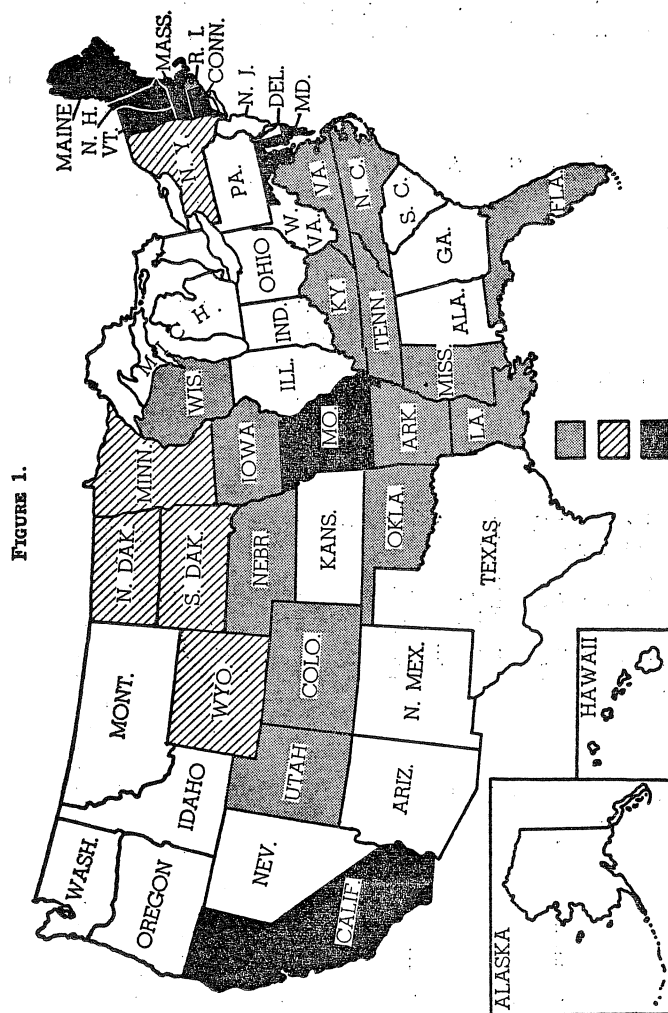


State	Statute passed: date first passed and type	Statute introduced and defeated: date and type where known	Statute considered and rejected by dealer organization	Rank in 1964 as to:	
				Number cars sold in state ¹²⁵	Number new car dealers in state ¹²⁶
(10) Mississippi	1935 & 1954 ¹³⁸ (admin.-licensing)	—	—	33d	28th
(11) Louisiana	1954 ¹³⁹ (admin.-licensing— dealer board)	—	—	21st	27th
(12) Arkansas	1955 ¹⁴⁰ (admin.-licensing— dealer board)	—	—	31st	32d
(13) Colorado	1955 ¹⁴¹ (admin.-licensing)	—	—	30th	33d
(14) Tennessee	1955 ¹⁴² (admin.-licensing— dealer board)	—	—	19th	22d
(15) North Carolina	1955 ¹⁴³ (admin.-licensing)	—	—	16th	15th
(16) Minnesota	1955 ¹⁴⁴ (penal)	—	—	18th	12th
(17) Kentucky	1956 ¹⁴⁵ (admin.-licensing)	—	—	25th	21st
(18) New York	1956 ¹⁴⁶ (Right created; no (approval of contracts remedy specified) by state agency)	1949 ¹⁴⁷	—	2d	2d
(19) Nebraska	1957 ¹⁴⁸ (admin.-licensing— dealer board)	—	—	32d	25th
(20) Utah	1965 ¹⁴⁹ (admin.-licensing— dealer board)	—	—	38th	43d

(21) Connecticut	—	Early 1950's ¹⁵⁰ (type unknown) 1965 ¹⁵¹ (admin.-licensing)	—	20th	24th
(22) Maryland	—	Early 1950's ¹⁵² (type unknown)	—	14th	31st
(23) Missouri	—	1955 ¹⁵³ (type unknown)	—	12th	14th
(24) New Hampshire	—	1955, ¹⁵⁴ 1963 ¹⁵⁵ (admin.-licensing)	—	41st	40th
(25) California	—	1963 ¹⁵⁶ (admin.-licensing— dealer board)	—	1st	3d
(26) Maine	—	1963 ¹⁵⁷ (admin.-licensing)	—	37th	37th
(27) Massachusetts	—	1956, ¹⁵⁸ 1963 ¹⁵⁹ (admin.-licensing)	—	10th	13th
(28) Vermont	—	1963 ¹⁶⁰ (admin.-licensing)	—	49th	44th
(29) Alabama	—	—	Early 1950's ¹⁶¹	22d	26th
(30) Georgia	—	—	Early 1950's	15th	19th
(31) Illinois	—	—	Early 1950's	4th	4th
(32) Indiana	—	—	Early 1950's	11th	9th
(33) Michigan	—	—	Early 1950's	3d	7th
(34) New Jersey	—	—	Early 1950's	8th	11th
(35) South Carolina	—	—	Early 1950's	29th	34th
(36) Texas	—	—	Early 1950's	7th	5th
(37) Washington	—	—	Early 1950's ¹⁶²	27th	23d

(For footnotes to Table 1, see pages 521 and 522)



States shaded with dots have administrative licensing statutes.
 States shaded with diagonal lines have penal and other types of statutes.
 States shaded solid black have no statute but one has been defeated.

(Footnotes to Table 1)

¹²⁵ See Automotive News, March 1, 1965, p. 12, cols. 2-5.

¹²⁶ See NATIONAL AUTOMOBILE DEALERS ASSOCIATION, THE FRANCHISED NEW CAR & TRUCK DEALER STORY 23 (1964).

¹²⁷ WIS. STAT. § 218.01 (1963) (Wis. Laws 1937, ch. 377, at 602, ch. 378, at 603, ch. 417, at 688).

¹²⁸ IOWA CODE ANN. §§ 322.1-.16 (1950) (Iowa Laws 1937, ch. 135, § 6, at 311).

¹²⁹ Automotive News, May 6, 1963, p. 1, col. 2.

¹³⁰ 1965 Iowa Legislative Service 376.

¹³¹ N.D. CENT. CODE, §§ 51-07-01 to -03 (Supp. 1963) (N.D. Laws 1937, ch. 125, at 238).

¹³² FLA. STAT. ANN. §§ 320.64-.70 (1958) (Fla. Laws 1941, ch. 20236, §§ 5-11, at 105).

¹³³ VA. CODE ANN. §§ 46.1-546 to -547 (1958) (Va. Laws 1944, ch. 406, § 20, at 645).

¹³⁴ WYO. STAT. ANN. §§ 40-39 to -40 (1957) (Wyo. Laws 1949, ch. 138, §§ 1-2, at 225).

¹³⁵ R.I. GEN. LAWS ANN. 31-5-23 (1956) (R.I. Laws 1950, ch. 2595, Art. 8, at 523).

¹³⁶ S.D. CODE § 54.1103 (Supp. 1960) (S.D. Laws 1951, ch. 262, §§ 1-2, at 277).

¹³⁷ OKLA. STAT. ANN. tit. 47, § 563 (1962) (Okla. Laws 1953, tit. 47, § 5, at 182).

¹³⁸ MISS. CODE ANN. § 8071.3 (1956) (Miss. Laws 1954, ch. 332, §§ 1-2, at 456). Section 8072 of the Mississippi Code was passed in 1935. This provision calls for approval of manufacturer-dealer contracts by the attorney general and arbitration of disputes. The statute "has never been used according to the knowledge and records of this office and the office of the Secretary of State." Letter From R. Hugo Newcomb, Sr., Assistant Attorney General, State of Mississippi, Dec. 9, 1964.

