CONSUMER CONTROVERSIES RESOLUTION ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 2482 and H.R. 2965

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

S. 957

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

JULY 20 AND 21, 1978

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CONSUMER CONTROVERSIES RESOLUTION ACT

THURSDAY, JULY 20, 1978

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

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

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

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

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

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

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

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

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

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

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

[Testimony resumes on p. 63]

[The text of the bills referred to follow:]

95TH CONGRESS
1ST SESSION

H. R. 2482

IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 1977

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

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

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

FINDINGS AND PURPOSE

SEC. 2. (a) FINDINGS.—The Congress finds and declares that—

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

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

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

(3) the existing mechanisms for consumer controversy resolution are inadequate to handle the enormous volume of such controversies;

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

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

(B) adequate representation of the interests of consumers;

(C) meaningful protections in cases of overreaching and unfair repossession of goods and products;

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

(E) readily available and adequate forums for the fair, effective, and efficient resolution of controversies involving consumer goods and services;

(5) a major and inseparable portion of the goods and services which form the underlying subject matter of such controversies flow through commerce, the circumstances of their sale and distribution to consumers affect commerce, and the unavailability of effective, fair, inexpensive, and expeditious means for the resolution of such controversies constitutes an undue burden on commerce; and

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

(b) PURPOSE.—It is the purpose of the Congress in this Act to assure all consumers convenient access to consumer controversy resolution mechanisms which are effective, fair, inexpensive, and expeditious, and to facilitate better representation of consumer interests.

DEFINITIONS

SEC. 3. As used in this Act—

(1) the term "commerce" means trade, traffic, commerce, or transportation—

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

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

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

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

(4) the term "Office" means the Office of Consumer Redress;

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

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

(7) the term "State administrator" means the individual or government agency which is designated, in accordance with State law, to direct, coordinate, or conduct a State system; and

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

OFFICE OF CONSUMER REDRESS

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

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

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

(2) allocate and pay to the States funds appropriated for financial assistance to States under cooperative agreements;

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

(4) encourage and assist the development and implementation of innovative concepts and approaches, including adapting or expanding the mechanism of the unsatisfied judgment fund in the field of automobile compensation law to satisfy all unsatisfied judgments;

(5) award discretionary grants;

(6) determine whether a State plan is in accordance with this Act;

(7) review the operation and effectiveness of each

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

(8) articulate and evaluate the goals for a model State system of consumer controversy resolutions, including the formulation and promotion of model small claims court statutes and ordinances which may be adopted by the several States, and which shall be formulated within 12 months after the date of the enactment of this Act and shall be revised from time to time as is deemed appropriate by the Director;

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

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

FINANCIAL ASSISTANCE TO STATES

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

(b) FINANCIAL ASSISTANCE.—The Commission, through the Director, is authorized to enter into a cooperative agreement to provide financial assistance to any State

for the development or maintenance of a system approved by the Commission for the effective, fair, inexpensive, and expeditious resolution of controversies involving consumers. Before a State shall be deemed eligible to enter into or renew a cooperative agreement for the development or maintenance of a State system, the Director shall make, justify, and publish in the Federal Register a finding that such agreement would further the purpose of this Act and that such State has developed, or is developing, a 4-year State plan which—

(1) is designed to meet the requirements of a State system set forth in section 7 of this Act, and represents an effective response to the needs of the State for fair, expeditious, and inexpensive resolution of controversies involving consumers;

(2) provides for a State administrator authorized under the law of the State to receive and disburse moneys, to submit required reports to the Director, including assembling copies of the rules and regulations covering each redress mechanism within such State, to conduct the comprehensive survey required by paragraph (3) of this subsection, and to supervise, direct, coordinate, or conduct the State system;

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

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

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

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

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

(c) DETERMINATION.—Within 90 days after the Commission receives a certified copy of a State plan developed under subsection (b) of this section, the Director shall make a determination whether (1) the State is eligible to receive financial assistance under subsection (b) of this section; and (2) such State plan is in accordance with this Act. Unless the Commission determines, within 30 days after the Director determines that a State plan is in accordance with this Act, that such State plan is not in accordance with this Act, the Director shall, to the extent resources are available, enter into a cooperative agreement designed to effectuate such plan. A State may submit a revised or improved plan designed to better effectuate the purpose of this Act at any time.

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

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

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

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

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

(1) compensation of personnel engaged in the resolution of controversies involving consumers, including personnel whose function it is to assist private citizens in the preparation and resolution of their claims and the collection of judgments;

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

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

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

(5) continuing supervision and study of the mechanisms and settlement procedures employed in the resolution of consumer controversies within the State;

(6) research and development of more fair, less expensive, or more expeditious mechanisms and procedures for consumer controversy resolution; and

(7) sponsoring programs of nonprofit organizations to accomplish any of the provisions of this subsection. The Director shall consider population density when allocating funds to the States under cooperative agreements. The proportion of the Federal share of the estimated cost of a cooperative agreement shall not exceed 70 per centum of the total cost of such agreement. The aggregate expenditure of funds of the State and political subdivisions thereof, exclusive of Federal funds, for such purposes shall be maintained at a level which does not fall below the average level of such expenditures for the last 2 complete fiscal years preceding the date of application for a cooperative agreement.

DEMONSTRATION PROJECTS

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

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

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

STATE SYSTEM

SEC. 7. Each State plan shall provide for the development or maintenance of a State system in which—

(1) there are sufficient numbers and types of readily

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

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

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

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

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

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

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

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

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

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

(i) facilitate the early resolution of consumer controversies by means in addition to the adjudication of claims;

(ii) encourage the fairest and most effective use of the services of attorneys in the resolution of such controversies;

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

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

(v) prohibit the use of consumer controversy resolution mechanisms by assignees or collection agencies in any manner consistent with the purpose of this Act;

(vi) provide for the maintenance of com-

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

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

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

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

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

(F) provides for the identification and correction of product design problems and patterns of service abuse by—

(i) maintaining public records on all closed complaints;

(ii) bringing substantial authority and meaningful influence to bear on the complainee

to correct patterns of product and service deficiency; or

(iii) providing information to Government agencies responsible for the administration of applicable laws so they can perform their remedial deterrent tasks more effectively; and

(5) a small claims court system is established and maintained which meets the requirements of paragraph (4) and which—

(A) is part of the regular court system maintained by the State;

(B) has a jurisdictional limit which is adequate to permit all, or substantially all, consumer controversies within its jurisdiction to be resolved therein;

(C) provides methods for assuring that process served is actually received by defendants, including procedures for supplemental notification after service of process;

(D) provides an easy method for an individual to determine the proper name in which, and the proper procedure by which, any person may be sued;

(E) provides informal means for the resolution of controversies through conciliation, media-

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

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

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

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

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

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

RECORDS, AUDIT, AND ANNUAL REPORT

SEC. 8. (a) IN GENERAL.—Each recipient of assistance under this Act shall keep such records as the Commission, through the Director, shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the project or undertaking supplied by other sources, and such other records as will facilitate an effective financial and performance audit. The provisions of this subsection shall apply to all recipients of assistance under this Act, whether by direct grant or contract with the Commission through the Director or by subgrant or subcontract from primary grantees or contractors of the Commission, through the Director, or from any State administrator receiving financial assistance under this Act.

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

(c) COMPTROLLER GENERAL.—The Comptroller General of the United States, or any of his duly authorized representatives, shall, until the expiration of 3 years after the completion of the program or project with which the assistance is used, for the purpose of financial and performance audits and examinations, have access to any relevant books, documents, papers, and records of recipients of financial assistance under this Act.

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

(1) a summary of any reviews undertaken pursuant to section 5(d) of this Act;

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

(3) an evaluation of the effectiveness of the Office and the Commission in implementing the purpose of this Act, together with any recommendations for additional legislative or other action.

AUTHORIZATION OF APPROPRIATIONS

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

to exceed $20,000,000 for the fiscal year ending September 30, 1979. Not more than 10 per centum of the amount authorized to be appropriated under this Act shall be used for Federal administrative expenses.

95TH CONGRESS
1ST SESSION

H. R. 2965

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1977

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

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

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

FINDINGS AND PURPOSE

SEC. 2. (a) FINDINGS.—The Congress finds and declares that—

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

sumer goods and services are largely unavailable, ineffective, or unfair;

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

(3) the existing mechanisms for consumer controversy resolution are inadequate to handle the enormous volume of such controversies;

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

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

(B) meaningful protections in cases of overreaching and unfair repossession of goods and products;

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

(D) readily available and adequate forums for the fair, effective, and efficient resolution of controversies involving consumer goods and services;

(5) a major and inseparable portion of the goods

and services which form the underlying subject matter of consumer controversies flows through commerce, the circumstances of the sale and distribution of such portion of goods and services to consumers affect commerce, and the unavailability of effective, fair, inexpensive, and expeditious means for the resolution of such controversies constitutes an undue burden on commerce; and

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

(b) PURPOSE.—It is therefore declared to be the purpose of the Congress in this Act to assure all consumers convenient access to consumer controversy resolution mechanisms which are effective, fair, inexpensive, and expeditious.

DEFINITIONS

SEC. 3. As used in this Act—

(1) the term "commerce" means trade, traffic, commerce, or transportation—

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

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

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

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

(4) the term "Office" means the Office of Consumer Redress;

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

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

(7) the term "State administrator" means the officer or employee of State government who is designated, in accordance with State law, to direct, coordinate, or conduct a State program;

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

(9) the term "State program" means all of the State sponsored mechanisms and procedures within such State for the resolution of controversies involving consumers, including small claims courts, arbitration, and other mechanisms and procedures set forth in the State plan.

OFFICE OF CONSUMER REDRESS

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

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

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

(2) allocate and pay to the States funds appropriated for financial assistance to States under cooperative agreements;

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

(4) encourage and assist the development and implementation of innovative concepts and approaches

with respect to the resolution of consumer controversies, including adapting and applying the unsatisfied judgment fund mechanisms, used in connection with automobile accident compensation litigation, to unsatisfied judgments relating to consumer controversies;

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

(6) determine whether a State plan is in accordance with this Act;

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

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

(9) coordinate and integrate the functioning of both public and business-sponsored consumer controversy resolution mechanisms; and

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

FINANCIAL ASSISTANCE TO STATES

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

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

(b) FINANCIAL ASSISTANCE.—The Director may enter into a cooperative agreement to provide financial assistance to any State to assist such State in the development and maintenance of a State program approved by the Director. Before a State shall be considered eligible to enter into a cooperative agreement for the development or maintenance of a State program, such State shall submit an application to the Director. Such application shall provide assurances that—

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

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

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

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

(4) the State administrator has submitted or will submit a 4-year State plan for the development or maintenance of consumer controversy resolution mechanisms within such State for which the application for a cooperative agreement is made and such State plan

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

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

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

(d) ALLOCATION OF FUNDS.—Moneys appropriated for financial assistance pursuant to this section shall be available to the Director for allocation to the States under cooperative agreements. The Director, in making such allocations, shall take into account population density and shall seek to achieve an equitable geographic balance in connection with the distribution of such moneys.

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

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

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

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

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

(4) continuing supervision and study of the mechanisms and settlement procedures employed in the resolution of consumer controversies within the State involved;

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

(6) sponsoring programs of nonprofit organizations to accomplish any of the provisions of this subsection. The proportion of the Federal share of the estimated cost of a cooperative agreement shall not exceed 70 percent of the total cost of such agreement. The aggregate expenditure of funds of the State and political subdivisions thereof, exclusive of Federal funds, for carrying out the State program shall be maintained at a level which does not fall

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

RESEARCH AND DEMONSTRATION PROJECTS

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

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

STATE PLANS

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

(b) DETERMINATION.—Within 90 days after the Director receives a certified copy of a State plan established under subsection (a), the Director shall make a determination whether (1) the State involved is eligible to receive financial assistance under section 5(b); and (2) such plan is in accordance with this Act. If the Director determines that such State is eligible to receive financial assistance under section 5(b), and that the State plan is in accordance with this Act, then the Director shall enter into a cooperative agreement designed to effectuate such plan. A State may submit a revised State plan designed to better effectuate the purpose of this Act at any time.

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

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

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

GOALS

SEC. 8. (a) STATE PROGRAM.—Any State plan submitted under section 7 (a) shall provide for the establishment of a State program which seeks to achieve the following goals—

(1) the provision of sufficient numbers and types of readily available consumer controversy resolution mechanisms responsive to the goals established in subsection (b); and

(2) the establishment of a public information program which effectively communicates to potential users the availability and location of consumer controversy resolution mechanisms and consumer complaint offices in such State.

(b) CONSUMER CONTROVERSY RESOLUTION MECHANISMS.—Any State plan submitted under section 7 (a) shall provide for the establishment of consumer controversy resolution mechanisms which seek to achieve the following goals—

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

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

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

(4) the provision of adequate arrangements for translation in areas with substantial non-English-speaking populations; and

(5) the establishment of reasonable and fair rules and procedures which are approved by the State administrator and which shall—

(A) facilitate the early resolution of consumer controversies by means in addition to the adjudication of claims;

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

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

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

(E) prohibit the use of consumer controversy resolution mechanisms by assignees or collection agencies in any manner inconsistent with the purpose of this Act;

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

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

(H) ensure that dispute resolutions are actually carried out;

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

(J) provide information relating to other available redress mechanisms in the event that dispute settlement efforts fail or the controversy is not within the jurisdiction of such mechanism.

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

(1) inclusion of the small claims court system as

part of the regular court system maintained by such State;

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

(3) the establishment of methods for assuring that process served is actually received by defendants, including procedures for supplemental notification after service of process, if appropriate;

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

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

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

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

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

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

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

RECORDS, AUDIT, AND ANNUAL REPORT

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

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

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

(b) AUDIT.—The Director, or any designated representative of the Director, shall have access for purpose of

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

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

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

(2) a summary of any reviews undertaken pursuant to section 7 (c) during such calendar year;

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

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

AUTHORIZATION OF APPROPRIATIONS

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

95TH CONGRESS
2D SESSION

S. 957

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 1978

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

AN ACT

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Dispute Resolution Act".

SEC. 2. FINDINGS AND PURPOSE.

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

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

involving small amounts of money, are largely unavailable, inaccessible, ineffective, expensive, or unfair;

(2) the inadequacies of dispute resolution mechanisms in the United States have resulted in dissatisfaction and many types of inadequately resolved grievances and disputes;

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

(4) there is a lack of necessary resources or expertise in many areas of the country to develop new or improved consumer and other necessary dispute resolution mechanisms;

(5) the inadequacy of dispute resolution mechanisms throughout the United States is contrary to the general welfare of the people;

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

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

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

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

SEC. 3. DEFINITIONS.

As used in this Act, the term—

(a) "Attorney General" means the Attorney General of the United States, or his designee;

(b) "commerce" means trade, traffic, commerce, or transportation—

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

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

(c) "Commission" means the Federal Trade Commission;

(d) "dispute resolution mechanism" means courts of limited jurisdiction and arbitration, mediation, conciliation, and simlar procedures, and referral services, which are available to adjudicate, settle, and resolve disputes involving small amounts of money or otherwise arising in the courses of daily life;

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

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

(g) "State system" means all of the State-sponsored mechanisms and procedures available within a State for the resolution of consumer disputes and other civil disputes not involving large amounts of money, including, but not limited to, small claims courts, arbitration, mediation, and other similar mechanisms and procedures.

SEC. 4. CRITERIA FOR DISPUTE RESOLUTIONS MECHANISMS.

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

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

(2) assistance, including paralegal assistance where appropriate, to persons seeking the resolution of disputes;

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

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

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

(A) insure that all sides to a dispute are directly involved in the resolution of such dispute, and that such resolution is adequately implemented (including promoting effective means for insuring that a monetary award or agreement is promptly paid, and a nonmonetary award or agreement is effectively carried out);

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

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

(D) permit the use of dispute resolution mechanisms by the business community, including, but not limited to, small businesses, corporations, partnerships, and assignees;

(E) provide for the qualifications, tenure, and duties of persons, other than judicial officers, charged with resolving or assisting in the resolution of disputes;

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

(G) provide information about the availability of other redress mechanisms in the event that dispute settlement efforts fail or the dispute does not come within the jurisdiction of the mechanism.

(b) STATE SYSTEM.—Each State is encouraged to develop a State system which is responsive to the criteria established in subsection (a) of this section by providing—

(1) sufficient numbers and types of readily available dispute resolution mechanisms which meet the requirements for such mechanisms set forth in subsection (a) of this section; and

(2) a public information program which effectively

communicates to potential users the availability and location of such mechanisms and consumer complaint offices in such State

SEC. 5. DISPUTE RESOLUTION PROGRAM.

Within 60 days after the date of enactment of this Act, there shall be established within the United States Department of Justice a dispute resolution program, to be administered at the direction of the Attorney General. Such program shall consist of the Dispute Resolution Resource Center established pursuant to section 6 of this Act and of the financial assistance authorized under section 7 of this Act.

SEC. 6. DISPUTE RESOLUTION RESOURCE CENTER.

(a) ESTABLISHMENT.—There shall be established within the United States Department of Justice, as part of the dispute resolution program established pursuant to section 5 of this Act, a Dispute Resolution Resource Center (hereinafter referred to as the "Center"). As soon as practicable after the creation of such dispute resolution program, the Attorney General shall provide for the creation of the Center and prescribe basic criteria for its operation consistent with the purposes described in subsection (b) of this section.

(b) PURPOSES.—The Center shall—

(1) serve as a national clearinghouse for the exchange of information concerning the improvement of

existing and the creation of new dispute resolution mechanisms;

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

(3) conduct research and development for the improvement of existent and creation of new dispute resolution mechanisms;

(4) undertake comprehensive surveys of the various State systems and, to the extent possible, major private dispute resolution mechanisms within the States, and each such survey shall, to the extent possible, disclose (A) the nature, number, and location of dispute resolution mechanisms within each State; (B) the annual expenditure and operating authority for each such mechanism; (C) the existence of any program for informing the potential users of the availability of each such mechanism; (D) an assessment of the present use of and projected demand for the services offered by each such mechanism; and (E) other relevant data on the types of disputes handled by each such mechanism, such as disputes between consumers and sellers, landlords and tenants, and any other relevant categories of cases;

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

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

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

(iii) are suitable for general replication.

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

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

SEC. 7. FINANCIAL ASSISTANCE.

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

to subsection (c) of this section, applications for the purpose of improving existent or creating new dispute resolution mechanisms.

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

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

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

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

(4) the specific criteria for the distribution of funds received by applicants under this section, consistent with the limitations contained in section 4 and subsection (e) of this section and after consultation with the Commission;

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

this Act and the procedures to be followed by the Department of Justice in reviewing such reports;

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

(7) procedures for publishing in the Federal Register a notice and summary of approved applications.

(c) ELIGIBILITY REQUIREMENTS.—Nonprofit organizations, agencies of State governments, and units of local governments are eligible to receive assistance under this section. Any such entity desiring to receive grant funds under this section shall submit to the Attorney General an application consistent with the criteria set forth in section 4 of this Act and such specific criteria as the Attorney General may establish under paragraph (4) of subsection (b) of this section. Such applicatior shall—

(1) set forth a proposed plan for improving or creating dispute resolution mechanisms for which financial assistance is sought;

(2) identify the person responsible for the administration of the project set forth in the application;

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

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

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

(6) set forth the nature and extent of participation of interested parties, including consumers, in the development of the application.

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

(A) compensation of personnel engaged in the administration, adjudication, conciliation, or settlement of disputes, including personnel whose function it is to assist in the preparation and resolution of claims and the collection of judgments;

(B) recruiting, organizing, training, and educating personnel described in subparagraph (A) of this subsection;

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

(D) continuing monitoring and study of the mechanisms and settlement procedures employed in the resolution of disputes within a State;

(E) research and development of effective, fair, inexpensive, and expeditious mechanisms and procedures for the resolution of disputes;

(F) sponsoring programs of nonprofit organizations to accomplish any of the provisions of this subsection; and

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

(2) Funds available under this section may not be used for the compensation of attorneys for the representation of disputants or claimants or for attorneys otherwise providing assistance in any adversary capacity.

