That is certainly satisfactory.

12 Now I call the Honorable Frank E. Moss, U. S. Senator
13 from Utah. Perhaps Senator Moss will get here later and we
14 will pass to the next witness, Richard Levin, University of
15 Virginia School of Law.

16 DIRECT TESTIMONY OF RICHARD L. LEVIN, STUDENT
17 FROM UNIVERSITY OF VIRGINIA SCHOOL OF LAW

18 MR. LEVIN: Mr. Chairman and Mr. Cabell, my name is
19 Richard Levin. I am a law student at the University of Virginia
20 Law School. I am very grateful for the opportunity you have
21 given me to come to Washington this morning to present my views
22 on the issue raised by the door-to-door sales industry and,
23 indeed, the current state of the door-to-door sales industry
24 has created a need to provide for some form of meaningful
25 protesting for the consumers.

1 I did not come to Washington, however, to discuss
2 with you and rehash with you the policy considerations which
3 weigh heavily in favor of promulgating some form or regulation
4 in this area. What I did come to do was to make four specific
5 proposals which I feel ought to be incorporated into the final
6 form of any regulations which are adopted.

7 Those four specific proposals are, first of all, to
8 abolish any minimum dollar exclusion which by definition limits
9 the scope or coverage of a door-to-door sale; secondly, to
10 prohibit holders in due course status in all consumer sales;
11 thirdly, likewise to prohibit the use of waiver of defense clause
12 and, lastly, I will urge you to extend the cooling-off period
13 itself from three to five days.

14 Before engaging in the discussion of these four spe-
15 cific proposals, I think a very brief summary excursion into
16 the present state of the law would be helpful in laying a foun-
17 dation as to why these four specific recommendations ought to
18 be incorporated.

19 It is noteworthy that preventative remedies aren't
20 entirely adequate in this area. There is no direct company
21 control over the salesman, at the point where he enters the
22 front door, and this is very important. When he enters the
23 front door, he realizes if he does not make a sale and he does
24 not earn any money and he does not feed himself or wife or
25 family, no matter what kind of training may be effected prior

1 to the time he knocks on the door and introduces himself and
2 begins his pitch, his sales pitch, at that point there is no
3 control which can be exercised which is effective.

4 Secondly, any voluntary Code of Ethics which may
5 have been adopted by an isolated industry association has like-
6 wise been ineffective. As a matter of fact, the largest single
7 direct selling industry association, NADSC, consists of only 150
8 direct sellers and 150 of the most reputable, I might add,
9 which at best comprise 10 percent of the direct selling indus-
10 try.

11 I think the conclusion which must be drawn from any
12 voluntary Code of Ethics which is effective in only 10 percent
13 of the cases is clearly obvious.

14 The cooling-off period itself has historically and
15 traditionally be vigorously opposed by direct sellers or
16 opposed or accepted, rather, on only their own grounds. Why
17 not? The cooling-off period would and should apply to all
18 direct sellers, not just to those alleged fly-by-nighters,
19 but even the most reputable, and it would have the effect of
20 neutralizing the psychologically professionally designed sales
21 pitches which are specifically constructed to undermine con-
22 sumer's resistance to the sale. It would neutralize the sales
23 pitches by giving a period of time for reconsideration.

24 Secondly, it would neutralize the vulnerable position
25 of the consumer caught in his own home. He can't simply walk

1 out, get in his car and go away from the establishment. The
2 establishment is his home and if he walks out the back door,
3 the salesman is still in the living room.

4 Existing remedies are inadequate. Seven states have
5 enacted some sort of legislation dealing with the cooling-off
6 period or otherwise prescribing some sort of regulation in
7 the area. Two of those states limit regulation to installment
8 contracts, and three more of the states provide no requirement
9 that the right of disclosure be given to the buyer, and one
10 more of the states applies only to "gypsy" sales where
11 the individual either does not have, that is, individual seller
12 does not have retail salesman's license granted by the state
13 or, in addition, does not have a home or place of business
14 within 75 miles of the place where the sale was consummated.

15 The only state that does have effective relief is
16 Hawaii. It is interesting that Hawaii is the only state also
17 in 50 states where a salesman can't usually cross the borders.
18 It is a long swim.

19 The UCC and UCCC are entirely inadequate. The Uni-
20 form Commercial Code is not designed to deal with small con-
21 sumer sales, but for commercial transactions. And any provision
22 which might be applicable by the UCC, Uniform Commercial Code,
23 must -- it presupposes existence of some sort of legal process.

24 Likewise, the Uniform Commercial Credit Code is
25 insufficient. There is a section in the Uniform Code dealing

1 with direct sellers, but the Code, to my knowledge, has only
2 been accepted in two states.

3 It was begun drafting in 1965 and adopted in '68, and
4 in the period since '68 is a period where issues of consumer
5 protection have really surfaced to the fore, and as a result
6 provisions which are applicable by the Uniform Commercial
7 Credit Code similarly are not designed to deal with problems
8 we recognize as important today.

9 Equally, direct sellers or the direct selling indus-
10 try often heard the complaint that any regulation in this area
11 by statute or rule would be discriminatory and violative of the
12 equal protection rights and the Supreme Court handled that
13 argument on a summary basis and I quote from the case of
14 Railway Express in New York:

15 "It is no requirement of equal protection that all
16 evils of the same genus be eradicated or none at all."

17 "Direct sellers are often heard to require giving
18 notice to a buyer of his right to cancel is equivalent to an
19 invitation for him to cancel."

20 I think this is equally absurd, and since when is it
21 possible to equate knowledge of one's fundamental legal rights
22 with an invitation to cancel?

23 The question is raised, "Why deal with direct sellers?"
24 I think if you look beyond the narrow issues presented here and
25 look to the problem as it arises in an economic and social

1 context in this country, you should recognize then why it
2 should be dealt with, why direct sellers should be singled out.

3 Mr. Rooney gave adequate testimony, and I am sure you
4 will hear more during the course of this proceeding as to
5 specific instances of consumers being taken advantage of and
6 so forth. I think the President's Riot Commission Report in
7 '68 pointed to unfair commercial practices and as one of the
8 leading causes of the ghetto discontent and discontent in low
9 income areas and social commentators recently pointed to the
10 same cause for middle-class discontent, dissatisfaction with
11 the products they have fraudulently or otherwise been induced to
12 purchase.

13 Why direct sellers? Direct sellers more than any
14 other group, and this is responsive to your question, Mr.
15 Cabell, have taken advantage of the legal process. There is
16 nothing wrong whatsoever with a creditor using a legal process,
17 using the courts as they exist to enforce legitimate claims,
18 but there is something wrong, it seems to me, with direct sellers
19 using the courts for claims which they have instituted on uncon-
20 scionable contract provisions, provisions calling for waiver
21 of defense, provisions calling for confession of judgment so
22 no litigation actually will be instituted for wage garnishment
23 proceedings and taking advantage and abusing the judicial process
24 as almost every one of the sellers has sometimes done, which
25 seems to me is drastically wrong.

1 In '68, in Los Angeles County alone, 148,773 wage
2 garnishment proceedings were instituted against persons who
3 failed to honor a debt, and almost every one of these debts
4 involved less than \$500. But more than this, and the provi-
5 sions are totally inadequate and provides only limited relief
6 and was ineffective at the time in '68 when the wage garnishment
7 proceedings were instituted.

8 700 persons in Los Angeles County in the same year
9 reported being dismissed from their employment because gar-
10 nishment proceedings were instituted against them. In a period
11 of unemployment, even a period of employment, this is a
12 serious consequence.

13 It cost employers in the country \$1.8 million a year,
14 or average of \$19.30 per garnishee, with extra paycheck book-
15 keeping costs involved. This is only one evil of the many
16 evils.

17 Thus the cooling-off period will not supply a com-
18 plete panacea. It is not designed to be the end-all solution of
19 problems presented in door-to-door sales, but it is consistent
20 with rational aims of consumer protection. It may help out on mar
21 unfair practices and sales abuses which flourish in the door-to-
22 door sales industry.

23 It may upgrade the free enterprise system itself by
24 assuring full disclosure and fair play in the market, but it
25 seems to me if there is to be a rule, if the Commission is to

1 take time and energy, as it has already devoted many hours,
2 to designing a rule to cope with many of these problems, it
3 ought to be a rule designed and which can, in fact, be respon-
4 sive to the issues which have been raised already and will be
5 raised in the course of this proceeding.

6 There should be no minimum dollar exclusion. I
7 noticed on my arrival this morning the industry's proposed
8 regulation calls for a \$25 exclusion and that the present draft
9 of the proposed rule calls for a \$10 exclusion. Anything less
10 than \$10 will not be a door-to-door sale by definition and not
11 subject to the cooling-off period and other provisions that
12 might be incorporated into the rule.

13 There appears to be no sound rational argument made
14 to support the \$10 minimum exclusion. In fact, having a
15 \$10 minimum or any is, in fact, counter-productive. Recovery
16 of \$10, \$5, \$2, \$8, anything less than \$10 can be very much
17 more important to many people, particularly the prime persons
18 who are affected in this area.

19 The low income consumer, that is, recovering more
20 than \$10 to many of us, and it seems to me this is the abuse
21 we are confronting and which ought to be dealt with, and if we
22 skirt the issue by definition limiting sales which are appli-
23 cable, you are skirting the entire issue and any rule which
24 might be effective probably from the end result will be
25 ineffective.

1 For example, it could be easily possible for those
2 intent on deception and fraud to, by contract, price the mer-
3 chandise either at \$9.99 and price the merchandise in several
4 contracts, so a \$50 item could be contracted in such purchase
5 at \$9 or \$8 and some cents and the rule would be entire inappli-
6 cable.

7 Secondly, there is no provision in the proposed rule to
8 deal with holder in due course status, the problem which arises
9 where the individual has bought a product, the seller has dis-
10 counted the commercial paper which the buyer has signed as
11 evidence of his obligation to a bank or to a credit institution
12 in a situation that arises where a television set, for example,
13 that was ordered for \$400 or for a legitimate price, which never
14 is delivered or is delivered in a faulty condition or a differ-
15 ent television set is delivered and the individual buyer says,
16 "I am not going to pay for the television, it is not what we
17 agreed to purchase."

18 It is too bad he still has to continue making payments
19 to the finance agency or he can institute wage garnishment or
20 other remedies provided for in the contract itself. I think this
21 is a disastrous situation. It is the financing agency who
22 selects the dealer from whom it buys its commercial paper and
23 has the facility to investigate dealers' liability and certifies
24 the products the dealer sells are sold by responsible legiti-
25 mate sales techniques and the credit agency can protect itself

1 well.

2 The same arguments are applicable here as to a cooling-
3 off period. Well, there are many states that have legislation
4 and many uniform commercial credit codes and uniform commercial
5 codes and why should any action be taken here? The fact is a
6 limited number of states have adopted, two states in fact have
7 adopted the UCCC, so is there not really relief?

8 If the legislation has provided any other kind of
9 relief that might be significant, experience has shown it will
10 be a long time before residents in all 50 states have protec-
11 tion which is necessary here. It is easy to perceive situa-
12 tions where door-to-door sellers operate interstate or may skip
13 from state to state. This, coupled with the fact of growing
14 urbanization of areas, and looking at Washington as an example,
15 that any relief provided by any one state is bound to be
16 ineffective.

17 Lastly, I urge you to extend the cooling-off period
18 itself from three to five days. Ample precedent exists for
19 extension of the cooling-off period to more than five days.
20 But I think -- well, it is interesting rather also that most of
21 this precedent resides in the sellers themselves and most
22 encyclopedia sellers particularly retain the right in their
23 contracts to unilaterally withdraw from the contract they have
24 entered into with the buyer if they find later that that pur-
25 chase or sale is undesirable from their point of view.

1 But it seems to me there are three interests which
2 have to be balanced here and, as you have pointed out, Mr.
3 Chairman, one is the buyer's interest in rescinding undesirable
4 purchases and, secondly, the legitimate businessman's inter-
5 est in finalizing a financed sale and the buyer's interest in
6 receiving goods which he still wants and which he ordered.

7 I think putting emphasis and striking a balance in
8 favor of the consumer, as must be done in this situation,
9 where absent any relief previous to this company proceeding,
10 absent any investigation into any natural relief that has possi-
11 bly shown that relief may be effectuated, the buyer has gone,
12 is continuously being taken advantage of.

13 Striking a balance in his favor and remembering a
14 legitimate businessman must be able to do business and finance
15 his sale and remembering also the people want the goods often-
16 times they purchased and are happy they made the purchase,
17 considering all three situations, it seems to me and I urge you
18 to also consider that the cooling-off period itself be extended to
19 five days as it is more often true on the part of sellers in
20 the direct selling industry.

21 I want to thank you again for allowing me to appear
22 before you and present the views of these people close to me.
23 I purposely failed to bring up any direct historical studies I
24 conducted myself and I feel it would probably be on the program
25 later on by persons more directly involved than I, but I want

1 to thank you again very much.

2 MR. DIXON: Thank you for coming, Mr. Levin.

3 Mr. Cabell.

4 MR. CABELL: Mr. Levin, it seems to me that some of
5 the extensions you proposed are really aimed at enabling the
6 consumer to examine the goods, or in other words, to have the
7 right to cancel a sale after he examined the goods. Is that
8 correct?

9 MR. LEVIN: It is correct, but it is not the sole
10 direction towards which these proposals are aimed.

11 MR. CABELL: Well, one of the difficulties, you see,
12 that we have in contracts which call for a performance over an
13 extended period, to attempt to give a purchaser a cooling-off
14 period based on his inspection of the goods would certainly
15 destroy any finality in the sales transaction at all.

16 MR. LEVIN: I think what I am suggesting happens to
17 be a coincidence remedy. If, in fact, the remedy which can be
18 exercised here happens to be able to be exercised at the time
19 after which the goods are delivered, and I think it is a
20 coincidence. I think the real object that the proposals are
21 aimed toward is providing consumer's effective relief, No. 1,
22 in case of waiver defense clause, where he is involved in liti-
23 gation to enforce the seller's rights or where rights are
24 summarily provided in the contract, which almost virtually
25 eliminates any rights of the consumer in case of litigation,

1 waiver of all defenses.

2 Secondly, the holder in due course situation where a
3 person has to maintain payments and I think it is also an
4 attempt more to avoid litigation. The only situation I think
5 for a five-day cooling-off period is where goods might have
6 already been delivered and when the goods are delivered, if the
7 buyer wants to inspect them, then he might be able to. But the
8 sellers can always fail to deliver the goods if they think the
9 contract might be cancelled until after five days.

10 I think that is the situation where the evil you
11 described might, in fact, arrive and I think the seller is
12 in the best position to take care of that evil.

13 MR. CABELL: The longer cooling-off period at least
14 in theory would seem to go down to the benefit of the consumer.
15 Did your study indicate that the states which had established
16 the longer cooling-off period had achieved any better results
17 than those with the short period, say two days?

18 MR. LEVIN: I am not prepared to answer the question.
19 I would not want to give information which is not entirely
20 accurate.

21 MR. CABELL: Thank you.

22 MR. DIXON: Mr. Levin, you know of our hearings coming
23 up in May on the holder in due course proposal?

24 MR. LEVIN: I am not aware.

25 MR. DIXON: We will send you a copy of it and you

1 might be interested.

2 MR. LEVIN: Thank you.

3 MR. DIXON: Thank you, Mr. Levin.

4 MR. LEVIN: Yes, sir.

5 MR. DIXON: I believe Senator Moss has come in, so I
6 will go back to his remarks if he sees fit.

7 DIRECT TESTIMONY OF HONORABLE FRANK E. MOSS,

8 UNITED STATES SENATOR FROM THE STATE OF UTAH

9 SENATOR MOSS: Thank you, Mr. Chairman.

10 I apologize for being a little late and I appreciate
11 the opportunity now to take my place at the podium and I will
12 try to be brief in my presentation.

13 Mr. Chairman, it is a real pleasure for me to appear
14 here today to support the proposed Federal Trade Commission
15 ruling on door-to-door sales. In my opinion the Commission has
16 formulated a sound proposal, one that would go a long way toward
17 protecting the consumer against abuses that are all too often
18 part of the Average American's experiences with door-to-door
19 sales. I fully support in principle the proposed rule.

20 What consumer in this country has not been exposed to
21 the door-to-door salesman? The knock on the door, a bright
22 smile, those first few flattering words, the home survey, free
23 gift or demonstration offer, these are some of the trademarks
24 of the door-to-door salesman. Before the unsuspecting house-
25 wife knows it, she has invited the charming man into her home,

1 been subjected to a high-pressure sales pitch, and has signed
2 her name on the dotted line for goods that upon reflection
3 she or her husband may not want.

4 I do not mean to imply that door-to-door selling is
5 always deceptive. Far from it. I have confidence that the
6 majority of companies engaged in direct selling treat their
7 customers fairly and value the repeat business that comes from
8 mutual trust between salesman and buyer. But there is wide
9 latitude in the practices that direct selling companies employ,
10 a latitude permitted by the lack of regulation in many juris-
11 dictions and by the absence until very recently of any self-
12 policing policies within the industry itself. When there is
13 no standard for fair practices, some salesmen are tempted to
14 "just what the traffic will bear."

15 The poor, the uneducated, the uninformed are the pri-
16 mary victims of this system. The other victims are the honest
17 companies. In the short run they are undersold by their fly-
18 by-night competition; in the long run their markets may be
19 ruined by the shoddy practices that result in the undermining
20 of public confidence in door-to-door sales.

21 Therefore, regulation of door-to-door selling practices
22 should benefit consumers and legitimate businessmen alike. In
23 those jurisdictions where door-to-door sales are presently
24 being regulated, abusive practices have been minimized. It is
25 now time that the benefits available to some consumers through

1 such regulation be made available to all consumers. There is
2 need to establish on the Federal level clear and consistent
3 rules for direct selling transactions in all states. It is my
4 understanding that it is possible to write the proposed regula-
5 tion in such a way that it will preempt state and local laws.

6 This proposed regulation is not the final word on
7 door-to-door selling. It doesn't protect the buyer against all
8 kinds of fraud. It has its strong points and its weak points.
9 Yet it represents a substantial and important step in protecting
10 the consumer and ultimately in restoring the confidence of the
11 American people in the men and companies engaged in direct
12 selling.

13 Let me briefly outline the various provisions, and what
14 each would do to curb deceptive practices that we have found to
15 be most common in door-to-door selling. I will then examine
16 a couple of places where I think the present rule could be
17 improved.

18 The first step in door-to-door selling, the initial
19 contact, is often where the deception starts. We have received
20 many complaints that door-to-door salesmen post as building
21 inspectors, survey takers, or company representatives dis-
22 tributing "free" products in order to gain entry to a house.
23 Once inside the house, the salesman can much more effectively
24 use high-pressure techniques to make a sale. It is a deceptive
25 practice to use such pretenses to gain admittance into a

1 private home.

2 The proposed regulation clearly requires the salesman
3 to state that the purpose of the contact is to make a sale. In
4 doing so, the regulation cuts out the deception where it begins.
5 This is one of its most important and praiseworthy provisions.

6 The three-day cooling-off period, the heart of the
7 proposed regulation, is admirable for a number of reasons. It
8 will protect the consumer by allowing him time to think over his
9 decision, to consult with his family, to find out more about
10 the contract, the product and about competing products and their
11 prices.

12 It also reduces the reliance the salesman may place
13 on high-pressure tactics. For when the decision to buy must
14 make as much sense to the consumer after mature reflection as
15 it did during an energetic sales pitch, there will be no pur-
16 pose served by a high-pressure tactic designed to make the
17 consumer sign before he can think about it. The result will be
18 better and more honest salesmanship, more satisfied customers,
19 and a restoration in the public's confidence in the direct
20 selling industry.

21 The requirements for clear notice of the right of
22 rescission, for uniform wording in the notice to the buyer, for
23 the spelling out of the different methods to rescind the con-
24 tract, are of utmost importance if we are truly to inform the
25 buyer of his rights. All too often the few rights the buyer

1 has are buried in small print, worded in impenetrable legal
2 diction, or actually signed away without the buyer's being
3 aware. To fail clearly to inform the buyer of his rights would
4 be to emasculate the intended effect of this regulation, and
5 the Commission has wisely recognized this fact.

6 The bill introduced in Congress last session contained
7 a provision for exempting all sales under \$60. I agree with
8 the Commission that a lower figure is needed. Perhaps we should
9 go all the way and include all door-to-door sales. Some of
10 the provisions, such as oral notice at the beginning of the
11 conversation, cost the seller nothing and should apply to all
12 door-to-door sales. Other provisions could be suspended for
13 sales under a certain dollar amount. In no event should the
14 Commission set a limit which would exempt a large percentage of
15 door-to-door sales. To do so would be to defeat the purpose
16 of the rule.

17 As praiseworthy as the proposed regulation is, there
18 are still some areas where I feel it could be improved. Firstly,
19 the "notice to buyer" is perhaps too lengthy. It may not help
20 the buyer, who will be confused by its redundancy, and it will
21 impose a sizable printing requirement on the seller.