"I am glad you brought it to my attention. As Revisor of Statutes, I shall recommend to the next session of the legislature that provisions be made for its enforcement or that it be repealed." *Ibid.*

¹³⁹ LA. REV. STAT. §§ 32:1251-1258 (1963) (La. Acts 1954, No. 350, § 4, at 666).

¹⁴⁰ Ark. Acts 1955, No. 182, at 416.

¹⁴¹ Colo. Laws 1955, ch. 77, at 198.

¹⁴² TENN. CODE ANN. §§ 59-1701 to -1720 (Supp. 1963) (Tenn. Acts 1955, ch. 79, § 5, at 235).

¹⁴³ N.C. GEN. STAT. §§ 20-304 to -305 (Supp. 1964) (N.C. Laws 1955, ch. 1243, §§ 20-21, at 1288).

¹⁴⁴ MINN. STAT. ANN. § 168.27(14) (1960) (Minn. Laws 1955, ch. 626, at 956).

¹⁴⁵ KY. REV. STAT. §§ 190.040-.070 (1962) (Ky. Laws 1956, ch. 161, §§ 3,6, at 320).

¹⁴⁶ N.Y. GEN. BUS. LAWS §§ 195-98 (N.Y. Sess. Laws 1956, ch. 900, at 1921).

¹⁴⁷ N.Y. Times, Jan. 21, 1949, p. 17, col. 3.

¹⁴⁸ NEB. REV. STAT. §§ 60-320, 60-1401 to -1419 (1960) (Neb. Laws 1957, ch. 280, at 1011).

¹⁴⁹ Utah Senate Bill 149-3 (1965).

¹⁵⁰ *Id.*, Feb. 28, 1955, p. 4, cols. 1-2.

¹⁵¹ *Id.*, June 28, 1965, p. 3, cols. 4-5.

¹⁵² Interview.

¹⁵³ Automotive News, Feb. 28, 1955, p. 4, cols. 1-2.

¹⁵⁴ *Ibid.*

¹⁵⁵ Interview.

work. Coercion and arbitrariness are bad things, and to have a man's effort destroyed by either clearly is an evil. The existence of these abuses and the need for action can be "proved" by the fact that other state legislatures have passed statutes. Also dealer associations can argue that the Wisconsin-Oklahoma statutory language is not an innovation but a tried and proven product without undesirable, unanticipated consequences.

Moreover, the villain is a giant corporation with wealth and power, and, in many instances, it is a foreign corporation coming into the state from outside to push around local businessmen. The spirit of Populism is still with us, and the argument has some appeal. Also in many states the dealers' political power is great. Often several legislators are automobile dealers.¹⁶³ Dealers often are active in local and state politics and have close ties with legislators and party leaders.¹⁶⁴ Finally, in many states it costs the legislators little if anything to give benefits to the dealers since the large automobile manufacturers have little influence.

However, the dealers lobby is not invulnerable. One trade association manager commented that the organized new-car dealers could pass any statute they desired in his state if the membership were solidly behind it.¹⁶⁵ The qualification reveals the difficulty. Since rural and urban, Chevrolet and Ford, and high volume and lower volume dealers have different interests, unity behind any proposal is hard to achieve. For example, a metropolitan dealer might not be disturbed if a small town or rural dealer located near him were cancelled and not replaced. The larger dealer might think that he could attract some of the smaller dealer's customers in the future. Also trade associations are likely to be controlled by the well-established, successful dealers who are interested in association activity. As long as manufacturers are cancelling only the more marginal dealers, those in control of the associations may not view the problem as worth much effort.

Not all dealers think that the manufacturer-dealer statutes are

¹⁵⁶ Cal. Senate Bill 1073 (1963). This bill was opposed by the northern and southern California dealers' associations. It was initiated by a dealer who had lost his franchise. Letter.

¹⁵⁷ Interview.

¹⁵⁸ *Automotive News*, March 12, 1956, p. 3, cols. 4-5.

¹⁵⁹ *Id.*, March 2, 1964, p. 4, col. 4; *id.*, March 9, 1964, p. 6, col. 5.

¹⁶⁰ Interview.

¹⁶¹ Interviews.

¹⁶² It was reported that "changes in dealer licensing law are contemplated by Washington State association; members are being asked to vote on such items as 'anti-coercion' rules for factory representatives, requirements for dealer licenses and proposed licensing of salesmen." *Automotive News*, May 10, 1965, p. 3, cols. 4-5.

¹⁶³ See, e.g., *id.*, Feb. 21, 1955, p. 1, col. 5; *id.*, April 25, 1955, p. 3, cols. 3-4.

¹⁶⁴ Interviews.

¹⁶⁵ Interview.

worth much effort. Trade association managers in those states where the question was appropriate were asked why their group had not pressed for a statute.¹⁶⁶ Thirteen answered that the problems in manufacturer-dealer relations were not great enough to justify a major battle with the factories. Seven answered that dealers in their state did not believe in governmental regulation. One commented that the experience of dealers in the Second World War and the Korean War had made his members hostile to any regulation by government and pointed out that dealers were licensed under these statutes as well as manufacturers. Six said their state was too small to justify any elaborate regulatory scheme. Views like these will be held by some members of the dealer trade association in any state, and they could prompt enough disunity to block action.¹⁶⁷ Several trade association managers commented that they had been greatly embarrassed when individual dealers appeared before legislative committees to oppose bills that the association was advocating.¹⁶⁸ Thus, a minority with strong free enterprise or don't-rock-the-boat views can discourage a majority that does not see a manufacturer-dealer licensing statute as vitally important. These statutes are passed in times of crisis in manufacturer-dealer relations: The dates of the state statutes tend to coincide with the depression of the 1930's and the pressures on dealers from the factories in the 1950's. The number of 1960 dates present in Table 1 may indicate that problems are arising again.

Dealers can have problems in getting legislation passed even when they have a fair degree of unity. The dealers' political contributions tend to be to the more conservative political leaders which may cost them some liberal support.¹⁶⁹ Many dealer associations have advocated right-to-work laws and low or no minimum wage laws and other things not calculated to favorably impress organized labor.¹⁷⁰ Also a state's used-car dealers often are not warm friends of the new-car dealers, and the used-car dealers will certainly do what they can to block licensing laws that along with handling coercion by manufacturers also often inhibit the sale of new cars by other than franchised dealers.¹⁷¹

¹⁶⁶ See discussion of research at note * *supra*.

¹⁶⁷ A prominent Chevrolet dealer fought the proposed Massachusetts statute. He said that most dealers "did not want politicians running their business." *Automotive News*, March 9, 1964, p. 6, col. 5.

¹⁶⁸ Interview.

¹⁶⁹ Interviews.

¹⁷⁰ Interviews. See, e.g., *Automotive News*, March 29, 1965, p. 3, col. 5, p. 8, col. 1; *id.*, April 5, 1965, p. 3, col. 5.

¹⁷¹ For example, "The Tennessee Automotive Assn. had reported concerted opposition to final passage [of the Tennessee administrative-licensing statute] by 'factories, Cleveland (Tenn.) used car dealers and representatives with labor sympathy.'" *Id.*, Feb. 28, 1955, p. 4, col. 1. See also *id.*, March 21, 1955, p. 3, cols. 3-5.