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

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

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

(4) the national need for experience with the type of mechanism proposed, including the need to further the goal that for all types of disputes there be dispute resolution mechanisms available.

(f) PAYMENTS TO GRANTEES.—When the Attorney General has approved an application submitted under subsection (e) (1), he shall pay to the applicant the Federal share of the estimated cost of the approved project. The Federal share of the estimated cost of projects funded pursuant to applications submitted under subsection (e) (1) shall be 100 percent for the first fiscal year in which funds are appropriated for grants under this section; 90 percent for the second fiscal year in which funds are appropriated for grants under this section; 75 percent for the third fiscal year in which funds are appropriated for grants under this section; and 60 percent for the fourth fiscal year in which funds are appropriated for grants under this section. When the Attorney General has approved an application under subsection (e) (2), he shall pay to the applicant the amount which he in his discretion determines appropriate. The aggregate expenditure of funds of the State and political subdivisions thereof, exclusive of Federal funds, for such purposes shall be maintained at a level which does not fall below the average level of such expenditures for the last 2 fiscal years preceding the date of application for funding.

Payments made pursuant to this subsection may be made in installments, in advance, or by way of reimbursement, with necessary adjustments on account of underpayment or overpayment, but shall not be used to compensate, directly or indirectly, for any administrative expense incurred in applying for funds under this Act.

(g) SUSPENSION OF PAYMENTS.—Whenever the Attorney General, after giving reasonable notice and opportunity for hearing to any recipient of a grant under this subsection, finds that the project for which such grant was received no longer complies with the provisions of this Act, or with the relevant application as approved by the Attorney General, the Attorney General shall notify such recipient of his findings and no further payments may be made to such recipient by the Attorney General until he is satisfied that such noncompliance has been, or promptly will be, corrected. However, the Attorney General may authorize the continuance of payments with respect to any program pursuant to this Act which is being carried out by such recipient and which is not involved in the noncompliance.

(h) No funds for assistance available under this section shall be expended until one year after the date of enactment of this Act.

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

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

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

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

(c) COMPTROLLER GENERAL.—The Comptroller General of the United States, or any of his duly authorized representatives, shall, until the expiration of 3 years after the final year of the receipt of any financial assistance under this Act, for the purpose of financial and performance audits and examination, have access to any relevant books, documents, papers, and records of recipients of such assistance under this Act.

(d) ANNUAL REPORT.—The Attorney General, in consultation with the Commission, shall submit to the President and Congress on or before the 365th day following the enactment of this Act, and on or before February 1 of each succeeding year, a report on the administration of this

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

(1) a list of all grants awarded;

(2) a summary of any actions undertaken in accordance with section 7(g) of this Act;

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

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

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

SEC. 9. AUTHORIZATION FOR APPROPRIATIONS.

(a) To carry out the purposes of section 6 of this Act, there are authorized to be appropriated to the Attorney General not to exceed $3,000,000 for the fiscal year ending September 30, 1978; not to exceed $3,000,000 for the fiscal year ending September 30, 1979; not to exceed $3,000,000 for the fiscal year ending September 30, 1980; not to exceed $3,000,000 for the fiscal year ending September

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

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

SEC. 10. THE FEDERAL TRADE COMMISSION.

The Federal Trade Commission shall hire and assign applicants for employment and shall promote, train, discipline, demote and dismiss employees on the basis of individual merit, without regard to race, color, sex, religion, or national origin, and without engaging in any act or practice which has the purpose or the effect of illegal discrimination against any individual because of his or her race, color, sex, religion, or national origin.

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

Attest: J. S. KIMMITT,

Secretary.

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

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

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

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

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

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

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

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

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

Mr. MEADOR. Thank you.

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

Mr. ECKHARDT. You may proceed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Mr. Meador's prepared statement follows:]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. ECKHARDT. Mr. Broyhill?

Mr. BROYHILL. Thank you, Mr. Chairman.

We thank you very much for your appearance here today.

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

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

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

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

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

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

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

Mr. MEADOR. Three.

Mr. BROYHILL. How are these centers administered?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Would you agree or disagree with that goal?

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. MEADOR. Cutoff points?

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

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

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

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

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

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

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

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

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

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

Mr. ECKHARDT. It is a contract in effect?

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. ECKHARDT. Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Do you have any comment on that?

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

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

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

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

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

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

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

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

Mr. MEADOR. Right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Would you like to add something to that?

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

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

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

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

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

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

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

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

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

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

Mr. BROYHILL. Would the chairman yield?

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

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

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

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

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

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

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

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

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

Mr. BROYHILL. That is true.

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. BROYHILL. If the chairman will yield.

Mr. ECKHARDT. Go ahead.

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

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

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

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

Mr. MEADOR. Yes, sir.

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

Mr. MEADOR. Thank you, sir.

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

Would you be amenable to answering those?

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

[Testimony resumes on p. 88.]

[The following information was received for the record:]

United States Department of Justice

OFFICE FOR IMPROVEMENTS IN THE
ADMINISTRATION OF JUSTICE
WASHINGTON, D.C. 20530

September 21, 1978

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

Dear Mr. Chairman:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Daniel J. Meador
Assistant Attorney General

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

Dr. Richardson, would you identify yourself?

STATEMENT OF LEE RICHARDSON, PH. D. ACTING DIRECTOR, OFFICE OF CONSUMER AFFAIRS, ACCOMPANIED BY T. RICHARD CUFFE, ATTORNEY-ADVISER

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

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

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

You may summarize it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Mrs. Peterson's prepared statement follows:]

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

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

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

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

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

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

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

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

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

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

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

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

I will now focus on specific sections of the proposal.

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

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

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

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

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

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

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

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

Thank you for the opportunity to testify on this legislation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. BROYHILL. I thank you.

I only have a couple of questions.

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

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

Would you want to comment on this?

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

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

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

Mr. ECKHARDT. Will the gentleman yield?

Mr. BROYHILL. Yes.

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

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

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

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

Mr. BROYHILL. No other questions.

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

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

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

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

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

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

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

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

Dr. RICHARDSON. Thank you.

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

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

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

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

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

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

Ms. GREGG. Thank you, Mr. Chairman.

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

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

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

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

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

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

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

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

Third: Eligibility standards are dissimilar.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

degree of independence presently had by FTC administrative law judges.

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

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

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

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

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

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

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

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

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

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

[Testimony resumes on p. 108.]

[Ms. Gregg's prepared statement follows:]

National Association of Consumer Agency Administrators

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

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

July 20, 1978

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

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

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

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

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

Consumer Disputes

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

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

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

Consumer Representation

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

Prevention

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

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

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

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

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

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

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

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

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

Business Sponsored Mechanisms

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

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

Administration

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

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

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

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

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

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

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

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

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

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

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

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

Mr. ECKHARDT. Thank you.

Mr. Broyhill.

Mr. BROYHILL. Thank you, Mr. Chairman.

Thank you for your statement.

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

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

Mr. BROYHILL. Then your members are primarily governmental.

Ms. GREGG. Our members are all——

Mr. BROYHILL. All government?

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

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

Could you comment on this?

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

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

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

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

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

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

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

Mr. BROYHILL. That is a good point.

Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Do you think this language adequately addresses the needs?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. ECKHARDT. Mr. Broyhill?

Mr. BROYHILL. I have no questions.

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

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

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

AFTER RECESS

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

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

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

We are glad to have you. You may proceed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Brief recess.]

Mr. ECKHARDT. You may proceed.

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

As a result of these experiences, we developed a belief that the best way to handle individual consumer complaints was through local groups working in conjunction with our office. This has the advantage of enabling the groups to use local resources, including volunteers as well as maintaining locations which are physically close to the consumers and businesses involved. These groups can also vary, depending on the local needs of the community. These groups also have the additional advantage of being able to say they are working with the Attorney General, an Attorney General who will take legal action in referred cases if there is a pattern of violation or impact upon the general public, not an individual problem, that was not resolved.

Indeed in Massachusetts in the past 3½ years, the Consumer Protection Division has taken formal legal action in over 457 matters, all of them involving such a pattern of violation. One case, for example, that we are working on now involves insurance overcharging which affects 14,000 people.

Every one of those cases involve more than just an individual. The matters have involved areas of advertising, automobiles—the single largest area of consumer complaints—home improvements, health, nursing homes, sales practices, housing, insurance, utilities, et cetera.

A significant breakthrough for complaint mediation in Massachusetts occurred on March 10, 1977, when the Massachusetts Legislature, at the request of the Attorney General and the local consumer group network, appropriated $200,000 to be distributed via the local consumer aid fund with the Attorney General as custodian and disbursing officer of the fund.

I have also supplied the committee with a copy of the guidelines, the application, and the groups that we have funded. The guidelines were drawn up by an advisory committee that the Attorney General named and who worked with us.

Basically, the guidelines put an emphasis on encouraging groups to maximize other resources, moneys from other sources, volunteers, local space, et cetera.

Pursuant to these guidelines, we have given $185,000 to 22 applicants during the fiscal year 1978. These applicants represent a variety of groups, nonprofit organizations, municipalities, community action programs, and a community college.

Just to give you some example of the different character of these groups, in western Massachusetts, there is a countywide, nonprofit corporation which received funds from us and also received some funds from the county commissioners in Berkshire County.

On Cape Cod there is a group of senior citizens who have received some funds from us and also received some funds from the RSVP program. In Boston there is a consumer council established by the city which receives some funds from the city and receives some funds from us.

Each of these organizations submits to the Attorney General's office on a bimonthly basis a computer report of each complaint they mediate. They are then entered into our master computer file on consumer complaints. This is a relatively new process only in existence for the past 4 or 5 months.

We are then able to review the computerized complaints to pick up any possible patterns of illegal business activities in the State. It is not a very helpful process if you have the same businesses envolved in mediation complaints, in other words, using Federal and State money and people's time to get complaints mediated if, in fact, there is an underlying illegal practice they are engaging in. What should happen is you should stop the underlying illegal practice.

At the present time we are still handling complaints in our own office for all those areas of the State where there are not local groups. For example, Cambridge, Mass., does not have a local group. In fact, the demand is so great that despite the local groups we will handle more complaints in our own office this year than we did last year. There is a need for an increased number of local groups so that every local area will be covered by a group which can attempt to mediate disputes.

Based on our experiences, we believe that an adequate dispute resolution bill should contain the following four elements:

I should say, basically, that I am really talking about a dispute resolution bill that deals with consumer complaints because the amount of money that is being talked about in terms of being appropriated for dispute regulation, in my judgment, is not adequate in terms of handling the whole gamut of complaints.

So I am addressing myself to what I think is important in terms of the handling of consumer complaints basically.

1. Mediation. We think mediation is very important. The primary emphasis should be on mediation, as opposed to binding arbitration. It is impractical to devise a system that would insure consumer satisfaction in every case. The only way to insure enforcement of a mediator's opinion would be to provide lawyers in all those cases where satisfaction is not achieved. This would be too costly.

In addition, binding arbitration has the disadvantage of limiting the number of citizens who could be assisted with their problems because the merchant's consent is required.

2. Enforcement of existing laws. Through enforcement of existing laws, a climate can be created in which it is easier to resolve a dispute short of litigation. This can be accomplished through a tie-in with local or State law enforcement officers. They could act in those instances where there was a pattern of violation or an impact on the public involved in the bringing of the suit.

3. Recordkeeping. Adequate record keeping is essential to determine patterns of abuse. Wherever possible, computerization should be encouraged.

4. Coordination. Coordination on a Statewide basis should be encouraged to avoid duplication. This would involve the possibility of awarding money to subgrantees.

What we are advocating is a realistic approach to problems that do exist in the marketplace. People should not expect, nor can Government provide, a magic wand that will solve all problems. But it has been demonstrated that third parties, utilizing community resources and backed by a law enforcement agency, can resolve many disputes that occur.

Mr. ECKHARDT. Mr. Broyhill?

Mr. BROYHILL. Thank you, Mr. Chairman.

That was a very good statement and we do appreciate your coming down to give us the benefit of your experience in Massachusetts.

Could you describe for the subcommittee the nature of consumer-related disputes that are most frequently encountered? Do you have that for the record?

Ms. GOLD. Certainly. The largest single area of consumer complaints involves automobiles. It can be a new car or a used car. It is often a repair job. It can be a situation, for example, where an individual takes their car in to be repaired and it doesn't function properly after the repair. It can be a situation where a person buys a new car and brings it back, for example, six times in 7 months and still hasn't got satisfaction. This is the single largest area of complaint we get.

Another large area is landlord-tenant problems. This can involve deposit problems and other types of problems. I include this in the area of consumer complaints.

Another area we have had problems in have involved career schools, programs that were advertised as guaranteeing you a job, for example, and in fact the program turned out not only not able to get you a job, but it was not a recognized program by anyone.

The disputes can range from what might be criminal in nature, an actual out and out fraud, larceny, or it might range to the other end of the spectrum where there is a difference of opinion between the merchant and consumer as to what they are entitled to.

Mr. BROYHILL. Do you have that broken down as to how often that would occur in the 40,000 cases you dealt with? You indicated you do considerable recordkeeping.

Ms. GOLD. I could supply you with percentages of complaints in the various areas if you are interested.

Mr. BROYHILL. I think you indicated that you had gone to court over 400 times in order to stop illegal practices. The question I am really leading up to is what type of mechanism do you see as needed to resolve these consumer disputes? In other words, is it an arbitration mechanism we need or is it more than that?

Ms. GOLD. I think it is less than that. I think, basically, going by our experience in Massachusetts, the ability of an independent third party to intervene in a situation and attempt to mediate it, to convey the complaint to the business person, to get in the middle where communication has broken down and to discuss it with the parties involved, is often helpful in terms of resolving a dispute.

When I say I think it is less than that, I don't think it necessarily has to take the format of people coming in and sitting down. I think telephone communications, communication by mail—that doesn't mean everybody is going to be happy. But I think it does take care of a large percentage of the problems.

The problem, as I mentioned before, I think with arbitration, of a notion that something will be binding, is that it takes an agreement of both parties. What I am talking about in terms of mediation is voluntary. It means that if you are a merchant, one of the complaint groups calls you up and says, I have a complaint from Mr. So and So, and this is what he says, they listen to your side of the story. They say under the law you must—for example, if a car doesn't pass inspection in Massachusetts and the cost of repairs is more than 10 percent, you are entitled to have it returned. It may be just an independent third party saying that to the other side that gets the problem resolved.

I don't think the formal process is necessarily what resolves it. We have instances where people go to small claims court, get judgments, and never get them satisifed.

What I would favor is something in a sense building on the model because I know that model of what we have in Massachusetts which sort of combines an informal approach by mediation backed—and I think this is important—backed by litigation where it is important to litigate.

I think it is a disgrace to have the Government pay for business complaint departments. If you have continued patterns of complaints—and we had one automobile dealer with over 500 complaints. I am not his complaint department. It is time for him to get his shop in order and the Government should not pay for that.

Mr. BROYHILL. How could Federal legislation best assist in efforts to establish this kind of mechanism? What can we do? I am sure you have studied the bills, the differences between the administration bill and my bill.

Ms. GOLD. I am not as familiar with the bills as I should be because I am here on short notice. I am very familiar with the Senate bill because I have read that.

One, I think that it should probably not include all disputes. I think that that is biting off much too much. I think, for example, the Senate bill which includes all disputes which could be domestic relations problems, problems that are really far afield from the consumer problems I am talking about and really amount to court diversion programs which are good and valid programs but I think confuse the issue when they are all combined in the same thing.

I think it should be Federal legislation which deals particularly with consumer problems which I think in Massachusetts are not atypical in terms of the great need that exists.

I know I go to National Association of Attorneys General meetings and we discuss these very same problems. So I think that dispute resolution legislation should deal with consumer problems. It obviously should make money available and it should not preclude the use of this money for programs that also tie in with law enforcement. It should allow a variety so that the States could fashion their own.

I don't say the Massachusetts would be the model and is necessarily the only model. In all honesty, I didn't realize before I came here that this bill wasn't as directed as I thought it was to consumer problems. I am now beginning to believe that the way at least the Senate bill was structured and the way it might be implemented by the Justice Department is not at all what I envisaged and certainly not what I think should be done.

Mr. BROYHILL. The bill introduced, as you know, would call for a program of grants to States to encourage them to set up these programs, whereas the Senate bill, as I understand it, would enable, through the Department of Justice, enable them to fund a center or two in each State.

I suppose with the amount of money that is called for in this bill it probably would be maybe one per State which is far narrower in scope than I had anticipated.

Ms. GOLD. I am in agreement with what you are saying. I think you can get more leverage for your money if you use it to address one problem which is the problem I see in terms of the consumer need for mediation.

Mr. BROYHILL. But would you want to see a program of encouraging the States to set up these programs or to set up one of these centers per State? That seems to be the difference between the two bills.

Ms. GOLD. I would like to see legislation that encourages the States to set up the programs. That takes into consideration what may already exist in the various States. The reason I say I don't necessarily say the Massachusetts model I have mentioned is the only model, I mean, New York State is a totally different State with ongoing programs of a totally different nature.

In my opinion, it ought to be a program that you let the State set up. I would like to see it have an impact on as many people as possible, and I think that when you talk about the amount of money that is involved, it is more realistic to talk about it in terms of one particular type of problem, of which there are an enormous number, than it is to talk about it in terms of many dissimilar problems.

Mr. BROYHILL. Thank you very much.

Mr. ECKHARDT. I understand, then, that you conceive of what is needed and what your program is affording is a kind of a consumer mediation service primarily which may then lead to other levels in which ajudication may be had if necessary. For instance, a case might go to small claims courts, or in some instances cases would go to the ordinary courts. Or a case could lead, as one of the cases

you described with respect to insurance overcharging, to a relatively large class action.

But at any rate, you are looking at this as a mediation service more than anything else, but one in which problems and cases would be identified and could then be taken care of in the ordinary process of the courts.

Do I state that correctly?

Ms. GOLD. That is correct. I think that through the mediation process the vast majority of the complaints, at least in our experience, can be resolved. I think it is absolutely correct that in some instances it may be appropriate for people then to have to go to small claims court if it cannot be resolved, maybe with the assistance of individuals.

In some instances it may be appropriate for them to bring a private suit or appropriate for a public person to sue. The Attorney General in Massachusetts can sue on behalf of all the citizens who have been wronged and to seek restitution. We did in that insurance case and obtained a judgment for 1.1 million and whatever the audit showed to be owed to consumers.

But it is absolutely correct that mediation would be a preliminary level at which the vast majority of problems I believe could be resolved.

Mr. ECKHARDT. Do you feel that the $15 million, if it were limited to consumer matters in the Senate bill, would be of any help to Massachusetts?

Ms. GOLD. Yes, I absolutely do. I mean, when you consider the fact that the amount of State money that we now have that we are using for this program is $200,000, and under that $15 million, Massachusetts could double or triple possibly the amount of money that we have, that is meaningful. It builds on something that already exists for Massachusetts.

What we tried to do was build on something that existed even before we did. I think it is so important that you pull together as many resources as possible and not keep starting new programs in different directions.

Mr. ECKHARDT. Suppose on the other hand the money is used for the kind of centers that have multi-purposes, that is beyond the consumer question, having to do with neighborhood disputes and things of that nature. Do you think that would be of any benefit to Massachusetts?

Ms. GOLD. Yes, I do. Before I worked in the attorney general's office I was a legal services lawyer for 6½ years. So I have a great familiarity I think with neighborhood problems and some of the other problems you are talking about. So I think it certainly would be a benefit.

I would have to look at exactly what programs exist in Massachusetts in some of those areas. I think it is a totally different thing. You are talking about apples and potatoes. I don't think you are talking about the same thing. I think if the decision is you want to use $15 million in a type of court diversion process which deals with community problems, that is one thing. If the decision is you want to use $15 million to assist consumers, I don't think you can do that through the neighborhood justice center and get the

same widespread benefit that you could in another way. To me it is totally different.

Mr. ECKHARDT. I wonder whether the broader program, as the Senate bill envisions, I wonder whether that program would in fact be a court diversion program?

Do you think it would prevent cases from going to court or would it simply open up disputes that would then be in addition to what goes to court?