22 A more concise format might help the buyer better to
23 understand his rights to rescission and refund. Attached to my
24 written statement is a draft of an abbreviated version, which
25 is roughly 40 percent shorter than the proposed wording. The

1 Commission might find this useful in considering any revisions
2 to the "notice to buyer" provision.

3 While the methods of cancelling are to be precisely
4 spelled out in the uniform language prescribed by the Commis-
5 sion, the right of refund may apparently be described in any
6 way that the seller deems fit. Since the refund is central
7 to the concept of rescision, the Commission might want to
8 require uniform language concerning what the seller must say
9 in regard to full return of money, goods traded in, and notes of
10 indebtedness. To help the Commission in its consideration of
11 this issue, I would like to attach to my statement a proposal
12 for the form that this notice might take.

13 There are, furthermore, several provisions of the regu-
14 lation that would profit from additional clarifying language.
15 They are at present too vague. I am referring specifically to
16 the provisions for arbitration and oral notice. For example,
17 we do not know what will be subject to arbitration, and by
18 whom. Without this information, it is not entirely clear that
19 the arbitration provision actually will help protect the con-
20 sumer.

21 The regulation contains a provision that would allow
22 for oral cancellation of the contract. While I make no specific
23 recommendation on this point, I would invite the Commission to
24 look more closely at what this provision would do, and as to
25 whether it would adequately protect either the consumer or the

1 seller.

2 The possibilities for misunderstandings, even in good
3 faith, are considerable. The cancellation could be given in an
4 off-hand manner and not recognized as such by the seller; the
5 notice might not be received by the proper individual and the
6 cancellation be invalidated; the consumer might be given the
7 run-around or an additional sales pitch when he calls to can-
8 cel; and there would be any one of a variety of mixups that
9 can occur when formal procedures are not established. Certainly,
10 if oral notice is retained in the final ruling, there should
11 be some standard procedures set up so that this notice is
12 properly given, properly received and properly acknowledged.

13 Finally, let me touch on a problem area that is not
14 at all affected by the current proposal. It is the door-to-
15 door sales order where the contract is signed, but the merchan-
16 dise delivered at a later date. By then the cooling-off period
17 may have run out.

18 If the merchandise is defective, if it doesn't measure
19 up to the salesman's claims, or if it is unsatisfactory in any
20 other way, the consumer is no longer protected. If the debt
21 has been assigned to a finance company, the holder-in-due-course
22 doctrine will prevent the customer from any effective remedy.
23 Fortunately, the Commission has recognized this latter problem
24 and proposed a regulation governing holder in due course. I
25 commend it for doing so.

1 Inconclusion, I wish to reiterate my support for this
2 important ruling, one which will be a landmark in the area of
3 door-to-door sales and for the consumer movement in general.
4 I commend the Commission for recognizing the gravity of the
5 problem and for its fine work in putting together a very fair
6 and worthwhile regulation. I ask that you consider carefully
7 the modifications I have suggested. In any event, I urge a
8 final promulgation of this rule as soon as possible.

9 MR. DIXON: Thank you, Senator.

10 Mr. Cabell, any questions?

11 MR. CABELL: Yes, sir.

12 With regard to the problem you last mentioned about
13 the consumer not having an opportunity to inspect the goods,
14 this is of particular difficulty if you have a continuing con-
15 tract, for example, a correspondence course, some instruction,
16 where the goods or services are to be delivered over an extended
17 period of time. How would you envision the rule dealing with
18 that situation?

19 SENATOR MOSS: That is something of a problem and I
20 can see where the customer might abuse that by entering his
21 objection when the last installment came. Therefore, I would
22 feel that that would have to be dealt with in the first instrument
23 that came in. If something should be delivered in increments
24 over a long period of time, I think the customer ought to make
25 his decision when he gets his first increment, at which point,

1 having looked at it, he would say, "Well, this is not what
2 was offered to me and I now can't handle it. Therefore, I want
3 to rescind."

4 But, to make it dependent wholly on the signing of
5 the contract, it seems to me, offers a loophole where you could
6 have continued deceptive practices, which is one of the things
7 your regulation is directed toward.

8 MR. CABELL: Now, you feel that the length of the
9 period established by the rule, aside from the problem you
10 pose, is adequate, or would you recommend that it be extended
11 to five or seven days?

12 SENATOR MOSS: Well, I think it is adequate, although
13 I certainly would have no objection to going to, say, five days
14 Now, it would be unfair to extend it for a long period of
15 time, because it, in effect, would leave the seller without
16 knowing where he is over a considerable period of time. That
17 could be unfair. Just so it is long enough so that an indi-
18 vidual really has time to, as we say, cool off from the sales
19 pitch, and make a decision.

20 The thing that often happens, as we all know, is that
21 the pitch is made perhaps to the housewife who is at home during
22 the day and when that has to be discussed with the other member
23 of the family, the husband or other members of the family, and
24 there is discussion back and forth, the thing may not appear
25 as nearly what it had appeared to be to her in the middle of

1 the day when she had the sales pitch.

2 MR. CABELL: You commented favorably upon the provision
3 in the rules that would require the salesman to disclose ini-
4 tially that he was a salesman and give the purpose of the visit.

5 Now, it has been suggested that this provision be
6 modified to prohibit only the deceptive door-opener or misrepre-
7 sentation on the part of the salesman as to the purpose of his
8 visit. Do you think this modification would provide adequate
9 protection for the consumer?

10 SENATOR MOSS: No, I think it ought to go all the
11 way. I think the man coming to make the door-to-door sale
12 ought to identify himself at the door as to what he is there
13 for, that he is there as a salesman; in fact, I would expect
14 he would even show a card or something that would say that he
15 is a salesman, say, for X Company and that he has come to talk
16 about his product, because, if we only go half-way and say he
17 can't deceive by saying he is there to look at the meter or
18 just around to bring a present or something, we still have not
19 identified him fully. He is just somebody coming up to the
20 door and starting to talk.

21 Yes, I think he ought to identify himself. I would
22 think that the sales industry, confronted with a regulation
23 that is going to give a cooling-off and recision period, might ve
24 well welcome that, because there is no use of getting a sales-
25 man in and having him do his pitch and make a sale when it will

1 be rescinded. He might as well identify himself in the first
2 place and say, "I have come to show you goods and I want to
3 make a sale," and then the person, knowing what he is talking
4 about, is more likely to make a bargain that will be stood by,
5 knowing in the beginning what he is getting into.

6 MR. DIXON: Thank you for coming down, sir.

7 Our next witness is Thomas B. Curtis, Vice President
8 and General Counsel of Encyclopaedia Britannica.

9 DIRECT TESTIMONY OF THOMAS B. CURTIS, VICE PRESIDENT
10 AND GENERAL COUNSEL, ENCYCLOPAEDIA BRITANNICA, INC.

11 MR. CURTIS: Thank you, Mr. Chairman.

12 I first want to apologize for the fact that Charles
13 Swanson, who is President and who was originally scheduled,
14 could not be here, but I assure you he read this statement and
15 fully approves of it.

16 I am Thomas B. Curtis, Vice President-General Counsel
17 of Encyclopaedia Britannica, Inc. I am pleased to have this
18 opportunity to appear before the FEderal Trade Commission on
19 behalf of Encyclopaedia Britannica and present our comments on
20 the Commission's proposed Trade REgulation Rule to govern sell-
21 ing in the home.

22 Encyclopaedia Britannica, Inc., American-owned since
23 the early 1900s, has since become a highly diversified inter-
24 national publishing organization. Our reference materials are
25 the repository of a vast body of scholarship and knowledge.

1 In addition to the 203-year-old Encyclopaedia Britan-
2 nica, the oldest continuously published reference work in
3 the English language, the company produces a wide variety of
4 other educational materials both here and abroad. Its affiliate,
5 Encyclopaedia Britannica Educational Corporation, is one of the
6 nation's largest suppliers of classroom films and related
7 instructional materials.

8 The parent company's Home Library Service is a lead-
9 ing distributor of books by direct mail.

10 Library Resources, Inc., a subsidiary, produces Micro-
11 brook (ultramicrofiche) libraries.

12 Other Britannica subsidiaries include G & G Merriam
13 Company, publishers of Merriam-Webster dictionaries, and the
14 New York trade book publishing house, Praeger Publishers, Inc.,
15 and its London affiliates, Pall Mall Press, Lt. and Phaidon
16 Press.

17 Our company takes immense pride in its products, and
18 we believe that they fulfill a vital function in both the
19 home and school.

20 Generally, we bring our publications directly to the
21 purchaser in the home. A major public benefit, we feel, flows
22 from this method of distribution. It is not necessary to
23 travel to a retail establishment, find parking and fight crowds.
24 There is time to review the merits of the product offered.
25 The husband and the wife may consult together.

1 The prospective purchaser has the benefit of an
2 explanation by a person who truly knows his material and can
3 answer questions in depth. He is not dependent upon a clerk
4 who may be unfamiliar with the product or, as is often the
5 situation in retail selling today, left to his own devices
6 because of insufficient staffing of clerks.

7 In other words, home selling has been a traditional
8 method of distributing goods since the earliest history of
9 this country when the periodic visits of the spice merchant or
10 tinker would be anticipated with delight in the settler's house-
11 hold. It continues to be an important factor in American
12 retailing. Billions of dollars worth of goods are sold in the
13 home each year and home selling provides jobs for millions of
14 people.

15 Generally, home selling has been conducted properly.
16 When it is, home selling is of real benefit and is not an
17 imposition on the householder. Nevertheless the rising tide
18 of consumerism in the United States has created what is, in
19 Encyclopaedia Britannica's opinion, a whole new ballgame.
20 Effective leadership and effective action by the American home
21 selling industry is required if we are to preserve and improve
22 direct selling as a viable institution.

23 Encyclopaedia Britannica intends to provide the needed
24 leadership and to take effective action now to preserve and
25 improve confidence in home selling.

1 In light of this new climate, Encyclopaedia Britannica
2 believes that it is not enough that our industry merely refrain
3 from improper conduct. Obviously, this must be done, but we
4 must go beyond this and give positive assurance to the public
5 that its rights in the home will be fully protected at all
6 times. This is why I say that it is a whole new ballgame.

7 In the same vein, to give the public needed assurance,
8 Encyclopaedia Britannica has endorsed the Commission's cooling-
9 off proposal. Our acceptance of the Commission's proposal is
10 not a mere paper endorsement. Encyclopaedia Britannica is
11 implementing the FTC rule that has been promulgated.

12 Moreover, we want the public to know that we are going
13 even further. A recent Federal Trade Commission study shows
14 that, rather than the area that we are dealing with here, the
15 vast majority of consumer complaints against direct distribu-
16 tion companies involve billing procedures and problems asso-
17 ciated with the delivery of goods.

18 In order to deal effectively with these problem areas,
19 we are reviewing all of our procedures for handling consumer
20 problems, billing and delivery. We are prepared to take several
21 important first steps now. Most important, we have established
22 a customer "cool-line," namely, a telephone number to be given
23 each purchaser by which he may reach our headquarters where a
24 specially trained staff will deal promptly and effectively with
25 any problem he may have. WE will introduce more human factors

1 to reduce computer billing problems. In short, we believe
2 Encyclopaedia Britannica is responding effectively to consumer
3 interests.

4 I would like to point out also that the designation of
5 the Commission's proposal as a cooling-off rule substantially
6 understates the rights being offered to the public. "Cooling
7 off" is in effect in a number of states, but the Federal
8 Trade Commission rule we have accepted goes beyond the rights
9 granted under any state statute, and we are undertaking much
10 more than merely conforming on the Federal level to what we are
11 already required to do under various state statutes.

12 The decision to endorse the Commission's proposal is
13 not an easy one. The rule proposed imposes a substantial
14 burden and our compliance will result in major expense. Even
15 more basic, there is a serious question of the Commission's
16 legal authority to impose this kind of burden upon an entire
17 industry under a Trade REgulation Rule.

18 We also believe the rule itself could be materially
19 improved. Indeed, the alternate rule proposed by the inter-
20 industry committee seems to us to give the public superior
21 protection, while avoiding some of the awkward problems created
22 by the Commission proposal.

23 In addition, we do not think the arbitration and
24 jurisdiction provision of subparagraph (c) can be put into
25 effect immediately. As far as I know, we are already subject

1 to the jurisdiction of every state in which we sell our publi-
2 cations and reaffirming this fact in each contract would merely
3 create confusion.

4 The question of small claims arbitration is an
5 intriguing one. It might be of real benefit to the consumer
6 if new procedures could be devised. We would be happy to help
7 support a study of this question in a joint Commission-industry
8 effort.

9 Again, I thank the Commission for the opportunity to
10 appear as, I hope, a leader of our industry, and we are proud
11 to have taken the action to which my testimony commits Encyclo-
12 paedia Britannica.

13 MR. DIXON: Thank you, Mr. Curtis.

14 Mr. Cabell.

15 MR. CABELL: Mr. Curtis, you refer to the major expense
16 and increased burden placed upon your company by this rule.
17 I wonder if you can tell me in what respect this effect will
18 be the greatest.

19 MR. CURTIS: Well, there are many areas, but let me
20 give a specific one in the drawing of the contracts, drawing
21 up of contracts, and we already have drawn up our contracts
22 and have changed them to conform to this rule and in some
23 instances this has created this problem, and that is the prob-
24 lem of reinstructing a rather sizable sales force and changing
25 our instruction methods and so forth in order to comply with

1 the regulation. That is what we were essentially referring
2 to.

3 I think it is essentially a one-cost item. I don't
4 think it will be a recurring cost once we get in the groove.

5 MR. CABELL: Now, in announcing the support for the
6 rule, I am sure your company considered the provisions which
7 we have heard testimony about this morning and I refer specifi-
8 cally to the provision in the rule which requires a seller to
9 disclose at the time of the initial contact that the purpose
10 of the contact is to make a sale.

11 May I ask, how does your company get that door open?

12 MR. CURTIS: Well, we are not too happy, I might say,
13 with this, because we frankly think a salesman should be able
14 to say, "Good morning" and maybe talk about the amenities.
15 But the main thrust of it we agree with, namely, that you should
16 inform the housewife -- well, in our instance, as you probably
17 know, our selling is only to husband and wife together and it
18 is in the home and usually in the evenings, but they should
19 state the purpose is this.

20 We think in many respects the alternate proposal of
21 the industry probably is much more realistic, because it will
22 then carry on throughout to be sure that there has not been
23 deception as to the purpose, while under the present Commission
24 ruling, which I again say we will conform to, but under that you
25 can conform by just uttering a few magic words in the beginning

1 and then go on an entirely different pitch, you might say,
2 which frankly could deceive, I think, in many respects, and I
3 hope the Commission will look at some of the industry pro-
4 posals, and we have worked with them on that, too, because
5 we think there are a lot of affirmative suggestions that could
6 be made.

7 May I say our purpose in endorsing the Commission's
8 ruling is so there can be no confusion, in the Commission's
9 mind or the public, of our desire and our feeling that the
10 direct selling industry should be working with the Commission
11 in trying to do this. We felt if we started out the other
12 way by saying, "Yes, we think this is a good idea in principle,
13 but here is what we think should be done," there might be a
14 misunderstanding.

15 We will abide by the ruling as written and we are
16 trying to do that, although I again say, and I think this is
17 quite true, that the industry can contribute greatly to the
18 Commission's ruling, improving the Commission's ruling and
19 make it more practical. This is one of the areas in particular
20 where we feel it could be improved and strengthened for both
21 companies and consumers.

22 MR. CABELL: Do you feel there is any ambiguity in
23 this provision of the rule with respect to "when is the ini-
24 tial contact?" Let's suppose your company puts an ad in a
25 magazine saying, "We will send you additional information

1 respecting the product if you will give us your name," that it
2 will be interpreted to require a disclosure at that time?

3 Would such a disclosure at that time obviate the
4 necessity of the salesman when he shows up unannounced, unin-
5 vited on the doorstep to make a disclosure?

6 MR. CURTIS: Yes, I think you have to think of it and
7 I think there is ambiguity. As a matter of fact, in our com-
8 pany, and this is not a firm pattern, but by and large operates
9 through what are called "leads" rather than cold canvassing, and
10 the leads are obtained in many ways, but one of them is these
11 little advertisements in the paper to "write in and tell us
12 whether you are interested" and the reason being, from the com-
13 pany's standpoint, is they have found that a salesman's time
14 is wasted unless you sort of cut down on the "potentials," to
15 be sure that they are really going around to someone expressing
16 some kind of interest.

17 But the point you get at is quite true, this is where
18 your contact is initially made, and I think it would be well
19 if there were, whatever the ruling might end up, that there
20 be an understanding of the techniques of getting the door open,
21 yes.

22 MR. CABELL: Thank you.

23 MR. DIXON: Thank you, Mr. Curtis.

24 The next speak is Mr. Donald Elberson, Executive
25 Director of Consumer Assembly of Greater New York.

1 DIRECT TESTIMONY OF DONALD ELBERSON, EXECUTIVE
2 DIRECTOR, CONSUMER ASSEMBLY OF GREATER NEW YORK

3 MR. ELBERSON: Mr. Chairman, we are very pleased to
4 be asked to give testimony to these very important hearings.

5 The Consumer Assembly of Greater New York is an asso-
6 ciation of over 100 organizations -- trade unions, cooperatives
7 fraternal groups, neighborhood associations, nonprofit medical
8 care groups -- all dedicated to pursuing the consumer interest
9 in the State of New York. In our affiliated organizations there
10 are approximately 1 million consumers. The Assembly is a con-
11 stituent member of the Consumer Federation of America and takes
12 an active part in its affairs.

13 The New York Legislature made a major breakthrough on
14 consumer legislation in 1970, particularly in the consumer
15 credit area. It eliminated the holder-in-due-course doctrine
16 in a substantial portion of the retail installment sales area.
17 It eliminated the holder-in-due-course doctrine in a substan-
18 tial portion of the retail installment sales area, greatly
19 liberalized the garnishment laws and passed a three-day cooling-
20 off period law for door-to-door sales.

21 As a private, nongovernmental organization of consumers,
22 we played a major role in developing the necessary support for
23 this legislation. We are pleased to place in the record the
24 Fifth Annual Report of the Joint Legislative Committee on Con-
25 sumer Protection of the State of New York, which includes all

1 consumer bills passed by the 1970 Legislature.

XXXX

2 (Elberson Exhibit No. 1 was made a part of the record.)

3 MR. ELBERSON: We think you will find it rather an
4 interesting document as you pursue your interest in the con-
5 sumer credit area.

6 The door-to-door salesman is the scourge of the
7 ghetto, preying on people whose resistance to his lying blan-
8 dishments is not very great. This has been outlined in many
9 treatises on the subject, one of the most important being the
10 book, "The Dark Side of the Marketplace," by Senator Warren
11 Magnussen, the very excellent studies by your own agency, and
12 numerous writings by Sidney Margolius.

13 It is not our purpose here to list in endless detail
14 the abuses visited on the unsuspecting consumer by the door-to-
15 door salesman. The record of this abuse has been and is before
16 you in great detail. We should wish only to indicate that,
17 in our experience, the door-to-door salesman is an example
18 of consumer exploitation of major proportions.

19 Though we have indicated that door-to-door sales
20 exploitation is concentrated in low-income, urban areas, it is
21 by no means absent in other more affluent areas. Rockland
22 County is a suburban area just north of New York City. Its
23 county government last October formed an Office of Consumer
24 Protection. James Farkas, its Director, recently indicated that
25 the greatest volume of complaints coming to his office since

1 as of that time are attributable to the door-to-door salesman.

2 In our view an ever more serious indictment of the
3 door-to-door sales for a part of its existence is not serving
4 the consumer adequately, particularly when there really are
5 other alternatives to the consumer, alternatives that are more
6 reasonable in economic terms and not characterized by exploi-
7 tation and dishonesty.

8 The consumer would be served well, in our opinion, if
9 in some way a substantial part of the door-to-door industry
10 were eliminated and other more meaningful alternatives offered
11 the consumer.

12 In New York the Consumer Frauds Bureau of the Attorney
13 General's Office has said in the past (pre-1970) that complaints
14 about the door-to-door salesmen were one of the most serious
15 problems with which they dealt. This is also borne out in
16 inquiries to the New York City Department of Consumer Affairs
17 and Nassau County.

18 Recently we had occasion to question them about the
19 effect of the cooling-off period law passed by the 1970 Legis-
20 lature. Though they do not keep statistics on such matters,
21 they told us there has been a dramatic drop in the complaints
22 in this area and considerably fewer actions against door-to-
23 door salesmen by the Attorney General's Office.

24 We find this exceedingly interesting because it may
25 portend a different approach to the regulation of practices

1 inimical to the consumer, a placing in his hands the power to
2 bring about change, "consumer power" if you want to call it
3 that.

4 This has happened in New York, even in face of a com-
5 pletely inadequate publicity about the cooling-off period law
6 by the communications media. In face of the great difficulty
7 in securing funds for the government to police certain prac-
8 tices, the placing of such power in the hands of the consumer
9 is an important contribution to the implementation of consumer
10 legislation. It should be understood, however, that a wide-
11 spread program of public information is needed in such imple-
12 mentation.