Obviously, to a great extent the manufacturers' strengths and weaknesses before state legislatures are the converse of the dealers'. In some states the manufacturers have attempted to capitalize on the dealers' weaknesses. They can work for disunity among the dealers. "Factory-minded" or "captive"¹⁷² dealers can be asked to speak out against regulation. Some dealers may think that cooperation with such a request may result in better allocations of scarce models of best selling cars. Some dealerships are owned by relatives of the top management officials of the manufacturers.¹⁷³ Those dealers who are officers of a state trade association advocating an administrative-licensing or a penal statute and those dealers who testify for such legislation can be talked to.¹⁷⁴ Such discussions can be most persuasive, given the dependence of any dealer on factory good will, although the manufacturer's representative makes no overt threats and confines his remarks to logical arguments against the bill. A statement issued to all dealers may persuade some to break ranks. For example, in one state a high official of General Motors stated that if a proposed administrative-licensing statute were enforced, General Motors would have to deal with nonfranchised dealers because inefficient dealers would be able to hang on to their franchises for life. To avoid promoting inefficiency, General Motors would have to sell to anyone who wanted to sell its cars.¹⁷⁵ As a result of this threat to end the franchise system, many members of the state association withdrew support, and finally the association itself formally opposed enactment of the bill it had originally sponsored.¹⁷⁶ Divide and conquer can be a potent strategy. Also, at times the manufacturers have formed alliances with the dealers' enemies, although organized labor and legislators whose views are "liberal" are unlikely to be enthusiastic friends.

The manufacturers may have their own influence with legislators apart from playing on dealers' weaknesses. They maintain an active lobby in many states and participate in political activities.¹⁷⁷ If they have manufacturing plants in a state, they may be able to work through the state's manufacturers' lobby.¹⁷⁸ Their relatively large deposits in banks in a state may make some bankers willing to exert their influence with state legislators.¹⁷⁹ Apart from pure influence, the manufacturers can offer some attractive arguments. Primarily, they assert that their control over dealers

¹⁷² These are the terms used by several trade association managers in the interviews.

¹⁷³ See *S. Hearings, Marketing Practices, Monroney* 889-92, 1093-94.

¹⁷⁴ See *id.* at 61. Also instances were discussed in interviews.

¹⁷⁵ *Automotive News*, May 28, 1955, p. 4, cols. 4-5; *id.*, March 4, 1957, p. 3, cols. 3-4; *id.*, March 11, 1957, p. 8, cols. 1-2.

¹⁷⁶ *Id.* at p. 1, col. 4; *id.*, March 25, 1957, p. 6, cols. 2-3.

¹⁷⁷ Interviews.

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*

is in the interest of automobile buyers since franchises typically are cancelled because the dealers' prices are too high to sell enough cars, their service is poor, or both. The automobile dealer has a sufficiently bad image in some areas that some legislators are very responsive to this position.¹⁸⁰ Moreover, if farm or labor groups can be persuaded to view these statutes as protection for high priced dealers who give poor service, their natural hostility to aiding a giant corporation may melt, and legislators representing these interests may vote against manufacturer-dealer legislation. Manufacturers also can talk about interference with free enterprise and free bargaining. For example, a General Motors executive called a proposed bill in Iowa "grossly unfair, unnecessary and, mind you, un-American."¹⁸¹ It is difficult to assess the impact of this kind of argument.

After reviewing all of these factors, one might speculate that in larger states the factories' strengths would be maximized. Where there are more dealers, there may be more diversity and less unity. A number of franchise cancellations in, say, Pittsburgh may not be viewed as a threat by dealers in Philadelphia or rural Pennsylvania.¹⁸² Big-city high-volume dealers may have closer contacts with factory people than other dealers, and these close contacts may serve as a less costly and more efficient way of getting what these dealers want from factories than an administrative-licensing scheme. Moreover, in the larger states the organized new-car dealers may have had more battles with labor, and the used-car dealers are more likely to have an organized lobby than in a smaller state. In larger states the manufacturers' lobby may be more significant as may the liberal group in the

¹⁸⁰ At the 1965 National Automobile Dealers Association convention, David Ogilvy, a noted advertising executive, reported that a Gallup poll showed that the public considered new-car dealers the least honest and trustworthy of seven types of businessmen. *N.Y. Times*, Feb. 4, 1965, p. 50, col. 3. The executive vice-president of the Wisconsin Automotive Trades Association, Louis Milan, responded by saying, "I think we've been smeared . . . the broad criticism certainly isn't justified in Wisconsin." *Milwaukee Journal*, Feb. 7, 1965, Part I, p. 16, cols. 1-2. Justified or not, in some areas new-car dealers are not viewed as trustworthy. For example, see the characterization of Simon Greed, "president, general manager and sales director of Honor Bright Motors, Inc." in KEATS, *THE INSOLENT CHARIOTS* 87-113 (1958).

¹⁸¹ *Automotive News*, May 6, 1963, p. 4, col. 1.

¹⁸² Nine out of the approximately ninety cases I know about which have been brought under the federal Good Faith Act, 15 U.S.C. 1221-25 (1963) by dealers against manufacturers alleging coercion, have involved Pennsylvania dealers, and seven of the nine have involved dealers from the Pittsburgh area. Only Michigan, with eleven Good Faith Act suits, has had more litigation under this statute. Pennsylvania has no state dealer-manufacturer statute. Its trade association officials doubt the effectiveness of state statutes that license manufacturers. Interview. Pennsylvania has more dealers than any other state. *Automotive News* 1965 Almanac, April 26, 1965, § 2, p. 92.

legislature. On the other hand, in the smallest states, the problems may not be important enough to warrant action. Some trade association representatives from small states said that their dealers had never been subjected to pressure from manufacturers' field representatives.¹⁸³ They thought that the amount of increased sales which would be possible in their areas would not justify a major effort by a field man. Pressure for increased sales pays off better in areas with larger populations where there are more potential customers who can be attracted by intense price competition but where market conditions do not produce this competition naturally. Also, in small states appeals to free enterprise and individualistic values, according to the trade association representatives,¹⁸⁴ may carry more weight than elsewhere.

To a great extent, manufacturer-dealer statutes have been passed in middle-sized states—in what may be described loosely as "Mid-West Republican" and Southern States—and defeated in New England. The major exception, New York, has a statute that is a compromise accepted by the dealer association to salvage something from defeat. The dealers asked for a statute that would have provided for treble damages and would have prohibited coercion and bad faith cancellation of dealers.¹⁸⁵ They accepted amendments, after legislators said they did not think that the bill was in the public interest,¹⁸⁶ which watered down the statute so that it provides only that a franchise cannot be terminated "except for cause."¹⁸⁷ These amendments stripped the act of any remedy for a dealer whose franchise is terminated in violation of its provisions.¹⁸⁸

Of course, the answer to why these bills succeed in some states and not in others may be simpler. A tough regional manager for Ford or General Motors may try to boost sales and an aggressive trade association manager may respond by rallying his members and using his lobbying skills.¹⁸⁹ One cannot overlook this kind of factor, but it is exceedingly difficult to measure it.

3. THE USE OF THE POWER OF THE UNITED STATES CONGRESS

a. *The Background for the Battles to Come*

The organized dealers have sought to use federal power to change manufacturer-dealer relations at several points in recent

¹⁸³ Interviews.

¹⁸⁴ *Ibid.*

¹⁸⁵ *Automotive News*, March 12, 1956, p. 61, col. 2.

¹⁸⁶ *Ibid.*

¹⁸⁷ N.Y. GEN. BUS. LAW § 197. See 1956 NEW YORK STATE LEGISLATIVE ANNUAL 40-42.

¹⁸⁸ N.Y. GEN. BUS. LAW § 198.