Ms. GOLD. Well, I think that might depend on exactly what the court system in any given community at the current time is. It just depends a lot on how the courts are operating presently in a particular community. I think it is conceivable that there might be additional ones that will go. It might be also conceivable that in some instances—let me give you a specific example: When I worked in Dorchester, which is a section of Boston, as a legal services attorney, there would be times when there were neighborhood problems. A kid might have damaged property of a neighbor or there might be yelling and screaming going on behind a neighbor.

What would happen, people would go down to the clerk's office and want to file a criminal complaint. Often what the clerk would do in the courthouse was to call the people in to sit down and talk about the problem.

In a sort of nonofficial way he would say, you don't do this and you don't do this and I don't want to see you people again. This seems to be somewhat what happens in the neighborhood justice center.

If you have courts that are not doing that in communities, that is one thing. If you have courts that are, that is something else. Some of the courts in this nature are receiving funding from other Federal sources.

I think I may have gone off the track, but I keep coming back to the same thing, that I think we are just talking about two totally different kinds of problems. That is not to say that in a neighborhood justice type center you would not have a consumer problem. Of course you would. It doesn't mean that you could not handle some there, but you could never handle the volume.

I guess what I am talking about is being able to handle a large volume of consumer problems that exist and for which I believe there is a large demand.

Mr. ECKHARDT. Should collection agencies be permitted to use the dispute resolution mechanism under this law?

Ms. GOLD. Well, if the dispute resolution mechanism were a mediation of the nature that I have spoken about, then it probably would not be terribly successful if they used it. It would mean that this local consumer group, for example, local dispute consumer-business problem group contacted someone and said, you know, you owe some money. Probably that would not be very effective. As a practical matter, even if they could use it, I don't think it would be very effective.

I think the other problem, I suppose, is that in some States collection agencies and businesses cannot use small claims court so that if you were to tie that to an appropriation and a small claims

court project wanted the money, then they would not be able to get the money.

I am not as troubled by the notion of business having access to whatever the dispute mechanism is as I am by the notion that the dispute mechanism deals with many other kinds of problems. It seems to me to be realistic to allow some access to that kind of system if it can be meaningful to businesses that have problems, particularly on a local level.

For instance, in our local consumer groups it might be in some instances helpful to be able to have businesses have access to it because they would have more faith in the system and its credibility. I don't think collection agencies should be able to use the process. That is what their business is, collecting. So let them go and collect and earn their money.

Mr. ECKHARDT. How do you set priorities to determine who gets funds from your office?

Ms. GOLD. We basically looked at the area that was served, their past history and track record and the sources of moneys that they had, what they had done, for example, to pull together resources of their own, and the criteria are set out in the pact that I have given you.

The criteria, as I said before, were devised by an advisory committee that consisted of a number of people who were knowledgeable in the consumer area in Massachusetts. We basically looked at and are looking at now what is the area you intend to serve and can you really do it? Is your program a viable one? If you are operating from your own house and you are an individual, that doesn't seem to be very viable. What are your other resources that are available?

Mr. ECKHARDT. Senate bill 957 would permit nonprofit private groups to receive grant money. Does the Massachusetts program also permit nonprofit groups to receive grant money?

Ms. GOLD. Yes, it does.

Mr. ECKHARDT. How do you draw any distinction between business-sponsored groups and others, if you do?

Ms. GOLD. We have not funded a business-sponsored group, but that is because none have applied either. I mean, no chamber, for example, has applied for funds. Under our program, any kind of group could possibly participate in it. The major thing we would look for was again the area they were serving and whether or not they were going to comply with our guidelines which include giving us the computerized information on a monthly basis.

Mr. ECKHARDT. Do you think that there should be any concern about whether a business group would adequately advise consumers of newly-acquired rights, for instance the rights under the Magnuson-Moss bill with respect to warranties? Or whether business groups might urge in mediation that persons settle for less than they are actually due?

Ms. GOLD. I think that is a possibility. I think what would make the difference is how closely one looks at or supervises those groups. Relating, again, to the Massachusetts experience, if we had a business group that appeared to be structured in such a way that it was going to provide the same services as the other groups, I

think we would be in a position to monitor them relatively closely to insure they are providing the service.

When we give money, we also have conditions for the grant. One of the conditions, for example, for the legal services office we funded was that they have to handle mediation for people who are above the poverty level with this money. They don't give them legal services, but they attempt to mediate. It is conceivable to me that there could be a business group somewhere that would be concerned, conscientious, and believe that they can help to provide this service. I would not necessarily foreclose that possibility.

Mr. ECKHARDT. I would think, though, that you would have to work out some basic requirements for the nature of the business group and the limitations upon its exercise of the authority if you are going to guard against such problems as that.

Ms. GOLD. I think that is absolutely correct.

Mr. ECKHARDT. Were you here when Mr. Meador testified?

Ms. GOLD. No, I was not.

Mr. ECKHARDT. Among other things, he said the Justice Department conceived of these mechanisms looking into the question of certain considerations other than legal rights in with respect to mediation. I suppose to a certain extent this is a question of semantics. There are always lawyers to advise clients not to proceed in cases in which practical considerations weigh into the total result.

I would advise a client, for instance, not to bring a suit if the suit might cost more than the recovery possible, or I might advise a client not to bring a suit just because he was standing on "principle."

But it does trouble me a little that such agencies might be set up with a quasi-official capacity that would look toward other standards for mediation other than the rights of the individuals as spelled out in law.

It particularly troubles me if the matter is of a potential criminal nature because it seems to me that that might lead to a situation in which the prosecuting authorities might be influenced not to bring cases where the criminal law has been violated.

I don't know whether you have any experience in this area or not or whether you have any opinion on it, but I would like your comment.

Ms. GOLD. I think the principles underlying the mediation must be the law. I think that is the framework in which you attempt to also resolve the dispute. My notion of mediation, and maybe it is a loose notion of it, is not that you give away what people's rights are. One service is also to let the people know what their rights are and to inform the business that is involved, for example, of what the law is.

What underlies the 40,000 complaints that we have mediated in the attorney general's office, and I quote "mediated", is the law. If there is a violation of law, we will use that and call the merchant and say this is what the law is and this is why you must do this and bring it to his attention.

I don't understand the notion of mediating independently and what the law is personally.

Mr. ECKHARDT. This is what gives you the clout of mediation with the strong party against the weak.

One, the strong party, if the party is a mercantile establishment, has a reputation to maintain that might be tarnished by the fact that many have a forum in which to bring their complaints; and, two, that if the rights of the individual are known, they may eventually end up in the law courts which can be costly and can be injurious from a public relations standpoint to the stronger party in the case.

But it seems to me that that is peculiarly related to consumer complaints. I can't see how these factors can much touch neighborhood disputes. For example, take questions, of whether a person using an easement across a property or asserting an easement is in fact trespassing or whether or not the handling of one's garbage constitutes a nuisance to one's neighbor.

Questions of that nature seem to me to invite extra legal persuasion and to create a lot of problems that may be more than they solve.

Ms. GOLD. I would agree with you. I think there is a big problem there. We have lots and lots of consumer laws which are supposed to mean something, otherwise we would not pass them. But they can't mean anything unless people know about them. That takes not just the consumer knowing about it, it takes the business person knowing about it.

There is the same ignorance, I find, among business as there is among consumers as to what people's rights are and what people's responsibilities are. So I think it is a very different area than the neighbor who plays the radio at 2 in the morning, and the notion of how you can help them live together as neighbors is very different than applying legal principles.

There are consumer situations where there is a bona fide dispute of facts and there is no particular law that is very clear on what ought to happen in that situation.

Then there is a third party attempting to say maybe this seems reasonable, and then the other side makes some form of accommodation where maybe both parties are not all that happy but at least they have resolved the matter and have not been involved in lengthy litigation.

Mr. ECKHARDT. That is what a capable lawyer does in respect to settlement of a case in many instances and in many instances finds a way to ultimately come to a conclusion so the clients on both sides are not injured by lengthy and expensive litigation, but the discussion remains legal rather than merely persuasive.

It does seem to me that when you get into areas of just every type of dispute, you get pretty far away from the questions involved in the construction of the law.

Ms. GOLD. I would absolutely agree with you.

Mr. ECKHARDT. Any further questions?

Mr. BROYHILL. Mr. Chairman, I would like to yield to Mr. Greene, minority counsel, for one or two questions.

Mr. GREENE. I suppose the purpose of this type of mechanism and program is to wash out of the court system some things that really don't need to go through it and that is one function that it serves.

Another function is diminished costs, perhaps. It takes less time of the courts and it is simplier for people to deal with. But how

would it? Undoubtedly it should in some manner interface with the established court system.

Should that take the form of perhaps, well, in regard to matters that were within the defined scope of the mediation program, should a person be required to seek mediation or go through this mechanism prior to seeking redress in courts in regard to this matter within the defined scope of perhaps the mediation mechanism?

Ms. GOLD. No; I don't think so. I think that is creating additional hurdles to people who already view our court system as fraught with all kinds of hurdles.

In terms of the consumer aspects that I was talking about, I think it interfaces in the respect that if a person chooses to try to have their complaint mediated, in other words, complains to a group, so and so will not resolve my problem, if that is unsuccessful—if, for example, very specifically speaking, we are unable in the Attorney General's office to resolve the particular complaint or if a local group is unable to resolve it, then we will tell them what their rights are. You have a right to go to small claims court if it is less than x amount of dollars, or you have a right to a legal services lawyer if you can't afford a private lawyer or you have a right to have a private lawyer.

In our law there is provision for class action suits and attorney fees and also the Attorney General will sue if it is a pattern of class problems. This is an easier and cheaper and maybe less time consuming mechanism for people to resolve disputes.

It is also cheaper for the merchant than the individual going down to small claims court. It doesn't mean that one would not then, after the process, if it didn't work, have access to the court system.

Mr. GREENE. Would the mediation result, from time to time, do you envisage, in a signed agreement as to a resolution of the matters? Perhaps you could resolve one-fourth of the matters involved in whatever the controversy is and the other percentage would have to be litigated.

In order to maintain some type of binding aspect of mediation so that the court would only address a portion of the total controversy, would you envisage something in the order of signed agreements?

Ms. GOLD. It could be. We have way more than that resolved satisfactorily. Our percentages are 60 to 70. Then there is another number that may not choose to go any further in terms of enforcing it whether there was an enforceable agreement or not.

I think there ought to be leeway for different types of programs to develop. We don't happen to use written agreements and they are not enforceable now en masse. I don't know that that is the important thing.

I think if the person is going to do it, they will do it anyway. If they are not going to do it as a result of the mediation, it is going to take a lengthy court battle until the person does it, if they ever do it.

As I said before, we have people who go through small claims courts and get judgments and never get what they are supposed to get. Then they have to go one step further and pull them into court

in a supplementary process. It depends on the people's willingness to comply with either the mediation or court order.

Mr. GREENE. I was pursuing something the chairman pursued, that is, once you have agreement between the parties, what mechanism do you have to enforce that agreement other than voluntary compliance or should we consider adding other mechanisms?

Ms. GOLD. I find that a little troublesome and a little impractical. The only real enforcement you are ever going to have is to supply everybody with a lawyer I think. That is ultimately where it is going to come about. To give a person a written agreement after they finish with mediation and now say, go hire your own lawyer, they are not going to view as very much enforcement. I don't think we can do that, supply everybody with a free lawyer.

I think we can think about enforcement, but unless it is binding arbitration, which cuts down on the number of people who can be involved in the process, I think it very difficult.

Mr. GREENE. So the total function of the program you are describing is voluntary?

Ms. GOLD. It is basically voluntary, yes, but I think equally as important is the tie-in with law enforcement. That is the teeth. It is voluntary, but it is voluntary in a climate whereby a person knows there are laws in a particular State that are going to be enforced.

If this program were entirely voluntary without the Attorney General taking the actions he has taken, I don't think it would be as successful as it is. The local groups have clout because they can say they are working with the Attorney General. A merchant is going to think twice about am I really right about not resolving this matter because I should be really right because if I am wrong, there is going to be a pattern of complaints building against me.

So it is voluntary in that there is no agreement that people must mediate the clout is contributed by the law enforcement agency which creates the right climate for people to get together and resolve their own problems.

Mr. GREENE. That is all.

Thank you, Mr. Chairman.

Mr. ECKHARDT. Are there any further questions?

Thank you very much for your testimony. It has been useful to the committee.

The subcommittee will be adjourned until 10 a.m. in the morning.

[Whereupon, at 3:30 p.m. the subcommittee adjourned, to reconvene at 10 a.m., Friday, July 21, 1978.]

CONSUMER CONTROVERSIES RESOLUTION ACT

FRIDAY, JULY 21, 1978

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

The subcommittee met, at 10:30 a.m., pursuant to notice, in room 2218, Rayburn House Office Building, Hon. Bob Eckhardt, chairman, presiding.

Mr. ECKHARDT. The Subcommittee on Consumer Protection and Finance will resume its hearings. I should like to ask the witnesses to come to the table. If you will, sit in this order: Commissioner Arthur Best; Mark Schultz, accompanied by Madelaine Geller; Rosemary S. Page; Mr. Talbert D'Alemberte, accompanied by Prof. Earl Johnson; and Mr. Dean Determan.

Without objection, the written statements of each of the persons will be permitted in the record. I will recognize you in order that you may summarize your statements.

STATEMENT OF ARTHUR BEST, DEPUTY COMMISSIONER, NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS

Mr. BEST. Thank you, Mr. Chairman.

Good morning. My name is Arthur Best; I am deputy commissioner, New York City Department of Consumer Affairs.

We strongly support this legislation, for two primary reasons: First, the Nation has a severe problem with consumer abuses that remain unresolved. This legislation you are considering represents a worthwhile step toward remedying some of those unresolved problems.

I emphasize consumer problems because those were the focus of this legislation in its earliest forms and should continue to be its primary focus.

The costs and quantity of consumer problems are both difficult to quantify. The broadest based survey of those problems is one I was associated with in 1975 conducted for the Center for Study of Responsive Law and Call for Action, a complaint handling organization. Data have been published in the Harvard Business Review and Law and Society Review, and they show one out of three purchases leads to some kind of dissatisfaction; and as high a percentage as 1 out of 10 leads to a serious feeling of dissatisfaction.

How much each of those problems costs is difficult to say, but a Federal study estimated a median cost as about $80 each.

Who are the victims of these problems is a question which has a simple answer. Everyone can be a victim of consumer trouble, and we all are. In the study conducted, we discovered very few class distinctions in people's exposure to consumer trouble.

What are the responses? Typically, it is to do nothing. Another is to complain to the seller; and a final response might be to use some kind of third party, a complaint-handling institution.

An overwhelming majority of persons faced with consumer problems do nothing; a significant proportion return to the seller and seek fair treatment; and a tiny group use some kind of third party. This is where we are now.

In New York City, our department handles approximately 250,000 contacts from aggrieved consumers each year. Some of those contacts we are able only to treat by giving brief information over the phone; others, we are able to process as complaints with a somewhat complex resolution process.

Those quarter of a million contacts represent an astronomical rate of incidence of consumer problems in the New York City area alone.

With a shortage of third parties, the situation turns out to be this way: Sellers have a monopoly on complaint resolutions and can set their own standards as to how to handle those complaints. This leads to social and economic costs which are obvious.

There is another process which leads to optimism. This fact is that all consumer complaint handling and suffering is a kind of cyclical system. The bad things about it contribute to further bad things; good things such as improvements are helpful and have a ripple effect far greater than one might expect.

In a city or town where there are very few methods of resolving problems, people will be less inclined to speak up and sellers will be less inclined to treat those voiced complaints fairly.

Working in an area where consumer complaints are effective, people learn there is a place to go and they will be more interested in speaking up. As more complaints are voiced to sellers and some small group of complaints are helped by third parties, there is more incentive for people to speak up and for the complaints to be handled fairly. This is the second reason we are supportive of this legislation. This legislation, if passed, will increase people's ability to complain, and give people additional experiences of exercising rights as consumers.

In New York City, for example, we need increased funds for consumer complaint handling; we would like to have night hours. We recognize we should have more bilingual employees and larger staffs; people who call get busy signals often. We should have a computer system to deal with complaints. We should improve our consumer education efforts. All these are things we are unable to do at this time.

The small claims court in New York City would be ineligible for support under one of the bills under consideration now. Those small claims courts have been a model for the Nation, but they themselves could benefit significantly from increased support.

Nongovernment complaint handling also deserves sustenance and encouragement.

One well-respected organization, Consumer Help, run jointly by New York University Law School and WNET channel 13 in New York City, was forced to close last spring for lack of funds after 4 years of successful service.

Summing up, I would say in New York City our department could improve its overall activities. The small claims courts could benefit by increased funds, although a topic that requires attention is limiting the impact that businesses have by excluding businesses—or approaching a more moderate procedure such as limiting the number of cases any individual or business can bring in a given year. Helping consumers at a time of energy crisis and financial crisis, it seems to us, is a very constructive effort. Making sellers deliver what they promise to deliver makes the free enterprise system work.

For those reasons, we support this legislation.

[Mr. Ratner's prepared statement follows:]

STATEMENT OF BRUCE C. RATNER, COMMISSIONER, NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS

Good morning. My name is Bruce Ratner, and I am the Commissioner of the New York City Department of Consumer Affairs. The Department was created in 1968 and is charged with protecting and educating the city's consumers, by enforcing licensing laws and laws related to the sale and offering for sale of goods and services within New York's five boroughs. We license businesses, promulgate consumer protection regulations, conduct hearings and investigations, recommend fines, and help consumers with thousands of complaints each year. Our experience with consumer problems and their solutions leads us to support consumer controversy and dispute resolution legislation such as Representative Broyhill's H.R. 2965, Representative Murphy's H.R. 2482, and Senator Kennedy's amended version of S. 957 which recently passed the Senate.

Consumers need and deserve help in resolving controversies with vendors, manufacturers, and providers of services. The New York City Department of Consumer Affairs handled 247,606 phone calls, letters and personal interviews concerning consumer problems in 1977. These contacts are only the tip of the iceberg: recent research published in Harvard Business Review and Law & Society Review shows that only about one in three perceived problems is voiced to a vendor or third party. Of these voiced complaints, only 3.7 percent are referred to third parties. And of the small number of cases that go to all third parties, only about 16 percent are reported to local consumer agencies. This survey, which covered 2,500 urban households in 34 cities nationwide, showed that for some categories of goods and services, such as denture and hearing aid purchases and appliance repairs, problems were perceived in one-fourth to one-third of all transactions.

Frequently the time and expense involved in trying to resolve a complaint seem so great in comparison to the dollars involved in the original purchase that consumers just don't bother to pursue a solution. However, it is important to remember that the sum of all these small problems is a great burden on the American marketplace. A manufacturer or vendor who reduces his or her costs at the consumer's expense and gets away with it puts more reputable businesses at a competitive disadvantage, and can contribute to lowering standards throughout an industry. Equally important is that the frustration and hopelessness felt by a consumer with no access to redress can lead to cynicism and alienation. The opinion research firm of Louis Harris and Associates, Inc., conducted a nationwide survey in 1976 in which 6 out of 10 respondents agreed that "most companies are so concerned about making a profit, they don't care about quality." Six out of ten respondents disagreed with the statement that consumers can take care of themselves in the marketplace without outside help. A Consumer Controversies or Dispute Resolution Act providing funding, guidance, research and development resources to consumer protection mechanisms would be of great help in responding to this need.

In voicing the Department's support for these bills, there are a few specifics that merit special attention. First, consumer needs should remain a focal point of concern as this legislation evolves. Although issues such as landlord-tenant conflicts are important and deserve attention, consumer help is the original concern of the bills. Each of the House bills and the original version of S. 957 emphasizes that present

mechanisms for resolving these controversies are inadequate to deal with such a huge volume of disputes.

Another important point concerns use of dispute resolution mechanisms by businesses, corporations, partnerships and assignees. Some states which allow these groups unlimited access to their small claims courts have found that the original purpose of the courts—to provide fair, inexpensive and speedy justice for individual litigants—has been subverted. A study done by the Connecticut Public Interest Research Group shows what can happen when businesses are allowed complete access to small claims courts: From May to September of 1976, 83 percent of the small claims cases filed in Hartford involved corporate plaintiffs and individual defendants. Forty percent of the Hartford cases were filed by three plaintiffs. A predictable result of these massive filings is a long waiting period before cases are heard: only 3 to 4 percent of cases in Hartford have hearing dates that are within 7 weeks of filing.