13 Mr. Chairman, we have a few recommendations we would
14 like to make. We would hope you would recognize that the door-
15 to-door sale is only a part of a very vicious system of con-
16 sumer exploitation, particularly in the low-income areas. We
17 are pleased you are contemplating hearings to consider abolish-
18 ing the holder-in-due-course doctrine. However, there are many
19 more practices that need to be abolished, and we hope you will
20 want to look into the consumer credit problem as a whole and not
21 piecemeal.

22 We are currently working in the New York State Legis-
23 lature to extend the present three-day cooling-off period law
24 to sales made at places of business, and the abolition of the
25 holder-in-due-course doctrine to automobile sales. As you

1 know, some door-to-door sales companies are very adept at
2 finding new ways of getting around the law as, for example,
3 arranging with consumers to be "invited" to their homes to
4 consummate a sale. We would hope that your regulation would
5 check this kind of action.

6 We are also concerned with the three-day period,
7 thinking it too short for the consumer to gather information
8 for real decision-making. We are of the opinion that the pro-
9 posal of the National Consumer Law Center of Boston, which
10 leaves a door-to-door sale unconsummated until a consumer sends
11 an approval notice in good time, is the type of regulation
12 needed.

13 We want to express our strong support for your effort
14 to implement a regulation of the type described in the announce-
15 ment of this hearing. It is encouraging to see you move in
16 this direction and wish to commend you for innovation in the
17 consumer credit area. However, as we said, we would like to
18 see you go further than appears to be inherent in the announce-
19 ment.

20 Mr. Chairman, we wish to thank you for the opportunity
21 to express our views and hope they will be helpful to you.

22 MR. DIXON: Thank you, Mr. Elberson.

23 Mr. Cabell.

24 MR. CABELL: I have a question in the light of your
25 comments on effectiveness of the New York law. Do you think

1 this rule will really be of assistance to the poor, as they
2 are sometimes described, the ignorant and illiterate, rather,
3 in the ghetto?

4 MR. ELBERSON: Well, I had some reservations about it,
5 but I am simply amazed by the number of people whom I run into
6 who know about the three-day law and who are putting it into
7 effect themselves, in answer to your question.

8 MR. CABELL: Do you think there is any requirement to
9 put the notice to the consumer in a language other than English?

10 MR. ELBERSON: Yes, that is part of the New York law,
11 and I believe the law states that in cities over a certain popu-
12 lation in Spanish and I think that is getting to be a pattern,
13 in New York anyway, as far as I can see.

14 MR. CABELL: Now, as I gather, you would support the
15 proposition of abolishing cooling-off sales altogether?

16 MR. ELBERSON: Yes, sir.

17 MR. CABELL: I mean door-to-door sales.

18 MR. ELBERSON: Yes, sir. I have read rather exten-
19 sively the studies of the Federal Trade Commission on the ques-
20 tion of the inefficient system, the uneconomic system of door-
21 to-door sales, and although my language might stand a little
22 improvement, I think what I am getting at is in the ghetto
23 communities a great deal needs to be done to improve the working
24 of the system to the advantages of the people that are living
25 there and they are not getting a fair shake at the present time.

1 MR. CABELL: Well, do you think we should draw any
2 distinction as between the types of door-to-door sales? We
3 have, on the one hand, the ordinary deliveryman of milk, laun-
4 dry, dry cleaning, and on the other we have the one-shot sale of
5 the encyclopaedia or a set of pots and pans, and what-have-you?

6 MR. ELBERSON: I think the major thrust should be,
7 as far as we have been able to determine in New York, an
8 installment sales contract. I think this is the major source
9 of the difficulty at the present time. To be realistic and to
10 get legislation through and so forth, I think this is a major
11 consideration, although as an objective I think we should move
12 toward other things which are not necessarily included in a
13 retail installment sale contract.

14 MR. CABELL: One of the things I think is trouble-
15 some about the cooling-off provision arises in connection with
16 your service contracts where the consumer purchases a service,
17 whether it is accompanied by merchandise or goods or what-have-
18 you, such as installation of a fence, and we will say the fence
19 is installed within the three-day cooling-off period.

20 Now what should be the remedy in that type of situa-
21 tion?

22 MR. ELBERSON: Well, I believe Senator Moss -- I would
23 be inclined to go along with his approach as to some indication
24 of some indication of some proof on that first increment. I
25 think that is very important.

1 MR. CABELL: I am not familiar with the New York law,
2 but I understand a number of the states have provisions that
3 the cooling-off provision terminates once the services have
4 been fully performed?

5 MR. ELBERSON: Yes.

6 MR. CABELL: Now, would you think that would be a
7 fair solution?

8 MR. ELBERSON: I think so.

9 MR. CABELL: Thank you, Mr. Chairman.

10 MR. DIXON: Thank you, Mr. Elberson.

11 MR. ELBERSON: Thank you, sir.

12 MR. DIXON: Mr. Sherwood is not on the list here, but
13 he has a presentation to make which I think we have time for.

14 DIRECT TESTIMONY OF FREDERIC R. SHERWOOD, AD HOC

15 INDUSTRY COMMITTEE, CHICAGO, ILLINOIS

16 MR. SHERWOOD: Thank you, Mr. Dixon.

17 MR. DIXON: Please give your name.

18 MR. SHERWOOD: Frederic R. Sherwood, 75 East Wacker
19 Drive, Chicago, Illinois.

20 My background: First, I am appearing as Chairman of
21 an ad hoc inter-industry committee which has been working since
22 October on a constructive and affirmative response to the
23 proposal made by the Commission. My background personally is
24 that in the past 17 years I have been closely identified with
25 direct selling for ten years as a salesman, as manager, as staff

1 executive for a company engaging in direct selling and then as
2 an executive of a trade association, and I am now manager of
3 a division of the trade association, and many of the members
4 of this division engage in this selling and I am appearing, not
5 for the trade association, but for this ad hoc inter-industry
6 committee and I want at this time to introduce for the record
7 what we call an alternative industry rule and I will give this
8 to the reporter.

XXX

9 (Sherwood Exhibit No. 1 was made a part of the record.)

10 In this alternative, the industry ad hoc committee,
11 which has worked on this and which has been comprised, I think,
12 of representatives of six or seven trade associations and of
13 individual companies, in a number of meetings has designed
14 something which follows very closely, in both its intent and
15 purpose on structure, the proposal made by the Commission. We
16 differ really only in detail, but we think that the differences
17 are very important indeed.

18 Now appended to the six-page alternative rule, which
19 I will describe briefly in just a moment, we have included --
20 and this is also submitted for the record, a tabular exposé
21 of the basic differences between the proposed rule and indus-
22 try alternative rule, taking section by section, and showing
23 how they differ and a very brief explanation of why we have
24 made the difference.

XXX

25 (Sherwood Exhibit No. 2 was made a part of the record.)

1 Then follows after this four-page tabular comparison
2 an explanation, two pages, which are entitled "Comparison of
3 Safeguards to Consumers under FTC Proposed Rule and Industry
4 Alternative Rule." This lists 22 points side by side, which
5 either show identical or similar treatment of particular con-
6 sumer protective features or which show areas in which the
7 industry alternative rule goes beyond and provides greater con-
8 sumer protection, we believe, than the proposed FTC rule.

9 (Sherwood Exhibit No. 3 was made a part of the record.)

10 Now, there are a total of eight points which are the
11 same in both. There are eleven points in which we believe the
12 alternative provides greater safeguards and benefits to the
13 consumer than the proposed Commission rule. There are three
14 points on which some might argue that the alternative dimin-
15 ishes benefits conferred on consumers by the alternative, but
16 we feel we could demonstrate that our treatment of these points
17 is preferable to that of the proposed rule.

18 The first change that we have made has been in the
19 title. We feel that such a rule, if it is promulgated, and of
20 course there is also the reservation in many of our minds about
21 whether it can be promulgated, but if a good rule can be promul-
22 gated by the Commission, we certainly feel that this is proba-
23 bly the most constructive solution to the proliferation of
24 dissimilar rules and laws on this point.

25 Before I go into the brief comparison and statement of

XXX

1 these differences, I might say that the gentleman from the
2 law school, who appeared earlier, mentioned seven state laws
3 and, as a matter of fact, there are 22 state laws which deal
4 with this in one way or another, which deal with the right of
5 the consumer to change his mind without any allegation of mis-
6 representation or fraud, simply for a change of mind.

7 But these 22 states approach the matter in very dis-
8 similar ways, the requirements of notices to the buyer where
9 notices are specified all read somewhat differently, and it is
10 impossible for a national company to prepare a contract that
11 technically adheres to one contract, that adheres to laws of
12 all the states or even to any appreciable number of them.

13 We feel for this reason when the Commission announced
14 its proposed rule, from the very beginning our ad hoc committee
15 has felt that this is definitely a constructive solution to
16 the entire problem if it can, in fact, be preemptive of the
17 many dissimilar local jurisdictional specifications and this
18 is one of the main reasons we back it.

19 Another reason that we back this treatment is that it
20 is a low-cost method of consumer protection because it is very
21 much self-administered and the speaker who preceded me said
22 that consumers themselves becoming acquainted with this right can
23 administer it themselves, and we see, with proliferation of
24 consumer agencies, counties, cities and states, that this is
25 going to be very, very expensive to the taxpayer.

1 Initially, we preferred the cooling-off as a regula-
2 tion, we preferred what is known as a little FTC type of act
3 which has been promulgated to the states by the Commission over
4 the past several years in varying forms. We endorsed this, we
5 have publicly supported it. We felt that giving greater powers
6 to the administrative agencies to get at deception and fraud
7 was the way to handle it, because it regards all merchants
8 and sellers alike, rather than treating one industry.

9 But with the growth of the laws in the states, we feel
10 that one rule, whether it is Federal or Commission rule, is
11 undoubtedly the desirable approach to this entire problem. If
12 the Commission can do it and make a good rule, then I think our
13 industry would certainly support this.

14 Now, we have made a change in the title "door-to-door
15 sales" we feel being rather narrow and obsolete. In the old
16 days of in-the-home selling, there was an enormous amount or
17 a great deal, comparatively speaking, of what is known as "cold
18 canvass," ringing door bells and knocking on doors.

19 This has changed a great deal in recent years, and while
20 there is a great deal of it in the home business, much of it
21 is by prior appointment and other types of contact and we feel
22 home solicitation sales, as appears in the informal Consumer
23 Credit Code and in the laws of 12 states, is preferable to
24 using "door-to-door."

25 We have increased the cut-off point from \$10 to \$25.

1 We feel because the arguments given over the time during which
2 the cooling-off and other regulatory consumer protection pro-
3 posals had been advanced, during the last five years the alle-
4 gations have been the consumers should have a right to withdraw
5 from overextending themselves financially, from engaging or
6 signing up for long-term large installment contracts.

7 This is the purpose of the Uniform Consumer Credit
8 Code, to deal with installment sales, as was the Federal Con-
9 sumer Credit Protection Act. We feel to impose details of
10 this regulation on very small sales, like small cosmetic
11 sales, small items in which in many instances now they pay
12 cash, we see delivery on the spot, that it is impossible to go
13 into the very small amounts.

14 But we do feel that \$25 is reasonable. Only one state
15 at the present time covers sales of a smaller amount. Other
16 states have cut-offs of \$25, \$50, and even \$150, and Senator
17 Moss said the Magnuson bill of 1968 in its reported version set
18 \$50 and we feel \$25 is fair and practicable.

19 We, of course, provide a three-business day cancella-
20 tion privilege. We provide a very clear, specific notice to the
21 buyer. Ours, we feel, is a better notice, it is clearer, less
22 confusing to the consumer. The completion notice required on
23 the detachable form in the Commission's proposal is some 400
24 words and ours reduces that to about 150 words, and we feel
25 that it is extremely clear and it covers, I think, the problem

1 fully.

2 WE also feel it is better to have this on the contract
3 itself rather than on a detachable form, but we clearly show
4 in our notice that the copy of the contract or receipt which
5 the buyer receives can itself be used as a cancellation form,
6 simply by writing "I hereby cancel," signing it and returning
7 it; so in effect we accomplish exactly the same purpose.

8 We differ in one probably important respect and that
9 is that we disagree on the matter of oral representations, oral
10 cancellations. We feel that it is extremely important that
11 there be ability of proof, both for protection of the consumer
12 and protection of the seller, that the cancellation is in
13 written form.

14 This parallels the Uniform Consumer Credit Code, which
15 requires a cancellation notice from the consumer in writing,
16 although it can be delivered in person and it does not have
17 to be mailed, and also Regulation Z, Federal Consumer Credit
18 Protection Act, in the rescission clause, which of course is
19 quite narrowed in the Federal ACT to installment credit sales
20 in which security is retained in the residence of the buyer
21 or property which may become his residence of the buyer, not
22 home sales, and there there must be a written notice of can-
23 cellation and this we feel is very important.

24 In oral declarations, generally we feel it is better
25 to avoid a requirement of an affirmative oral declaration, and

1 it is sufficient and protective to have this clearly set out
2 in writing. As far as the door approach is concerned, we feel
3 not that a person should not identify himself at the door,
4 because certainly we feel he should give a clear identifica-
5 tion of himself at the door, but we feel in the matter of proof
6 if there is any controversy it is better for the consumer and
7 all concerned simply to prohibit the use of ruses, misrepre-
8 sentations, false pretenses, because these can be attested to
9 by a number of witnesses.

10 In other words, if a person or a company is using a
11 type of plan that there can be a number of people that can
12 attest to this -- if you focus on an affirmative required oral
13 declaration to one party, this is simply the word of one person
14 against another. We feel that our proposal is much more con-
15 sumer protective and it goes beyond the proposed rule of the
16 Commission.

17 A number of changes which we have suggested have to
18 do with the mechanics of getting delivered or shipped goods
19 back, getting the down payments to the people who may have them
20 we feel, upon examination, we hope you will agree, that we have
21 addressed ourselves more constructively to the mechanics of
22 the consequences, both for the buyer and seller, following can-
23 cellation and we, of course, do not disagree with the right of
24 cancellation. We feel the mechanics must be spelled out more
25 clearly and more satisfactorily.

1 We have followed the Commission's recommendation on
2 transfer of paper, but simply adding a phrase to the wording
3 proposed by the Commission, prohibiting seller from transfer,
4 et cetera, for five days unless seller has arranged to relieve
5 buyer of all liability on the note in the even of valid can-
6 cellation.

7 We feel it accomplishes the same thing, but simply per-
8 mits the merchant to go about his ordinary business with its
9 financial institution, but he certainly cannot hold a consumer
10 to a piece of transfer paper under the rule.

11 Now, we have added one feature that was not included
12 in the Commission's proposal and that is this emergency clause.
13 We feel there are certain valid circumstances where, in an
14 emergency, a buyer or a consumer who engages in a transaction
15 with a person who comes to his home and arranges that trans-
16 action must be able to enter into it if it is a valid personal
17 emergency and we certainly do not intend this as a loophole and
18 I think you will agree, upon studying the words we have proposed,
19 we have made this a very, very tight restriction, and we have
20 followed the general structure, both of the Uniform Consumer
21 Credit Code's provision on this point and Regulation Z of the
22 Truth-in-Lending Act, a Federal Act, but we have gone beyond
23 it in using even tighter language which makes it necessary that
24 the buyer must furnish the seller with a separate signed and
25 written description of the emergency and this cannot be in

1 preprinted form or anything of that type.

2 We have added also one feature, a specific clause stat-
3 ing the preemptive intent of the FTC's rule it promulgated and
4 this is on the fourth page of the side-by-side showing. We
5 feel this is of extreme importance, to simply add one more
6 rule to the rules which are rapidly spreading, as I mentioned
7 earlier, in all kinds of different forms, would just be to
8 confuse the issue.

9 If the Commission can do this, and I think we really
10 hope that it can, this seems to be the best solution, because
11 it is a consumer protection device or privilege which is self-
12 administering. It is at no cost. The policing would be done
13 by one agency, the Commission, and there is some on the ad hoc
14 committee who feel it would be preferable to have a FEderal
15 Trade Commission rule to a piece of Federal legislation and
16 there are others in the group who feel a piece of Federal legis-
17 lation might be preferable, but this is a technical point. But
18 we all agree that one rule which is preemptive is of the utmost
19 importance to the health of this country and its industry.

20 We have supplied an effective date recommending if
21 it is promulgated, it will take effect nine months following
22 its final publication.

23 I think the final attachment here, "Comparison of Safe-
24 guards," as you run down them, you can see the points which are
25 either the same, where we go further, or where there might be

1 some questions.

2 1, 2 and 3 are the same and are for the proposed rule
3 and alternative rule.

4 We omitted this provision that a consumer cannot cancel
5 a sale if made in the presence of an attorney and we feel that
6 ours is preferable, because we make no exclusions as to who it
7 can be signed in the presence of and thus not be effective.

8 One very important improvement in our proposal is the
9 assurance of receiving a written contract or receipt from the
10 seller. This is not clear in the Commission's proposal. It is
11 true that the Commission requires that the notice of cancella-
12 tion be provided, that is, the cancellation form spelling out
13 the buyer's rights, but it is not clear that the buyer must
14 receive either a written contract or a receipt, which we specify,
15 so that if there is any sale of \$25 or more, we specify that
16 the buyer must receive a written statement, a written contract
17 or receipt.

18 We feel ours is preferable because the cancellation
19 form, the cancellation notice, is much clearer, simpler and we
20 feel that certain details of the mechanics, its flexibility to
21 receive agreed upon cash value in lieu of traded-in goods is
22 very important.

23 A salesman who is making a trip, going from one town
24 to another, say, answering inquiries, there may be some days
25 before he returns to his district office and in the meantime

1 he may have taken as a trade-in certain used merchandise
2 which could even be resold before he gets back to his district
3 office, so we feel that by clearly specifying that the seller
4 can give the agreed-upon value of the traded-in goods in lieu
5 of the goods themselves, and this is a definite improvement.

6 Summing up, we think that as to a door-opener, ours
7 is definitely an improvement. WE feel, in general, that we
8 provide a procedure that does not slow down the delivery of
9 goods, desired goods and services, to consumers who really
10 want them and who have no intention of cancelling their con-
11 tracts and are satisfied with the transaction, that by the
12 mechanics which we have specified we make a simple economical
13 and rapid flow of goods to consumers who want them, while
14 giving ample protection to those people who want out of the
15 contract.

16 As the Commission has proposed in its rules, the
17 mechanics would undoubtedly persuade many sellers to hold up
18 for a period of time, there would be delays waiting to see if
19 there is receipt of a cancellation intent, and in ours the
20 whole flow, especially in large companies where many thousands
21 of orders are processed every day, the company can set the wheels
22 in motion and in most cases when a cancellation request is
23 received, they can wire or phone the warehouse that is about
24 to ship the material and stop it. In some cases they cannot
25 stop it, but they can give clear instructions to the consumer

1 as to how the merchandise is to be returned and if it is
2 returned in reasonably good condition, I have the exact words
3 we use, in good condition, then of course the seller returns,
4 of course, the down payment. We do have the right, we reserve
5 the right to retain from the down payment an adjustment amount
6 if there is damage to the goods or if the buyer is not reason-
7 ably cooperative with the instructions provided by seller to
8 return those goods.

9 But in large companies it is not a matter of simply
10 delivering at the doorstep or delivering by a local truck or
11 a delivery service, but much of this is a huge mechanism of
12 warehousing or parcel post from the central points located in
13 a different place from the home office of the company, which
14 processes the orders and we feel that our approach is a realis-
15 tic and reasonable solution to this entire problem and we feel
16 that the approach is sound and sensible and definitely consumer
17 protective.

18 Thank you.

19 MR. DIXON: Thank you, Mr. Sherwood. Your suggestions
20 are certainly going to receive our careful consideration.

21 MR. SHERWOOD: Sir, I might just add I do expect to
22 remain during the entire hearings this week and if any questions
23 arise in connection with the industry's proposals that are not
24 clear, or further questions, I will be glad at any time to try
25 to clarify or explain these aspects of the industry's proposal.

1 MR. DIXON: We appreciate that offer.

2 Any questions, Mr. Cabell?

3 MR. CABELL: No.

4 MR. DIXON: He says "no" and you will be here the
5 rest of the week?

6 MR. SHERWOOD: Yes, I shall.

7 MR. DIXON: That concludes the list of witnesses to
8 be heard this morning and the hearings will now adjourn, to
9 reconvene at two o'clock this afternoon.

10 (Whereupon, at 12 o'clock noon the trade practice
11 conference adjourned, to reconvene at 2 p.m. of the same day.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

AFTERNOON SESSION

2 p.m.

1
2
3 MR. DIXON: May we come to order please.

4 This is a continuation of the public hearings on
5 the Commission's proposed Trade REgulation Rules concerning a
6 cooling-off period for door-to-door sales.