¹⁸⁹ Many trade association managers explain the presence or absence of legislation in these terms. Interviews.

history, but the most significant activity took place in the early 1950's as a response to the manufacturers' policies at that time. Although the National Association of Automobile Dealers (NADA) was formed in 1917, until the mid-1950's it would be hard to credit it with significant permanent successes in controlling manufacturers' power over their dealers.¹⁹⁰ In 1953, NADA appointed a new executive vice-president, Frederick J. Bell, a retired admiral in the United States Navy. Bell was an aggressive and articulate man who made significant changes in NADA policies. Before his administration NADA had requested changes in the manufacturers' practices, had been heard politely, and then usually had been ignored.¹⁹¹ In early 1954, NADA held a convention in Miami. There Bell and the association's officers in speeches and resolutions demanded changes, expressed extreme distaste for government interference in business, but said that if negotiations failed, something would be done.¹⁹²

The manufacturers responded in several ways. On the one hand, General Motors and Ford took some action to meet complaints. General Motors offered to buy back any cars a dealer thought were excess inventory so that the dealer would have no reason to "bootleg" these cars to a used-car dealer in another area.¹⁹³ However, some representatives of dealers said that any General Motors dealer who conceded he could not sell his inventory would risk his franchise or his allotment of "hot" models.¹⁹⁴

¹⁹⁰ Some might challenge the statement in the text. In 1937, Congress was memorialized by resolutions passed in the Wisconsin and Indiana Legislatures, largely in response to requests by the two state dealer trade associations. These resolutions asked for relief from the evils of the manufacturers. Congress directed the Federal Trade Commission to investigate the manufacturers' policies. The FTC's report criticized both the manufacturers and the dealers, charging that many dealers engaged in anti-competitive practices. A bill was drafted by the NADA in 1940 and introduced into Congress at its request. The bill would have allowed the FTC to police manufacturer-dealer relations. In a referendum only 22% of NADA's members voted but 90% of those dealers opposed the bill. The bill died. See HEWITT, *AUTOMOBILE FRANCHISE AGREEMENTS* 107-10 (1956).

The effort was not a total loss. Many manufacturers did make some concessions in their policies and franchise terms. Perhaps most significantly, General Motors' chief executive officer, Alfred P. Sloan, Jr., announced his "quality dealer" plan in a speech before the NADA in 1938. He advocated (1) a forum for discussion of policies, (2) review of administrative action, (3) protected territories, and (4) a known, uniform, and fixed price for cars. The speech is reproduced in *S. Hearings, Marketing Practices, Monroney* 80-87. General Motors instituted much of this program.

While these benefits were important, during 1955 and 1956 the NADA would have agreed with the statement in the text.

¹⁹¹ Interviews. See also *H.R. Hearings, Dealer Franchises, Celler* 74-75.

¹⁹² *N.Y. Times*, Jan. 10, 1954, p. 81, col. 1. See also *id.*, Oct. 6, 1954, p. 21, col. 1.

¹⁹³ See *S. Hearings, General Motors, O'Mahoney* 3500.

¹⁹⁴ See *S. Hearings, Marketing Practices, Monroney* 750.

Its representatives also went to the Department of Justice and asked for approval of territorial security clauses in franchises (devices to deter, for example, one Chevrolet dealer from selling to customers who lived in another Chevrolet dealer's territory) and action against "bootlegging." The Department refused to give its approval.¹⁹⁵

Ford made the first revision in its franchise terms since 1938.¹⁹⁶ Most significantly it allowed dealers to nominate a son, son-in-law, brother, brother-in-law, or nephew to take over their dealerships upon their death. Such a nominee had to have adequate capital and have participated in the dealership for a reasonable time. Qualified nominees would be given "first consideration" as the replacement dealer.¹⁹⁷ While this was an important benefit, it did not end pressure and threats, or "bootlegging" and cross-selling into another's territory.

The manufacturers made other less considered responses which helped NADA rally support for the action that was to come. Admiral Bell reported that in 1954 and 1955 factory men had said to him:

No association and no dealers are going to tell us how to run our business.¹⁹⁸

Ours is a horse trading business; we like to see our dealers on the lean and hungry side!; why don't the dealers sell their yachts and racing stables and get back to work; the dealers are making too much money; why can't their wives be satisfied with last year's mink!; what's wrong with price packing?¹⁹⁹

Moreover, in late 1954 and 1955, the number of cancellations of franchises and threats to cancel increased.²⁰⁰ During that time a common tactic used by district managers to "shake up" a dealer was to send him a notice that his franchise would not be renewed when it expired at the end of the year. When the dealer asked for another chance, the district manager would agree if the dealer would sign a promise to sell more cars during the next year.²⁰¹ Sales quotas were increased drastically, and high-volume dealers were given franchises near established dealers.²⁰² Ford dealers,

¹⁹⁵ See *id.* at 819-25. Representative Crumpacker asserted that General Motors knew it would not get the Department of Justice's approval. "This was all a grand public relations show to try to prove that they were sincerely concerned about this bootlegging practice and wanted to do something about it, but the Government was preventing them from doing so." *H.R. Hearings, Marketing Legislation*, Klein 56.

¹⁹⁶ *Automotive News*, Feb. 7, 1955, p. 2, col. 3, p. 7, col. 1.

¹⁹⁷ *Ibid.*

¹⁹⁸ Bell, *Point of No Return*, NADA Magazine, Feb. 1955, pp. 20, 21.

¹⁹⁹ Bell, *While We Work For It—Let's Work At It*, NADA Magazine, Nov. 1955, pp. 15, 16.

²⁰⁰ *Automotive News*, Nov. 14, 1955, p. 1, col. 1, p. 52, col. 3.

²⁰¹ *Ibid.*

²⁰² *Ibid.*

for example, were told to outsell competing Chevrolet dealers or a dealer who could do it would be found. Chevrolet dealers received the same "encouragement."²⁰³

During this period General Motors in particular made several major public relations errors. First, Lee Anderson, a Chevrolet, Buick, and Pontiac dealer in the Pontiac, Michigan, trading area, gave a speech before a Rotary Club that was reported in an industry trade paper, *Automotive News*.²⁰⁴ Anderson charged that Pontiac executives obtained cars from the factory at a discount. Thus some of his potential customers were removed, and some executives resold these cars to other potential customers. Anderson also had written a book about problems in manufacturer-dealer relations and sent it to General Motors' management. Although Anderson had a new showroom and adequate sales, his franchise was cancelled because of his disloyalty.²⁰⁵ The cancellation was reviewed before Harlow Curtice, General Motor's president, and other top management officials. Curtice indicated that the group had reached a decision before Anderson presented his case. Anderson said that at this meeting Curtice called him a "Red," but Curtice's associates who had been present denied this, explaining that "Red" was Curtice's nickname and the word had probably been used with this meaning at the meeting.²⁰⁶ In any event, General Motors created the impression that a dealer had to follow "the party line" and be a good organization man or suffer the loss of his business.

Second, J. E. Travis, a Buick dealer in St. Charles, Missouri, which is near St. Louis, gave a speech asserting that it was vital that dealers have protected territories so they could afford to carry parts in stock and have trained mechanics available.²⁰⁷ Travis was a former president of the Missouri Automobile Dealers Association and had been in business for thirty-five years. He had been active in civic affairs and was a leading citizen of St. Charles. However, his sales had declined in the face of competition from larger dealers in St. Louis, and he asserted he received smaller allotments of the best selling models than he deserved. His franchise was cancelled for inadequate sales, but some thought his speech was a factor.²⁰⁸ The Missouri Automobile Dealers Association passed a resolution accusing General Motors of "disgracefully shabby treatment."²⁰⁹ The very influential Representative Clarence Cannon,²¹⁰ Chairman of the House Appropriations Commit-

²⁰³ *Ibid.*

²⁰⁴ *Id.*, June 13, 1955, p. 3, cols. 3-5.