In addition, institutions that use the courts frequently may have an unfair advantage over inexperienced defendants. Beatrice Moulton reported in a Stanford Law Review article that "business claimants who every few weeks file multiple suits in small claims courts become familiar to the judge and the handling of their claims becomes routine." Professor Moulton added that the "plaintiff soon learns the operative facts necessary for a judgment and soon gives unassailable answers." Imagine the dismay an individual defendant feels when he stands against a corporate representative who is handling his one hundredth case and is on a first-name basis with the judge. Combined pressure from an experienced creditor and a hurried judge can prevent a defendant from describing the legitimate defenses of fraud, defect, material misrepresentation or failure to deliver in a transaction which would shield him or her from an unfair judgment. These defenses might as well not exist if they cannot be used.

When poor consumers see the small claims court as a rubber-stamp for powerful businesses, they suffer not only financial losses, but a loss of faith in government. Attorney General Robert Kennedy said "For (the poor man), the law is always taking something away." I urge you to prevent these desperately needed dispute resolution mechanisms from becoming collection mechanisms for businesses. New York law prevents corporations, associations, insurers and assignees from filing in small claims courts, although these groups may be defendants. Other states limit the number of cases any one plaintiff can file in a year. Another approach would be to specify a limited number of days for corporate plaintiffs to present cases. The legislation should adopt one of these methods of dealing with the so-called "business overload" problem.

I would also like to note the importance of education programs. Each of the bills under consideration allows for expenditures to inform the public about the availability and use of dispute resolution mechanisms. These provisions are vital, because dispute resolution mechanisms cannot serve a public unaware of their existence. Literature in the consumer field has pointed out time and time again that a central reason for the under-use of consumer help agencies is that people just do not know about them.

To show the services dispute resolution mechanisms can provide, I will describe some innovative mechanisms which have worked to solve consumer problems in New York City.

THE NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS

The New York City Department of Consumer Affairs is now in its tenth year and, as I said before, is responsible for enforcing laws relating to the sale of goods and services in the city. In addition to the Licensing Division and the Markets Division (which enforces weights and measures law) the Department devotes substantial time and energy to enforcing the Consumer Protection Law, representing consumer interests before administrative and legislative bodies, and responding to thousands of consumer complaints. When we receive a complaint that deals with an existing law or regulation under the jurisdiction of the Department, a field investigation is made and, if the inspector finds a violation, a summons is issued. When a complaint does not relate to one of our laws or regulations, it may be referred to a more appropriate agency, or if no other agency can help, Consumer Affairs staff will make strong efforts to work out a solution. In 1977, consumers were helped in 79.8 percent of these cases.

Additional funding and access to research and development resources, as provided for under consumer controversies and dispute resolution legislation, would be a great help to state and local government agencies such as the New York City Department of Consumer Affairs. Our complaint division would be able to help

many more consumers if we had night hours and more bilingual employees. We would like to have the staff to handle more complaints by phone, reducing consumer frustration and speeding up the resolution process. Right now our phone lines must be staffed almost entirely by part-time volunteers. These volunteers work very well and deserve high praise; however, they cannot supply the continuity and expertise of full-time employees. Having access to a computer would enable us to respond more quickly to inquiries, as well as spot trends in consumer concerns or patterns of violations. A National Dispute Resolution Resource Center could help analyze more efficient methods of dealing with complaints and, perhaps, provide for exchange of information about the education of consumers concerning dispute resolution mechanisms.

The New York City Department of Consumer Affairs works hard to make consumers aware of laws written for their protection, how to use money wisely and how to avoid problems in the marketplace. Pamphlets and fact sheets are made available, conferences are held, and volunteer speakers address community groups around the city. Information is disseminated through the press and broadcast media both in the news and through regularly scheduled programs. Consumer education is the core of an effective program. Additional funds could improve this education effort significantly.

HARLEM SMALL CLAIMS COURT COMMUNITY ADVOCATES

The Harlem Small Claims Court Community Advocates are funded by the Model Cities Program and are under the administration of the New York City Department of Consumer Affairs. The Supervising Community Advocate in Harlem is an attorney, and he is aided by two full-time employees. These experts in small claims court actions are available in the court clerk's office to explain legal rights, to help fill out forms and to assist plaintiffs and defendants in gathering appropriate evidence. Though volunteer lawyers provide part-time help of this sort in other parts of New York City, this crucial service is not available in many major cities or rural areas. The response to the Community Advocates program has been very favorable. This is consistent with the report of the 1977 American Bar Association Conference on Minor Dispute Resolution, which said that for both plaintiffs and defendants, a highly desired court feature is advice in planning and presenting a case. This service should be available nationwide.

There is also a great need for agencies to help in the collection of small claims court judgments. A 1976 report by the New York Public Interest Research Group said that the collection problem is "the most glaring and persistent" problem facing small claims courts today. In a New York Public Interest Research Group study of Queens Small Claims Courts, more than 40 percent of claimants who had won judgments were not able to collect any money more than 5 months after their hearings. Yet despite this drawback, the New York Small Claims Courts—with night hours, limited business access, and Community Advocate service—are considered among the most progressive in the country. Clearly, the proposed legislation's provisions concerning collection are of the utmost importance.

THE CONSUMER HELP CENTER

The Consumer Help Center was a joint project of the New York University School of Law and WNET/Channel 13, a public broadcasting station. This project, though eminently sucessful in serving consumers, was terminated due to lack of funding. The Help Center focused its energies on dispute resolution by means of intervention; using conciliation, mediation and negotiation techniques designed to re-establish goodwill between the vendor and consumer. Although the Center's staff included lawyers and 40 to 50 percent of the volunteers were law students, legal action was initiated only as a last resort. The Help Center limited the number of complaints it handled to approximately 5,000 a year in order to give each complaint individual attention. Most complaints were taken over the phone—a great advantage to lower income consumers who may have trouble expressing themselves well in a letter. The phone method also allowed volunteers to question the complainant about the conflict so that a complete history of the problem and all relevant details could be obtained. The complainant then was asked to send in copies of all relevant documents. After the case had been carefully reviewed, a call was placed to the vendor. Volunteers were carefully trained in mediation techniques and would take a conciliatory, but not apologitic, stance. The vendor's side of the story was carefully considered—it was not assumed that the complainant was always right. Negotiations continued, bringing cases to a conclusion satisfactory to both parties in an average of 15 business days from the complainant's first call.

Complete records of each case were kept for use by volunteers and as a statistical resource for other consumer groups. If no resolution was achieved, the complainant could be referred to small claims court.

The Consumer Help Center had a phenomenal 80 percent successful resolution rate and was well-known in New York as an innovative and effective source of dispute resolution outside the courts. Even while the Help Center was in operation, funding limitations kept the program from achieving its full potential. Even a small outlay for additional phone lines and for recruiting volunteers would have greatly increased the number of complaints handled. As it was, the phone lines could only be left open for 3 hours a day—otherwise so many complaints would come in that they could not be given individual attention. It is tragic that a program such as the Consumer Help Center—one which solved so many disputes on a financial shoestring—could not find a funding source sufficiently interested in consumer problems to back its continuing operations.

I believe that these New York programs show substantial success, especially considering their limited resources. I hope these programs will be just the beginning of what will be done in many states, with the backing of consumer controversies and dispute resolution legislation, to provide consumers with the help they need and deserve.

I sincerely urge you to respond to this need by supporting this proposed legislation.

Mr. ECKHARDT. Thank you.

STATEMENT OF MARK SCHULTZ, REGULATORY AFFAIRS ATTORNEY, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, ACCOMPANIED BY MADELAINE S. GELLER, CHAMBER'S CONSUMER AFFAIRS ASSISTANT

Mr. SCHULTZ. My name is Mark Schultz, regulatory affairs attorney for the Chamber of Commerce of the United States. Accompanying me is Madelaine S. Geller, the Chamber's consumer affairs assistant.

We support S. 957, which authorizes the Federal Government to help States and local communities improve their informal complaint-handling and small claims court procedures. The purpose of the legislation is to provide consumers and business with ways for resolving minor disputes effectively, efficiently, fairly, inexpensively, and expeditiously. We hope that it will, as intended, provide an incentive for States and local communities to study their existing minor-dispute resolution mechanisms, to add new mechanisms, and to change old methods that no longer serve the public as they should.

S. 957 will implement, to a large extent, the Model Small Claims Court Act drafted by the National Chamber, plus the main elements of the Chamber's consumer redress program, "Up With Consumers." For years, the National Chamber has been in the forefront of efforts to encourage business to discover ways in which intra-company complaint-handling procedures, arbitration and mediation mechanisms, and consumer-oriented small claims courts could be established in their companies, trade associations, and communities across the country.

Although we have encouraged businesses and States to adopt similar consumer redress programs and to act voluntarily, expeditiously, and effectively on consumer problems, recognizing the role consumers themselves must play in advancing their own interests, we realize that, in some instances, Federal Government involvement is necessary. For example, during the past 2 years, the Chamber has been working to bring attention to the need for revision of small claims courts. Our regional offices have been involved with

business and consumer groups around the country to establish a working relationship that would highlight the need for change in the current small claims court system. However, we have found in some instances that minor consumer problems—the redress of grievances or complaints involving goods and services—have taken a back seat at the State level to other pressing consumer needs, such as energy and inflation. Of course, we recognize the priorities that State legislatures must establish in order to complete their calendars within short legislative sessions. But we feel passage of legislation such as S. 957 will help States recognize the continual need of consumers to have these minor problems resolved.

Some action by the States has taken place already. Kentucky, Arkansas, and Texas have made several favorable changes in their judicial systems. Other States have considered establishing consumer redress programs, but were unable to schedule hearings or move the proposal to the floor of the legislature because of overloaded calendars. Some states also have made changes through State administrative law. However, far too few have adopted such programs to date. With the incentive provided for in S. 957, we expect the next State legislative sessions to result in the examination and establishment of better redress mechanisms on the State level.

Legislation such as S. 957—a bill which transcends ideological lines and enjoys a unique coalition of the administration, consumer and business groups, as well as that of lawyers' groups and representatives of State and local governments—is a significant step in the right direction. S. 957, in facilitating the establishment and improvement of informal dispute resolution mechanisms and small claims courts, with its careful restraints on government intervention and its reasonable price tag, ultimately may be the solution to providing effective redress for consumer problems.

Full implementation of S. 957 will benefit both the consumer and the business community, and deserves serious consideration. We offer our support for and recommend approval of S. 957.

[Mr. Schultz' prepared statement follows:]

STATEMENT OF MARK SCHULTZ, REGULATORY AFFAIRS ATTORNEY, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

I am Mark Schultz, Regulatory Affairs Attorney for the Chamber of Commerce of the United States. Accompanying me is Madelaine S. Geller, the Chamber's Consumer Affairs Assistant.

The Chamber of Commerce of the United States is the world's largest business federation, composed of more than 69,000 business firms, 2,500 chambers of commerce in the United States and abroad, and 1,200 trade and professional associations. National Chamber members have a vital stake in S. 957—the "Dispute Resolution Act"—which seeks to facilitate establishment of small claims courts and other consumer-business dispute resolution mechanisms.

We support S. 957 which authorizes the Federal Government to help states and local communities improve their informal complaint-handling and small claims court procedures. The purpose of the legislation is to provide consumers and business with ways for resolving minor disputes effectively, efficiently, fairly, inexpensively, and expeditiously. We hope that it will, as intended, provide an incentive for States and local communities to study their existing minor dispute resolution mechanisms, to add new mechanisms, and to change old methods that no longer serve the public as they should.

S. 957 will implement, to a large extent, the Model Small Claims Court Act drafted by the National Chamber, plus the main elements of the Chamber's consumer redress program, "Up With Consumers." For years, the National Chamber has been in the forefront of efforts to encourage business to discover ways in which

intra-company complaint-handling procedures, arbitration and mediation mechanisms, and consumer-oriented small claims courts could be established in their companies, trade associations, and communities. This is due, to a large extent, to the fact that the National Chamber's federation of business enterprises, local and state chambers of commerce, and trade and professional associations provides a singularly appropriate vehicle to implement activities to achieve these objectives.

Initially, the consumer should be, and in the vast majority of cases is, able to obtain redress action directly from the retailer, manufacturer, or offerer of services, as appropriate. However, if the dispute cannot be resolved directly between the two parties, we have recommended that it be handled to the fullest possible extent by mediation or arbitration procedures or by third-party complaint resolution services. Should formal adjudication of individual claims be found necessary, swift and non-complex judicial procedures, such as small claims courts, should be broadly available at the local level. Such procedures should be fair, expeditious, accessible, effective, dignified, and of minimal cost to the parties.

Although we have encouraged businesses and states to adopt similar consumer redress programs and to act voluntarily, expeditiously, and effectively on consumer problems, recognizing the role consumers themselves must play in advancing their own interests, we realize that, in some instances, Federal Government involvement is necessary. For example, during the past two years, the Chamber has been working to bring attention to the need for revision of small claims courts. Our regional offices have been involved with business and consumer groups around the country to establish a working relationship that would highlight the need for change in the current small claims court system. However, we have found in some instances that minor consumer problems—the redress of grievances or complaints involving goods and services—have taken a back seat at the state level to other pressing consumer needs, such as energy and inflation. Of course, we recognize the priorities that state legislatures must establish in order to complete their calendars within short legislative sessions. But, passage of legislation such as S. 957, will help states recognize the continual need of consumers to have these minor problems resolved.

The inability to obtain a refund or delivery of a product or service paid for may not appear to be of as great significance as solving energy or employment problems within a state. But, to the consumer who has been wronged, the need to obtain justice is of equal importance, and legislatures must be provided with the incentive to realize this. The proposed legislation will enable states to take immediate steps in this direction. Hence, we support the promotion of effective consumer redress through a cooperative functioning of public and privately sponsored informal resolution mechanisms, which will make available to consumers more avenues of redress and, therefore, increase the speed within which satisfaction can be obtained.

Unfortunately, for many consumers, procedures for resolution of minor claims and disputes involving consumer goods and services are unavailable or ineffective. Therefore, the development of informal dispute resolution mechanisms will encourage businesses and consumers to resolve their differences quickly and inexpensively, without protracted litigation.

Some action by the States has taken place already. Kentucky, Arkansas, and Texas have made several favorable changes in their judicial systems. Other states have considered establishing consumer redress programs, but were unable to schedule hearings or move the proposal to the floor of the legislature because of overloaded calendars. Some States also have made changes through State administrative law. However, far too few have adopted such programs to date. With the incentive provided for in S. 957, we expect the next state legislative sessions to result in the examination and establishment of better redress mechanisms on the State level.

Legislation such as S. 957—a bill which transcends ideological lines and enjoys the support of the Administration, consumer and business groups, as well as that of lawyers groups and representatives of State and local governments—is a significant step in the right direction. S. 957, in facilitating the establishment and improvement of informal dispute resolution mechanisms and small claims courts, with its careful restraints on government intervention and its reasonable price tag, ultimately may be the solution to providing effective redress for consumer problems.

Full implementation of S. 957 will benefit both the consumer and the business community, and deserves serious consideration. We offer our support for and recommend approval of S. 957.

Mr. ECKHARDT. Thank you.
Miss Page.

STATEMENT OF ROSEMARY S. PAGE, ASSOCIATE GENERAL COUNSEL, AMERICAN ARBITRATION ASSOCIATION

Ms. PAGE. Mr. Chairman, I am Rosemary S. Page, associate general counsel, American Arbitration Association. I have been authorized to appear on behalf of the American Arbitration Association by our president, Robert Coulson, and by our general counsel, Gerald Aksen.

H.R. 2482, H.R. 2965, and S. 957 contain provisions which, in the experience of AAA, should prove workable in accomplishing their stated goals and purposes. These provisions include: (1) encourage a variety of different mechanisms for disputants to use; (2) adapt existing mechanisms to accommodate a wider activity of disputes; (3) encourage finality; (4) educate the consumer on the uses of the various mechanisms; (5) involve the consumer in the planning stages and throughout the program; (6) encourage the scheduling of hearings at a time and place that are convenient to the consumer; and (7) include disputes that arise in the course of daily life, in addition to traditional consumer disputes.

My written statement goes into details which I will only mention now about the association's experience in four distinctive areas, and the important lessons gleaned from these consumer-type areas:

First: Developing rules for the home owners warranty program, to conform to the Magnuson-Moss warranty act and monitoring the administration of these rules has taught many valuable lessons about the workable or unworkable features of that act as applied to consumers' disputes.

Second: The educational component developed in connection with the Michigan Medical Malpractice Arbitration program has supported the conclusion that informing a potential user of a forum by both active and passive techniques is an effective teaching method.

I have brought with me a sample poster in Spanish which is actually used in that program. It shows something which was placed on the wall in the clinic and hospital areas so the consumers would be able to look at it. It asks them whether or not they have been informed about the arbitration program.

This is just one of a number of educational devices or techniques developed in connection with that type of program to make available to them the use of arbitration if they did have a medical malpractice dispute.

Third: New York's no-fault automobile insurance reparations arbitration is a program which has received great acceptability by consumers. This optional program is fast, accessible and has the added advantage of relatively trouble-free enforcement.

Fourth: The 4A program represents an innovative approach to the diversion of disputes arising in the course of daily life from the criminal courts into an alternative forum that is voluntary and civil in nature.

Incidentally, the Consumer HELP program referred to in Mr. Ratner's testimony is now housed at the American Arbitration Association.

Based upon the association's experience, I would say to accomplish the goals and purposes of the act will require time. Rules must be carefully tailored to meet the specific needs of each pro-

gram. An effective educational effort will be required to avoid failure.

I am speaking of this based on our own experience. A very thorough educational effort is necessary. To succeed in attaining the aims of this legislation will require this type of commitment.

There are differences between the bills. We would encourage including a wide variety of disputes. Ultimately, this approach may be more economical even if the initial startup and progress appears slow.

There will not be quick results in this area. Experience has shown that care in working out the details of each program which sometimes can only be developed after use, often brings about the most efficient and effective results.

Thank you.

[Testimony resumes on p. 140.]

[Ms. Page's prepared statement follows:]

STATEMENT OF ROSEMARY S. PAGE, ASSOCIATE GENERAL COUNSEL OF THE AMERICAN ARBITRATION ASSOCIATION

I am Rosemary S. Page, Associate General Counsel of the American Arbitration Associaton. I am a member of the New York State Bar and I have been admitted to practice before the U.S. Supreme Court. I am a member of the Bar Association of the City of New York and was recently appointed to its Committee on Consumer Affairs.

The AAA is here today on invitation to testify on H.R. 2482, H.R. 2965, and S. 957. The association is appearing as a technical resource on arbitration and on other dispute resolving mechanisms and my testimony will principally cover those portions of the three bills.

The AAA is a private, nonpartisan, not-for-profit, educational corporation headquartered in New York City, with 24 regional offices throughout the United States. Now 52 years old, its mission is to design, educate and administer dispute resolution procedures such as arbitration, conciliation, mediation, and elections.

To implement its purposes, AAA has staff specialists in education and training, community dispute services, and elections as well as professional staff to administer the arbitrations under its various insurance, labor, commercial, construction and other rules of procedure.

In 1977 the association administered a total of 47,066 claims. Its 1978 budget is more than $11 million. Its Board of Directors is drawn from a cross-section of disciplines—labor and management, both public and private sector, consumer advocates, attorneys, educators and international specialists. The largest part of its income is derived from case fees paid to administer arbitrations. Other sources of income include membership dues, educational seminars and moneys from contracts with Federal and State agencies to furnish education, training, elections or arbitration services.

The association is best known for administering arbitrations but, as you can see, AAA's mission is considerably broader than that. Perhaps its least known mission lies in the area of handling consumer-type disputes.