7 For the benefit of those of you who were not here
8 this morning, my name is William Dixon, Assistant Director,
9 Division of Industry Guidance of the Commission's Bureau of
10 Consumer Protection. To my left is Mr. Henry Cabell, attorney,
11 who has been in charge of developing the rules of these pro-
12 ceedings.

13 The first speak this afternoon is Miss Betty Furness,
14 Chairman of the New York State Consumer Protection Board.

15 DIRECT TESTIMONY OF BETTY FURNESS, CHAIRMAN,

16 NEW YORK STATE CONSUMER PROTECTION BOARD

17 MISS FURNESS: Good afternoon, Mr. Dixon and Mr.
18 Cabell.

19 It is a pleasure to be with you. Accompanying me
20 here today from my legal staff is a lady who helped me develop
21 my testimony today and I would like to present her, Miss Sue
22 Prentiss.

23 28 months ago I stood at this podium and I testified
24 before this Commission on the urgency of several consumer
25 protection measures.

1 I suggested that the consumer needed on-stop con-
2 sumer service where he could get answers to his questions and
3 remedies for his problems and also be informed on how to avoid
4 problems. This has yet to be accomplished.

5 I also addressed myself to the subject of a cooling-
6 off period for a consumer who has dealt with a door-to-door
7 salesman.

8 Today I am back to testify on the same need, which
9 is now even more acute. The proposed Federal Trade Commission
10 regulations creating a three-day cooling-off period are essen-
11 tial to protect consumers from the unscrupulous practices
12 of a growing army of unethical door-to-door salesmen. These
13 contemporary con men prey on the poor, the unsophisticated,
14 the uneducated and non-English speaking citizens.

15 Ghetto dwellers have been conned by door-to-door
16 salesmen pretending to have inside information on their
17 children's achievements in school. "You have been selected to
18 purchase an encyclopedia because your son Johnny is at the
19 top of his second grade class," goes one spiel. "He needs
20 this encyclopedia to stay on top."

21 Many a hopeful parent, convinced her child's future
22 is on the line, has bought books no young child can use. We
23 have records of people unwittingly buying two reference works
24 simultaneously (which may be one more than most home libraries
25 need). Even more often, the cost of that set of books

1 purchased door-to-door will far exceed the cost of the same
2 volumes purchased directly from the seller's home office.

3 So the proud mother who signs on for such a project
4 needs a three-day cooling-off period not just to get her
5 feet back on the ground, but to realize that she has contracted
6 to spend \$440 over three years for a set of books that would
7 cost \$259 on a direct sale basis and which her child may not
8 even use for years.

9 Last year New York State, in its progressive consumer
10 protection efforts, enacted a broad statute which strikes at
11 many of the most serious aspects of door-to-door sales. As
12 Executive Director and Chairman of New York's Consumer pro-
13 tection Board, I have followed the development of New York's
14 statute from its enactment through to its operation.

15 Because of our experience I would like to suggest
16 what I consider to be the strengths in your proposed regula-
17 tions and suggest some possible weaknesses.

18 As we all know, the repetitious and commonplace hor-
19 ror stories of door-to-door sales generally have one factor
20 in common. They involve credit not cash sales. Installment
21 credit sales, I believe, are the principal source of heartache
22 and deception in this area. The nature of their sales tech-
23 niques and the confusion surrounding interest charges makes
24 it advantageous for firms to avoid dealing in cash.

25 Many of the troublemakers are fly-by-night companies

1 that move into an area for a month or so, bilk as many people
2 as possible, then sell out their contracts to finance companies
3 and move on. In many cases the companies themselves are
4 notoriously hard to find and customers end up with a product
5 that is unsatisfactory and an uncommunicative box number that
6 knows only how to accept money.

7 An example of the installment sale is the case in
8 Attorney General Lefkowitz's files involving a contract for \$1800
9 worth of glassware signed by a 17-year-old girl. She never
10 would have considered assuming such a debt had it not been
11 for the high-pressure tactics of a door-to-door salesman who
12 assured her that the cost of her purchase was only a few
13 pennies a month.

14 As you know, the proposed Federal Trade Commission
15 regulations are to apply to any sale solicited door-to-door
16 in the amount of \$10 or better. The New York statute, on the
17 other hand, covers only credit sales with four installments or
18 more. This year our Board has proposed an amendment that
19 would broaden the coverage to any deferred payment sale. I
20 think the New York distinction is an important one. It was
21 designed to exempt direct sellers of convenience items who
22 rely on customer goodwill for repeat sales.

23 The FTC rules would affect nearly all sales except
24 newspaper or milk and egg deliveries and even those might be
25 affected in the case of a large family purchasing in quantity

So I recommend that the Federal Trade Commission regulations be revised to deal solely with installment credit.

A limitation in the scope of the New York statute is that solicitation and sale must be made in the buyer's home. The limitation has backfired. Ingenious salesmen have invaded factories, shops, offices, all exempt from restrictions of the statute. The techniques remain the same; only the territory is different. On the issue of home vs. business, I think New York has committed an oversight and that our legislation must be amended to cover any door-of-door solicitation.

Further, I think the FTC proposal should be broadened to cover any sale initiated door-to-door wherever it may be consummated. This would prevent the seller from negotiating at the door and then leading the buyer to a nearby store to sign the contract.

The next points involve the method of cancellation. The FTC proposal allows the buyer to cancel in any way he chooses: orally (by phone or direct contact) or in writing (delivered by hand or mail). New York provides for written cancellation only (by letter postmarked no later than midnight of the third business day after the sale).

There is a question as to whether verbal cancellation is really a good idea because it so often is difficult to prove. We have had a number of complaints from people who have tried to cancel contracts directly after purchase and

1 whose cancellations have been ignored. If the FTC decides to
2 permit verbal cancellations, we feel they should also advise
3 buyers to have a friend witness the cancellation. Alterna-
4 tively, the FTC might require that door-to-door sellers keep
5 records of all cancellations which would be subject to inspec-
6 tion at regular intervals.

7
8 In New York the buyer's right to cancel is condi-
9 tional. The FTC proposal does not make the right conditional.
10 In New York if the seller has begun performance of services,
11 or the goods cannot be returned in the same condition in which
12 they were purchased, the buyer cannot cancel. We feel this
13 stipulation is a poor one. No hardship is imposed on a seller
14 who delays processing an order for three days in anticipation
15 of the possibility of cancellation. If performance is imme-
16 diate -- for example, if an appliance is sold at the door --
17 an even greater urgency exists for permitting cancellation
18 without a penalty. It is impossible for the buyer to deter-
19 mine if the appliance functions the way it is supposed to until
20 it has been tried. On this regulation, we feel the FTC's posi-
21 tion is preferable to New York's.

22 Over and over again we hear the story about the
23 Spanish-speaking buyer who has been coaxed into a sale by a
24 Spanish-speaking salesman, signed an English contract, but on
25 refusing to pay for faulty merchandise, has been dunned and
threatened in Spanish. To assure that the buyer has as

1 a chance to understand his rights and obligations under the
2 contract as he does the threats later directed at him in
3 dunning letters, the New York statute provides for notice
4 in Spanish and English in cities with a population over one
5 million. On a national basis, while the second language on
6 contracts need not be Spanish, FTC regulations should provide
7 for a dual language provision wherever needed.

8 Clearly language problems do not exist only in the
9 lives of non-English-speaking people. We must take cognizance
10 of the fact that the very people most easily defrauded are
11 those who either cannot or will not read pages of complicated
12 legal material, whether it is a deliberately obfuscating con-
13 tract or even a declaration of their own rights.

14 With this in mind, I must point out that the FTC
15 notice seems somewhat cumbersome. As in the New York regu-
16 lation, notice of the right to cancel should be a conspicuous
17 part of the contract paper, not a separate item that can be
18 ignored or lost, and should, as your proposal requires, be in
19 a contrasting color.

20 Under the proposed Federal Trade Commission rules, in
21 the case of cancellation the seller may not retain any down
22 payment in money or goods. The New York rules unfortunately
23 do allow him to keep either the down payment or up to 5 per-
24 cent of the purchase price, whichever is less. Clearly, in
25 cases of this kind we need not feel sorry for the seller.

1 Under the FTC rule, if a buyer wishes to cancel a
2 contract and return the goods in question, he must make them
3 available for 20 days. At the end of that time if the seller
4 has not recovered the cancelled goods, they become the buyer's
5 possessions. Twenty days seems far more than adequate.

6 The FTC proposal also offers several new rules that
7 have no points of comparison in our New York law. We support
8 the arbitration clause prohibition of waiver and confessions
9 of judgment. We support the requirement of a statement of
10 selling intent and the right to cancel. We support the assign-
11 ment prohibition though we would extend it to cover seven days
12 to avoid mail confusion.

13 In general, we feel the FTC has taken a necessary
14 and welcome step in protecting the consumer. We recognize, as
15 you do, that the consumer's life today is a remarkably compli-
16 cated one -- that when he is vulnerable, easily pressured,
17 or deliberately confused, he often gets into trouble. The
18 three-day cooling-off period provides an essential opportunity
19 for him to reconsider the responsibility he is assuming, to
20 get advice and often to examine an unknown quantity.

21 I hope New York State's experience in this area will
22 be a helpful resource to the Commission in amending or revis-
23 ing the proposed regulations.

24 Thank you for the opportunity to testify this after-
25 noon.

1 MR. DIXON: Thank you, Miss Furness.

2 Any questions, Mr. Cabell?

3 MR. CABELL: It has been said that this cooling-off
4 regulation won't help those who need it the most and by that
5 I mean the very poor and perhaps the illiterate, because they
6 won't be aware of it. What has been your experience in New
7 York with this group of people?

8 MISS FURNESS: Well, I think this is inevitably true
9 wherever one lives. I think that arm-in-arm with anything
10 like this regulation, or our law, anything that does pertain
11 particularly to the more vulnerable people, that part of our
12 job, once the regulation becomes firm, or a law is passed, we
13 have to educate these people in whatever manner we are able
14 to accomplish it and that is harder than getting a regulation
15 through; but it is equally essential that people get this
16 information and part of the thrust of my office is going to
17 be to acquaint the consumer with the rights that they have, but
18 it is very difficult, as you point out. The people who need
19 the information most are the last to get it.

20 MR. CABELL: Now, we have another problem in connec-
21 tion with this proposed rule which I suppose you evaded by a
22 provision in the New York law which you criticized. That is
23 this problem of emergency repair service. If a hot water
24 heater breaks down, the sale of a new hot water heater, of
25 course, would take place in the home and this makes the sale

1 subject to the provisions of the rule.

2 Now the contractor or seller is immediately con-
3 fronted with a situation where he says, "Should I put in a
4 water heater now or wait until the expiration of the three
5 days?"

6 MISS FURNESS: Well, I would be surprised if one's
7 water heater blew up and a door-to-door salesman came by
8 simultaneously. I would think in this case the consumer would
9 have deliberately invited someone into the house, a plumber
10 or contractor, and here again one would hope that they would
11 be a reputable person, but I would be astonished if such an
12 accident would fall under the heading of door-to-door sales.

13 I think the door-to-door salesman is someone who is
14 not invited in.

15 MR. CABELL: You see, that is one of the problems
16 we have with the rules. It would apply to sales that are not
17 made at the seller's place of business. So it would apply to
18 the water heater situation.

19 Now, as I say, New York evaded this problem or does
20 not have it, because I believe, as you said, if the service
21 is performed, it no longer applies. But our trouble is, I
22 suppose, to separate the hot water heater salesman who comes
23 in response to our consumer's request from the seller who does
24 not, who has initiated the contact.

25 MISS FURNESS: Well, I would leave this to your

1 expertise, to plug that loophole, but I think you have a
2 very good point. Anybody needing a water heater and having
3 phoned someone in the neighborhood and having said, "Come
4 around and sell me a water heater," it does seem to should
5 be responsible for the purchase of that water heater.

6 MR. CABELL: But, based on your experience, you
7 still believe the escape clause in the New York law that pro-
8 vides for performance and so forth has not worked out too well
9 in the sense that consumers have not received the protection
10 they need?

11 MISS FURNESS: Well, here again I must simply
12 reiterate the material we worked on was material that was
13 gotten from the records of door-to-door salesmen and not
14 where the consumer has been the instigator.

15 MR. CABELL: Thank you.

16 MR. DIXON: Miss Furness, do I understand you to
17 recommend that the rules should be limited solely to install-
18 ment sales contracts?

19 MISS FURNESS: Yes, I did.

20 MR. DIXON: So if there were a cash transaction,
21 even a sizable one, in the home, the rule you realize would
22 not apply?

23 MISS FURNESS: It seems to me, as I stated in my
24 testimony, that the tricky sales practices or the tricky sales-
25 men with the tricky products that we are trying to control

1 here do not tend to get a large amount of money in a door-to-
2 door sale, that their practice is to make it a credit sale,
3 that is how they make more money than the full product is
4 worth, that is how they might be lucky enough to sell a \$600
5 vacuum cleaner or a set of books that eventually cost more
6 than anyone considers because they have not had time to do
7 the arithmetic.

8 I think if somebody comes to your door and sells
9 you something for a considerable amount of money in cash, it
10 is very hard to get ahold of the cash that fast. You know,
11 I am not as nervous about those sales and there are, as you
12 are well aware, some pretty well-known companies who do a
13 tremendous business in door-to-door sales where these sales
14 really tend to be for very few dollars, but they do come back
15 and are welcomed back and it does not seem to me they neces-
16 sarily have to be caught up in the net that you are spreading
17 to catch these trickier types of salesmen.

18 MR. DIXON: In your experience so far under the New
19 York law, do you have any idea how often this option is exer-
20 cised by customers in door-to-door sales?

21 MISS FURNESS: I am sorry, I have no figures on that
22 at all.

23 MR. DIXON: Thank you, Miss Furness.

24 MISS FURNESS: Thank you.

25 MR. DIXON: The next speaker is Richard Givens,

1 attorney in charge of the Commission's New York Office.

2 DIRECT TESTIMONY OF RICHARD A. GIVENS, ATTORNEY
3 IN CHARGE, NEW YORK OFFICE, FEDERAL TRADE COMMISSION

4 MR. GIVENS: Thank you, Mr. Givens. It is a great
5 pleasure to be here and appear before you in connection with
6 this proposed rule on the cooling-off period for door-to-door
7 sales. Of course, I am the attorney in charge of the New York
8 Office and it is obvious from the way this hearing is being
9 conducted in no sense am I committing any portion of the Com-
10 mission or staff to the position which I am taking, which is
11 my own personal view, based, however, on facts accumulated
12 by our office.

13 To begin with, I would like to ask that the record
14 include the prepared statement which I have submitted to you
15 and which I, therefore, will not take your time to read word
16 for word, if that is agreeable to you.

17 MR. DIXON: All right.

18 (Statement follows:)

19

20

21

22

23

24

25

1 PREPARED STATEMENT OF RICHARD A GIVENS
2 ON PROPOSED COOLING-OFF PERIOD FOR DOOR-
3 TO-DOOR SALES 35 Federal Register, p.
 15164, (9/29/70 proposed 16 C.F.R.
 Part 429)

4 My name is Richard A. Givens. I am honored to appear
5 before the Commission in connection with the proposed Trade
6 Regulation Rule requiring a cooling-off period during which
7 consumers may cancel contracts obtained through door-to-door
8 solicitations.

9 As Attorney in Charge of the New York Office of
10 the Commission, I would like to summarize some of the infor-
11 mation accumulated by the New York Office. I would also like
12 to provide the Commission with some of the data derived from
13 the investigations conducted under my supervision during my
14 service as former Chief of the Consumer Fraud Unit of the
15 United States Attorney's Office for the Southern District of
16 New York from 1968 to 1971 to the extent that these may pro-
17 perly be revealed.

18 Apart from the facts, which I will attempt to set
19 forth impartially, the alternatives regarding the Proposed
20 Rule which I will outline are, of course, solely my own
21 responsibility and do not necessarily represent the view of
22 the New York Office as such or anyone else on the staff. In
23 the preparation of my testimony today, I had the assistance
24 of Staff Attorneys Myron Shaprio and Daniel O'Mullan.

25 The facts which I will outline suggest that door-

1 to-door sales, and more specifically door-to-door credit sales,
2 pose particular dangers of deception for the following
3 reasons:

4 (1) The Consumer cannot end the discussion by
5 leaving. On the contrary, if the salesman chooses to con-
6 tinue the conversation, the customer must somehow get the
7 salesman to leave or agree to the transaction;

8 (2) The sales is not subject to supervision to
9 the extent that is usual in stores, and, if the sales are
10 on a commission basis, is more likely to make extravagant
11 representations which he, himself, can later deny or which
12 his employer may later dismiss as unauthorized.

13 (3) The customer is vulnerable to the assertion
14 that since the salesman has taken the trouble to come, the
15 transaction should be completed without further deliberation
16 or consultation by the buyer; to buttress this the salesman
17 can plausibly say that he cannot give a promised "discount"
18 if he has to come back, or indeed, cannot come back at all.

19 Patterns of practices Found

20 Cases investigated by the New York Office, includ-
21 ing those which have been resolved or decided and those
22 pending in various stages, have shown a widespread pattern
23 deception other unfair practices in commerce in credit sales
24 obtained through home solicitation. While many door-to-door
25 salesmen are entirely honest, the inherent characteristics

1 of door-to-door solicitation for credit transactions lead
2 to abuses which appear sufficiently substantial to justify
3 strong remedial action.

4 These cases involve a wide variety of goods and
5 services including encyclopedias, books, magazines, swimming
6 pools, sewing machines, vacuum cleaners, aluminum siding,
7 storm and screen windows and other home improvements. Con-
8 sumers are frequently enticed by radio and newspaper adver-
9 tising offering merchandise and services at purported bargain
10 prices, which are used as bait to obtain an invitation for
11 a salesman to come to the consumer's home. Upon gaining
12 access, the salesman disparages the merchandise or service
13 offered and attempts to switch the customer to much higher-
14 priced merchandise or services. Customers are often induced
15 to sign long term credit contracts for the purchase of the
16 items or services involved without adequate realization of
17 the financial burden involved.

18 In other instances investigated by the New York
19 Office, door-to-door solicitors of such items as encyclopedias,
20 magazines, swimming pools, storm and screen windows, home
21 food and freezers and other items have frequently deceived
22 consumers into believing that they have been specially select-
23 ed to receive the offer and that either a survey, quiz, con-
24 test or advertising campaign is being conducted in connection
25 with which merchandise is either being offered free or at

1 special rates when this is not the fact.

2 In the case of P. F. Collier & Son Corporation,
3 v. F. T. C. 427 2d 261 (6th Cir., 1970) cert. den. November
4 23, 1970, respondents were charged with causing their sales-
5 men to falsely identify themselves to consumers as representa-
6 tives of respondent's advertising department. The salesmen
7 told consumers that they were conducting a survey or partici-
8 pating in a brand identification program. The customers were
9 told that as part of an advertising program the company was
10 prepared to place a limited number of sets of encyclopedias
11 with qualified couples. The salesman explained that the pur-
12 pose of his visit was to determine if the couple was qualified.
13 Having gained entry on this basis, the salesman would inform
14 the couple that in order to qualify they must write a letter
15 recommending the encyclopedias, which was purportedly to be
16 used in a local advertising campaign. A second condition of
17 the placement was to indicate good faith by agreeing to
18 purchase the yearbook for ten years. The salesman thereby
19 induced the customer to sign an installment contract for
20 approximately \$250.

21 The Commission charged that, in fact, the offer was
22 in no way limited to selected couples; that the encyclopedia
23 was not free; that the representatives were in no way con-
24 nected with any advertising department. The Commission's Order
25 in this matter has become effective on November 23, 1970, when

1 the U.S. Supreme Court denied respondent's petition for
2 certiorari.

3 A recent series of cases investigated by the New
4 York Office involving the magazine subscription industry un-
5 covered evidence of consumers who signed contracts without
6 realizing the full extent of their commitments. All of the
7 publishers involved resorted to high pressure door-to-door
8 solicitation in the selling of their magazines. Smooth-talking
9 salesmen deceived consumers into thinking that they were being
10 offered fabulous bargains. It was only after salesmen had
11 left and the consumers had the opportunity to read over their
12 contracts more carefully that they began to realize the commit-
13 ments they had made. Contracts that had been sold on the
14 basis of a few cents a week turned out to have obligations in
15 excess of \$150.

16 In other recent investigations conducted by the New
17 York Office involving door-to-door solicitation, bait and
18 switch tactics were used to sell swimming pools. Leads were
19 obtained through local newspaper advertising that emphasized a
20 response would not incur an obligation. Each response was
21 followed up by a visit from respondent's salesmen.

22 In every instance the swimming pool advertised was
23 disparaged and unavailable for sale. The prospective customer
24 was switched to a considerably more expensive model that gen-
25 erally cost three to four times as much as the advertised

1 model. In no instance was a consumer found who was able to
2 resist buying a considerably more expensive pool than adver-
3 tised. Invariably the salesmen's appointments were made at
4 night or on weekends when the entire family was likely to be
5 at home. Although the pitches varied, the ultimate goal was
6 the same, create enthusiasm with the children and wife in order
7 to increase the pressure on the father and husband.