²⁰⁵ *S. Hearings, General Motors*, O'Mahoney 3333.

²⁰⁶ *Id.* at 3713.

²⁰⁷ *Automotive News*, May 2, 1955, p. 14, cols. 1-5.

²⁰⁸ See *S. Hearings, General Motors*, O'Mahoney 3234-63, 3724-26.

²⁰⁹ *Automotive News*, Oct. 31, 1955, p. 1, col. 2. The resolution is reprinted at *S. Hearings, General Motors*, O'Mahoney 3260.

²¹⁰ Representative Cannon was a Democrat from Missouri.

tee, wrote Harlow Curtice about the Travis cancellation saying that it "indicates an industrial ruthlessness which warrants protective legislation."²¹¹

Third, both Ford and General Motors forced dealers to falsely register cars as sold so that sales leadership could be claimed.²¹² Finally, Harlow Curtice refused an invitation in July 1955 to appear before a Senate committee studying mergers and economic concentration.²¹³ This greatly annoyed Senators Kefauver and O'Mahoney,²¹⁴ and Senator O'Mahoney was to even the score within a few months.

Quite apart from the actions of either the NADA or the manufacturers, another event happened in late 1954 that was significant. The Democratic Party captured control of both the House and the Senate. Many of its leaders hoped to expose the evils of large corporations and unchecked economic power and relate this to the close association of big business with the Eisenhower Administration. 1956 was to be an election year. Some prominent Republicans also were worried about the size of General Motors and its effect on the economy. For example, Stanley Barnes, Assistant Attorney General in Charge of the Antitrust Division of the Department of Justice in the Eisenhower Administration, proposed that General Motors be split into two or more independent corporations.²¹⁵ The political climate was not too favorable for the manufacturers.

When the NADA decided to turn to Congress for aid in late 1954 and early 1955, it faced a number of problems. Most significantly the nation's approximately 42,000 franchised new-car dealers were not clear about their objectives. When NADA first acted, its primary interest seemed to be in stopping "bootlegging" and gaining "territorial security"²¹⁶—both of which are protections against the actions of other franchised dealers. Yet NADA's membership was divided on the question of territorial security because some dealers made their living selling in the territories of others and could not be expected to support legislation that would stop this practice.²¹⁷ A divided membership was unlikely

²¹¹ Automotive News, Nov. 7, 1955, p. 2, col. 5, p. 72, col. 5.

²¹² S. Hearings, General Motors, O'Mahoney 3370, 3397, 3769-71, 4056.

²¹³ Automotive News, July 4, 1955, p. 1, col. 2, p. 42, cols. 4-5.

²¹⁴ Ibid.

²¹⁵ See 102 CONG. REC. 7073 (1956).

²¹⁶ Automotive News, Feb. 7, 1955, p. 1, cols. 3-5. See Heuerman, *Dealer Territorial Security and "Bootlegging" in the Auto Industry*, 1962 Wis. L. REV. 486.

²¹⁷ The Subcommittee on Automobile Marketing Practices of the Senate Committee on Interstate and Foreign Commerce (the Monroney subcommittee) sent a questionnaire to all new-car dealers in 1955. Of those responding, 8,693 favored a territorial security system, but 7,766 opposed it. The opposition tended to come from dealers in the larger states who oper-

to achieve legislation. Furthermore, the antitrust policies of the Eisenhower Administration stood in the way. The Department of Justice promised to fight to block any attempt to legislate against "bootlegging" or for "territorial security."²¹⁸ The possibility of a presidential veto hung over the heads of the proponents of legislation favoring the dealers throughout the battle that was to come.²¹⁹ The administration was ideologically committed to free competition, and thus opposed to any action that might isolate dealers from this healthy spur to efficiency. In February of 1955, Admiral Bell remarked that President Eisenhower would "have to choose between the public interest and his own Justice Department advisors."²²⁰

While "bootlegging" and "territorial security" were of primary interest, the NADA soon began talking about coercion applied by factory representatives to take unwanted vehicles, parts, accessories, tools, and advertising as well as unfair terminations of franchises—the argument that had succeeded in some state legislatures. Undoubtedly these were real problems for some dealers. They were also related to "bootlegging" and "territorial security," or so it was said. According to this view, a new-car dealer engaged in "bootlegging" in order to get rid of the cars forced on him by the factory because of its overproduction and maldistribution.²²¹ Thus, if coercion were controlled, the source of new cars appearing on used-car lots would dry up. Then, too, "territorial security" was desired not only to save a dealer's own profits but to enable him to make enough sales so that his franchise would not be cancelled. If it became more difficult to cancel franchises, a dealer who wanted to make higher profits on fewer units would not need to be so concerned about invasions of his territory by neighboring dealers since convenience, lack of knowledge, and inertia would, in many cases, produce a profit that satisfied him if not his manufacturer.

b. The Monroney Committee's Study

In 1956, the manufacturers were to rewrite their dealer franchises to grant the dealers more benefits, the manufacturers' internal organizations were to be changed so that dealer opinion could reach top management and so actions of district managers

ated in cities with a population of between 2,500 to 25,000 which were within twenty-five miles of a metropolitan area. These were the dealers who could best gain from invading the territories of others. See SUBCOMMITTEE ON AUTOMOBILE MARKETING PRACTICES OF THE SENATE COMM. ON INTERSTATE AND FOREIGN COMMERCE, 84TH CONG., 2D SESS., THE AUTOMOBILE MARKETING PRACTICES STUDY (Comm. Print 1956).

²¹⁸ Automotive News, Feb. 7, 1955, p. 1, cols. 3-5, at 48, col. 3.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ See, e.g., *id.*, April 25, 1955, p. 1, cols. 1-2.

would be reviewed, a federal statute allowing dealers to sue for damages caused by coercion was passed, and manufacturers ordered their sales organizations to change their methods of supervising dealers. The first significant event in the long process that brought about this apparent revolution was the appointment in February of 1955, of a subcommittee of the Senate Committee on Interstate and Foreign Commerce to study automobile marketing.²²² The subcommittee consisted of Senators Monroney (the chairman), Thurmond, and Payne.²²³ The appointment of a subcommittee was in response to the complaints of state associations and NADA. NADA said that the investigation would be "welcomed, if not sought after."²²⁴ The reason for NADA's lack of greater enthusiasm for the Monroney study might have been reflected in a report of *Automotive News* that "Republican congressmen cooperated on NADA's program last year. However, it is quite possible that Democratic leaders, who now head Senate committees, will go off on their own."²²⁵ NADA could not be sure that the Democrats' zeal to attack big business would benefit automobile dealers.

The Monroney committee and its staff began its study in March 1955.²²⁶ The subcommittee counsel, David Busby, investigated back issues of the *Automotive News* and the materials in the NADA library. He talked with representatives of the Federal Trade Commission and the Department of Justice.²²⁷ *Automotive News* stated that "NADA is holding secret meetings across the country in preparation for the investigation NADA has embarked upon a series of regional meetings aimed to produce dealer witnesses when-and-if hearings are staged" ²²⁸ "[T]here is deep concern among manufacturers as to the public-relations aspects of the inquiry" ²²⁹

Senator Monroney later described the subcommittee's activities in the spring and summer of 1955:

Senator Thurmond checked throughout South Carolina and other southern areas. Senator Payne checked throughout Maine and some points in New England. I checked Oklahoma and then held meetings in other states. These conference meetings were called with the help of . . . NADA officers in California and Florida. Mr. Busby, special counsel, cross-checked many dealers in Virginia, Maine, South Carolina,

²²² S. Hearings, *Marketing Practices*, Monroney 4.