In preparation for my presentation I asked a number of AAA department heads to review H.R. 2482, H.R. 2965 and S. 957 and to comment. There was enthusiastic response from all AAA departments. I'd like to share their comments with you and have, accordingly interspersed their remarks among my own.

The overall reaction of AAA staff is positive; however, there are certain provisions of the bills which, based upon AAA experience, were considered especially important.

As I mentioned, AAA has had considerable experience with administering disputes of all kinds—some with success and some which have not gotten off the ground for various reasons and we'd like to share these with you.

One troublesome area for us has been in defining what is a consumer controversy. Is the dispute between the seller and buyer of a $50,000 home a consumer controversy? Is a dispute over whether a landlord will pay for his tenant's $40 eyeglasses a consumer controversy when the glasses were broken when the two began shoving each other during a dispute over a rent hike? Is the dispute as to an insurance

company's liablility under an uninsured motorist endorsement for a $200 personal injury caused by a hit-and-run driver a consumer controversy?

In defining the disputes that are covered, S. 957 has eliminated the word "consumer" from the purpose of the bill (page 3, line 9) and specifies disputes involving small amounts of money (page 2, line 1) and H.R. 2482 and H.R. 2965 have retained the word "consumer," (page 3, line 16 in each) but H.R. 2482 (page 5, line 17) directs the Commission to "encourage and assist the development and implementation of innovative concepts and approaches, including adapting or *expanding the mechanism of the unsatisfied judgment fund in the field of automobile compensation law* to satisfy all unsatisfied judgments," (emphasis added) and H.R. 2965 (page 6, line 2) speaks of applying the same mechanisms as are used in connection with automobile accident compensation litigation.

The provisions reflect the trend which our experience, has also seen to broaden, if not the definition of the word "consumer," then at least the use of the same mechanisms and procedures to handle a wide scope of disputes.

We recommend the approach of braodening, rather than narrowing the scope of the Act. A broadened scope may be of more practical importance that the need to define "consumer."

I will briefly describe the experiences of the Association in four areas that bear upon the provisions of the bills. When I use the word "consumer," it means the person who makes a claim.

First, I will describe the Home Owners Warranty Program and the lessons learned in devising and administering a non-binding mechanism under the provisions of the Magnuson-Moss Warranty Act of 1975, Public Law 93-637, 15 USC 2301 and its Informal Dispute Settlement Procedures, 16 CFR Part 703.

Second, I will describe the Michigan Medical Malpractice program because of the experience gained in educating the consumer on the use of binding arbitration.

Third, I will describe the New York No-Fault experience which contains features that consumers appear to favor.

Fourth, I will describe our 4A program because it is an example of an innovative approach to the resolution of disputes. It is a program which has contributed to diverting unnecessary matters from overcrowded criminal courts.

HOME OWNERS WARRANTY (HOW)

Developed in 1974 and nationally administered by the Home Owners Warranty Corp. (HOW), a subsidary of the National Association of Home Builders, the warranty provides 10-years of protection against major structural defects, a 2-year warranty on the installation of electrical, plumbing, heating and cooling systems, and a year's protection against faulty workmanship and defective materials. Recently rewritten to meet the law's requirement of easily understandable language, the warranty is designated as "limited," reserving for the builder the option of repair, replacement or refund on the product sold.

I am a member of the Advisory Board of the Home Owners Warranty Program and have helped to develop the Expedited Home Construction Arbitration Rules of the AAA under which HOW arbitrations are administered. I have also been involved in mointoring the process of administering the HOW arbitrations.

The HOW dispute resolving mechanism for home buyers conforms to the Magnuson-Moss regulations and, I understand, is the only program in the country which does.

There are certain provisions under the Magnuson-Moss Warranty Act which have proven extremely difficult to work with:

(1) The mechanism for resolving disputes must be nonbinding. (This stumbling block has been eliminated from the new bills. H.R. 2482, page 15, line 16; H.R. 2965, page 16, line 17; S. 957, page 6 line 12).

(2) There is a 40-day time limitation from time of filing the claim to delivery of award. The rigidity of the limitation creates problems, especially when the parties are trying to settle their differences.

(3) There is a prohibition against builder arbitrators. Therefore, the most experienced persons of the subject matter of the dispute are ineligible to serve. The aim of the law is laudatory but it presupposes that no builder could be a neutral and our experience has shown that this concern is not well founded.

(4) No fee may be charged the home owner, thus there is no deterrent to the frivolous claim and, indeed, experience has shown that no fee plus nonbinding awards have caused some consumers to use arbitration like a revolving door.

The HOW arbitration is especially demanding to administer because most consumers are first time users of the process with no prior knowledge of how it works or what to expect. The administrator is frequently called upon as a paralegal. This

approach is endorsed in H.R. 2482, page 8, line 12; H.R. 2965, page 8, line 10 and S. 957, page 5, line 4.

One positive feature of these arbitrations is the fact that hearings are conveniently held in the home.

The association is in the process of devising an "instant education" device to overcome the lack of familiarity of the consumer. The education here must be specially tailored because of geography and the newness of the rules and the concept. This is a program which will require time to devlop and this will also be true of the new programs planned under the three bills. It will take time to develop then and time to iron out their wrinkles.

MICHIGAN MEDICAL MALPRACTICE ARBITRATION

The Michigan Medical Malpractice Act of 1975 requires that all insured hospitals, HMO's, clinics and sanatoriums must offer optional arbitration agreements to all inpatients, outpatients and emergency room patients after treatment.

To provide that health care consumers in Michigan are aware of how malpractice arbitration works and what it entails, AAA, the State Insurance Bureau and the statutory Arbitration Advisory Committee developed a comprehensive education approach for patients. Parenthetically, the statute requires that one half the membership of the Arbitration Advisory Committee be consumers. The education program includes: Slide shows in hospital and patient waiting areas, explanatory posters in English and Spanish, a booklet with illustrations and easy to understand words which emphasize in bold print the differences between arbitration and litigation, and an optional arbitration agreement which includes a post signature revocation period.

When consumers know what arbitration or any other mechanism is, they can make an intelligent choice of one or another. The bills as written, permit this choice and this is to be encouraged.

NEW YORK NO-FAULT AUTOMOBILE INSURANCE ARBITRATION

New York's Insurance Law section 675(2) specifically authorizes the use of arbitration as an optional forum for no-fault claims and the regulations promulgated thereunder by the Superintendent of Insurance, 11 NYCRR 65.7 and 65.16 designate the American Arbitration Association as the administrator of the arbitrations.

The parties in the no-fault arbitration proceeding are the party claiming first party personal injury benefits (including assignees) and the insurer. Claimants have been opting for arbitration in increasing numbers, a total of 30,694 since the inception of the program in 1974 to June 1978. The consumers seem to like arbitration because the availability of arbitration is made known to them, they can easily ascertain how it works, it is inexpensive, it is quick, the hearings can be arranged at a place and time that are convenient and enforcement by and large is no problem.

THE 4A PROGRAM

The 4A program means arbitration as an alternative to litigation, in this case a court diversion program which removes petty criminal actions into mediation/arbitration if the prosecuting attorney and the defendant agree. The complaining witness and the defendant enter into an arbitration agreement. There is a hearing and an attempt is made by the parties to reach a consensual resolution of their problem. The arbitrator's award incorporates their agreement, as an award, which is binding upon both parties and enforceable under the state arbitration law.

FINALITY

Arbitration is one of the mechanisms specified in the definition of a consumer controversies resolution mechanism contemplated under each of the bills. And among the criteria which each bill is designed to encourage is the finality of the resolution of consumer controversies. Arbitration which is final and binding can do this. Our experience shows that this provision of the bill is to be encouraged.

AVAILABILITY OF ARBITRATION

In order for arbitration to be binding, however, it must be enforceable. There are still a number of States which will permit revocation of an agreement to arbitrate at any time prior to award.

There are 37 States and the District of Columbia with modern arbitration statutes. I understand that South Carolina and Oklahoma enacted Uniform Arbitration Acts effective May 8, 1978 and October 1, 1978 respectively, bringing to 39 the total number of States with modern arbitration laws.

If the Act is to be uniform in making available the various mechanisms to all consumers in every jurisdiction then all jurisdictions should be encouraged to enact laws which will make this possible if enforcement is to be sought in state court. If enforcement is to be under the Federal arbitration act then this should be spelled out in the Act as a separate ground for Federal court jurisdiction. A dilemma appears to arise now when the trend is to limit the number of claims within the jurisdiction of Federal courts because they are so overcrowded. As you are aware, there is pending legislation to eliminate diversity as a ground for Federal court jurisdiction (H.R. 9622). Consumer claims, because they frequently involves small sums (under $10,000) and often lack diversity of citizenship between the parties would be enforceable only in State court unless the Act specified otherwise or unless a special enforcement tribunal were created with enforcement powers—enforcement of the agreement to arbitrate and enforcement of the arbitration award.

Another approach might be to make these claims cognizable under the Federal act without access to the Federal court. This approach may be one way to avoid the inconsistency in the availability of modern arbitration statutes until such time as all jurisdictions recognize the enforceability of the agreement to arbitrate future disputes.

THE INFORMED CONSUMER AND EDUCATIONAL COMPONENT

To foster the use of the various mechanisms, such as arbitration, parties should be free to include preclaim arbitration provisions otherwise known as future disputes clauses in their contracts. The Magnuson-Moss Warranty Act does not authorize precommitments to arbitration so that even the consumer who desires arbitration cannot be bound by a future disputes clause of a warranty provision. The rationale for this prohibition was that consumers are uniformed as to what arbitration is and how it works.

The association's experience, especially under the Michigan medical malpractice arbitration program, has shown that the consumer can be both actively and passively involved in the process of education, resulting in informed consumer choice of binding arbitration.

The consumer educated as to what arbitration, or any other mechanism, is can make an intelligent choice as to the preferred mechanism. The Act as written, permits this choice and this is to be encouraged.

ALTERNATIVE REMEDIES

It is heartening to see, under S. 957, page 5, line 14, authorization for implementation of nonmonetary as well as for monetary awards and agreements.

In the consumer field, AAA experience has shown that the nonmonetary award can frequently give the greatest relief. This may be true in the medical malpractive field, for example, where an award of any operation removing the sponge may be more meaningful than a flat monetary judgment. This may be true in the landlord/tenant field where an award requiring the tenant to lessen the volume of his stereo after 10 p.m. and for the landlord to replace the 5-watt bulb in the entry hall with a bulb of a least 60 watts is more meaningful than a monetary award or an eviction, which will solve nothing and may exacerbate the situation.

OTHER MECHANISMS

Recently the AAA Consumer HELP program was launched. This project, formerly under the auspices of New York's public television Channel 13 and New York University is now housed at AAA's central office in New York City. In this program, consumer complaints are resolved through telephone mediation and/or referral to existing government and legal agencies.

There have been very special programs developed also, such as the advisory arbitration programs administered by AAA for the Middleburg Prison in New Jersey and the California Youth Authority. Creativity in designing programs such as the California Youth Authority program can be encouraged by the U.S. Supreme Court's decision in *Goss* v. *Lopez,* 419 U.S. 565, where the court had before it the due process claims of nine Columbus, Ohio, junior and senior high school students who had been suspended from their schools for periods of up to 10 days. The court, in a 5-to-4 decision held that the students had a constitutuonal right to some kind of notice prior to their suspension from school and some kind of hearing before they could be suspended.

The AAA has been involved in the consumer area in other ways as well. In Florida the Miami Regional Office, administers Better Business Bureau arbitrations. The Community Dispute Services Department has been involved in a number of different community oriented programs more fully described in the attached CDS

pamphlet. The Montgomery Ward consumer project may be the one which is most frequently thought of because it encompassed a grand idea but for whatever reasons this project went unused. Perhaps the greatest value of this project was the experience which AAA gained in the consumer controversy field. And it is clear that the drafters of the three bills, too, have sought to include what should be included and to avoid what should be avoided.

The approach which AAA has taken in developing and administering each of the programs mentioned above has been to develop a set of rules specially tailored to meet the needs of the consumer and the program. This approach is supported in the purpose of each bill and is specified in S. 957 page 5, line 1 and in H.R. 2965 page 15, line 20.

SUMMARY

AAA's personal experience in administering dispute resolution techniques is mirrored in the various reports upon which the authors of the subject pending legislation relied in developing its criteria and components.

The goals of the Act and the methods specified to reach those goals are realistic and plausible within the Association's experience.

There may be a need to clarify jurisdiction for the enforcement of (1) agreements to arbitrate and (2) arbitration awards.

Informing and educating the consumer are essential parts of the success and efficiency of any program. The educational criteria and components, like the others stressed above, are to be encouraged.

The inclusion in the three bills and especially in S. 957 of the wider scope of conflict resolution is reflective of the new approach to a growing problem which is currently receiving minimal attention. The legislative treatment which includes consumer disputes and other disputes "arising in the courses of daily life," (S. 957 page 4, line 7) is to be encouraged.

On behalf of the Association I wish to offer its services to effectuate the purposes of the three bills, for to do so is fully in keeping with its mission.

Thank you.

Mr. ECKHARDT. Thank you.

Mr. D'Alemberte.

STATEMENT OF TALBOT D'ALEMBERTE, CHAIRMAN, SPECIAL COMMITTEE ON RESOLUTION OF MINOR DISPUTES, AMERICAN BAR ASSOCIATION, ACCOMPANIED BY EARL JOHNSON, MEMBER

Mr. D'ALEMBERTE. Mr. Chairman and members of the subcommittee, I am Talbot D'Alemberte, from Miami, Fla., where I am in the private practice of law. I serve as chairman of the American Bar Association's Special Committee on Resolution of Minor Disputes. With me, to handle any difficult questions if we get into that, is my colleague, Prof. Earl Johnson, a member of the special committee, who teaches at the University of Southern California Law Center and serves as director of the university's program for the study of dispute resolution policy.

Mr. Chairman, I will be brief, but I want to start in 1906, if I can, and truncate rapidly from there.

The ABA's work in the area of minor disputes has been traced back to Roscoe Pound's address on "The Causes of Popular Dissatisfaction with the Administration of Justice." To commemorate that address, the ABA called together a conference in April 1976, commonly referred to as the Pound Conference.

The participants of that conference heard a number of people, consumers, and others discuss the numerous contemporary causes of the popular dissatisfaction with the administration of justice.

Following that, a followup committee was appointed, chaired by an obscure lawyer named Griffin Bell. He had a committee of

distinguished scholars and citizens, people who have shown interest in justice reform for some time. They came out with some recommendations which I think are pertinent to the hearings today.

In that report, the ABA states:

> We recommend that the American Bar Association undertake to stimulate research and experimentation designed to develop criteria by which to identify disputes most likely to profit from mediation, factfinding and other alternative mechanisms of dispute processing.

Another recommendation states that in disputes involving consumer complaints we encourage the creation and use of alternative methods of resolving the disputes.

Following this report by Griffin Bell and his committee, the committee which I chair was created by our board of governors. Out of that committee came an extensive amount of work. Most notably is the publication of a report on the May 1977 conference at Columbia University which we convened to address the general subject of resolution of minor disputes. I do recommend this report for the summaries of the conference presentations and for the appendix, which is a list of a number of alternative dispute resolution mechanisms now in operation throughout the United States. A copy have been provided to you, Mr. Chairman, and the other subcommittee members, and I request that it be included in the record of these hearings.

This brings us to our interest in this legislation, and particularly Senate bill 957, the proposed Dispute Resolution Act.

Support of this legislation is one of the nine priorities of ABA President Spann, and he very much encourages the passage of this legislation, and congratulates the subcommittee on the prompt hearing you are giving this bill.

I might pause just a moment to address what I understand was the principal thrust of questioning yesterday concerning the scope of the legislation, and whether there was sufficient focus on consumer disputes.

To speak to that briefly, we look at this legislation and the appropriation it carries as providing a chance for limited further experimentation. As we have said, there has been a great deal of vigorous interest and there has been a lot of research.

Professor Johnson has written an excellent book called "Outside the Courts," which I commend to you.

There has been that great experimentation. We see this legislation as further encouraging that kind of experimentation and we reason, from the ABA standpoint, that experimentation will touch all the areas that the ABA showed interest in; and that would include consumer areas, the landlord-tenant courts, and other minor dispute mechanisms.

The ABA is pretty clear in its position in encouraging a broad area of experimentation, including experimentation with consumer dispute resolution mechanisms.

It is pretty clear to us that this bill will not authorize a vast number of programs to solve many of those problems. What we will see is experimentation, and hopefully from that, alternatives to courts and better methods of resolving a wide range of disputes in our society.

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Thank you; and I will be most happy to respond to questions. I can assure you I will direct most of them to Professor Johnson.

[Testimony resumes on p. 224.]

[Messrs. D'Alemberte and Johnson's prepared statement and attachments follow:]

AMERICAN BAR ASSOCIATION

GOVERNMENTAL RELATIONS OFFICE • 1800 M STREET, N.W. • WASHINGTON, D.C. 20036 • (202) 331-2200

Statement of

Talbot D'Alemberte, Chairman
and
Prof. Earl Johnson, Member
Special Committee on Resolution of Minor Disputes
American Bar Association

Before the

Subcommittee on Consumer Protection and Finance
Committee on Interstate and Foreign Commerce
U. S. House of Representatives

In Support of
the proposed Dispute Resolution Act, S. 957

July 21, 1978

Mr. Chairman and members of the subcommittee; I am Talbot D'Alemberte from Miami, Florida, where I am in the private practice of law. I serve as chairman of the American Bar Association's Special Committee on Resolution of Minor Disputes. With me is my colleague, Professor Earl Johnson, a member of the Special Committee, who teaches at the University of Southern California Law Center and serves as Director of the University's Program for the Study of Dispute Resolution Policy.

The subject of your hearings today, the Senate-passed Dispute Resolution Act, and comparable House legislation, is one of the nine legislative priorities of ABA President William Spann. Mr. Spann is not able to attend these hearings, but did designate us as his representatives, and requested that I convey the Association's appreciation for your thoughtfulness in inviting us, and commend your initiative in focusing House attention on this important legislation.

American Bar Association support for the pending legislation was first expressed by the Board of Governors in May of last year following extensive study and approval by my committee. As adopted, the resolution provides:

> RESOLVED, that the American Bar Association supports, in principle, the enactment of legislation such as the Consumer Controversies Resolution Act (S.957 and H.R.2482, 95th Cong.), or legislation of similar purport, which would provide federal financial assistance to the states for the improvement of existing mechanisms, and the

experimentation with new mechanisms, for the resolution of minor disputes and which would reserve to each state the right to provide such mechanisms for the resolution of minor disputes as appear appropriate to meet the needs of its residents.

The Board also directed that consideration be given to amending the then-pending version of S.957 to (1) expand its application to the broad range of citizen disputes in addition to consumer disputes; (2) place in the Justice Department's Office for Improvements in the Administration of Justice the responsibility for conducting the envisioned grant program; and (3) establish the grant program as a special revenue-sharing plan without burdensome requirements of detailed federal regulations. A more detailed statement of this policy in terms of the pending legislation will be discussed at the end of this testimony.

Causes of Popular Dissatisfaction With the Administration of Justice

During the 1906 Annual Meeting of the ABA, Dean Roscoe Pound delivered his classic address, "The Causes of Popular Dissatisfaction with the Administration of Justice."* To commemorate Dean Pound's insight on the 70th Anniversary of his speech and the 200th Anniversary of our nation, the ABA jointly convened** in April, 1976 a National Conference to review the current causes of public discontent with our justice system. These causes,

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*Reprinted in 35 F.R.D. 273 (1964)

** The conference was co-sponsored by the Judicial Conference of the U.S., the Conference of Chief Justices, and the ABA

however, are not unknown: federal and state court backlogs and delays are notorious; the costs of litigation and legal counsel have priced the means of legal advocacy out of the reach of many; legislatures are legislating more protections which the justice system can't assimilate quickly enough to make the protection readily available; government bureaucracy, created in part to resolve disputes and to protect the public from shabby practices and products, is too cumbersome to effectively do its job; and I could go on.