8 In every instance second mortgages were signed and
9 in most instances all credit papers were signed in blank.
10 Consumers were almost always unaware of the financial obliga-
11 tion incurred. The great majority could not afford the prin-
12 cipal amount, let alone the substantial charges for financing.
13 Without exception, the credit documents were immediately sold
14 to a third party finance corporation and any defense against
15 the pool company thereby jeopardized.

16 The techniques used by the salesmen included re-
17 presentations that the pool was being offered at a special
18 price and required the customer to use it as a demonstrator,
19 the home owner's location was so advantageous from a traffic
20 standpoint that the pool would be put in at cost or slightly
21 above, etc.

22 In yet another case investigated by the New York
23 Office involving door-to-door solicitation of storm windows
24 where bait and switch tactics were used, respondent's sales-
25 men concentrated first on efforts to sell the advertised

1 window and obtained a deposit and signed contract. Then
2 followed the campaign of subtle disparagement designed to
3 culminate in the customer switching from the cheap window
4 (\$7.50 including installation), to one several times as expen-
5 sive (\$28.00 to \$46.00). Attacks on the cheap window were as
6 follows: "It isn't suitable for you"; It has a very poor grade
7 of aluminum"; "It requires cleaning with steel wool every few
8 weeks"; "You'll have to pay expensive carpentry charges";
9 "There's a glass shortage which will cause a long delay in
10 delivery -- if you get the more expensive ones, you'll get
11 immediate delivery". Apex Window Co., Inc. Consent Order No.
12 6788.

13 Facts In Recent Criminal Prosecutions

14 In mail fraud cases prosecuted by the United States
15 Attorney's Office the same pattern has been found.

16 For example, in United States v. Armantrout, 411 F.
17 2d 60 (2d Cir. 1969) a conviction and prison sentence were
18 affirmed where rugs priced at \$1000 and up were sold to cus-
19 tomers by home solicitation based on false representations that
20 the customers could obtain the rugs at no cost by referring
21 other customers to the firm. This "chain referral scheme",
22 called by a defense witness a "bubble", depended upon home visits
23 by the defendant's salesmen, who painted a rosy picture of the
24 money-saving opportunities available to the customers. The
25 obligations signed by the customers were immediately sold to a

1 bank which took the position that the customer was liable
2 regardless of subsequent events. It is estimated that consumers
3 were defrauded of \$500,000 in this single local scheme alone.

4 Similar facts were involved in United States v.
5 Sterngass, Dkt. No. 32704 (2d Cir. 12/18/68) where a conviction
6 and prison sentence were unanimously affirmed from the bench
7 without opinion. The items sold included color television sets,
8 central vacuum systems, and charcoal broilers which would
9 supposedly help to prevent cancer.

10 In some instances in these prosecutions the sales-
11 men remained in the consumer's homes until after midnight where
12 necessary to make a sale. The appointments for the salesmen
13 were made for them by prior customers, who had been told to say
14 there were obtaining the products at no cost.

15 In United States v. Peter Farland and Meyer Brody,
16 70 Criminal 322 (S.D.N.Y.) which was an offshoot of the
17 Commission's Holland Furnace Company case (Dkt. No. 6203), two
18 defendants were convicted of mail fraud and sentenced to terms
19 of imprisonment on January 13, 1971, where door-to-door furnace
20 salesmen falsely told homeowners their existing furnaces were
21 dangerous and might explode. Of about 150 homeowners inter-
22 viewed by Postal Inspectors, all but 5 had been told their old
23 furnaces were hazardous. The salesmen gained entrance to the
24 prospect's home by pretending to offer cleaning services or to
25 be following up on alleged Holland Furnace Company warranties.

1 None were told the true purpose of the visits - to sell new
2 furnaces at \$1400 and up, and other items such as a humidifier
3 for \$900. The contracts contained a purported cooling-off
4 clause, but defendants dismantled the victim's old furnaces
5 before the period expired and refused to honor their own clause.

6 Numerous other criminal investigations have disclosed
7 like patterns. In United States v. Albert Monash, (S.D.N.Y.)
8 in which an indictment was filed on January 14, 1971, (see
9 N.Y. Times, 1/15/71, p. 85) the Grand Jury charged defendant
10 with "bait and switch" sales of furniture and sewing machines.

11 Complaints regarding sales of future consumer
12 services, such as correspondence school lessons, through mis-
13 leading representations, have been particularly serious. The
14 Honorable Whitney North Seymour, Jr., United States Attorney
15 for the Southern District of New York, testified in December,
16 1970, in connection with proposed rulemaking by the Commission
17 respecting home study and correspondence schools. He described
18 widespread dissatisfaction by students who signed up during
19 home solicitations, but later sought unsuccessfully to withdraw
20 from a course.

21 Discussion of Provisions of Proposed Rule

22 The requirement of a cooling-off period during which
23 the consumer is permitted to reassess the decision to enter a
24 contract has been tried with seeming success in several States.
25 The earliest cooling-off provisions were adopted in Pennsylvania

1 (Pa. Stat. Ann. tit. 73, § 500-202(c)(4)) and Michigan (Mich.
2 Stat. Ann. §§ 19.417(102)(j), (k)) but these applied only to
3 "home improvement installment contracts". Massachusetts, in
4 1966, enacted the first generalized right to cancel provision
5 (Mass. Ann. Laws ch. 255D, § 14 A(2) (as amended 1969)) as
6 part of a broad Retail Installment sales act. Connecticut's
7 Home Solicitation Sales Act of 1967 (Conn. Gen. Stat. §§ 42-134
8 to 42-143) and New Jersey's Door to Door Retail Installment
9 Sales Act of 1968 (N.J.S.A. 17: 16c-61.1 et seq) also pro-
10 vided the consumer in those states with a cooling-off period
11 in the retail installment contract situation. Effective
12 September 1, 1970, New York's Home Solicitation Sales Act
13 (Pers. Prop. Law, § 425 et seq.) required the cooling-off
14 period in home solicitation sales payable in four or more in-
15 stallments. These state provisions and others like them,
16 indicate the reasonableness of Federal action, but does
17 not obviate the need for it. This is true both because some
18 state laws do not go far enough to afford protection from the
19 kinds of fraud described here, and because state and local
20 enforcement is often inadequate, especially as to interstate
21 transactions and nationwide industries.

22 1. Abuses are Concentrated in Credit Sales

23 The unfair practices described above have been con-
24 centrated exclusively in credit transactions obtained by
25 solicitors. Cash sales by home solicitors, whether by Girl

1 Scouts canvassing with cookies, or by such firms as Avon which
2 do not use credit contracts or seek to enforce collection from
3 customers, have not generated abuses of the type outlined here.

4 If the Commission were to restrict the application
5 of the proposed Trade Regulation Rule to credit sales, i.e.,
6 sales in which the consumer assumes a future obligation to the
7 seller or a third party at the instance of the seller, and
8 cash sales of over \$100.00, it would appear that much incon-
9 venience which might be claimed to flow from the Rule as
10 originally proposed could be obviated.

11 2. The Definition of Door-to-Door Sale Should be
12 Expanded to Include Home Solicitation Due to Prior Contact.

13 The facts outlined above suggest the possibility of
14 strengthening the definition of a door-to-door sale to make
15 clear that it includes home solicitations where the salesman
16 has a prior invitation to visit the customer's home as a result
17 of response to advertising. The dangers of door-to-door sales
18 without a cooling-off period are fully present in such in-
19 stances, as is illustrated by the cases I have mentioned
20 handled by the New York Office and the United States Attorney's
21 Office.

22 Indeed, I personally had an experience recently per-
23 tinent to this problem. My wife saw an advertisement in a
24 newspaper for metal roofing for a porch at a fantastically low
25 price. She called the number given and as a result a salesman

1 called at our home. He showed my wife and me a piece of what
2 looked like tin foil. My wife asked, "Is this safe?" and the
3 salesman replied, "We can't guarantee this. It may blow off
4 and hurt someone. You would have to arrange your own insurance."
5 In response to inquiry he offered a "better" type of roofing
6 for seven times the advertised price.

7 The salesman further volunteered that if it was not
8 convenient to pay cash, he could obtain an FHA-insured loan for
9 use, and in fact had a bank loan application and an FHA home
10 improvement loan form in his pocket. When I asked for time to
11 think about it, he told me that the "low special discount price"
12 he had offered for the product was good only that night and
13 not if he had to come back.

14 When I informed him that I was at that time Chief of
15 the Consumer Fraud Unit in the Southern District of New York,
16 he admitted that the company listed on the advertisement was
17 actually a different concern than that which would have been
18 named on the contract. He said this was done in order to in-
19 sulate the firm from complaints.

20 At the time I testified to this episode before the
21 National Commission on Consumer Finance on June 27, 1970, it
22 drew a great laugh from the audience. And indeed the incident
23 was funny, but only because I was well enough informed not to
24 sign the loan application forms the salesman produced. The
25 fact that the appointment had been made by us by telephone in

1 response to a published advertisement rather than by a sales-
2 man merely ringing our doorbell did not preclude the risks of
3 overreaching or eliminate the need for a cooling-off period in
4 such cases.

5 The definition of Door-to-Door Sale in the proposed
6 Rule might accordingly be strengthened by adding after the
7 phrase "in which the seller or his representative personally
8 solicits the sale" language such as "whether or not the
9 solicitation is by prior arrangement or invitation by the
10 buyer or another" expressly confirming the intent of the Rule
11 to reach such cases.

12 3. Notice of Purpose of Visit

13 The facts outlined above may also indicate the
14 importance of subsection (g) of the proposed Rule, which re-
15 quires that the seller "clearly, affirmatively and expressly
16 reveal" at the outset "the purpose of the contact," including
17 a statement of "the goods or services which the seller has to
18 offer". In United States v. Peter Richard Farland and Meyer
19 Brody, mentioned above, in which prison sentences were imposed
20 on January 13, 1971, in the Southern District of New York on
21 two defendants, one aspect of the defendant's method of opera-
22 tion was for the salesmen to gain entry by claiming to be
23 merely selling cleaning services for furnaces or following up
24 on alleged old Holland Furnace warranties, when in fact they
25 were seeking to sell new furnaces for \$1400 and above. The

1 initial deception as to the purpose of the visit was critical
2 to the success of the salesman.

3 The same has been true in Commission cases, such as
4 the P. F. Collier & Son case mentioned above in which the sales-
5 man stated that he was a representative of respondent's adver-
6 tising department conducting a survey and brand identification
7 program and advising the customer that he was prepared to "place"
8 a set of encyclopedia free with "qualified couples" for adver-
9 tising purposes. In fact, the real purpose of the so-called
10 advertising representative was to induce the customers to sign
11 a retail installment contract obligating them to make payments
12 in excess of \$250.

13 The New York Office has had similar cases in the
14 magazine subscription industry in which the salesman's appoint-
15 ment was prearranged by a telephone canvasser identifying her-
16 self as a representative of the local welcome wagon committee
17 offering "free" magazines. The customer was initially told
18 that the only requirement was for the customer to pay postage
19 and handling. The salesman would get the customer to sign an
20 installment contract requiring payments totaling more than
21 \$150.

22 Oral Cancellation

23 The "Notice to Buyer" required by part (a) of the
24 proposed Rule suggests three methods of exercising the right
25 to cancel. Human nature being what it is, it is my opinion that

1 a significant number of people will use the third and easiest
2 method of cancellation, i.e., that the buyer "orally inform"
3 the seller, in person or by telephone" of his intention to
4 cancel. Such an oral cancellation produces no permanent
5 record. The staff of the New York Office has, on a number of
6 occasions, in its efforts to enforce the rescission provisions
7 of the Truth-in-Lending Act, encountered sellers who have
8 attempted to deprive the buyer of the benefit of his right to
9 rescind. It is to be expected that similar efforts may be
10 made to circumvent this rule. This proposed rule presents a
11 difficulty not encountered in Regulation Z in that it suggests
12 a means of cancellation which leaves neither party with a
13 permanent record. The buyer is left in the position where
14 the seller may simply deny that any oral notice of cancellation
15 was received.

16 The seller should be required to maintain an adequate
17 record of all cancellations received. The proposed Rule should
18 be amended to require these records. The records could take
19 the form of a log or diary of cancellations received. This
20 evidence of compliance with the proposed Rule should be re-
21 quired to be maintained for a period of not less than two years
22 after the date of the execution of the contract in question.
23 These suggestions parallel the recordkeeping requirements of
24 Regulation Z.

1 Regulation Z Rescission, Should Satisfy
2 Where Proposed Rule Would Overlap.

3 The proposed Rule will apply in many situations in
4 which the Rescission provision of Regulation Z now applies.
5 It would seem incongruous to require the seller to comply with
6 both. I, therefore, recommend that the proposed rule include
7 a statement that the compliance with Regulation A's rescission
8 provision operates to satisfy the requirements of the proposed
9 rule.

10 CONCLUSION

11 The facts described here strongly illustrate these
12 dangers of deception in home solicited credit sales. In my
13 opinion the evidence strongly justifies the adoption of a Trade
14 Regulation Rule such as that proposed as to credit sales.

15 Action along the lines proposed has also been
16 recommended by Bar groups. The Committee on Federal Legisla-
17 tion of the New York County Lawyers Association approved safe-
18 guards of this kind in a 1968 report which has separately been
19 made part of the record in this proceeding, and the Chairman
20 of the Committee on Federal Legislation of the New York State
21 Bar Association, Anthony P. Marshall, Esq., has informed me
22 that he has placed on record before the Commission a similar
23 position previously taken by his Committee.

24 The Need for Separate Consideration of
25 Problems of Sales of Future Services.

 In addition, consideration of a separate rulemaking

1 proceeding concerning sales of future consumer services may be
2 justified. The cooling-off period of specified length such as
3 the three day provision now under consideration is most signifi-
4 cant in contracts for the sale of consumer goods. Consumer
5 services are, however, a different matter. The problem is
6 that the cooling-off period expires before the consumer
7 receives the services. Such a period offers only limited pro-
8 tection in this situation. Correspondence school courses,
9 judo lessons, dance lessons, health and physical fitness
10 services are all commonly sold on a home solicitation basis.
11 Numerous complaints have been received concerning abuses in
12 these fields where customers realizing that the services do
13 not live up to representations sought to cancel the contract.
14 Consumers in this situation cannot "inspect" the goods prior to
15 signing the contracts. On these matters a cooling-off period
16 is of little help. Separate consideration might appropriately
17 be given to this problem and to the possibility of permitting
18 cancellation of the future portion of such contracts if the
19 consumer believes this necessary, with his liability limited
20 to the price of the services up to that point on a pro rata
21 basis, plus a reasonable registration fee.

22 (For further information regarding abuses in the
23 area of future services see the facts in United States v.
24 Zovluck, 274 F.S. pp. 385 (S.D.N.Y.) conviction aff'd from the
25 bench, Dkt. No. 32652-58 (2d Cir. 4/7/69) (health service);

1 Friedman v. United States, 347 F. 2d 697 (8th Cir. 1965)
2 (dance lessons); Adams v. United States, 347 F. 2d 665 (8th
3 Cir. 1965) (nurses training course).

4 I want to thank the Commission for the opportunity
5 to present my views on this important issue. I wish to assure
6 the Commission that regardless of the disposition of the Rule
7 under consideration today, the New York Office intends to
8 proceed against deceptive practices in door-to-door sales
9 where and whenever we find them. I have received the assurances
10 of Miss Patricia Hynes, my successor as Chief of the Consumer
11 Fraud Unit in the Office of the United States Attorney for the
12 Southern District of New York, that her unit will consider
13 criminal action in all cases where FTC investigators uncover
14 criminal fraud.

15

16

17

18

19

20

21

22

23

24

25

1 MR. GIVENS: The first point I wish to make is that
2 the experience of the New York Office indicates that a cooling-
3 off period for door-to-door sales is of tremendous importance
4 and we would strongly recommend that the Commission be urged
5 to adopt such a rule. This is true for three main reasons.

6 The first is that the customer cannot end a discus-
7 sion in his home by leaving, that he has to somehow get the
8 door-to-door salesman out. In many of our investigations we
9 have found that a salesman would stay there until even three
10 o'clock in the morning to obtain a sale.

11 The second point is the salesman is not subject to
12 supervision to the same extent that would apply if he were
13 operating a store. It is easier for the company to say that
14 he was not authorized to make some of the representations
15 which might have been given to the customer.

16 The third point is the customer is vulnerable to
17 an assertion by the salesman that the salesman has taken the
18 trouble to come to the customer's home and, therefore, the
19 transaction should be consummated immediately, that the sales-
20 man cannot afford to come back or cannot afford to give the
21 customer the same discount if he has to come back.

22 In my prepared statement I have given a great number
23 of detailed instances where fraud and other abuses have been
24 perpetrated as a result of these disadvantages under which
25 the customer labors in this type of sale.

1 I would agree with my distinguished predecessor on
2 the standard here, Betty Furness, that these situations have
3 occurred most frequently in credit transactions and, therefore
4 it would be my recommendation that the primary thrust of the
5 rules should be limited to credit sales.

6 I would also apply the rules to cash sales in
7 excess of \$100, because if a person is being asked to part
8 with a large sum of money, I would feel that some cooling-off
9 period would be justified. However, it seems to me that the
10 point made by Betty Furness is correct, that a large number of
11 sales made for small amounts in cash should not have to be
12 covered and if they were covered, it would generate a great
13 deal of unnecessary paperwork, which would work to the detri-
14 ment of the realistic implementation of this rule.

15 However, I would go beyond what Miss Furness sug-
16 gested in one respect, which is that in my view it is critical
17 that this rule should encompass a case where the sale is
18 made in a home solicitation that results from a call made by
19 a customer and in my prepared statement I give one illustra-
20 tion that happened to me personally, which I also reported
21 before the National Commission on Consumer Finance about a
22 year ago, in which we had an advertisement for a roof or a
23 porch which was supposed to be for \$200 and the salesman came
24 as a result of a phone call which my wife had made in response
25 to that ad.

1 So this was not a door-to-door sale unsolicited.
2 Yet there was an attempt made, in my view, to defraud us. The
3 salesman said that this material which he showed which looked
4 sort of like tinfoil might not be safe and, in fact, we would
5 need our own insurance because it could fall off and hit
6 somebody. He then told us, as a matter of fact, we could have
7 another one for \$1400, and I said I was not sure we could
8 afford that and the salesman then said, "Well, I happen to
9 have an application for a bank loan in my pocket and, in fact,
10 this is being insured by FHA," at which point I told him at
11 that time I was chief of the Consumer Fraud Unit at the U. S.
12 Attorney's Office and he then indicated he would like to
13 leave his present job and go to work for me to expose the
14 industry.

15 This was not a solicited door-to-door visit, if you
16 like.

17 We also had other instances, including one in the
18 criminal prosecution which I handled for the United States
19 in which many customers called a certain furnace company that
20 they found in the Yellow Pages, as a result of which the sales-
21 man came and told them that their existing furnace was about
22 to blow up and that they were lucky they did make this call
23 and the injury in that case convicted the defendants of falsely
24 making these statements to the customers and the two defen-
25 dants were sentenced to imprisonment.

1 So it would be my position that it would be wrong
2 to limit the rule to cases where the sale is unsolicited;
3 in other words, where the door-to-door salesman comes without
4 a prior call by the customer. In my view, the rule could be
5 strengthened by making that crystal clear, although it would
6 be my interpretation that the existing rule as proposed would
7 cover such cases where the customer calls and the salesman
8 comes.

9 However, this does raise the additional question
10 which Mr. Cabell asked, which Miss Furness commented on before.
11 One way of handling that, which we recommended in the prepared
12 statement, is that home improvement cases covered by Regula-
13 tion Z would not be covered by this rule, which would limit
14 some emergencies such as a heater.

15 Another possibility would be to permit a waiver
16 by the consumer of the cooling-off period. This has been pro-
17 posed in an alternative draft submitted by the Association
18 of American Publishers. I would feel that this might be fair
19 in the case where the product is one where a genuine emergency
20 could exist such as a washing machine perhaps, but I think
21 it should be made crystal clear if any such waiver is per-
22 mitted, that it would be limited to certain products listed
23 in the rule.

24 It would be unfortunate for an encyclopedia to be
25 listed as a product where an emergency could occur or to have

1 a salesman able to obtain a waiver in the cooling-off period
2 on the grounds that the encyclopedia was needed as an emer-
3 gency.

4 By this I don't mean to denigrate the need for
5 encyclopedias, but I think it would be fair to allow a three-
6 day cooling-off period.

7 Finally, I wish to comment on the question of oral
8 cancellation. In my opinion, the question you asked of Betty
9 Furness about the fact that the rule is important to less
10 educated people, bears on this question. The more sophisti-
11 cated person is, the more likely they are to take advantage
12 of a provision for written cancellation and if the rule is
13 to be fully meaningful in the inner cities, it must, in my
14 view, allow for oral cancellation. In that respect, it per-
15 haps might be fair to require the seller to maintain records
16 of such cancellation.