²²³ Senator Monroney was, and is, a Democrat from Oklahoma. Senator Thurmond was a Democrat, and now is a Republican, from South Carolina. Senator Payne was a Republican from Maine.

²²⁴ *Automotive News*, Feb. 7, 1955, p. 1, cols. 3-5, at 48, col. 3.

²²⁵ *Id.*, Jan. 24, 1955, p. 1, col. 3.

²²⁶ *Id.*, March 21, 1955, p. 1, col. 3, p. 11, col. 1.

²²⁷ *Id.*, April 4, 1955, p. 1, cols. 2-5.

²²⁸ *Id.* at 1, col. 2, p. 4, col. 1.

²²⁹ *Id.* at 1, col. 3.

Maryland, Pennsylvania, New Jersey, New York, and the Massachusetts area. Everywhere our personal conferences were held without fanfare or publicity, and with good cross-checks and representation of dealers.

We found largely the same types of dealer trouble. To me and to the other members of the committee and to the staff, the problems we found indicated a dangerous malignancy in America's No. 1 industry.²³⁰

These informal contacts proved highly troublesome to the manufacturers since they had no way to counter the impressions created at this preliminary stage.²³¹ Moreover, Senator Payne was a former automobile dealer with his own knowledge and opinions about the business. Senator Monroney's college roommate was a General Motors dealer who thought he had been pushed around;²³² Senator Thurmond served in the Army Reserve with NADA's legislative counsel.²³³ The manufacturers' only rebuttal at this stage came when, soon after he was appointed chairman of the subcommittee, Senator Monroney was contacted by friends who were Ford dealers in Oklahoma. They told him he was making a mistake to investigate this area as there were no real problems.²³⁴ Henry Ford II was very concerned about this tactical mistake of his subordinates.²³⁵ It looked as if the dealers had been coerced to contact Senator Monroney, and Ford's position was that it was against its policy to coerce dealers.²³⁶

In July 1955, the Monroney subcommittee issued a staff report that was highly critical of the manufacturers' treatment of dealers.²³⁷ The manufacturers suffered further public relations damage when a Detroit newspaper reported that the factories considered the staff report a joke and the inquiry an attempt to use the industry as a whipping boy by Senators who had been goaded into action by dealers who could not stand the competitive gaff and who objected to giving buyers "a little discount."²³⁸ The story was sent out over a national wire service, and representatives of the manufacturers soon denied its truth.²³⁹

²³⁰ Monroney, *Free Markets for Free Men*, NADA Magazine, Feb. 1956, pp. 44, 45.

²³¹ The general counsel of the Ford Motor Company complained about the lack of opportunity to present both sides of the story. S. Hearings, *Marketing Practices*, Monroney 1055-57.

²³² *Id.* at 105.

²³³ *Id.* at 113.

²³⁴ *Id.* at 725-26, 996.

²³⁵ *Id.* at 996.

²³⁶ *Ibid.*

²³⁷ STAFF OF SUBCOMMITTEE ON AUTOMOBILE MARKETING PRACTICES OF THE SENATE COMM. ON INTERSTATE AND FOREIGN COMMERCE, 84TH CONG., 1ST SESS., *THE AUTOMOBILE MARKETING PRACTICES STUDY* (Comm. Print 1955).

²³⁸ *Automotive News*, Aug. 8, 1955, p. 42, col. 1.

²³⁹ *Ibid.*

In early September, the Monroney subcommittee, in a burst of social science most unusual for Congress, sent a questionnaire to the 42,000 franchised new-car dealers in the country.²⁴⁰ As a matter of survey technique, the first question was objectionably ambiguous, but it was undoubtedly valuable politically for just this reason. It read: "1. Do you feel there is a need for congressional study or Federal legislation with regard to automobile dealers' problems in the field of automobile marketing?"²⁴¹ Some might agree with study but oppose legislation; mixing the two gave one no way to determine this. Other questions concerned "bootlegging" and "territorial security." There were no questions on coercion or unfair cancellations other than a general invitation to make further comments.

c. Senator O'Mahoney Sees an Opportunity

The Monroney subcommittee did not have exclusive rights to dealer-manufacturer problems. Another Senate subcommittee also studied this area. This dual jurisdiction had important consequences as both dealers and manufacturers got a chance to modify positions taken before one subcommittee when they faced the second. During 1955, the subcommittee on antitrust and monopoly of the Senate Judiciary Committee was holding hearings on industrial concentration and reviewing the operations of large corporations.²⁴² General Motors was the topic of one group of hearings, and the initial sessions concerned such things as General Motor's nonautomotive divisions and its competition with its suppliers in selling replacement parts to its dealers. The active members of this subcommittee were Senators O'Mahoney (the acting chairman),²⁴³ Dirksen, and Wiley.²⁴⁴

In early November 1955, Senator O'Mahoney announced that the committee would look into General Motors' control over its deal-

ers.²⁴⁵ Harlow Curtice, just back from a trip to Europe, said that General Motors would cooperate gladly.²⁴⁶ O'Mahoney invited dealers to testify, and said that the subcommittee would bar reprisals.²⁴⁷ Admiral Bell of NADA criticized the hearings because they were limited to General Motors and advised dealers not to testify because the subcommittee could not protect them from reprisals.²⁴⁸ Undoubtedly, Bell was upset because Senator O'Mahoney's action might undercut the impact of the planned Monroney committee hearings. Senator O'Mahoney probably turned his subcommittee's hearings in this direction because he sensed that he could embarrass General Motors more effectively in this area than his committee had been able to in its study of economic concentration.²⁴⁹ After some hurried negotiations with the Senator, NADA decided to make use of the O'Mahoney committee, and on November 29, it fired the opening shot in a long congressional battle.²⁵⁰ Admiral Bell and Professor Charles Hewitt of the University of Indiana School of Business²⁵¹ appeared and discussed the dealers' problems, attempts to deal with the manufacturers, and poor position before the courts. Then thirteen former dealers and one current dealer told the committee of their experiences with General Motors²⁵²—two of the group were Lee Anderson and J. E. Travis, whose stories evoked sympathy and indignation.²⁵³ The dealers painted a picture of overproduc-

²⁴⁵ N.Y. Times, Nov. 1, 1955, p. 61, col. 8.

²⁴⁶ Automotive News, Nov. 7, 1955, p. 2, col. 5, p. 72, col. 1.

²⁴⁷ N.Y. Times, Nov. 24, 1955, p. 30, col. 5.

²⁴⁸ *Id.*, Nov. 27, 1955, p. 72, col. 3.

²⁴⁹ See *S. Hearings, General Motors, O'Mahoney 3156 passim*, where General Motors was not embarrassed. Time, in its usual objective fashion, commented, "New Dealing Senator Joseph C. O'Mahoney of Wyoming likes to play the role of a giant killer with a special shillelagh cocked for big business. Since General Motors is a giant . . . it was the logical target . . ." Time, Nov. 28, 1955, p. 91, col. 2.

From a publicity standpoint, Senator Joseph C. O'Mahoney's four week investigation of General Motors was turning out to be a dismal flop. Finally, last week, Joe O'Mahoney landed his antitrust hearings on Page One. To a packed Senate hearing room he brought 14 G.M. dealers (out of 17,000) who charged they had been badly used by G.M.

Time, Dec. 12, 1955, p. 96, col. 3.

²⁵⁰ *S. Hearings, General Motors, O'Mahoney 3156-58, 3159-89.*

²⁵¹ *Id.* at 3191-234. Professor Hewitt has been described as "the dealers' professor." Interview. He served as a consultant to the NADA in 1955 and 1956, and he participated in the drafting of the proposed bills that came before the 84th Congress. Undoubtedly his statements and writings have helped the dealers far more than the manufacturers. See HEWITT, AUTOMOBILE FRANCHISE AGREEMENTS (1956); Hewitt, *The Furor Over Dealer Franchises*, 1 Business Horizons 80 (Winter 1958).