But the real significance of the 1976 Pound Conference was the body of recommendations for action which the participants suggested. Pertinent to our discussion today were recommendations to create state and local Neighborhood Justice Centers; to increase research and experimentation in to which disputes are most susceptible of non-judicial dispute resolution; to experiment with non-governmental dispute resolution mechanisms, especially in the area of consumer disputes; and to evaluate the experience with small claims courts and arbitration programs as different, but important, existing mechanisms for dispute resolution.

These recommendations, and others, have guided the ABA in its work, and they have become the basis for a substantial portion of the Justice Department's legislative program during this Congress. Since Attorney General Griffin Bell was chairman of the Task Force that prepared these recommendations, I would ask that these recommendations be included in the record.

One of the recommendations was to convene a National Conference on Minor Disputes Resolution, which we did in May of last year at the Columbia University School of Law. Since we have provided each member of the subcommittee with a copy of the report of that conference, I will not detail the discussion that took place. I would like to note, however, that Appendix C, "Alternative Dispute Mechanisms," is a compilation of the kinds of dispute resolution forums which could benefit from enactment of the pending legislation and which also could be models for replication throughout the country.

Alternative Dispute Resolution Mechanisms

Passage of the Dispute Resolution Act would provide much-needed seed money to assist in the development of new projects, as well as to foster the expansion of the existing mechanisms to which I have referred.

There appear to be two primary goals advanced by the kinds of experiments and demonstration projects the Dispute Resolution Act might support: One is to make justice more accessible for low and middle income people; the second is to develop adequate forums for solving problems which are not particularly suited for the adversary system of justice.

The first goal responds to the perception that litigation in the courts simply has become too expensive for most people. Even the affluent cannot afford to litigate rather modest disputes where what is at stake does not justify the legal fees and related expenses. Thus, a corollary to the proposition that poorer persons can't afford access to the courts is the fact that many

aggrieved parties, regardless of socio-economic status, effectively have no access to any forum for the resolution of disputes because the time, money and trouble involved are simply worth far more than the loss involved. Consequently, we are as concerned with simplifying access as we are in assuring that many disputes which now go unresolved, will finally be aired.

There is, of course, another distinct way of furthering access. Government can provide subsidies -- free lawyers and the rest -- to litigants desiring to resolve modest disputes in the regular courts. If committed to increasing access for rather modest disputes, the economic question for government probably is whether that goal can be accomplished more efficiently by supplying nonjudicial forums that operate effectively without lawyers or by subsidizing access to the regular courts for anyone, including the affluent, who become implicated in these disputes.

Such issues as comparative equity, fair process, and subjective satisfaction also are important and perhaps more difficult to appraise. The ultimate resolution, preferably approached carefully through experimentation and research, may lie in a mix of low cost (to litigants), nonjudicial forums and government-subsidized access to the regular courts.

The other problem the Dispute Resolution Act addresses is that for some disputes the adversarial model is not the best approach. Common sense or research might suggest, for instance, that litigation in the courts is counterproductive for disputes between people with a continuing emotional relationship, such as members of the same family, or neighbors, simply because a negotiated

settlement is likely to be more conducive to a harmonious future than would an adversary proceeding and an imposed solution. In addition, the traditional adversary proceeding, by definition, is only concerned with the result of a wrong, and does not often deal effectively with resolving the cause of the dispute. For instance, does a fine or admonishment from the bench really resolve a domestic dispute? Most probably not. In fact, it is suggested that it may even fuel the fire. It is also necessary to consider that many such disputes never reach the court simply because they are not within the parameters of a definable, actionable cause. Consider the neighborhood dispute about a loud stereo -- is this really a matter for police, prosecutors and judges? Today it is, and the results are astonishingly poor: In court, the state says the defendant broke the law by x decibels. He will either be fined, or jailed, or both if proved guilty; neither if not. Yet there is no resolution of the underlying dispute between neighbors. A finding of guilty as well as a finding of not guilty, can heighten the animosity between the disputants. Soon (estimates run to about 90 days), the parties will be back with the same problem, or one which has escalated, perhaps, into a serious criminal matter.

Similarly, research may establish that litigation is less effective than some other approaches in disputes between parties involved in a continuing economic relationship such as landlord-tenant, supplier-merchant, or seller-consumer. This proposition appears more problematic since these economic relationships tend to be rather transitory and easily exchanged compared to the

emotional ties discussed above. It is simpler for a customer to shift patronage to another store than to disown a son or even to ignore a next-door neighbor.

Yet it may be preferable to offer all disputants government- or private sector-sponsored forums where they can seek to work out their problems short of litigation, and with less rancor, despite the fact the "failures" will end up in the professionalized adjudicatory setting. For the most part, knowledgeable negotiation currently is available to disputants only after the opposing parties have obtained (and paid for) legal counsel. Any discussions, after all, take place within the context of what the court is likely to do. For that reason, without lawyers at their side, litigants may be reluctant to enter into meaningful negotiations, and especially wary of making or accepting a settlement offer.

Many disputants might be able to work out their less complicated problems if the right kind of alternative forum were available. In some instances, this would require a law-trained mediator who could give both sides some rough idea of the likely outcome should the case go to court. The night small claims court experiment in Los Angeles has introduced a reform which approaches this idea. Volunteer lawyers function as pretrial mediators, listening to both litigants and seeking to resolve the problem without a court hearing. In that context, they advise the disputants of their respective legal rights and the probable outcome, or at least the possibilities and risks. Thus far, the mediators have been successful in negotiating compromises in a rather high percentage of cases.

A similar program in Orlando, Florida handles minor criminal matters. Jointly co-sponsored by the ABA's BASICS program (Bar Association Support to Improve Correctional Services) and the Orlando Bar Association, some 125 local lawyers volunteer their time to mediate disputes involving simple assault, menacing threat, harrassment, trespass, disorderly conduct and other minor disputes. This project was recently the subject of an NBC Nightly News "Segment 3" program, which noted that the program settles about half of the 60 cases a month handled. The program announcer concluded by observing that legislation was pending in Congress to help other cities start their own programs.

There does not appear to be any sound reason for limiting the government's dispute resolution role to that of the place of last resort. Society has a stake not only in a final disposition of a personal controversy but in an amicable one as well. Consequently, the legal system might invest resources in forums which could facilitate negotiated compromises in nonadversary settings.

Whatever the reasons, it already is possible to detect a trend toward alternatives to the professionalized adversarial judicial model both within the United States and elsewhere.

One of the most pervasive is found in England. Beginning shortly after World War II, Parliament began creating specialized "administrative tribunals" to hear cases arising out of newly enacted social legislation. Each tribunal is composed of a chairman, often a lawyer, and several citizens usually possessing some subject matter expertise or representative of an interest group relevant to that class of dispute. There now are several thousand

administrative tribunals in England and their jurisdiction has spread beyond the social welfare area. In fact, in recent years the tribunals have been handling nearly as many noncriminal cases annually as the entire English court system.

The "public complaint boards" in Sweden are a more recent development and on a less ambitious scale. But they also incorporate more revolutionary features. Aimed principally at consumer disputes, the boards accept complaints by mail and actively pursue a satisfactory resolution of the case. Staff members contact the commercial firm involved to learn its version of the facts. Where appropriate, staff also attempt to mediate the dispute to produce a suitable settlement. If that is unsuccessful, the disputing parties appear before a hearing board composed of citizen representatives from consumer groups and the relevant industry, e.g., dry-cleaning or auto repair. The decisions of these boards are not binding, but they are very persuasive since recalcitrant disputants can expect to appear on a blacklist reported in the newspaper. It is not surprising, then, that the Swedish public complaint boards report ninety percent compliance with their recommendations.

The rentalsman, found in British Columbia and a few other Canadian provinces, is an example of another model -- nonlegal personnel employed on a fulltime basis to resolve disputes. In this instance, the disputes are between landlords and tenants. The rentalsman and his deputies have been granted exclusive jurisdiction over these problems. Landlords and tenants can register complaints by telephone or letter. The rentalsman

office attempts to mediate informally. If that attempt is unsuccessful, an investigator looks into the case and a hearing is scheduled at a convenient location. Again mediation is tried, based in part on the investigative report. If this second attempt fails, the deputy rentalsman, a laymen, decides the case. Unlike the Swedish public complaint boards, he possesses adjudicative power.

The community ingredient becomes even more immediate when dispute resolution becomes a local or neighborhood matter, rather than part of a national scheme of specialized tribunals or boards. The "community conciliation committees" established in many Polish cities and towns during the 1960s exemplify this development. These committees are composed of local citizens chosen by broad-based community organizations because of their credibility with other residents of the area. Members serve without pay on a rather infrequent basis -- two or three times a month. They hear both civil and criminal cases at evening sessions in an informal manner without lawyers. These disputes may be brought to them directly by the parties or on referral from the courts. If a mediated settlement is impossible, the committee will announce its own solution to the problem. Community conciliation committee decisions are not binding, but the committee can use its powers of persuasion which have proved quite effective in producing compliance.

Recent years have seen community-based justice establish a tentative foothold in several American cities. Variously called

arbitration as an alternative to adjudication, community mediation, or citizen dispute centers, they all embody a similar approach. Principally focused on crimes between relatives, friends or neighbors, these programs seek to mediate a long-term solution to the problems which underlie the criminal offense. If the defendant struck his next-door neighbor out of frustration over a long-standing, unresolved controversy about a barking dog or an overhanging tree, the mediators seek to deal with the dog or tree as well as the punch that brought the neighbors to court.

Proposed Dispute Resolution Act ("Consumer Controversies Resolution Act")

Of the four bills now pending before your subcommittee (H.R.2482, H.R.2965, H.R.13491 and S.957), we think that the Senate-passed Dispute Resolution Act embodies the most favorable features of the earlier version of this legislation, the Consumer Controversies Resolution Act. However, we have not had an opportunity to read Mr. Broyhill's recently introduced bill and, thus, are not able to comment on it.

The earlier concerns of the Association have generally been resolved in S.957:

(1) The proposed Dispute Resolution Resource Center, as part of the Dispute Resolution Program, will be under the direction of the Justice Department (although we assume most of the research, information-exchange, technical assistance and surveys will be undertaken outside of the Department under the Attorney General's direction);

(2) The scope of the bill has been expanded to include the broad range of citizen disputes in addition to consumer disputes;

(3) The dual funding mechanism of 50% discretionary and 50% entitlement (within stated priority categories) appears to be a workable approach. However, we urge you to be mindful of the fact that one of the purposes of this bill is to provide the financial means by which public and private entities at the state and local level will be able to experiment with novel approaches to dispute resolution. To the extent that the projects for which funds may be expended are stipulated by the Justice Department, this important degree of experimentation will be lessoned.

Consequently, we would recommend that Section 7(e)(1) be amended to remove the requirement that only projects "identified as national priority projects" will be eligible to be funded. It is important to focus specific attention on projects identified as national priorities, but we think this purpose will be fully served through the exercise of the Attorney General's discretion under Section 7(e)(2).

The American Bar Association commends this subcommittee for its attention to this important bill. Our system of justice, and increased access to that system, will be greatly enhanced by the enactment of the Dispute Resolution Act, and we are pleased to offer our assistance in working with you to this end.

Prepared by
Frank E. A. Sander
Harvard Law School
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American Bar Association

Report on the NATIONAL CONFERENCE ON MINOR DISPUTES RESOLUTION

May 1977

Preface

Impelled by the observable fact that there are not adequate means in the standard adversary system of justice to handle promptly, efficiently and inexpensively what we have termed "minor disputes," the American Bar Association has launched an effort to determine and provide means which will be adequate for their handling.

A failure to achieve our goal will, I am afraid, result in widespread cynicism and discontent with our existing system.

The National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice held in St. Paul, Minnesota, in April of 1976, recognized this need for change and accommodation, as did our own Task Force headed by Griffin B. Bell, which was formed to implement recommendations made at the Pound Conference.

The National Conference on Minor Disputes Resolution held at Columbia University School of Law, May 25-27, 1977, financed by the American Bar Endowment and American Bar Association, constituted a major step in our effort to determine what was, in fact, being done to address the problem and what might be done.

The conferees, to whom we owe a debt of gratitude, were drawn from the practicing bar, from social workers, from judges and from academics. They all shared a common interest in wanting to address the problem frankly and to do something about it.

We were most honored to have the Chief Justice of the United States participate in our sessions and address us at our concluding

luncheon. His interest in the problem is deep, indeed, but it is equalled by his dedication to its resolution.

Professor Frank E. A. Sander kindly served as our Reporter. His summary of the Conference, which follows, gives some notion of the matters we reviewed during two exciting days of discussion. To state a question is not, of course, to suggest its final answer. Therefore, no one, in all likelihood, would agree with all the points made by our conferees; but to raise the questions and to discuss them is an essential beginning to sound resolution.

As Professor Sander concludes in his own report: "The challenge remains."

JUSTIN A. STANLEY
Immediate-Past President
American Bar Association

Introduction

In the past few years, a serious concern has developed about the effectiveness of the manner in which various types of "minor" disputes[1] are societally resolved. Consider, for example, an angry argument between two neighbors, the culmination of a long festering hostility. The argument ends in a physical assault and ultimately winds up in the lower-level criminal courts. Regardless of the particular disposition, the court action is unlikely to address the basic underlying issues: what is at the root of the continuing conflict between these individuals? How can they be helped to get along better in the future? Obviously this problem is not confined to disputes between neighbors, but can be readily replicated with respect to disputes between family members, between consumer and merchant or between landlord and tenant.

A number of circumstances have combined to create the present concern. Just as the quickening pace of modern life has increased substantially the number of potential collisions between individuals, there has been a waning of some of the traditional dispute

1. The term "minor dispute" is used for lack of a better term to refer to a variety of disputes that involve relatively small amounts of money or relatively pedestrian issues. Yet in terms of importance to the parties or potential impact on society these disputes are decidedly not minor. "Perhaps", as Dean McKay said in his keynote address to the conference, "the major-minor dichotomy is a mistake . . . [and] we need a new terminology so that we may not be misguided in our search for a better means of dispensing justice."

resolution institutions such as the family, the church and the neighborhood association. The growth of government too, has brought with it an increasing number of controversies between citizen and state. The result has been an unprecedented demand upon the judicial system, leading often to considerable frustration and delay, and ultimately to a hurried processing of the cases that come before the court. In these circumstances it is little wonder that there has been increasing interest in exploring alternative ways of resolving more expeditiously and effectively some of these disputes.

But perhaps the problem goes deeper. Along with the frustration engendered by the unresponsiveness of the legal system there has come a perceptible disenchantment with the increasing complexity and remoteness of the traditional dispute resolution process.[2] Sometimes the legal process appears to be so cumbersome that it develops a life of its own and loses sight of the underlying problems it was designed to resolve. Disputants appear to yearn increasingly for a simple, and accessible procedure that permits them to tell their story and get prompt and constructive assistance toward the resolution of the underlying controversy. Of course some minor disputes involve complex legal issues requiring full and careful judicial consideration. But many others do not, and it is with respect to this latter group that the search for alternative modes takes on a particular urgency.

It was a concern with questions like these that led Justin A. Stanley, President of the American Bar Association, to convene a conference of interested persons in New York City in May of 1977. The conference focused on two aspects of the broader topic—small claims courts and the resolution of disputes outside the courts through the use of such techniques as arbitration, mediation or fact finding. A detailed program of the conference is attached as Appendix A.

2. *See* Smith, "A Warmer Way of Disputing: Mediation and Conciliation in the United States," a paper to be delivered at the Tenth Congress of Comparative Law in the summer of 1978 and to be published in *The American Journal of Comparative Law*. The article compares the movement toward simplified dispute resolution with the trend towards a return to midwifery in child delivery.

I
Small Claims Courts

The session on small claims courts was devoted largely to a preliminary report of the recently completed survey of fifteen small claims courts, by John C. Ruhnka and Steven Weller. Since this study will be published later this year by the National Center for State Courts under the title *Small Claims Courts: A National Examination,* no attempt will be made to summarize it here. Suffice it to say that the study represents a comprehensive effort to examine fifteen urban small claims courts, with a view to determining their caseload, their mode of operation from filing through trial, and the attitudes of individuals who use those courts. Quite clearly any serious student of the small claims movement will wish to examine this study with care.

Although the Ruhnka-Weller study made a number of recommendations for change, which will be dealt with interstitially below, in general the report concluded that "the small claims courts we examined were meeting the goals of speedy and inexpensive justice far better than the previous literature would have led us to expect" (pp. 9-11 of Sept. 1, 1977 draft). This general conclusion was subjected to perhaps the heaviest questioning by the panel of commentators who followed the Ruhnka-Weller presentation. Rhoda Karpatkin referred to "the case of the Missing Plaintiff"—an allusion to the fact that no examination of the small claims court can be complete without looking to those who are not pres-

ently using the court.[3] It was suggested that a useful complement to the Ruhnka-Weller study would be a study that sought to identify the missing plaintiffs—difficult as that would be—and to explore the reasons for their failure to use the court.

It was hypothesized that there might be a variety of reasons for nonuse. The most obvious one derives from the fact that small claims courts are not ubiquitously available, particularly in non-urban areas. Accordingly, an effort should be made to expand their availability in these locations.

Even where small claims courts are available, affected litigants may not know about them. It was pointed out that in many cities the court is not listed in the telephone directory under an easily accessible heading.[4] Clearly this requires a major effort of citizen education, not only by consumer groups but also by the media. It suggests, in addition, the need for greater accessibility of these courts. Some conference participants urged the model of a book-mobile, i.e., a movable court that travelled from neighborhood to neighborhood. Another intriguing suggestion was that the courts might be located in firehouses. Finally, note should be taken of the recent effort in one community—San José, California—to bring the court closer to the potential users.[5]

It is possible, however, that the failure to utilize the court to its full potential has more subtle causes. Citizens, though generally aware of the existence of the court, may be unaware of how it operates and how it could be used by them. Indeed, some individuals may well have an affirmative distrust of the court as simply one other agency of "the system" which is "out to get them." This attitude is very likely enhanced by the fact that a large number of individuals come into the court as defendants in suits by institu-

3. Consider, for example, the wide disparity in filings per 1,000 population found in the Ruhnka-Weller study (from 52.48 in DesMoines to 4.81 in Grand Rapids).

4. For example in New York the court is not listed in the box labelled "Frequently Called Numbers" which appears at the top of the pages containing city listings.

5. *See* Beresford and Cooper, *A Neighborhood Court for Neighborhood Suits,* 61 JUDICATURE 185 (1977).

tional plaintiffs (either merchants or collection agencies). This issue will be further dealt with below.

Quite obviously such skepticism of the court as an institution, if it is widespread, will be difficult to cure. It will necessitate not only educational efforts of the kind already referred to,[6] but also attempts to work closely with indigenous community organizations and individuals who enjoy the confidence and trust of the community. Beyond that, however, the question arises whether in some situations nonuse is due not to inadequate awareness of the existence of the court but to its inherent limitations for resolving certain types of minor disputes.[7]

Aside from questions of access and utilization, the conference addressed a number of other basic issues.[8] Some of these will be briefly discussed below.

A. *Intake and Screening*

An excellent recent survey of the small claims literature that was distributed in advance to the conference participants[9] makes the point that, contrary to the common assumption respecting small claims courts, there is no necessary correlation between size of the claim and simplicity. Small claims can be complex, just as large claims may be simple. Accordingly, the authors recommend the use of a small claims administrator to sort out or screen the incoming cases, so as to subject each to the appropriate process. If, for example, a seller was suing a buyer, and the latter had no defense except lack of funds, there would be no point in schedul-

6. There was some reference at the conference to the "street law" program at Georgetown and a number of other law schools. This program enables law students to go into public high schools to teach those students about various aspects of the legal system.

7. In this connection, see particularly Section II, *infra*, on dispute resolution outside the courts.

8. For a useful compendium of recommended small claims procedures, see ABA COMMISSION ON STANDARDS OF JUDICIAL ADMINISTRATION, STANDARDS RELATING TO TRIAL COURTS 2.75 (1976).

9. Yngvesson and Hennessey, *Small Claims, Complex Disputes: A Review of the Small Claims Literature,* 9 LAW & SOC. REV. 219 (1975).

ing the case for a full hearing. The sole problem would be to deal with the question of collection, a matter that could perhaps be handled by the administrator without requiring judicial time. On the other hand it is possible to envision a superficially similar case involving difficult issues of consumer protection law (as well as perhaps constitutional law). Such a case obviously requires careful and deliberate judicial consideration. It will also require the provision of some research assistance to the judge, perhaps by giving him or her access to a law clerk.