17 Obviously, the records could be falsified, but, on
18 the other hand, the pattern of fraud, falsification of such
19 records could be uncovered in the subsequent investigation.

20 As one further addendum, I would like to indicate
21 that the suggestion of the publishers association that the
22 Federal Trade Commission rules should preempt all local laws,
23 in my view, would be premature at this point, certainly with-
24 out having some experience under the rule or some indication
25 by Congress as to whether they would intend to preempt such

1 local laws.

2 Thank you.

3 MR. DIXON: Thank you, Mr. Givens.

4 Mr. Cabell.

5 MR. CABELL: Mr. Givens, I have a couple of questions.

6 You said of the door-to-door salesman, the hardest thing, to
7 get the door open, is one of the aims of the salesman. After
8 that he has to get into the consumer's home. The rule pro-
9 vides in its present form that the seller at the time of ini-
10 tial contact has to disclose the purpose of the visit and
11 identify himself and could.

12 The alternative provision, I believe, you referred
13 to a minute ago merely prohibits the use of misrepresentation
14 to gain entrance.

15 Now, would you care to comment on the two?

16 MR. GIVENS: Yes. In my opinion the proposed rule
17 as published, which is now before the Commission, would be
18 much preferable to the alternative rule. In the criminal
19 case which I mentioned before, the evidence indicated that
20 the salesman would attempt to sell new furnaces to people
21 by arriving and indicating that he was there to clean the
22 furnace and then after obtaining entrance to the home in that
23 manner, many of the furnaces were dismantled and the customer
24 was told, "Well, we can't put this back together. It is just
25 lucky we were here, because this would have blown up any

1 minute if we had not arrived just in time."

2 Also, in the same criminal prosecution, there was
3 evidence that the solicitors would arrive saying that they
4 were there to follow up on old warranties and, in fact, there
5 were no such warranties according to the instances that were
6 in evidence in that criminal case.

7 Similarly, numerous complaints have been received by
8 the New York Office of the Commission where magazine salesmen
9 would indicate they were arriving to conduct a survey or some-
10 thing of that sort. A prohibition of misrepresentation would
11 add nothing to the existing law, which already prohibits
12 fraud or misrepresentation.

13 The problem, as I see it, is to develop a structure
14 which will effectively deal with this evil and obviously that
15 means going beyond what has already been done. Therefore,
16 I would very strongly urge that the proposed rule, which I
17 believe is subdivision (g), as now published in the Federal
18 Register, could be adopted.

19 MR. CABELL: Th-re has also been recommended in a
20 number of comments submitted that if the consumer is dealing
21 with an established retail business and initiates a contact,
22 that the resulting sale should be excluded from the provisions
23 of the cooling-off rule.

24 Now I don't know whether your furnace company was
25 an established local business or not, but what I have in mind

1 is your department stores and other retail sellers who are
2 really in a retail business at fixed locations and make most
3 of their sales from this location.

4 The sale in the home by these stores is somewhat
5 incidental, although not insignificant.

6 MR. GIVENS: It might be possible to exempt a situa-
7 tion where the customer has called a retail store, which main-
8 tains a fixed location, and the store then sends someone to,
9 let us say, have your living room fitted for a rug, if that
10 is the type of situation you have in mind. I think it would
11 be important that this should not apply, however to adver-
12 tising by retail stores which encourage the customer to call
13 a telephone number or to write in, in response to which a
14 salesman will visit, because this will tend to encourage an
15 alliance between those operators who are now in the less
16 ethical door-to-door field with retail firms.

17 We know of one instance in New York, in which one
18 company, the name of which I cannot disclose because it is
19 pending, but it has been the subject of numerous complaints,
20 is not purportedly about to operate out of a large retail
21 establishment.

22 Now, if that merger, if you want to call it that,
23 were consummated, and if the rule did not make it clear that
24 advertising for door-to-door salesmen to come to see you, such
25 as in the case that happened to me that I referred to, was

1 covered by the rule, you would be encouraging the subterfuge.

2 So my answer would be that a distinction such as
3 you indicated could be drawn, but it would have to be very
4 carefully handled.

5 MR. CABELL: Do you think the rule, in its refer-
6 ence to initial contact, and I am talking about this same
7 provision, is specific enough? I am concerned about the situa-
8 tion in which the initial contact may be made in response to
9 a written advertisement rather than at the time the seller
10 appears on the doorstep?

11 MR. GIVENS: I think it would be important to the
12 rule to be made as clear as possible, first, that any sale
13 which is consummated in the location other than the place of
14 business of the seller is covered regardless of whether the
15 initial contact is made by advertisement, telephone, or by
16 whatever means.

17 Secondly, that the oral advices that have to be
18 given would have to be given when the first oral contact is
19 had with the customer. In other words, it should not be
20 enough if the advertisement says, "Write in, if you wish to
21 learn more about a course for art instruction" and then later
22 a salesman comes and says, "I am conducting a survey on prob-
23 lems of home art" and then it would be contended that since
24 that salesman had come in response to an inquiry that emanated
25 from the advertisement, that the advertisement has disclosed

1 the purpose of the visit and such a contention would certainly
2 go against the purpose of the rule and the rule may already
3 not permit such a thing, but it could be made even more clear.

4 MR. DIXON: Thank you, Mr. Givens.

5 MR. GIVENS: Thank you.

6 MR. DIXON: Our next speaker is Mr. David Yoho,
7 President of Surfa-Shield Institute.

8 DIRECT TESTIMONY OF DAVID YOHO, PRESIDENT,
9 SURFA-SHIELD INSTITUTE

10 MR. YOHO: I want to thank you gentlemen for the
11 opportunity of appearing here today and putting my thoughts
12 and viewpoints before this Commission.

13 My name is David Yoho. I am the President of the
14 Surfa-Shield Corporation, a firm having multi-faceted opera-
15 tions including a direct sales organization, which sells
16 building materials in 16 states through 25 outlets, some of
17 which are company-owned and others of which are franchised.

18 Our sales force sells these materials to residen-
19 tial property owners as well as owners of commercial indus-
20 trial properties and builders of all styles.

21 I am also Director of the Surfa-Shield Institute,
22 an organization which develops trading practices in the market-
23 ing of building materials and runs a school which trains
24 salesmen and management within the building material industry
25 and at the risk of making this sound like a commercial, I am

1 also the President of a large sales consultant firm, which
2 develops sales training programs for approximately 30 major
3 corporations in various industries.

4 I have been selling and training salesmen for most
5 of my adult life and in '59 I became interested in the spirit
6 of consumerism and as such made numerous public appearances
7 and speeches to trade groups, exhorting them to police their
8 industry, improve marketing techniques, and change some of
9 their sales habits so as to obviate various forms of consumer
10 legislation which I and certain colleagues of mine determine
11 to be proposed and passed if industry did not, in fact, take
12 the initiative.

13 By way of further qualification, I have in the
14 ensuing years appeared on numerous radio and television shows
15 throughout the United States, giving advice to consumers
16 regarding impure selling, advertising and marketing practices,
17 as well as serving on various state commissions created for
18 the purpose of advising the respective legislators in the
19 area of consumer legislation.

20 At my own company's expense I issued numerous letters
21 advising on good buying habits, on how to avoid fraud, and in
22 the years 1968 to 1970 our public relations department devoted
23 80 percent of its efforts toward informing the public on the
24 "how" of good buying habits.

25 I am submitting herewith for the Commission's perusal

1 two such articles, one from the Chicago Tribune and one from
2 the New York Times, as well as the copies of the speech
3 delivered in New York City with Mrs. Virginia Knauer, entitled
4 "Marketer's Role in Consumer Protection."

XXXX 5 (Yoho Exhibits 1, 2 and 3 were made a part of the
6 record.)

7 So much for the commercial.

8 Having had a lifetime of sales education as a
9 profession, I am well aware of the impure practices often
10 developed as a means to develop merchandise via a door-to-door
11 sales technique. I have been sorely troubled at times to
12 admit I am part of a profession exhibiting such a lack of
13 creativity that while they alone have helped build the Ameri-
14 can economy to the highest standard of excellence in the
15 world while, on the other hand, they have so tarnished the
16 image of the American salesmen.

17 I am well aware of the frauds which are perpetrated
18 many times in the door-to-door transactions, but I would like
19 to offer at sometime my service to sit with this Commission
20 to inform and advise on some of the habits and practices
21 which have not been brought to your attention and may affect
22 the outcome of the promulgation of this type of regulation,
23 and at this point I would like to separate the words "fraud" and
24 "misunderstanding."

25 Granted that many of the acts are simply fraud, but

1 based on my years of experience in evaluation of complaints
2 that I have seen and when we take into consideration all of
3 the items sold door-to-door and the fact that, depending on
4 whose statistics you read and believe, there are between 5.2
5 and 5 million door-to-door salesmen, still the dishonesty is
6 probably less than 10 percent.

7 I would hasten to add the stupidity factor is proba-
8 bly around 70 percent. When I use this statistic, particularly
9 on a radio or television show, it exposes all on the part of
10 the consumer who says, "Is he calling us stupid?" And bad
11 breeding on the part of the seller who says, "Is he calling us
12 stupid" and when I allude to the stupidity factor in the latter
13 category, I refer to such items as buying and selling, not
14 communicating on the same wavelength as to quality, price, or
15 things of that ilk when the object is tangible, such as cos-
16 metics or jewelry.

17 I am referring to the in-training abilities and
18 knowledge, when it comes to sales and service types of insur-
19 ance and certainly I am referring to the poor pricing and even
20 poorer preparation of the standards and specifications in the
21 sales of home improvements, all of which are lumped together
22 in the stupidity factor.

23 Now, I do not misunderstand the stupidity factor
24 of the industry other than fraud, and, for the most part our
25 marketing techniques could have cleared up such an atmosphere

1 like this ten years ago.

2 I am prepared to explain with statistical references
3 and to prove, with all industries, the stupidity factor does
4 not improve a product when sold at other than the door-to-door
5 route per se, at the seller's place of business.

6 From the morning testimony, Mr. Cabell, you asked
7 one gentleman to state the purpose of his salesmen when they
8 make a call and then you asked the question "How does your
9 company get the door open?" And then you questioned on ambi-
10 guity of the rule on disclosure, "Does it take place when the
11 ad is placed or does the disclosure take place when the sales-
12 man and buyer meet for the first time?"

13 It is my feeling in this area the rule should be the
14 same, determining the product and not the manner in which the
15 product is sold. As an example, for one of our clients we
16 developed marketing techniques for air conditioning. These
17 were central air conditioning units, and in some cases they
18 were sold by an ad in the paper which exhorts someone to
19 answer the ad and then a representative comes to their home.

20 In the classification of a large retail organization,
21 whose name would be well known to you, they come into the place
22 of business, an estimator goes to their home to determine the
23 heat loss or heat gain factor, and then the sale is made. When
24 the original contact is made, whether by advertisement or by
25 a one-on-one buyer-seller communication, the sale of the product

1 does not change much, the complaint does not change much, and
2 particularly in the area of the stupidity factor. I question
3 whether, by this form of legislation that you are proposing,
4 that you or any other Government body, in fact, will improve
5 the relationship between buyer and seller.

6 As to Miss Furness' recent comment on credit, as
7 early as ten years ago I spoke before a program which Attorney
8 General Lefkowitz participated in, and it was pointed out in
9 New York, and I think it might be helpful to parallel this
10 situation for other parts of the country, credit was more than
11 a moderate influencing tactic in some door-to-door fraud.

12 I do agree that a certain element of the consumer
13 society requires protection and they do need protection. That
14 is the illiterate, the poor and the emotionally unstable, and
15 they need protection from the outright fraudulent character
16 who presents himself as a door-to-door salesman. But I con-
17 tend that the latter is in the minority, and so is the former
18 and if, in fact, it is the intent of this Commission to improve
19 the plight of the consumer, and I do not say it facetitiously,
20 do it on a fair and equitable basis by judging it on its very
21 merits and not on the fact of whether it is in a store or place
22 of business.

23 We can state there is this same type of practice,
24 particularly in major cities, when a product is sold at the
25 place of business and, in fact, as I mentioned earlier, one

1 of the largest American retailers uses a practice which would be
2 considered in most advertising techniques as bait and switch,
3 but the sale is made at the seller's place of business and you
4 have to take into consideration the automobile industry which,
5 in many parts of the country, leads the list of the sales and
6 purchases made at the seller's place of business.

7 I will reiterate I am in favor of consumer protec-
8 tion. I think it is good for business. I am not in favor of
9 class legislation, which I contend this action to be, and, in
10 fact, at the risk of slapping the hand that was referred to
11 me, I would like this Commission to go on record citing their
12 rights, either under organic law of the United States or
13 under the statutes, which created the Federal Trade Commission,
14 which permits the Commission to legislate rather than regulate.

15 For while I agree with the premise of protection of
16 those who cannot protect themselves, I am concerned when a
17 regulatory body creates legislation when my fundamental educa-
18 tion had taught me this was the province of our elected law-
19 makers.

20 I realize it is the avowed intent of this Commission
21 to create an atmosphere in which the consumer can seek and buy
22 services with an aura of confidence, and I commend that
23 activity in our Government as well as in those industries who
24 have returned to that simple basic marketing concept that "The
25 customer is right."

1 I am not an attorney or owner of an industrial com-
2 plex, but I am one of perhaps thousands of men who emanated
3 from poor beginnings in our society and who have been able to
4 raise their standard of living, my standard of living and
5 improve my social structure because, as a young man in college,
6 I was introduced into door-to-door selling. It is a part of
7 my life, of which I am extremely proud, and I find no shame in
8 saying this is how I got my start and I am still active in a
9 business which sometimes utilizes this as a marketing means.

10 There are many fine companies in the direct sales
11 ledger and the Direct Sales Selling Association, which has a
12 growing membership of direct sales organizations, has done much
13 over the years to ameliorate impure selling practices.

14 When young Mr. Levin got up to speak this morning,
15 he referred to the NADSC or National Association of Direct
16 Selling Companies, and if I sound somewhat facetitious, that
17 has not been their name for two years, for all of his missurvey
18 of the industry and its problems, but they have been a direct
19 selling organization, and he spoke of the fact that they have
20 150 member firms, of which I am not a member although I am
21 familiar with their practices and premises, and I have examined
22 the constitutionality, and what they have done, and this is a
23 petition of purportedly a percentage of those direct selling
24 legions which belong to that selling organization and I believe
25 he exhibits typical naivety when he refers to what is legiti-
mate practice.

1 I am sure somewhere he will question what is a
2 legitimate fee in representation from counsel and what does
3 "legitimate business" mean, whether he sits in a store and
4 exhibits to people who come for attendance or in visiting
5 their homes. But does this type of legislation you now propose
6 not create a stigma against the style of selling that a man or
7 woman has used as a means for improving their lot in life?

8 I ask the Commission to examine well the kind of
9 people who are in direct selling and if it is all of these kinds
10 of people that we need protection against. I could comment
11 on Miss Furness, and without naming the company, to say that
12 many direct sales are made within the budgetary limit you
13 espouse and the people are invited back again and again and
14 again year after year. They may pay for the service, but that
15 is part of creativity.

16 The fact is this is class legislation and if, in
17 fact, the rescission of a contract represents a better way to do
18 business for the consumer, then I believe the same rule should
19 apply for every product and every service, whether it is sold
20 at the seller's place of business or at the buyer's residence.

21 Lastly, I would like to share something with this
22 Commission. When I was a young man, my father, who had little
23 education and considerably less in the way of material things,
24 gave me a philosophy which helped me through the years. He
25 said, "Do not give your word lightly to a man, for when you

1 give it, make it important, and know if you later break your
2 word, you will lost the trust and confidence of your fellow-
3 man."

4 When I later studied business law in college, I was
5 given to understand the method of contractual relationships
6 used in this country and the fundamentals laid out by our
7 Founding Fathers were created so the man could give his word
8 in a form that removed all doubt. In essence, contracts,
9 specifications and forms of payment were a means of conveying
10 in a documented form whatever each party was expected to do to
11 "keep their word."

12 Over the years the form of contractual relationships
13 has been refined, but not necessarily improved by the legal
14 profession of our country and law-making body of our country
15 in the form of the Uniform Commercial Code. Because of the
16 type of law you are now proposing, the contract, which was
17 once considered a man's word, his bond and seal, is a mere
18 illusion. It is no longer binding and it means every little,
19 and our Government through its various agencies not only sanc-
20 tions but encourages unilateral breach of covenant and with that
21 gives the right of protection and enforcement to one party of
22 the transaction and sometimes criminal sanction to the other
23 party.

24 And as a man who has trained over 50,000 salesmen
25 and to do so has had to make studies of both sales psychology

1 and buying habits of the American consuming public, I say this
2 kind of law may be made workable by a sizable staff, but in the
3 end will be unable to protect the consumer and, in fact, leave
4 him in greater jeopardy than the 10 percent of our society that
5 is out to take him.

6 Finally, in my humble belief, the signing of a con-
7 tract is still the giving of my word. I wonder how much we
8 change the societal structure of our country when we tell a
9 man, "Give your word, but it does not really mean anything
10 because you can change it later if you want to."

11 I want to once again thank the Commission for hearing
12 my appeal and I want you to excuse me if at times I have
13 appeared to be emotional.

14 MR. DIXON: Thank you, Mr. Yoho.

15 Mr. Cabell.

16 MR. CABELL: In your concluding remarks, Mr. Yoho,
17 you indicated this rule might leave the consumer in a worse
18 position or in greater jeopardy than he was before it was
19 adopted.

20 Now, could you tell us how?

21 MR. YOHO: Yes, sir, although within the limited time
22 allowed here today I will just cite an instance or two.

23 I would appreciate at any time to come down and sit
24 with the Commission and show you how laws like this are obvi-
25 ated if the segment of sales society which would perpetrate this

1 act finds a way to circumvent or simply move into another
2 field.

3 As an example, when you created language in Regula-
4 tion Z, a number of people simply moved out of the home improve-
5 ment business because there would be a lien that could be
6 adopted at a later moment and, therefore made the transaction
7 subject to Regulation Z and moved into the carpeting field.

8 A number of people in the United States, who have
9 stayed in the business and who have fraudulent inclinations,
10 used the format of Regulation Z to show people that they are,
11 in fact, being very honest when they tell the people, "You can
12 shop around for financing and cancel that part of the trans-
13 action."

14 Now that is one method. The second method is by
15 means of various forms of advertising which are used by the
16 same kind of people who once were that element in the door-to-
17 door society and who have now moved into that sophisticated
18 marketing concept where they have become concessionnaires.

19 Mr. Givens spoke before of the large well-established
20 department stores and it would give the Commission some educa-
21 tion, I am sure, to know that the highest percent of department
22 stores utilizing a home improvement department do so on a con-
23 cession basis where they have little or no control, either of
24 the sales methodology or the pricing and markup or product
25 control exerted at the buyer and seller level. And many of

1 these people have moved into that media.

2 I use these as two. I have perhaps 400 more examples
3 that I would be happy to share with you at any time. As I
4 have trained salesmen over the years, as we appear on televi-
5 sion, we warn consumers about chicanerous practices.

6 MR. CABELL: Well, I can't understand a provision
7 which gives a consumer a unilateral right to cancel a contract
8 is going to hurt him. I simply can't see this.

9 MR. YOHO. What I said in my statement is it may
10 well lay him open for easier taking by that segment of our
11 sales society because what you have construed here is a regula-
12 tion which affects only the transaction which is made at the
13 buyer's residence and I contend that the same kind of trans-
14 action can be made at the seller's place of business quite
15 easily.

16 All I am saying is if you are going to promulgate this
17 regulation and make it the rule of the land, do it on an
18 equitable basis fair to everyone. If the encyclopedia is sold
19 door-to-door, it makes no difference when it is sold in the
20 store and the practice will remain the same. I don't believe
21 in this particular kind of legislation, but I believe in con-
22 sumer protection. But I believe if you do it, you should do
23 it on a fair and equitable basis and take the individual product
24 and assess it on a broad overall scale.

25 If they can cancel one type of transaction, they

1 should be able to cancel the other.

2 MR. CABELL: In other words, you think this rule
3 will jeopardize the consumer because the seller will then force
4 him into the retail establishment and make the sale there?

5 MR. YOHO: No, it does not force him into a retail
6 establishment. Chicanery is chicanery. The man who uses those
7 practices at door-to-door will simply revert to a form where
8 he gets the buyer to come to his place of business. One of
9 the forms of that in New York City is a sale of furniture
10 where a form of switching advertising is used and it is very
11 seldome sold at the door.

12 At one time it was when the salemen were rampant,
13 but in our society that has changed and the people are now
14 exhorted to come to the furniture store where they are often
15 switched and sold inferior merchandise at inflated prices and
16 this rule does not cover that.

17 MR. CABELL: That is all.

18 MR. DIXON: Mr. Yoho, I gather you don't recognize
19 the existence of any special situation here in the door-to-door
20 situation where we are not talking about specific misrepre-
21 sentation, whether bait, deceptive pricing or anything else,
22 but a situation which exists where the seller actually comes
23 unusually uninvited to the buyer's door to make a sale, as
24 being considerably different in substance from the situation
25 which exists when the buyer is interested enough to go to the

1 seller and seek the seller out?