²⁵² *S. Hearings, General Motors, O'Mahoney 3234-481.*

²⁵³ "Senator WILEY. I was very much impressed with his [Travis'] integrity and fairness this morning. And it seemed to me that after years of association with that business that he got a raw deal." *Id.* at 3261. Lee Anderson said that several Senators told him that they voted for the Good

²⁴⁰ N.Y. Times, Aug. 1, 1955, p. 40, col. 4.

²⁴¹ STAFF OF SUBCOMMITTEE ON AUTOMOBILE MARKETING PRACTICES OF THE SENATE COMM. ON INTERSTATE AND FOREIGN COMMERCE, 84TH CONG., 2D SESS., THE AUTOMOBILE MARKETING PRACTICES STUDY (Comm. Print 1956). (Emphasis added.)

²⁴² See *S. Hearings, General Motors, O'Mahoney*.

²⁴³ Newsweek gave its view of the Senator in the following language: After nineteen years in the U.S. Senate, 71-year-old Joseph C. O'Mahoney, the Wyoming Democrat, thinks that no matter how much investigating may be done, there is always more to do. As Chairman of the Temporary National Economic Committee (TNEC), he spent three years before Pearl Harbor in a marathon study of the economy. This week, as chairman of the Senate Antitrust and Monopoly Subcommittee, O'Mahoney was still at it. His subject this time: General Motors.

Newsweek, Nov. 28, 1955, p. 89, col. 1.

²⁴⁴ Senator Dirksen was, and is, a Republican from Illinois, and Senator Wiley was a Republican from Wisconsin. Senators Kefauver and Hennings were the other Democrats on the subcommittee, but they took little part in these hearings.

tion, a sales race, coercion to take cars and establish sales leadership by dishonest advertising and "packing" prices, arbitrary cancellations of ethical dealers, lack of fairness in internal appeal procedures, and unfair prices when cancelled dealers tried to sell out because manufacturers refused to give franchises to qualified buyers and tried to protect a new dealer's capital by not allowing him to pay too much for the cancelled dealer's assets.

These dealers told a shocking story, and the hearings attracted the attention of the press, news magazines, and television. "[R]eporters were crowded shoulder to shoulder around press tables."²⁵⁴ General Motors was scheduled to begin its presentation on Friday, December 2, in the morning. However, when Harlow Curtice and the other General Motors officials arrived at the hearing room, they were told by Senator O'Mahoney that there were three more dealer witnesses to be heard. Curtice appeared "quite startled" and started to leave.²⁵⁵ Senator O'Mahoney told him to remain, and Curtice stayed to listen to a Pontiac dealer call him "a bully of the greatest magnitude."²⁵⁶ Moreover, a press photographer took a picture of Curtice and other General Motors officials being confronted by three angry dealers. The picture made the front page of the *New York Times* the next morning.²⁵⁷ Also Curtice and Senators O'Mahoney and Wiley appeared on television at the beginning of the hearings.²⁵⁸ It is obvious that presentations at the hearings were timed for the best news coverage.²⁵⁹ In short, the hearings were planned to serve an "educational" function, and they succeeded to a great extent.

At first, General Motors' strategy seemed only one of attack. For example, shortly before the NADA made its presentation, Henry Hogan, General Motors' general counsel, charged that the dealer talks "poverty with a ham under his arm."²⁶⁰ Harlow Curtice began his statement to the subcommittee by showing how well off General Motors dealers were.²⁶¹ The Company's theme was that almost all dealers were extremely profitable and happy, and that only a handful of inefficient dealers were complaining.²⁶²

However, the results of NADA's publicity campaign, which was assisted by Senator O'Mahoney, cast doubt on the effectiveness

Faith Act with reservations but were moved to favor it by the free speech issue involved in his case. Finlay, *Dealer Forum*, *Automotive News*, Sept. 8, 1958, p. 3, cols. 1-2.

²⁵⁴ *Id.*, Dec. 12, 1955, p. 16, col. 1. See note 249 *supra*.

²⁵⁵ *Ibid.*

²⁵⁶ *S. Hearings, General Motors, O'Mahoney* 3447. The comment was publicized in *Newsweek*, Dec. 19, 1955, p. 71, cols. 1, 3.

²⁵⁷ *N.Y. Times*, Dec. 3, 1955, p. 1, col. 2.

²⁵⁸ *S. Hearings, General Motors, O'Mahoney* 3472.

²⁵⁹ See *id.* at 3705.

²⁶⁰ *Newsweek*, Dec. 5, 1955, p. 82, cols. 2, 3.

²⁶¹ *S. Hearings, General Motors, O'Mahoney* 3492, 3501-04.

²⁶² *Id.* at 3499-500.

from a public relations standpoint of trying to do no more than argue that no real problem existed.²⁶³ Thus, at the beginning of the hearings on Monday morning, December 6, Harlow Curtice said:

Within the last few days the public has been grossly misinformed by widespread publicity given to misleading statements made by witnesses, including the few complaining dealers who have appeared before this committee.

Because of the public misunderstanding and the possible damage to General Motors good will . . . I feel impelled to do what I have not considered necessary heretofore—namely, to formalize a continuing long-term relationship with our dealers, which for all practical purposes has been in effect in General Motors for many years.²⁶⁴

He then said that he had offered all 17,000 General Motors dealers a five-year selling agreement that could not be terminated but for cause.²⁶⁵ This was front page news²⁶⁶ of a kind more to Mr. Curtice's taste.

Clearly the company had made an impressive gesture that was to be of great benefit to dealers, but it had not conceded that any problem existed. It returned to the attack,²⁶⁷ and it countered the story of each dealer who had appeared before the subcommittee and said that their allegations were false.²⁶⁸ It probably was least effective in the cases of Anderson and Travis, the two dealers whose rights of "free speech" had been impaired.²⁶⁹ Generally, the rebuttal was telling since most of the complaining

²⁶³ Time reports its version of what happened between the Friday when General Motors began its presentation and the Monday morning when it continued:

The committee system can move fast when it has to: for example, after the laments of a few G.M. dealers were widely publicized in the hearings before Wyoming's Senator Joseph C. O'Mahoney last month . . . Curtice and the Operations Policy Committee went into session one Sunday, came out that evening with a far-reaching decision to extend all G.M. dealers' contracts from one to five years. This also indicated how the committee system can put pressure on Curtice. He thought that the complaints of dealers were exaggerated, that he did not have to pay much attention to them. But other top men thought that Curtice was wrong and they made no bones about saying so.

Time, Jan. 2, 1956, p. 46, col. 1, at 53, col. 2.

²⁶⁴ *S. Hearings, General Motors, O'Mahoney* 3555.

²⁶⁵ *Id.* at 3556, 3688-98.

²⁶⁶ *N.Y. Times*, Dec. 7, 1955, p. 1, col. 2.

²⁶⁷ "[O]ther G.M. brass handled the skirmishing, Curtice stuck to grand strategy." *Newsweek*, Dec. 19, 1955, p. 71, cols. 1, 2.

²⁶⁸ *S. Hearings, General Motors, O'Mahoney* 3709-73.