This model of a flexible process, with appropriate screening at the outset, was greeted with considerable interest by the conference.

B. *Utilization of Court by Institutional Plaintiffs*

There appeared to be considerable divergence of views on the question whether commercial sellers or collection agencies should be permitted to sue in small claims court.[10] As is noted in much of the recent literature, such use defeats one purpose of the court—to make available a simple and efficient procedure for claims by or against individuals. On the other hand, as was pointed out most forcefully by Judge Earl Warren, Jr., of the Sacramento Municipal Court, if institutional litigants are barred from the small claims court, they will simply take their claims elsewhere, with the net consequence that the indigent defendant will be faced with the same claim in the regular trial court, where the judge may not be as ready to assist him in presenting his defense.

The conference appeared to find much merit in this objection. That, too, is the position taken in the Ruhnka-Weller study. A possible compromise suggested by Judge Felice Shea would bar institutional plaintiffs from the small claims court, but would permit the individual defendant to remove the case to that court.

C. *Personnel*

1. JUDGES

Quite obviously small claims courts can only be as effective as

10. Of course not all commercial litigants are large corporations. Presumably a "mom and pop" business should in any event be permitted to utilize the small claims court.

the judges who serve in them. Although there are presently many dedicated and able individuals who hold these positions, it was noted that, as is characteristic of many of the lower courts, often these jobs are not regarded as important or prestigious. Accordingly, some small claims court judges do not value their work and regard it simply as a necessary step on the judicial ladder.

This condition, like the matter of community confidence in the court already discussed, has complex causes and hence is difficult to remedy. There appeared to be no agreement at the conference on whether, in those jurisdictions where small claims court judges are judges of general jurisdiction who simply serve in small claims court some of the time, it would be preferable to seek full-time "professionals," at the risk of losing the benefits that may come from distributing these functions more widely. Certainly a special effort by the Bar would appear to be called for to aid in the recruitment of qualified individuals who enjoy this type of work and to see to it that the judges receive the proper support in their work. Similarly, administrative judges having assignment powers ought to make a special effort to seek out those individuals who appear to have a special aptitude for small claims work. The law schools, too, can assist this effort by encouraging students to observe and study the lower courts which are so often neglected by teachers and scholars.

But with the press of business in these courts, and the shortage of qualified individuals to serve as judges, it is likely that there will always be a chronic undersupply of small claims court judges. Given this situation, the conference was particularly impressed by the effective use made of volunteer lawyers in the New York City Small Claims Court. Approximately 1,000 lawyers give their time to resolve cases expeditiously in the evening.[11] This would appear to be a program well worth emulating elsewhere.

11. *See* Sarat, *Alternatives in Dispute Processing: Litigation in a Small Claims Court,* 10 LAW & SOC. REV. 339 (1976), for a fuller description of this program. See also the San José Neighborhood Court described in note 5 *supra* which makes a similar use of volunteer attorneys.

2. ROLE OF LAWYERS

The hallmarks of small claims court justice are speed, simplicity and economy. The process is essentially a Solomonic one, with each party telling his or her story, and the judge attempting to formulate some acceptable (often compromise) solution. In this situation, it is usually not practical to utilize attorneys in their traditional adversary role. Although the common absence of complex legal issues does not in itself dictate that conclusion since another legal skill—the effective marshalling of facts—is very much at issue, the unavoidable fact is that the small amount in controversy usually necessitates keeping costs to an absolute minimum.

But that does not mean that there is no place for lawyers in the small claims court. As was pointed out above, there are innovative possibilities for using lawyers in other capacities, such as volunteer dispute resolvers. Moreover, there are occasional cases that pose difficult and complex legal issues which would undoubtedly benefit from the participation of attorneys.

If adversary lawyers are to have a much more limited role in small claims courts, there emerges a clear gap in the form of needed guidance and assistance for litigants. Plaintiffs need to know how to fill out the requisite forms, and may also need help in gathering the information necessary for the trial. Defendants, particularly in suits brought by lawyers on behalf of institutional plaintiffs, need to be apprised of possible defenses and may also need help so as to be able to meet most effectively the case against them. The former task can probably best be performed by clerks or other lay advisors, as is the case, for example, in the Harlem Small Claims Court (see Appendix C). The latter task, however, may require trained paraprofessionals or law students since the issues can often be complex. In addition, judges in small claims court will often have to be prepared to play a more active role than their counterparts in the regular court.[12]

12. *See* Weller, Ruhnka and Martin, *Success in Small Claims: Is a Lawyer Necessary?*, 61 JUDICATURE 176 (1977).

D. *Enforcement*

A basic weakness of the small claims court even in those jurisdictions where it presently works well appears to be the inadequacy of the enforcement process. Often the decision is not rendered until some weeks after the hearing, and the parties are advised of it by postcard. Although such a deferred decision may prevent emotional outbursts in court, it means that a winning plaintiff must come back again into court to obtain enforcement if the defendant is unwilling to pay.[13] It was suggested that this situation might be markedly improved if the court were to render a decision where possible at the time of the original hearing, and then immediately address itself to the question of enforcement, e.g., by entering a small weekly order based on the defendant's demonstrated ability to pay. It should be noted, however, that often enforcement difficulties arise from default judgments, and the suggested change would have no effect in those cases. A new procedure recently adopted in New York, involving the issuance of an "information subpoena and restraining notice" to third parties, such as banks and insurance companies, would also aid the plaintiff in discovering assets of the defendant and immobilizing them until they could be seized.[14]

13. In New York close to half of the plaintiffs who won judgments were unable to collect any money. *See* Wall St. Journal, Aug. 16, 1977, p. 1, col. 4, and New York Times, Aug. 29, 1977, p. 28C, col. 1.

14. *See* New York Times, *ibid.* The New York program also calls for the revocation of the license of any business that fails to pay a valid small claims judgment.

II
Dispute Settlement Outside the Courts

The subject of nonjudicial dispute resolution is a vast one.[15] For convenience of presentation at the conference it was roughly broken down into two parts—disputes between individuals and disputes between individuals and organizations (government or business).[16]

A. *Disputes Between Individuals*

1. NEIGHBORHOOD JUSTICE CENTERS

The discussion of interpersonal disputes was centered primarily on the newly emerging notion of a Neighborhood Justice Center (NJC). Although the general idea of a community dispute settlement center has ancient origins,[17] and although modern prototypes have sprung up recently in many areas around the country (see

15. An excellent overview of the subject can be obtained from JOHNSON, KANTOR AND SCHWARTZ, OUTSIDE THE COURTS—A SURVEY OF DIVERSION ALTERNATIVES IN CIVIL CASES (National Center for State Courts 1977), which was distributed to all conference participants.

16. This dichotomy is of course not exhaustive. *See, e.g.,* Goldbeck, *Mediation: An Instrument of Citizen Involvement,* 30 ARB. J. 241 (1975), for a description of mediation to resolve a community dispute.

17. *See, e.g.,* Danzig *Towards the Creation of a Complementary, Decentralized System of Criminal Justice,* 26 STAN. L. REV. 1, 42 (1973), and the references there cited.

Appendix C), the term Neighborhood Justice Center was first put forward in the Pound Conference Follow-up Task Force Report, chaired by former Judge (now Attorney General) Griffin Bell.[18] Because of the strong interest of the Attorney General in this idea, it appeared likely at the time of the conference that the Justice Department, through its Law Enforcement Assistance Administration, would fund a number of experimental NJC projects. Accordingly, it seemed appropriate to devote substantial emphasis at the conference to this concept. Subsequent developments have borne out the wisdom of that judgment, for, as of the writing of this report, such funding has materialized for three NJCs, in Atlanta, Kansas City and Los Angeles.

Perhaps it is appropriate at the outset to say something about the precise contours of an NJC. The idea was rather generally described in the Pound Conference Follow-up Task Force Report, but that very generality is one of the NJC's prime virtues. For it is a truly flexible device capable of multiple adaptation to varied circumstances.[19] It may therefore be useful briefly to delineate here the concept, drawing substantially upon the various citizen dispute centers presently in operation in various parts of the country (see Appendix C).

In essence a neighborhood dispute center is an informal institution designed for the expeditious and effective resolution of certain types of "minor" disputes. It may or may not be connected with the court. It can receive cases either on a voluntary walk-in basis, or by referral from social agencies, the police, prosecutors or the

18. ABA, REPORT OF POUND CONFERENCE FOLLOW-UP TASK FORCE 9 (Aug. 1976).

19. *See* MCGILLIS AND MULLEN, NEIGHBORHOOD JUSTICE CENTERS: AN ANALYSIS OF POTENTIAL MODELS, National Institute of Law Enforcement and Criminal Justice, Monograph Series (Gov. Printing Office 1977), for an excellent survey of six existing programs in Boston, Columbus, Miami, New York City, Rochester and San Francisco), as well as a probing examination of various possible models, and of some of the operational and legal issues they may pose. An earlier, abbreviated version of this volume was prepared by Abt Associates, Cambridge, Massachusetts, and released by the National Institute on June 6, 1977.

court. The center utilizes a flexible process, usually consisting of mediation or arbitration, or a combination of the two. Arbitrators or mediators may be professionals, law students or trained citizens drawn from the community. The primary goal is to provide an informal alternative to the court process. Such an alternative appears to be particularly appropriate in resolving interpersonal disputes between individuals involved in an interdependent relationship (e.g., neighbors, family members or landlord and tenant), for in such cases there is a particular need for a noncoercive process (such as mediation) that has the capacity of reorienting the basic relationship between the disputants rather than simply dealing with the surface symptoms of their relationship, as a court typically would (e.g., "why can't Mrs. A get along with Mrs. B" rather than "did Mrs. A hit Mrs. B"). The ultimate aim is that, following a full airing of the dispute, the parties will be able, with the aid of the mediator(s), to arrive at a mutually satisfactory settlement of the controversy, which will then be reduced to writing. In some programs, if the parties fail to reach a consensual settlement, the mediator-arbitrator can impose a settlement on them.

The NJC concept raises a number of familiar and some novel issues. As with the small claims court, there are questions of how to enhance the accessibility and legitimacy of the institution. These difficult questions are no easier to resolve in the NJC context. But because the NJC is usually a newly created institution, and because a collateral goal of the NJC's creation is to help to reestablish the sense of community that has been largely lost in big urban areas, there is a greater opportunity forthrightly to address the issues of community involvement in the creation and operation of the Center.[20]

Since an NJC is usually distinct from the court (though often having a more or less well defined relationship to it), some difficult issues not present with respect to small claims courts are raised by it. Two of these that were particularly emphasized at the confer-

20. *See* Wahrhaftig, Citizen Dispute Resolution: Whose Property (Amer. Friends Service Comm., Pittsburgh, mimeo, 1977), for an elaboration of this point.

ence were the issues of confidentiality and coercion. As regards the former, the entire thrust of a neighborhood center is to facilitate a candid airing of the facts that gave rise to the dispute, unhindered by technical principles of relevance or constitutional law. But in view of the unofficial nature of the institution, how can the disputants be protected against compelled disclosure of facts revealed at the hearing which may be germane to a later court proceeding, possibly involving potential criminal liability? In principle, of course, strict confidentiality of such revelations is promised. But in the absence of legislation providing such confidentiality, it cannot be assured.[21] Perhaps so long as the question remains a theoretical one, owing to the sound exercise of discretion on the part of prosecutors and others, the potential harm is primarily of academic interest.[22]

A similar dilemma has been raised with respect to the issue of coercion. So far most of the neighborhood dispute centers have been tied to the criminal justice system; that is, most of their cases are diverted to them from the prosecuting attorney or the court. Obviously in that setting there is a residual element of coercion; for, if the disputants do not want to utilize the alternative process or live up to an agreement reached through it, they will most likely be returned to the criminal process. In the criminal context that kind of implicit coercion is unavoidable. Still, many individuals will opt for the less drastic process exemplified by community mediation because in most cases that will produce a more acceptable and enduring resolution of the underlying controversy.

It is true, of course, that there is a potential danger here. Although the criminal process is more drastic, concomitantly it provides more safeguards and protections. One needs to be concerned

21. Some projects (e.g., that in Brookhaven Township, Long Island) have executed a written agreement with the local district attorney assuring immunity from prosecution on the basis of any information revealed in the NJC proceeding. Whether such an agreement is enforceable, however (e.g., against a successor district attorney) is unclear.

22. A question of immediate importance, however, for such an institution is how candid it should be with disputants respecting the assurance of confidentiality.

that individuals who are threatened by the criminal process not be induced uninformedly to waive these safeguards simply because at the end of the rainbow there is what appears to be a less drastic alternative. Clearly full disclosure and a knowing waiver of rights should be demanded here.[23]

The next pressing question is what will happen when these neighborhood justice centers are no longer tied to the criminal justice system, and handle a variety of civil and criminal disputes, as is presently contemplated for the new NJCs to be established in Atlanta, Kansas City, and Los Angeles. We simply do not know whether, absent the residual coercion that is provided by the criminal process, the mechanism will work as well. There seems to be a good deal of evidence from the existing projects that many individuals will choose voluntarily to come into one of these centers in order to avail themselves of a service that the courts presently do not provide. Thus even if the Center were limited to consensual cases it would appear to be a valuable addition.

In some cases, however, it may be desirable to compel the parties to exhaust this process before going into court. We have done this with respect to divorce conciliation procedures in some states. Some jurisdictions have also taken a similar route with respect to compulsory screening panels for medical malpractice cases, or compulsory arbitration for money claims below a stipulated amount.[24]

23. A related question concerns the appropriate remedy once there has been informed waiver followed by a refusal to go through with the alternative process. If that process is arbitration, then, assuming the appropriate state law, presumably an enforceable arbitration award can be entered. But where mediation is involved, by the very nature of that process (i.e., a consensual proceeding) no such relief is possible.

24. Generally speaking, such mandatory use of pre-court mechanisms is constitutional so long as a right of de novo trial is granted to the loser. *See* JOHNSON, KANTOR AND SCHWARTZ, note 15 *supra,* chapter 5. *But see* Wright v. Central DuPage Hospital, 347 N.E.2d 736 (Ill. 1976), Simon v. St. Elizabeth Medical Center, 355 N.E. 2d 903 (Ohio Comm. Pleas 1976), and Johnson v. Burch, Baltimore City Court, June 6, 1977, for three cases that hold unconstitutional on various grounds a requirement to resort first to a medical malpractice screening panel. *See also* Redish, *Legislative Response to The Medical Malpractice Insurance Crisis: Constitutional Implications,* 55 TEX. L. REV. 759 (1977).

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Thus, although we should in the first instance explore the consensual utilization of these alternate processes, we should not necessarily shy away from the ultimate possibility of a statutory requirement that such processes be exhausted before a court action can be initiated. Of course, such a step should not be taken until we have some persuasive evidence that that avenue promises a more effective and efficient resolution for that particular type of controversy. Unfortunately to date we do not yet have any sophisticated attempts to evaluate the work of neighborhood dispute centers.[25]

2. ARBITRATION OF SMALL CLAIMS

As pointed out above, arbitration represents a promising avenue for the efficient resolution of relatively small money claims. In Philadelphia County, for example, all money claims below $10,000 must be presented first to a panel of arbitrators made up of volunteer attorneys who receive a modest fee for each case. To comport with the right of trial by jury[26] under the state constitution, the loser is permitted to appeal to the court for a trial de novo, but he must pay all costs accrued to the time of appeal. Perhaps because of this condition, only about 10-12 percent of the losers have appealed. As a result approximately 30,000 cases per year are thus disposed of. Similar programs are in effect in California, as well as in specified counties in Ohio and New York.[26a] An experimental program for compulsory arbitration of certain cases in federal court is presently under consideration. See S. 2253, 95th Cong., 1st Sess. (1977).

Arbitration appears to be a less expensive and more expeditious method of resolving many types of cases. In view of that fact, consideration should be given to a more widespread use of compulsory arbitration. In addition voluntary arbitration should be further

25. Such a product may be forthcoming shortly in the form of the evaluation of the Urban Court in Dorchester, Massachusetts, which was recently undertaken by Prof. William Felstiner under a grant from the Law Enforcement Assistance Administration to the Program for the Study of Dispute Resolution Policy at the USC Law Center in Los Angeles.

26. *See* Stanley, *The Resolution of Minor Disputes and the Seventh Amendment,* 60 MARQUETTE L. REV. 963 (1977).

26a. *See* JOHNSON, KANTOR AND SCHWARTZ, note 15 *supra,* chapter 5.

encouraged, with the state perhaps offering to bear some or all of the administrative costs, so as to remove the present economic disincentive to the use of this method of dispute resolution.

B. *Disputes Between Individuals and Organizations*

Many of the complaints by individuals in a complex modern society are not against other individuals, but against large organizations, both public and private. For example, a welfare recipient may feel that her grant was improperly determined. Or a prisoner may have a complaint about some aspect of his treatment by the prison authorities. Many of these cases currently find their way into the state and federal courts. Hence some consideration of alternate ways of resolving these disputes appears to be appropriate.

Many of the principles considered above with respect to the resolution of interpersonal disputes in NJCs are applicable here, too. Processes such as mediation and arbitration have obvious applicability also in the context of individual versus organization. But a special threshold issue emerges here: how to find a way to equalize the vast disparity in expertise and power between the individual and the organization, so that any dispute resolution mechanism that is established will have the confidence and trust of the affected individuals.

Linda Singer's presentation focused on two basic mechanisms—ombudsmen and administrative grievance mechanisms. There is now a considerable literature on the former;[27] the latter device, though widely used in the labor field, has only recently been applied in other settings (such as schools, prisons and hospitals) and hence is much less well understood. Ms. Singer posited six basic prerequisites of an effective grievance procedure.

1. THE AFFECTED INDIVIDUALS MUST PARTICIPATE IN THE DESIGN AND OPERATION OF THE MECHANISM

The most effective way to promote credibility in a grievance

27. *See e.g.,* JOHNSON, KANTOR AND SCHWARTZ, note 15 *supra,* chapter 6; GELLHORN, OMBUDSMEN AND OTHERS (1966); GELLHORN, WHEN AMERICANS COMPLAIN (1966); and other references cited in the JOHNSON, KANTOR AND SCHWARTZ bibliography. See also Appendix C *infra.*

mechanism is to give those affected by it a central role in making it work. This participatory approach enables individuals who must live with the solutions to problems to share a role in developing those solutions, and hence promotes a commitment to it on their part.

2. THERE MUST BE FULL ACCESS TO THE MECHANISM, WITH GUARANTEES AGAINST REPRISAL

Fear of reprisal is the objection to grievance mechanisms most often voiced. Of course, there can never be an absolute guarantee that threats or reprisals will not be applied informally against someone who uses the grievance system, but some safeguards can be built into the mechanism. For example, the importance of ensuring that no record of a grievance be placed in the complainant's central file cannot be overemphasized.

3. WRITTEN RESPONSES (INCLUDING THE REASONS FOR THE DECISION TAKEN) MUST BE MADE TO ALL GRIEVANCES

Assurance that there will be a response to a complaint at every level is a fundamental requirement for an effective grievance mechanism. If the complaint is rejected, a written reply with reasons for the rejection is all the more important. Only in this way can a grievant or other interested party know the grounds on which decisions were based or decide whether an appeal is warranted. Written replies are also needed to determine whether a grievance has been handled properly within established time limits.

4. GRIEVANCES MUST BE RESPONDED TO WITHIN PRESCRIBED, REASONABLE TIME LIMITS; SPECIAL PROVISION MUST BE MADE FOR RESPONDING TO EMERGENCIES

Brief, enforceable time limits are essential at every step in an administrative grievance mechanism. They put all involved parties on notice that they must act on complaints. Mechanisms without time limits are an invitation to responsible officials to avoid dealing with tough questions and issues. Time limits should be realistic,

but any procedure that requires much more than 30 days is unlikely to be used or trusted.