2 MR. YOHO: In the marketing of certain sales items,
3 to give but one example representative of one of our clients,
4 central air conditioning exists in less than 8 percent of the
5 already built homes of this country. As a means for marketing
6 central air conditioning, we construct a method where we will
7 come out and survey a home free of charge.

8 The avowed intent of that survey is to sell one out
9 of every seven people we survey on the idea of central air con-
10 ditioning and out of one of seven people we can make a presen-
11 tation to one out of three, and out of the one out of three we
12 make the presentation to we sell one out of four, so we may
13 survey approximately 40 or 50 homes to get one sale, but it is
14 a marketing technique of that nature which is required because
15 the person living in an already-built home is under the
16 impression that central air conditioning might cost \$3,000 or
17 \$4,000 when, in fact, if he has a certain type of heating unit,
18 that central air conditioning might be installed for under
19 \$800. That is the easy way to get the message to the people.

20 But, as I read your ad and I interpret the intention
21 of the Commission, that would be covered under the door-to-door
22 sales act.

23 MR. DIXON: I think it would be, but do you think
24 there is going to be such an impediment to this transaction to
25 give that buyer in his home three days to think this over?

1 MR. YOHO: No, not if you also give the same impedi-
2 ment to Sears and Montgomery Ward and J. C. Penney and E. J.
3 Korvette where they come into the store.

4 MR. DIXON: We go back to my original question. Are
5 the two situations altogether different? Isn't the buyer inter-
6 ested enough to go and inquire about the item?

7 MR. YOHO: No, I don't think so. I think special
8 selling creates markets that this country would not know or
9 recognize or would not contribute to the overall payment of the
10 tax burden if the direct sales door-to-door were not here. I
11 think we probably utilize the door-to-door method for less
12 than 3 percent in our business for a total volume of less than
13 \$12 million, but I do endorse for the door-to-door sales people
14 I think they are unreasonably put upon.

15 One of the statements read this morning exhorted the
16 Commission to take door-to-door selling away from the American
17 economy and we would all be better off. You might as well
18 include religion and television and the American flag, because
19 they are as much a part of it as that.

20 MR. DIXON: Don't you think that such a situation
21 could relate to the proposal of a rule such as this is not
22 really so much an accusation of the door-to-door method as it
23 is a simple recognition of the situation I am talking about?

24 MR. YOHO: I think there is a problem in a certain
25 number of the transactions which exist at the door-to-door level

1 and I think there has to be a cureall and it has to come
2 quickly.

3 I don't think this is the way. As an example, I don't
4 see where Regulation Z has created an aura where the buyer
5 reads what he is signing. He has not really shopped and he
6 will sign a contract in the State of Pennsylvania which is
7 promulgated by a rule of someone testifying here tomorrow where
8 he pays up to 9 to 10 percent add-on, which is the simple
9 interest of 18 or 20 percent, and I don't think he benefits
10 when he signs that. But he will sign it because the law of
11 our land is there to protect him.

12 Somebody sells saying, "Here you are, we have to put
13 it down here because Regulation Z exists." Regulation Z, in
14 my opinion, is immoral. And I hasten to add that is founded
15 on very good factual material about what the intent of the law
16 was when Congressman William Cahill proposed it before Con-
17 gress and what it came out to be after you people wrote the
18 regulation.

19 I take no issue with you. If I were sitting where
20 you are, I would write it that way, too, but I am on the other
21 side of the fence today.

22 MR. DIXON: Do you have any idea why so many who are
23 engaged in direct selling support at least the main thrust
24 of this rule?

25 MR. YOHO: Yes. I think that like the people who

1 sign contracts when they don't read the fine print or know
2 what they are paying, it is unwise to be against consumerism
3 today as it is unwise to be against motherhood, apple pie, and
4 the American flag.

5 They don't have the guts or courage to stand up and
6 tell you what they really feel. I expect last year in my own
7 company somewhere upward of \$40,000 in a public relations
8 department, 80 percent of which was educating the consumer. It
9 has benefitted us greatly.

10 I made 40 television appearances and an equal number
11 of radio presentations last year and answered questions about
12 consumerism and it has benefitted me greatly.

13 I would like to see an end to the holder in due course.
14 I would like to see the rules of the Uniform Commercial Code,
15 which already is part of our legislation and our society, I
16 would like to see them enforced. I would like to see the
17 financial institutions who have created such a problem in
18 exhorting people to get into this business so easily, any form
19 of door-to-door sale, by the paper, hold themselves up as
20 exonerators of the holder-in-due-course item.

21 I would like to see the newspapers participating on
22 the front page by sharing in the world on the front page their
23 support of the consumer, but on the back page using every kind
24 of switch advertising, but exempting themselves under the law.
25 I would like to see all of that covered, but I am not sure this

1 is the way. But I am not denigrating the activity of the Com-
2 mission because I know the time and effort put into it, but
3 I don't want to see a lot of fine people I know hurt.

4 MR. DIXON: I can't resist one small quarrel with your
5 last statement, which comes from quite an extensive experience
6 now in conducting hearings over proposed rules, that I have
7 never found the American businessman lacking the courage to
8 come in here and tell me what he thinks.

9 Thank you.

10 MR. YOHO: Thank you.

11 MR. DIXON: The next speaker is Mr. Benny L. Kass,
12 National Legal Aid and Defender Association.

13 DIRECT TESTIMONY OF BENNY L. KASS, NATIONAL
14 LEGAL AID AND DEFENDER ASSOCIATION

15 MR. KASS: For the record, Mr. Dixon, my name is
16 Benny Kass, Washington attorney, and I appear on behalf of the
17 National Legal Aid and Defender Association.

18 Before I begin my prepared testimony, I would like
19 to just clear up a couple of points of Mr. Yoho. First, in all
20 fairness to the FTC, the Federal Reserve Board drafted Regulation
21 Z, and, second, I am delighted to know with the drawbacks --
22 and I am first to say the Federal Truth-in-Lending has failed --
23 but with the drawbacks I am delighted to know that the home
24 improvement people have gone out of the field because of the
25 recession period of the Truth-in-Lending. This was one of the

1 things that that regulation was intended for. If that is the
2 case, I am delighted we have had some small effect in driving
3 out some of the home improvement people.
4 I will have a number of other comments to make about
5 I don't want to get into a debate with the prior witnesses
6 because I do have something to say, but I am concerned with
7 the proposition that the Federal Trade Commission should
8 enact such a cooling-off period as against all industry.
9 If, in our opinion, this were seriously proposed
10 and presented to the Commission, to the Congress and state
11 legislatures, we would be all in favor of it. But if, as we
12 suspect, too often the cry of fairness and equal opportunity
13 or equal application is designed only to thwart the Commission
14 in its operation, then we oppose this concept and my statement
15 will point out why.

16 NLADA was formed in 1911 and is an affiliate of the
17 American Bar Center, Chicago, Illinois. Our current President
18 is Mr. John Douglas, a practicing attorney here in Washington.
19 Our membership includes some 474 offices engaged in civil prac-
20 tice and about 200 defender offices engaged in the defense of
21 those charged with crime, all representing clients who other-
22 wise would be unable to afford and obtain counsel.
23 On behalf of NLADA, I am pleased to state that we
24 support and endorse the principle and concept of the trade
25 regulation rule now under consideration by the Federal Trade

1 Commission.

2 One of our major concerns involves the entire area
3 of consumer affairs. Although we claim no expertise in the
4 techniques of door-to-door selling, we are thoroughly involved
5 with hundreds of legal cases whose origin stem from a door-to-
6 door sales transaction.

7 If Mr. Yoho has the case and if Mr. Yoho or others
8 have the material to present to this Commission, I say, "Here
9 is the time and place, either orally or in prepared testimony,
10 so that the Commission which is considering the door-to-door
11 transaction procedure would have facts at its disposal and for
12 your study."

13 I would like personally to see this material and I
14 would hope that such will be submitted to the Commission prior
15 to the close of this transaction.

16 Let's look at the justification, as we look at it, for
17 this regulation pending before the Commission.

18 The Justification for Regulation

19 Former Chairman of this Commission, Paul Rand Dixon,
20 testified before Senator Magnuson's Committee in March of 1968,
21 and stated:

22 ". . . our experience of more than 50 years of
23 enforcing the FTC Act indicates that dishonest and unethical
24 businessmen gravitate to certain industries and to certain
25 sales approaches, one of which is door-to-door selling. The

1 reasons for this are not complex. To make a 'fast buck'
2 mobility and amenity are required. The contact with the con-
3 sumer must be of short duration. It is essential that it be
4 accompanied by confusing sales talk, vague promises, and, above
5 all, a quick and legally binding decision on the part of the
6 victim."

7 That is testimony before Senator Magnuson's committee
8 on S. 1599, 90th Congress. That is not a consumer advocate
9 speaking, but Chairman Dixon.

10 Presumably, this is all the justification needed for
11 the Federal Trade Commission to respond with a very strong,
12 hard-hitting, trade regulation rule. But we also refer you to
13 the Federal Trade Commission's Report on District of Columbia
14 Consumer Protection Program (June 1968) listing a number of
15 deceptive -- or indeed fraudulent -- business practices to
16 which the consumer was subjected at a place other than the
17 place of business of the seller.

18 Permit us the opportunity to briefly catalog the
19 type of practice which door-to-door salesmen often subject
20 the consumer. We wish to make it perfectly clear that we are
21 not presenting a broad-brush allegation on the entire door-
22 to-door, or direct selling industry. But the illustrations
23 which follow are taken directly from the many legal files of
24 our NLADA members around the country:

25 -- Unconscionable high prices

- 1 -- Bad referral selling tactics
- 2 -- Misrepresenting nature of business
- 3 -- Free gift or other offers
- 4 -- High pressure or coercive tactics
- 5 -- The appeal to impulse purchasing; and
- 6 -- Misrepresentation of the value of the offered
- 7 goods, with no opportunity for the consumer to com-
- 8 pare values.

9 And yet another justification for FTC involvement
10 comes in the form of a new release issued by the Iowa Attorney
11 General, wherein he warned citizens of his state "to be on
12 their guard against door-to-door salesmen and telephone solici-
13 tors who offer 'free encyclopedia sets' to the public." The
14 catch in this something-for-nothing offer, the Attorney General
15 said, is that "to take advantage of the 'free' part of the
16 offer, the customer must agree to keep the set up-to-date by
17 purchasing the yearly supplement for ten years, which ends
18 up in the consumer paying for the entire set."

19 Approaches to Solution

20 There are several ways in which to resolve the door-
21 to-door sales problem. One approach -- suggested by the pro-
22 posed National Consumer Act -- is to require an affirmative
23 approval by the consumer of the door-to-door sales transaction,
24 before a contract is, in fact, entered into. Since represen-
25 tatives of the National Consumer Law Center will testify, I

1 understand, tomorrow on this proposal, we will move on to the
2 next approach: the cooling-off period.

3 Basically, the Federal Trade Commission is proposing
4 that every door-to-door sales transaction entered into must
5 provide for a three-day cooling-off period, to enable the
6 consumer to sit back and reflect on what he has purchased. There
7 are those who argue, as was just previously argued, that this
8 is discriminatory; that the same cooling-off period should be
9 applicable to every transaction, whether entered into at a
10 regular place of business or in the home.

11 While this idea is also worthy of FTC consideration
12 and we would encourage you to do it if you have the business
13 support to do so and apparently Mr. Yoho offered his support,
14 we submit that the door-to-door sales transaction -- especially
15 in the homes of our clients -- is totally different from the
16 sales in a store.

17 Look, for example, at these distinctions:

18 -- while both types of transaction can appeal to
19 impulse buying, at least when the consumer goes to the store
20 he has made a conscious decision to go shopping. The salesman
21 at his door appeals strictly to the pressures of time and impulse.

22 -- when the consumer goes to the store, it is at his
23 convenience; the door-to-door salesman often is an intruder
24 into the privacy of the home when he is not wanted.

25 -- the consumer who makes a purchase at a store has

1 the ability to check out the reliability of the merchant;
2 often the door-to-door salesman is merely "passing through
3 town."

4 -- if something goes wrong with goods purchased at a
5 permanent place of business the consumer generally knows that
6 he can get satisfaction by returning to the store; goodwill is
7 a significant element of all reliable businessmen. The door-
8 to-door salesman, on the other hand, often relies on the one-
9 shot purchase.

10 -- service of legal process can usually be obtained
11 on businessmen with a regular place of business with a regular
12 place of business; service of process is often difficult -- if
13 not impossible -- on the door-to-door salesman.

14 And as far as the low-income consumer is concerned
15 as a practical matter, many of the ghetto victims of door-to-
16 door salesmen are not well educated and do not and cannot read
17 the contract, as Betty Furness mentioned, Spanish and other
18 foreign language speakers, and those that cannot read, they are
19 particularly susceptible to -- indeed very often rely upon --
20 what the door-to-door salesman says is included in the contract
21 provisions.

22 This, of course, can and does occur at regular busi-
23 ness establishments, but we submit that it is much more likely
24 to occur where the ghetto victim has taken no initiative, and
25 the product is physically there in his home. To be sure, a

1 cooling-off period should be applicable to transactions con-
2 ducted in regular business establishments, but that is hardly
3 an argument against correcting the abuses which do exist in
4 the door-to-door sales industry.

5 Accordingly, we are in full accord with the thrust of
6 the proposed Trade Regulation Rule presently under considera-
7 tion.

8 Suggested Amendments

9 We do have, however, a number of comments and sug-
10 gested amendments which we ask the Commission to consider:

11 1. We encourage the Commission to broaden the cover-
12 age of the Trade Rule to include leases as well as sales. As
13 the Commission knows, leasing has become a popular alterna-
14 tive to credit sales as a means of distributing goods to con-
15 sumers, and certainly merits inclusion in the coverage of this
16 Trade Rule.

17 Parenthetically, the Commercial Code was mentioned
18 earlier. When the Commission on Uniform State Laws, which I am
19 a member of for the District of Columbia, proposed the Uniform
20 Consumer Credit Code, it added to the scope and thrust of the
21 contract the word "lease" as well as "sales," and we would like
22 you to consider this in the proposed trade rule.

23 2. The rule should be applicable to all door-to-door
24 transactions, not just those with a purchase price of \$10 or
25 more. Our experience has shown -- especially in the field of

1 magazine salesmen -- and I understand Congressman Rooney was
2 here this morning -- that although the individual transaction
3 is less than \$10, the total sales price is considerably more.
4 This is a potential loophole which we believe can be corrected
5 by making the rule applicable to all purchases, regardless of
6 price.

7 3. The term "door-to-door sale" does not include
8 any sale made in the presence of the buyer's attorney. We just
9 question why this exemption is needed at all. While we recog-
10 nize the unlikely situation where a lawyer is present when the
11 salesman comes knocking, this exemption presents a potentially
12 large loophole for avoiding the coverage of the proposed rule.
13 And, besides, I do not want to deprive my wife of the benefits
14 of the cooling-off period, just because I happen to be home
15 when the sale is made.

16 4. The regulations do not cover those sales made
17 pursuant to a preexisting charge agreement. As a result,
18 this effectively exempts the door-to-door salesman who has a
19 permanent route and who keeps coming back every week to collect
20 -- and to sell. Often this type of salesman thrives in low-
21 income and inner-city areas, such as in magazine and encyclo-
22 pedia sales.

23 5. If a letter is sent by regular mail late in the
24 evening of the third business day, it may not be postmarked
25 until the morning of the fourth business day. Some sellers may

1 content that such a letter of rescission was not mailed on time
2 and therefore in effective. This problem could be avoided if
3 the right to cancellation extends for 12 hours longer than the
4 time period stated in the notice. In other words, since the
5 notice calls for posting by midnight of the third business day,
6 the legal right to rescind should extend until noon of the
7 fourth business day.

8 6. The Trade Rule would require that the seller
9 return to the buyer within ten business days all payments made
10 under the contract. But the goods need not be picked up until
11 20 business days -- ten days later. We are concerned that
12 this will place too great a temptation on consumers -- espe-
13 cially low-income ones -- to use the product, thus jeopardizing
14 their right to cancel.

15 I understand in the trade this is known as the
16 "peanut and jelly syndrome," that if the product is left in
17 the home, the children, by using and looking through the
18 encyclopedia, will, in effect, vitiate the right to cancel
19 because the goods have been used and the peanut and jelly is
20 over the books.

21 Accordingly, we urge the Commission to reduce this perio
22 to at least not more than 15 working days after cancellation,
23 but urge the Commission to ask the industry whether there is even
24 reason to differentiate between the ten-day period for the
25 return of payment and any other period for the goods themselves.

1 7. And, finally, we urge the Commission to require,
2 as a condition of doing business as a door-to-door salesman,
3 that the following statement be conspicuously incorporated
4 on the fall of all negotiable instruments negotiated by door-
5 to-door companies:

6 "Any holder of this note shall take this note
7 subject to all defenses of any party which would
8 be available in an action on a simple contract."

9 In our opinion, this would effectively eliminate the
10 hardships faced by consumers -- especially low-income ones --
11 as a result of the holder-in-due-course doctrine. If the
12 Commission wants to eliminate the abuses in the door-to-door
13 industry, it must include a strong prohibition on the holder
14 doctrine. And as the Commission well knows, this is not a
15 novel suggestion insofar as it was required by the Commission
16 in at least two previous orders, Dockets Nos. C-1433 and C-1489.

17 There are some provisions in the proposed rule on
18 which we especially want to comment. First, (d) would make it
19 unfair and deceptive act or practice for any seller to include
20 in any door-to-door sales contract any confessions of judgment
21 or waivers of any of the rights to which a buyer is entitled,
22 including specifically his right to cancel a door-to-door sale.
23 We commend the Commission for this provision, and urge its
24 inclusion into the Trade Rule.

25 Second, we are most enthusiastic about (c) which

1 provides for arbitration. As our many lawyers -- and indeed
2 clients -- will tell you, litigation is a long and costly propo-
3 sition. In our opinion, arbitration is one means of resolving
4 consumer disputes short of going to court, and we support this
5 concept.

6 Parenthetically, I served on the American Consumer
7 Arbitration Board with Willard Wirtz, Nancy Dickerson and
8 some other people, and I understand they submitted a letter to
9 the Commission in support of the concept of arbitration and
10 I hope it is inserted at an appropriate place in the record.

11 And, finally, we submit that the requirement in (a)
12 that the buyer be given notice of cancellation is somewhat
13 ambiguous with regard to the requirement that the buyer be
14 given a copy of the contract. We ask the Commission to clarify
15 this by requiring that consumers receive a legible copy of the
16 executed contract as well as a legible copy of the Notice of
17 Cancellation.

18 Mr. Chairman, we appreciate this opportunity to appear
19 before the Commission on this most important proposal, and we
20 offer our services to the Commission if we can be of further
21 assistance.

22 MR. DIXON: Thank you, Mr. Kass.

23 Mr. Cabell.

24 MR. CABELL: Mr. Kass, I would imagine a number of
25 your members are practicing in states which have adopted the

1 proposed legislation. Can you tell us if they expressed any
2 opinion as to the utility of the rule?

3 MR. KASS: Yes. I have, for the record, the most
4 recent Commerce Clearinghouse Consumer Credit Guide as issued
5 just finally -- it started a chart on "Home Solicitation Sales"
6 and I have for the record this chart and it just came out and
7 I received it last Saturday and will submit it for the record,
8 listing a number of states with the cooling-off periods.

9 (Kass Exhibit No. 1 was made a part of the record.)

10 As you know, parenthetically, as I said, the Uniform
11 Consumer Credit Code has a proposal, one of the proposals would
12 provide for a cooling-off period and it has been adopted in
13 four states to this date. We have talked to the lawyers about
14 the various proposals, because they are different around the
15 country.

16 Betty Furne-s pointed out they have had problems
17 with some of the language. At this time we feel that we don't
18 even want to get into, I will be glad to submit later for the
19 record a statement, but we don't want to get into the legisla-
20 tive history because we don't want even to assume that legisla-
21 tion is the only answer to the door-to-door sales problem.

22 It is one of the answers. We also submit that this
23 proposed trade regulation rule is another answer to the problem
24 on a national basis. I will be glad to go into the technical
25 problems. There are similarities between the state laws and

1 proposed rules and those I picked up in my seven or eight
2 points for amendment.

3 But as far as getting into a discussion as between
4 the legislation, on the one hand, and the trade regulation
5 rule, I would rather not get into it because we submit the
6 Federal Trade Commission has authority to go ahead even though
7 there are several states that already have provisions.

8 MR. CABELL: The committee established by a number
9 of direct sellers have submitted a proposed alternative to the
10 rule we have released for comment and I don't know if you have
11 seen it.

12 MR. KASS: I did not. I saw a notice of it this
13 morning, but I have not seen it.

14 MR. CABELL: Provision (g) requires the seller, at
15 the time of the initial contact, to disclose the purpose of
16 making that contact.

17 MR. KASS: Your provision?

18 MR. CABELL: Right. Their provision would simply
19 prohibit the use of misrepresentation to get in, to open the
20 floor.

21 Now, would you care to comment on that?

22 MR. KASS: I will comment in writing later on for
23 this specific thing. I do think it is important, however,
24 having listened to what Mr. Yoho prescribed as one of the means
25 of making a sale and I think it is commendable, of having around

1 and surveying 40 or 50 homes to tell them that they intend,
2 or tell them that air conditioning, central air conditioning,
3 is not so expensive or may not be so expensive, but the basic
4 purpose of it is to help make a sale for the company.

5 I have no objection to it. I wish more companies
6 would come in and knock on the door and say, "I am here to
7 make a sale." One of our concerns, you may not realize about
8 air conditioning, whater it may be, and therefore we think
9 there ought to be a definite obligation to disclose if there is
10 a sale or if the objective, ultimate or other objective, is
11 to make a sale.

12 Some point along the line we feel there ought to be
13 disclosure. I don't know what it means "they shall not mis-
14 represent." There should be no misrepresentation anyway. The
15 FTC does not have to rule on it. That is covered under Sec-
16 tion 5 of the Commission's Act anyway. So I think that what we
17 are concerned about is the man who knocks on our client's
18 door ought to be big enough to say, "I am here to make a sale,"
19 if indeed that is the ultimate objective, and that is what we
20 support and commend in the provision in paragraph (g).

21 MR. CABELL: In connection with your comments on
22 arbitration, I have a couple of questions. It is my under-
23 standing that to arbitrate, the person requesting it has to
24 post a \$50 fee. I believe that is the established minimum at
25 this time.

1 Now, is there any existing procedures or any proposed
2 changes to those procedures that would make such a provision
3 applicable to the type of sales we are talking about?

4 MR. KASS: Yes, there are several. This is open to
5 all suggestions. The normal traditional use of arbitration, in
6 labor arbitration, commercial, insurance or other types of
7 arbitration, certainly you have to post a \$50 fee. If the
8 process will take over two or three days, you are expected to
9 pay reasonable cost of services of the arbitrator.

10 In the District of Columbia there is an experiment
11 now underway to the effect that the American Arbitration Asso-
12 ciation will fund the bill, will foot the bill for arbitra-
13 tion and we are experimenting with 100 cases and we are willing
14 and anxious to take 100 cases so we can see if arbitration
15 works and the American Arbitration Association will foot the
16 bill for it.

17 Our problem with that is not the bill. We will be
18 glad and there are lawyers around the country, who, despite
19 the fee problem and, incidentally, if the FTC wants to get into
20 the problem of fee and price-fixing, I encourage you to follow
21 that suggestion up, but despite the problems of fees, there are
22 lots of lawyers and lots of professors and other people inter-
23 ested in the public interest or interested in just good busi-
24 ness that will donate their time to do arbitration.

25 So that cost can be waived. Our problem with

1 arbitration is not the cost. Our problem with arbitration is
2 getting a merchant to say, "Yes, I want to go to arbitration" or
3 "I am willing to submit myself to arbitration."

4 A very large supermarket president in this area was
5 presented with the day of going to arbitration and said, "No,
6 we don't have to. We never have problems with customers. We
7 solve them all." That seems to me even more reason to go to
8 arbitration if you have no problems.

9 Arbitration, as you know, required an individual to
10 feel if he goes to arbitration he will gain something. Thus
11 far, a lot of merchants haul the consumer into the small claims
12 court, have his wages garnished or whatever legal proceeding
13 there is, and feels there is no reason to go to arbitration.

14 So I would encourage a greater pushing of the con-
15 cept of arbitration. It is an education, not for the consumer,
16 but it is for the businessman, to say he will benefit in the
17 long run by sitting down and having some impartial person listen
18 to the problem and try to negotiate it out.

19 Furthermore, in the District of Columbia I don't know
20 of any other states, but in the District of Columbia our
21 Criminal Code -- under the Code created the courts have just
22 raised the jurisdiction of the small claims court from \$150 to
23 \$700. That jurisdiction is small claims and conciliation --
24 and there is a procedure for arbitration and you have to pay
25 \$50. All you have to do is go to the court and ask for

1 arbitration.

2 It is a two-way street and you have to get the mer-
3 chant to go along. Our problem with this is not the fee, but
4 getting the merchants to go along. We will present to any
5 people that want to arbitrate lots of people that have com-
6 plaints and I submit, if they have class actions or class
7 arbitrations, to sit down and negotiate with the customer on
8 a one-to-one basis.

9 MR. CABELL: The thing that bothers a number of us,
10 I suppose, is to consider arbitration as an alternative or
11 one of the ways to remedy the situation. We are in a country
12 where if we get personnel and staff on what is really an extra-
13 judicial system, who is going to pay for them?

14 MR. KASS: To some extent, many or some of the indus-
15 tries that have agreed to go to arbitration are footing the
16 costs themselves and find it a lot cheaper than going to court.
17 So we are experimenting and we don't know how it will work. I
18 do not call it an alternative to the judicial remedy, but a
19 supplement.

20 It is not a substitute, it is not an alternative, but
21 just another remedy we would like to have. If you can't go
22 to arbitration, you can still go into court. We are not sure
23 it will work.

24 As I say, the main reason we are not sure it will
25 work is because the business community has not gone along. If

1 the door-to-door selling industry will say, "Yes, we will set
2 up with the local Better Business Bureau and local U. S.
3 Attorney's office, or local Chamber of Commerce or local com-
4 munity consumer groups, we will agree to go to arbitration and
5 let one of them serve as an arbitrator." You have a lot of
6 untapped people whom we know would like to get into this
7 thing and they are impartial and objective o- can be.

8 MR. CABELL: Well, do you think, in the light of
9 this state of affairs, that the Commission would be justified
10 in putting a provision in the rule requiring arbitration?

11 MR. KASS: I don't know, to be perfectly honest.
12 I think that you would be justified because arbitration is
13 certainly one method that can be tried. It is tried and true
14 in the labor field and in insurance claims and it has been
15 tried in a lot of other areas and much would depend on the
16 response of industry.

17 If industry said they are willing to go along, if
18 industry feels that this is a means of avoiding that class
19 action that they will be hit with if they don't settle the
20 matter, then I suspect you would be justified. I have not
21 heard the testimony of industry and I was not able to be here
22 this morning, but I read the proposal of the Encyclopaedia
23 Britannica, but they didn't say "Don't do it," but they said
24 "We will sit down and study it."

25 Knowing the way trade regulation rules work their

1 way through the Commission, maybe within six or eight months
2 we will have some studies if we can get industries to say,
3 "Yes, we will experiment with this arbitration right now. I
4 cannot speak for the American Arbitration Association, but I
5 will go back to them since I am on the Council and ask that
6 specific question and will supply that answer for the record.

7 MR. CABELL: I would appreciate that. Of course, they
8 have agreed to provide us with some specific information and
9 suggestions as to how this provision should be rephrased if the
10 Commission decides to require compulsory arbitration.

11 MR. DIXON: Mr. Kass, do you think it worthwhile
12 to have a holder-in-due-course coverage in this particular
13 rule even though the Commission has another proceeding devoted
14 to that particular subject?

15 MR. KASS: Yes, very much so. I cannot separate the
16 door-to-door service industry, at least as it affects frauds
17 and deceptions in the inner city, from the holder-in-due-
18 course doctrine, because often the contracts are sold and
19 negotiated right away and there is no recourse.

20 Although I commend the Commission for looking into
21 the holder-in-due-course doctrine and doing something about
22 it, I think if the Commission wants to do something about the
23 door-to-door problem, you cannot stop at the cooling-off period,
24 but have to go beyond this to cover another facet of this
25 problem, namely, holder in due course. It is not beyond the

1 scope of the Commission and in the Singer Sewing Machine Case
2 you did exactly that. I think the Commission should not
3 operate on an ad hoc basis, but on a trade regulation rule, so
4 that both industry and consumer will know what their guidelines
5 and rights are, and I think this is, in my view, why we need
6 trade regulation rules in many instances rather than on an
7 ad hoc basis.

8 MR. DIXON: Thank you, Mr. Kass.

9 Mr. Sheridan, who was scheduled to appear tomorrow
10 morning, had asked to appear this afternoon if time permitted,
11 and it would, Mr. Sherican.

12 DIRECT TESTIMONY OF STEPHEN SHERIDAN, VICE
13 PRESIDENT, ELECTROLUX DIVISION, CONSOLIDATED FOODS

14 MR. SHERIDAN: Thank you very much, Mr. Dixon.

15 I came with a prepared statement, but I left my
16 reading glasses at home, so I thought Mr. Sherwood was old
17 enough that I could use his glasses, but he is more youthful
18 than he seems to me, so you will have to forgive me if I
19 stumble as I read.

20 My name is Stephen Sheridan. I am Vice President of
21 Electrolux at 235 East 42nd Street, New York City. Electrolux
22 manufactures and sell at retail vacuum cleaners, floor polish-
23 ers and related supplies through its own employees directly to
24 the consumer throughout the United States. I believe we have
25 a well-established reputation for integrity, quality and

1 service. I hope this expression of our views will be helpful
2 to the Commission in its present undertaking.

3 We do not quarrel with the cooling-off concept in
4 retailing. Over the years we have unilaterally extended this
5 privilege to our customers -- as have most major retailers.
6 It is a customer service that generates confidence in the
7 reliability and integrity of the company. Superimposing a
8 Government-mandated cooling-off period, while nettlesome, is
9 not in itself damaging.

10 I would respectfully point out, however, that there
11 are two flaws in the proposed Trade Regulation Rule, which are
12 correctable, and corrected will considerably strengthen the
13 instrument without in the slightest way weakening the protec-
14 tion it affords. Quite the contrary.

15 The proposed Trade REgulation Rule is flawed because
16 its scope is too narrowly defined. It should not be limited to
17 door-to-door selling only, but should be extended across the
18 boards to all forms of retailing. If the consumer or customer
19 is to be protected against the injuries contemplated by the
20 proposed Trade REgulation Rule, then the consumer or customer
21 should be protected against all such injury -- not simply a
22 minuscule fraction of them.

23 The high-pressure charlatan in store retailing is just
24 as inimical to the best interests of the consumer as the high-
25 pressure charlatan in direct selling and just as prevalent.

1 The ethical direct seller is just as ethical as the ethical
2 store seller. The "captive" consumer is just as captive in a
3 store as in a house.

4 In the Congressional Record, dated Monday, March 18,
5 1968, there is an insertion by Senator Proxmire in which he
6 quotes an article written by Robert C. Maynard in the Washing-
7 ton Post, dealing with the Federal Trade Commission's survey of
8 retail practices, page S 2980:

9 "Mrs. Selman said recently that she had not intended
10 to buy furniture from Tops that day. 'I was just looking around,'
11 she said. A visit to anyone of the nearly two dozen high
12 credit stores in any of the city's principal slums will make
13 it easier to understand how difficult it is to leave without
14 signing a contract for something."

15 The failure to include store sales within the scope
16 of the proposed Trade Regulation Rule deprives the consumer of
17 equal protection of the law, and unnecessarily discriminates
18 against those legitimate direct sellers who are innocent of the
19 abuses in question.

20 This proposal should not be shrugged off as politically
21 inexpedient. It is most sincerely offered and the Commission
22 respectfully urged to address itself to this issue.

23 The constraints imposed by the proposed regulation
24 are less onerous than the calumny that spreads from its publica-
25 tion and its discriminatory application. If the Federal Trade

1 Commission addresses itself to the intent or focus of the
2 seller rather than the locus of the sale, it would provide a
3 great service to consumer and ethical merchant alike.

4 A second flaw which we earnestly urge be corrected
5 has to do with burdensome mechanics alone, however expensive and
6 burdensome mechanics. There are now over 25 jurisdictions that
7 have some form of cooling-off law -- with a predictable prolifer-
8 ation in state and municipality this year. Each of these
9 statutes has somewhat differing provisions, and explicitly dif-
10 fering contract requirements. To add another to this growing
11 list is not simply a vexatious imposition, but an item of sig-
12 nificant cost. The multiplicity of contract forms may be a
13 boon to the printer. It is considerably less than that to the
14 retailer.

15 The Federal Trade Commission can help here without one
16 whit diminishing the consumer protection the proposed Trade
17 REgulation Rule envisions. The proposed Trade REgulation Rule
18 should seek to preempt and supersede all other legislative
19 enactments on the subject. Cooling-off would then have one
20 uniform set of principles and one uniform contract requirement
21 -- and quite possibly -- few, if any, objections.

22 We respectfully urge your sympathetic and resource-
23 ful response to these two proposals. If the Federal Trade
24 Commission can courageously take on all the attorneys who chal-
25 lenge its authority to promulgate the Trade Regulation Rule,

1 then surely the Federal Trade Commission can summon the cour-
2 age and resourcefulness to meet these two issues head on.

3 With respect now -- not to the thrust -- but to the
4 detail of the proposed Trade Regulation Rule, we have a few
5 observations which may be helpful.

6 The primary objectives of the proposed Trade Regula-
7 tion Rule are to give the buyer a meaningful right to cancel and
8 to insure that the buyer is informed of that right. These
9 objectives are nearly obscured, however, by the mass of detail
10 in the Trade Regulation Rule, some of which is germane but
11 lengthy, and some -- like the arbitration proceeding -- far out
12 in left field. Arbitration of any dispute arising out of the
13 contract surely goes beyond the cooling-off concept.

14 Identifying the seller at the door and cutting through
15 doorstep gobbledy-gook and misrepresentation are praiseworthy
16 goals. Paragraph 4g, however, substitutes a cumbersome rigma-
17 role of its own which will inevitably be breached or glossed
18 over. A forthright requirement for identification would be
19 simpler and more effective.

20 The long cumbersome notice required and the cancella-
21 tion form will be self-defeating in that it would confuse the
22 buyer.

23 Compensating for the lengthy obfuscation in the
24 notice, the proposed Trade Regulation Rule -- would require com-
25 panies to print the "notice to buyer" in a different and

1 conspicuous color. Larger type, and rainbow hues will make a
2 more colorful instrument to be sure -- at an exorbitant and
3 unnecessary cost. An easily read, succinct notice would seem
4 to be the answer.

5 While the proposed Trade REGulation Rule carefully
6 spells out the notice and procedure for cancellation, it does
7 blithely proceed to allow an oral cancellation which compounds
8 the vulnerability of buyer and seller alike. I think there
9 should be a positive requirement for written notification.

10 Finally, we believe that the penalty for avoidance or
11 breach of the Trade Regulation Rule on cooling-off should be
12 directly related to the avoidance or breach involved. Thus
13 goods can be forfeited if available in as good condition, but
14 not picked up by the seller. But failure to do so hardly con-
15 stitutes an unfair practice.

16 The efforts of the Federal Trade Commission to bring
17 tighter controls over unethical business practices should not
18 be diminished because witnesses set forth objections to the
19 proposed Trade REGulation Rule. The arguments are sincerely
20 offered and will strengthen the instrument and effectively help
21 the Federal Trade Commission ride herd on the unethical. At
22 the same time it will not unnecessarily or discriminately
23 penalize legitimate business.

24 MR. DIXON: Thank you, Mr. Sheridan.

25 Mr. Cabell.

1 MR. CABELL: Mr. Sheridan, I think throughout your
2 statement you referred to the discriminatory effect of this
3 rule vis-a-vis the retailer operating out of a store and the
4 direct seller. You have also mentioned the difficulty of print-
5 ing contracts which comply with the laws of the 23-odd states
6 which have similar legislation.

7 Now, aside from this, what additional burdens will
8 this rule impose on your company?

9 MR. SHERIDAN: As I see it, none.

10 MR. CABELL: Will it make it more difficult for your
11 salesmen to make sales?

12 MR. SHERIDAN: Mr. Cabell, promulgation of this regu-
13 lation would be helpful to us. We are not opposing it. We are
14 supporting it. We just want to improve it a little.

15 MR. CABELL: And that would include the provision
16 4(g), which requires the seller to disclose?

17 MR. SHERIDAN: We have no objection to that. As a
18 matter of fact, some form of identification and statement of
19 purpose, I think, is necessary. I just object to setting your-
20 self up within the framework of reference which 4(g) has,
21 before you can open your mouth to say, "Boy, it is cold." I
22 believe you have to say who you are.

23 I think when you get into situations like that, you
24 are setting up a strait jacket which people are going to try to
25 get out of. I think the requirement should be for identification

1 of the person, company and product; and even, if you will, and
2 I am here to make a sale, I don't care about that. I just
3 don't want you to say, if we can't say anything else within
4 the first 30 seconds or so we must go through this rigmarole.

5 MR. CABELL: It has been said that consumer sales
6 resistance is inherent in direct selling systems since the
7 majority of the sales contacts are made at the seller's initia-
8 tive rather than at the consumer's request.

9 So this, I think, has posed a problem for the seller
10 in overcoming the initial consumer resistance. Which system
11 does your company use to get the salesman in the door?

12 MR. SHERIDAN: I would like to respond to your ques-
13 tion without agreeing with your initial premise. We don't use
14 any surveys or any gimmicks. We don't give free samples. WE
15 identify ourselves at the door, tell them who we are, by name
16 of individual, name of company, and product and ask if we can
17 come in and sell vacuum cleaners or provide the services which
18 we have.

19 MR. CABELL: Using these methods, you have been suc-
20 cessful in selling vacuum cleaners, I assume?

21 MR. SHERIDAN: I have been led to believe we are the
22 most successful company.

23 MR. CABELL: Now, with regard to your statement on the
24 provision of the rule which requires the seller to remove the
25 goods, I envision a situation in which the consumer has a

1 rather bulky item or bulky collection of merchandise in his
2 home which he does not want there.

3 Now, if we adopted your premise, the consumer would
4 have to pay to have this property taken out if he did not want
5 it, or he would be put to the inconvenience of finding someone
6 to buy it and haul it out or something of that nature.

7 MR. SHERIDAN: Mr. Cabell, if a consumer had a bulky
8 collection of merchandise waiting to be picked up, I think that
9 consumer does not need a cooling-off, but a little speaking
10 to, chastising, because obviously they are not being swept
11 away but are taking in the companies. And if it is a single
12 item, and I can understand in extreme cases a customer might
13 purchase a large item and change his mind and it would be
14 expensive to remove, providing your regulation is it can be
15 moved at the company's expense and the company can be forced to
16 pay for it.

17 MR. CABELL: You see, it was cast in the form of being
18 an unfair trade practice for the company not to do this. Con-
19 ceivably, in the case of a small item, the company would be at
20 a disadvantage to have the consumer just throw it out.

21 MR. SHERIDAN: Really, instead of responding to that
22 question, because I can only speak to those issues with which
23 I am familiar and I am only familiar with selling of vacuum
24 cleaners and if the customer didn't want the vacuum cleaner
25 and we didn't pick it up, she is at liberty to chuck it out the

1 window and it is not that bulky. I cannot speak for these bit
2 items.

3 MR. CABELL: You see, this would apply all across the
4 board to all of these different types of things and that is
5 why the provision was cast in that form and I wondered if your
6 people had considered it in making this objection?

7 MR. SHERIDAN: We had considered it, indeed we had.
8 It is our position as I stated it.

9 MR. DIXON: Thank you.

10 MR. SHERIDAN: Thank you very much and thank you for
11 allowing me to speak today.

12 MR. DIXON: That concludes the list of those who
13 wanted to appear this afternoon.

14 I have an indication that one of the prior witnesses
15 might possibly have some further light to shed on earlier
16 testimony and before we get into that sort of thing, I would
17 remind you again this record will be open for a considerable
18 length of time, in view of the Chicago hearings, and for some
19 period of time after that, and this is the precise reason that
20 we will keep it open for some period after the public hearings
21 have been concluded, so I would ask, unless it is a matter of
22 extreme urgency, that the additional comments be made within
23 that time that the record is being held open for that purpose.

24 The hearing will now adjourn, to reconvene tomorrow
25 morning at ten o'clock.

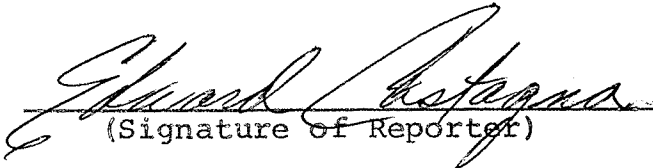
1 (Whereupon, at 3:50 p.m., the trade practice con-
2 ference in the aforementioned matter adjourned, to reconvene
3 at 10 a.m. of the following day, Tuesday, March 9, 1971.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DOCKET NO: TRADE PRACTICE CONFERENCE

CASE TITLE: Public Hearing on a Proposed Trade Regulation Rule
Concerning a Cooling-Off Perior for Door-to-Door Sal
HEARING DATE: March 8, 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: April 6, 1971


(Signature of Reporter)

Edward Castagna
(Name of Reporter - Typed)

300 - 7th Street, NW..
(Address - Typed)

Washington, D.C. 20024