5. OUTSIDE REVIEW OF GRIEVANCES MUST BE AVAILABLE

Objective review of complaints by impartial outsiders is essential if a mechanism is to be credible to individuals. In addition to providing the unemotional perspective of a neutral party, outside review imposes at the lower levels of a grievance mechanism the necessity of responding reasonably, since unreasonable responses and faulty logic will be detected.

It is not necessary for the opinion of the independent outside body to be binding on administrators for the procedure to be effective. The independence and fairness of the outside review and the good faith of the administrators, rather than the threat of binding sanctions, make mechanisms effective. There is no theoretical reason, however, for not making the decision of the outside reviewer binding in cases involving the application—as opposed to the formulation—of policy.

6. THE MECHANISM MUST BE APPLICABLE TO AS BROAD A RANGE OF ISSUES AS POSSIBLE AND MUST CONTAIN MEANS FOR DECIDING WHETHER A SPECIFIC COMPLAINT IS GRIEVABLE

Once the scope of the mechanism has been agreed upon, the mechanism itself must contain a means for determining whether a specific grievance is grievable. Thus, when a grievance is dismissed because it is not within the ambit of the mechanism, a complainant must be allowed to appeal that ruling through every level of review. The mechanism thus must have jurisdiction over questions of its own applicability.[28]

28. *See, e.g.,* Keating, *Arbitration of Inmate Grievances,* 30 ARB. J. 177 (1975), for an illustration of these principles at the Karl Holton facility administered by the California Youth Authority. It consists at the first level of a five person committee, one of whom (a middle-management official) acts as Chairman, the other four being voting members—two inmates and two staff members. Review of the decision—or of the opposing views in case there is a tie—by the director of the facility or his delegate is then provided for, and finally

Varieties of each of the two basic mechanisms (i.e., ombudsmen and grievance mechanisms) were explored in the context of disputes arising in total institutions (prisons, schools, etc.), disputes between citizen and government (e.g., welfare, social security, etc.), and disputes between individual and business organizations (e.g., consumer controversies). It was pointed out that many of these mechanisms are of relatively recent origin and that there is an urgent need for additional research and experimentation on the subject of complaint handling.

A central question with respect to administrative grievance mechanisms concerns their relation to court proceedings. Presumably if a system conformed to basic principles of fairness, such as those elaborated above, then in appropriate cases a judge might be authorized to stay the judicial proceedings for a brief period while recourse was had to the established administrative mechanism.[29]

While the notion of Neighborhood Justice Centers has, on the whole, been enthusiastically received, the installation of ombudsmen and administrative grievance mechanisms, particularly in total institutions (such as schools or prisons) has been a far slower task. Although such mechanisms hold some promise in terms of the potential reduction of court caseloads—for example about five percent of the current civil litigation caseload in the federal courts involves state prisoners' civil rights cases—the reformation of entrenched bureaucracies is obviously a far more difficult task, and it remains to be seen what progress can be achieved by way of making these institutions more responsive to the grievances of individuals who are affected by them.

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recourse can be had to an outside independent three-person review board set up under the auspices of the American Arbitration Association. The decision of this board is only advisory, but the director of the facility must promptly indicate whether he will comply with it, and if not, to state his reasons for not doing so. Thus while the ultimate power of decision remains in the person in charge, aggrieved individuals are given maximum opportunity first to air their views freely in a mediational context and then, if that fails, to have their views presented for evaluation by a disinterested outsider.

29. *See* H.R. 9400, 95th Cong., 1st Sess. § 5 (1977), so providing for § 1983 prison cases. *See also* Comment, 35 MD. L. REV. 458 (1976).

III
Common Threads, Residual Tensions and Promising Experiments

A. *Recurring Themes*

Although the conference dealt with two discrete topics, each of which raises a number of separate issues, many common themes emerged. It may be useful to elaborate some of these here.

1. Perhaps paramount is our vast ignorance—ignorance by the affected parties of what machinery is presently available to aid them in resolving disputes, as well as ignorance by society whether litigants' needs are presently being adequately met. Reference has already been made to the first question and how it might be addressed. Some examples respecting the second type of knowledge-gap may be useful here.

Linda Singer, in her description of prison grievance mechanisms, pointed out that of the cases processed at the California Youth Authority (see note 28) only about one percent go to outside arbitration. Why is that? Is it because the grievance mechanism is so effective or is it because of the burden posed by the arbitration procedure?

Similarly, with respect to small claims courts, reference has already been made (see note 3) to the sharply differential usage rates in various courts around the country. The Ruhnka-Weller study does not really shed much light on that. This issue is, of course, closely related to what has been referred to earlier as "the case of the missing plaintiff." Quite obviously we need to know more

about why many individuals are not using the small claims court system at all. What are these grievants looking for? Could their objections be met by making specific changes in the procedure or are their objections more fundamental?

With respect to the ombudsman mechanism, we have a number of models. There is the New Jersey Department of the Public Advocate, perhaps the most elaborate, and apparently the only statewide institution. Then there are some local ombudsmen, such as that in King County, Seattle (see Appendix C). And finally there are some ombudsmen attached to particular institutions, such as hospitals or prisons. What are the good and bad features of each? Which model is best for what situation? How does the establishment of an ombudsman compare with the institution of an administrative grievance mechanism? Despite the availability of a good deal of basic learning on the subject, we simply do not know the answers to vital questions like these. Yet for any jurisdiction or organization that is contemplating the establishment of such an institution, such questions are very fundamental.[30]

Above all we need to develop more systematic methods for measuring the effectiveness and sufficiency of available dispute resolution mechanisms.[31] This requires first of all some agreement on

30. Perhaps this kind of information gap might be partly remedied by the creation of a Dispute Resolution Resource Center such as is currently being proposed as a joint venture of the ABA, the American Arbitration Association, and the National Center of State Courts. *See also* S. 957, 95th Cong., 1st Sess., CONG. REC. S 18904 (Nov. 4, 1977), proposing to establish such a center in the Department of Justice.

31. For a suggestive example, see the recent Vera Institute of Justice study on Felony Arrests (1977), showing that in over half of the cases studied the defendant and the victim had a prior relationship; 87% of these cases were dismissed by the prosecution for failure by the victim to follow through, thus suggesting a search for a different type of remedy, such as a citizen dispute center. *See also* ALASKA JUDICIAL COUNCIL, THE ANCHORAGE CITIZEN DISPUTE CENTER: A NEEDS ASSESSMENT AND FEASIBILITY REPORT (1977), for a commendable attempt to design a newly recommended citizen dispute center in response to a specific inquiry concerning the unmet dispute resolution needs of the community.

The pending study of the American Bar Foundation of the entire network

criteria, and then some way of applying those criteria to a variety of mechanisms. Quite aside from these difficulties there lurk beneath the surface all kinds of difficult normative issues, such as: should there be an available remedy for every grievance? What are the costs and benefits of doing so? How much of society's resources should be allocated to dispute resolution as against other social needs?

But even as we are searching for more scientific approaches to the problem of dispute resolution, we must not disregard the obvious. In the words of Chief Justice Burger's closing address to the conference:

> . . . [T]here are many conflicts that fall into today's classification as minor disputes, which no one is solving and which ought to be resolved if we are to avoid the frustrations, tensions, and hostilities that often flow from unresolved conflicts. We do not need to call on psychiatrists or clinical psychologists to tell us that a sense of injustice rankles and festers in the human breast and the dollar value of the conflict is not always the measure of tension and irritation produced. A landlord who delays unduly in repairing a defective radiator or refrigerator can produce unhappy chain reactions on children and adults. A defective roofing or siding job on the home, defective work on the family car or the television set sometimes can produce serious consequences comparable to those of a major illness.[32]

2. Another recurring theme is the need early on to involve the affected "community" if we want to develop a system that has acceptability and accessibility. But just how that "community" is to be defined is far from clear. In some situations, there are resid-

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of dispute resolution mechanisms in a midwestern city may also provide some helpful insights on this question. *See also* Steele, *Two Approaches to Contemporary Dispute Behavior,* 11 LAW & SOC. REV. 667 (1977), for a useful appraisal of the existing literature, and the forthcoming volume by Cappelletti and Garth, Access to Justice: A World Survey, which will be published in 1978 by Sijthoff (Leyden and Boston) and Giuffrè, for suggestive solutions from abroad.

32. *See* Burger, *Our Vicious Legal Spiral,* JUDGES' J., Fall 1977, p. 22. For a conceptual discussion of this issue of "avoidance," *see* Felstiner, *Influences of Social Organization on Dispute Processing,* 9 LAW & SOC. REV. 334 (1974), and the reply by Danzig and Lowy, 10 *id.* at 366 (1975).

ual ethnic ties that may provide the requisite coherence.[33] In other situations, what may be involved is community in the sense of "neighborhood," thus raising the intriguing question whether the dispute mechanism itself can aid in recreating the sense of community that has been so largely lost in our big urban centers.

As indicated earlier, there is no easy answer to this question of enhanced community involvement. But one need not permit this hurdle to become disabling. There is ample room for—indeed, desperate need of—additional experimentation. Thus, even while working towards the ideal of a community-generated mechanism one can attempt to adapt existing mechanisms in such a way as to make them more reflective of community concerns.

3. A third common theme is that many of our present problems stem from our overemphasis on the traditional adversary system. Whatever one may think of the strengths and weaknesses of that system, it seems clear that it is simply too cumbersome and expensive for most of the disputes with which we are here concerned. As pointed out earlier, this does not mean that the adversary process has no place in resolving "minor" disputes. It does mean that we need some kind of screening mechanism to decide which are the simple disputes that can be resolved by some "rough justice" techniques, and which are more complicated ones that ought to be cast into the full adversary mold. Indeed, ultimately we ought to be aware of the whole range of mechanisms—mediation, arbitration, fact finding, ombudsmen, screening panels, grievance mechanisms—with a view to developing some procedure for assigning each case to that process or group of processes most suited to that particular type of controversy.[34]

A closely related question concerns the appropriate role of lawyers in an enlightened system of dispute resolution. As pointed out earlier in the discussion of small claims courts, there will be cases where the amount in controversy is so small and the underlying

33. *See, e.g.,* YAFFE, SO SUE ME—THE STORY OF A COMMUNITY COURT (1972), describing the work of the Jewish Conciliation Board in New York City.

34. *See, e.g.,* Sander, *Varieties of Dispute Processing,* 70 F.R.D. 111 (1976), for an elaboration of this theme.

dispute so elemental that there will be no place for the traditional type of adversary legal representation. Other cases involving complex legal issues will require the full measure of the legal process if the litigants' basic rights are to be appropriately protected. The need for some effective way of sorting out these very different kinds of cases is apparent.

The newly emerging modes of dispute resolution pose an immense challenge to the legal profession to come up with creative new solutions for using legal skills to solve society's problems. The utilization of volunteer lawyers as dispute resolvers is one example.[35] Another may be the broadened preventive law role made possible by the increasing use of prepaid care plans.[36] Both of these examples, and others that may evolve, have important implications for legal education that need to be more fully addressed.

4. Finally, in both areas encompassed by the conference, there is a need for developing mechanisms to bring about greater power equalization.[37] This point is immediately apparent with respect to noncoercive processes such as mediation, for quite obviously such techniques cannot work effectively in an atmosphere of gross power disparity. This can be readily seen when it comes to developing workable grievance mechanisms in autocratic institutions like prisons, hospitals, or schools. If such a grievance mechanism is to be at all effective, it must find a way of giving legitimacy to the concerns of those who are affected by the system and who have grievances which they seek to voice.

But the issue of power equalization also has its counterpart with respect to institutions employing adjudicatory processes. Thus in

35. Reference has already been made to the use of arbitrators in the Small Claims Court in New York City and San Jose, and to the use of lawyers to arbitrate small claims in Philadelphia. Some of the Neighborhood Justice Centers also use lawyers or law students as mediators, arbitrators, or fact-finders (see Appendix C).

36. *See* DEITSCH AND WEINSTEIN, PREPAID LEGAL SERVICES (1976); BROWN AND DAUER, PLANNING BY LAWYERS (1977).

37. *See* Galanter, *Why the "Haves" Come out Ahead: Speculating on the Limits of Legal Change,* 9 LAW & SOC. REV. 95 (1974), for a perceptive exploration of this general theme.

the small claims court the issue manifests itself in terms of the question whether institutional plaintiffs should be permitted to use the court, or whether, even though lawyers are generally discouraged, some type of legal assistance or advice should be provided to individual defendants in suits brought by institutional plaintiffs.

B. *Dilemmas and Tensions*

1. A familiar dilemma in all service organizations with limited resources is how to allocate those resources between the specific and the general, between the short run and the long run. On the one hand there are the recurring disputes between individuals that continue to present themselves at an alarming rate and with which the system must cope quickly and decisively. At the same time, if the mechanism is not to get hopelessly bogged down by the daily grist, some attention must be paid to the more generic problems that are raised by some of the cases. In the context of legal services, this is done through legislative change or test case litigation. Similarly, if we are to lay claim to an effective and readily available system of minor disputes resolution, some attention must be paid to the underlying conditions that create many of these disputes. For example, with respect to consumer credit controversies that represent such a substantial portion of small claims court business, there is a need to determine whether or not unfair consumer practices are being perpetrated by a specific company which ought to be dealt with by a class action or by some other collective approach. But beyond that, we should perhaps explore more fully aggregate, preventive solutions, such as limiting the amount of credit an individual could assume, or requiring a seller to negate the presence of typical defenses such as breach of warranty or violation of consumer protection laws before a collection suit could be brought. Similar approaches could be pursued in other areas.[38]

2. Another dilemma that was much discussed at the conference is whether we should opt for or against resolution of these minor

38. Indeed, the statutory development of rent withholding is a good example of such a solution. This general approach is more fully developed in Ehrlich and Frank, Planning for Justice (Aspen Institute Occasional Paper 1977).

disputes by courts. The question obviously requires some refinement. For the typically small, simple dispute over money due (say between a painter and houseowner) the small claims court still appears to be an effective and expeditious mechanism. But it should be supplemented with other techniques such as arbitration, either by offering those as alternatives within the court (as in New York City) or by establishing a pervasive system for the compulsory arbitration of small claims, as in Philadelphia and a number of other jurisdictions.

When it comes to other types of disputes—minor criminal matters, squabbles between family members, complaints about governmental unresponsiveness—then an initial resort to nonadjudicatory techniques (whether in or out of court) may often be preferable. As pointed out earlier, this is particularly true where we are dealing with individuals who are involved in long-term relationships, since a mediated solution in which both parties attempt to work out a mutually acceptable resolution holds far more promise of providing a long-term solution to the underlying controversy.

Such mediative resolution may be readily provided through a Neighborhood Justice Center or, in the case of a grievance against an organization, by utilizing an administrative grievance mechanism or ombudsman. Whether or not these mechanisms should be under the auspices of the court becomes an essentially political issue. To be sure, they normally gain thereby in authority and prestige. At the same time, in some quarters there is a distinct distrust of established institutions, and the acceptability of the mechanism thus may be enhanced if it is more closely tied to the community. These considerations must be carefully balanced in each specific situation. In any event the ultimate issue is not so much whether minor disputes should be resolved by courts as what is the *process* most appropriate to each particular dispute in question.[39]

39. Of course, as pointed out at the outset, some seemingly minor disputes entail major complex legal issues, and hence require the full authority of the court. Consider, e.g., the case of a girl baseball player complaining about exclusion by the local Little League that is cited by Smith, note 2 *supra*.

C. *Promising Experiments*

Given our vast ignorance on so many fundamental questions of dispute resolution, everyone can make up his or her own list of viable experiments. By way of recapitulating some of the earlier themes, it may be useful to assemble here some that seem promising at least to the writer of this report.

1. We might attempt to utilize the Small Claims Administrator mechanism described in the Yngvesson and Hennessey article (note 9 *supra*) with a view to developing a flexible intake and after-process adapted to the needs of the particular case. Such an experiment might also help to shed some light on the question of institutional plaintiffs in small claims court. For example, one might conclude that there is a feasible compromise between allowing all these cases in small claims court or forcing them all into the regular court.[40] The compromise would consist of allowing these cases to be brought in small claims court but not commingling them with the typical individual-versus-individual case, but rather requiring them to be handled as part of a separate "calendar" where the defendant would have access to competent legal advice and the proceeding would be before a judge who would be alert to the issues likely to arise in that kind of case.

Moreover, gaining some useful experience with a flexible intake mechanism would have relevance far beyond the confines of the small claims courts. Indeed perhaps it might be the first step towards testing the feasibility of a multifaceted dispute resolution center involving initial analysis of the dispute with a view to utilizing the process best suited to its resolution. Thus if it were a dispute between two neighbors, it would be referred to neighborhood mediation. If it were a small claims case of the simple individual-versus-individual variety, it would be referred to the small claims court. If it were a case of governmental unresponsiveness, it would be referred to the ombudsman.[41]

40. Judge Shea's proposal to give the defendant removal power represents another compromise worth exploring.

41. *See, e.g.,* Sander, *Varieties of Dispute Processing,* 70 F.R.D. 111 (1976).

2. A virtually infinite number of intriguing experiments are made possible by the NJCs about to be established.[42] For example, we might seek to determine the comparative efficacy of an NJC connected with a court as against one closely affiliated with the community which it was designed to serve. Similarly we could try to learn something about the relative advantages and disadvantages of having lay or professional dispute resolvers. Or we might seek to put to an operational test a question that has long divided the theoreticians—whether it is advisable to combine in one dispute resolver different functions such as mediation and arbitration.[43]

3. There is ample room for experimentation, too, with respect to developing the most effective mechanisms for resolving disputes between individuals and organizations. As pointed out earlier, we need to know more about the comparative efficacy and cost of alternative mechanisms such as ombudsmen and administrative grievance procedures. In what situations, for example, would one be preferable to the other? And within each mechanism, there is a host of questions unanswered by empirical research centering around optimal composition, jurisdiction and procedures. The ultimate unanswered question, of course, concerns the effectiveness of such mechanisms in providing more expeditious and acceptable dispute resolution while at the same time helping to relieve the caseload pressure on the courts.[44]

42. Many of the alternative possibilities are canvassed in McGillis and Mullen, note 19 *supra*.

43. *See, e.g.*, Sander, note 41 *supra*, at 122.

44. It is possible, however, that we will ultimately have to choose among the diverse motivations for providing alternative modes of dispute resolution (e.g., relief of court congestion, facilitating access to "the system" by disputants, and providing more effective dispute processing) because they will to some extent be in irreconcilable conflict.

Conclusion

In his concluding address to the conference, Chief Justice Burger commended the conference "for being venturesome and imaginative in seeking ways to reduce social irritations and tensions with minimum delay, complexity, and prohibitive expense to those who can ill afford it" and expressed the hope that its fruits would be "concrete experiments and accomplishments." The challenge remains.

Appendix A

NATIONAL CONFERENCE ON MINOR DISPUTES RESOLUTION

SPEAKERS AND TOPICS

Major Addresses

Robert B. McKay
"Minor Disputes and Other Major Problems"

Paul Nejelski
"The Federal Role in Minor Dispute Resolution"

Hon. Warren E. Burger
"Our Vicious Legal Spiral"

Topic I

"Small Claims Court: Problems and Prospects"
Moderator: Hon. Felice K. Shea

"Summary of Small Claims Project of the National Center for State Courts"
John C. Ruhnka, Project Director and
Stephen Weller, Assoc. Project Dir.

Commentators: Hon. Earl Warren, Jr.
Professor Norman C. Amaker
Rhoda H. Karpatkin

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APPENDIX A

Topic II

"Some Promising Alternative Dispute Resolution Mechanisms"
Moderator: Professor Earl Johnson, Jr.

1. "Informal Grievance Mechanisms Outside the Courts"
   Linda R. Singer
2. "Diversion of Small Disputes into other Forums:
   Community Mediation—Arbitration"
   Joseph B. Stulberg

Closing Panel Discussion
Moderator: Talbot D'Alemberte

Panelists: A. Leo Levin
Ronald L. Olson
Hon. Arlin M. Adams
Professor Lewis B. Kaden
Sandra DeMent
Theodore R. Tetzlaff

Concluding Comments: Frank E. A. Sander

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