²⁶⁹ *Id.* at 3562 ("Mr. CURTICE. He [Anderson] has never liked us, you know."), 3713-21, 3724-26 (G.M. asserted Travis had inadequate sales but made no rebuttal of his charges that standards were applied unfairly because of admitted false registration practices of G.M. and made no comment on the fact that Travis did well in sales contests).

dealers had been cancelled for lack of sales and thus were vulnerable to charges of inefficiency. However, apparently the rebuttals did not get equal time in the mass media and attained less prominence than the charges.²⁷⁰ Moreover, the subcommittee allowed each of the complaining dealers to file a sworn reply to the rebuttal which was printed in the record of the hearings immediately after General Motors' contentions about each dealer.²⁷¹ At times relations between Mr. Curtice and Senator O'Mahoney were tense,²⁷² and later Curtice was to talk of the "emotional" atmosphere.²⁷³

On December 9, 1955, the last day of the O'Mahoney subcommittee's hearings, Senator Monroney sent Senator O'Mahoney a telegram with a summary of General Motors dealers' responses to the questionnaire that the Monroney subcommittee had sent out in September. Of the 17,000 General Motors dealers, 8,276 had replied at that time, and 6,047 of them favored congressional study or legislation in the field of automobile marketing.²⁷⁴ These responses to the ambiguous first question were released to the press²⁷⁵ to rebut General Motors' contention that all but a few inefficient dealers were content.

General Motors' position was further weakened²⁷⁶ by another event. George Romney, president of the newly formed American Motors Corporation, on December 19, announced a sweeping program to improve dealer relations with AMC.²⁷⁷ The essence of this program was the creation of new channels of communication from dealer to top management and a board to hear appeals from franchise cancellations. Romney was at the beginning of his campaign for the "compact car" and his war on the "gas guzzling

²⁷⁰ See the absence of entries in the New York Times Index for Dec. 1-15, 1955.

²⁷¹ *S. Hearings, General Motors, O'Mahoney* 3711-13, 3721-23, 3726-28, 3734-37, 3747-49, 3752-57, 3762-64, 3766-68.

²⁷² See, e.g., N.Y. Times, Dec. 2, 1955, p. 56, col. 1; *S. Hearings, General Motors, O'Mahoney* 3541-42.

²⁷³ *S. Hearings, Marketing Practices, Monroney* 687.

²⁷⁴ *S. Hearings, General Motors, O'Mahoney* 4073-74.

²⁷⁵ See N.Y. Times, Dec. 10, 1955, p. 27, col. 1.

²⁷⁶ Time did not conclude that General Motors' position had been weakened at all:

What had O'Mahoney accomplished? The hearings showed that G.M. executives did their homework before they took the stand, that they freely cooperated with the committee, and that they ran a highly efficient business. While some of G.M.'s 17,000 dealers were clearly sore, the records proved that even they had done well. Quipped one newsman: "It's just an argument between big millionaires and little millionaires." In what O'Mahoney had originally billed as a full-dress probe into big business, G.M. had come off well.

Time, Dec. 19, 1955, p. 86, cols. 1, 3. Time aided General Motors' public relations by naming Harlow Curtice "Man of the Year" for 1955. Time, Jan. 2, 1956, p. 46, cols. 1-3.

²⁷⁷ N.Y. Times, Dec. 19, 1955, p. 10, col. 1.

monsters" produced by his competitors, and he was willing to break ranks and concede that there were major problems in automobile marketing. He netted some favorable publicity for AMC and helped his sales staff recruit and retain good dealers.²⁷⁸

d. The Monroney Hearings

The second round of the fight began on January 19, 1956, when Senator Monroney's subcommittee to study automobile marketing practices began its hearings. The subcommittee released a report²⁷⁹ setting out the results of the questionnaires in great detail. Senator Monroney stated:

The subcommittee for the last 10 months has attempted to avoid unduly disturbing the industry. It has quietly gone about gathering data and facts, and has hoped its mere presence would bring about reforms necessary. This failing, the subcommittee now hopes that the spotlight of public attention will do much to alleviate the situation. That failing, legislative action may be necessary.²⁸⁰

The first witness was George Romney of American Motors.²⁸¹ He conceded that there were abuses in automobile marketing for which American Motors and its competitors were at least partially responsible.²⁸² He said that the manufacturers had forgotten the wisdom of Alfred P. Sloan, Jr., the former president of General Motors who had retired at the end of World War II.²⁸³ Sloan had called for a program to develop "quality dealers" who sold cars ethically and profitably.²⁸⁴ In the 1950's Romney stated, Ford had challenged Chevrolet's sales leadership and overproduction had followed.²⁸⁵ Cars were pushed on dealers who had to "bootleg," "pack" prices, and unethically advertise to meet quotas.²⁸⁶ Romney called the situation "a crisis."²⁸⁷ Needless to say,

²⁷⁸ In an advertisement directed to dealers, American Motors earlier had pointed a finger at the larger manufacturers:

There are two ways for a car-maker to achieve volume sales in the automobile business today.

One is to build a flood of cars, load them up on a dealer, and let him sweat it out. The factory makes the money—the dealer cuts his profit per car.

The other way is to make volume selling so profitable to a dealer that he will double and triple his volume on his own hook.

AMC asserted that Nash and Hudson followed the second method. Automotive News, Jan. 24, 1955, pp. 60-61.

²⁷⁹ SUBCOMMITTEE ON AUTOMOBILE MARKETING PRACTICES OF THE SENATE COMM. ON INTERSTATE AND FOREIGN COMMERCE, 84TH CONG., 2D SESS., THE AUTOMOBILE MARKETING PRACTICES STUDY (Comm. Print 1956).

²⁸⁰ *S. Hearings, General Motors, O'Mahoney* 4.

²⁸¹ *Id.* at 7-89.

²⁸² *Id.* at 11.

²⁸³ *Id.* at 47.

²⁸⁴ *Id.* at 80-87.

²⁸⁵ *Id.* at 14, 22-24, 27, 30, 65.

²⁸⁶ *Id.* at 38.

²⁸⁷ *Id.* at 63-64.

these deviationist views were not popular in Detroit.²⁸⁸ The subcommittee then heard Admiral Bell²⁸⁹ and another group of complaining dealers.²⁹⁰ The subcommittee still was largely limited to cancelled dealers because those with existing franchises had too much to lose. It was reported that Senator Monroney had some 20,000 letters from dealers, but in most instances he had been requested not to disclose the name of the sender for fear of reprisal by the manufacturers.²⁹¹

The hearings were then recessed until after the NADA convention.²⁹² At that convention Senators O'Mahoney and Monroney were featured speakers. Senator Monroney explained the strategy and function of the hearings by his subcommittee:

You know we didn't put [George Romney] . . . on just by accident as our opening witness. We wanted to show some of the big boys what some of their new competition was willing to do for dealer partnership, and we are going to work up on our hearings. We are going to take next Studebaker-Packard. We are going to take Chrysler, and we are going to have a nice little sandwich—General Motors between Ford and Chrysler. We are going to have ample testimony from dealers, and we are going to document this story on the front pages under the Washington spotlight for all this country to see exactly what is happening.²⁹³

At this point, matters were not going particularly well for the manufacturers. General Motors began making some strategic moves. On February 3, Harlow Curtice issued a statement to the press that laws in the manufacturer-dealer area were not needed,²⁹⁴ and on the 11th, he unveiled the new 1956 model dealer contract²⁹⁵ which he had announced at the O'Mahoney hearings on December 2, 1955.²⁹⁶ A principal feature was the previously announced five-year term, but the selling agreement also contained a whole cluster of other benefits for the dealer. For example, dealers could nominate a successor, widows of dealers got more benefits, General Motors paid more for warranty work, and the dealer would receive a greater allowance at the end of the model year for cars still in stock to aid in "clean up." The NADA publicly praised the changes.²⁹⁷

On February 13, the *Automotive News* reported that, according

²⁸⁸ *Id.* at 1301.

²⁸⁹ *Id.* at 91-127.

²⁹⁰ *Id.* at 169-368.

²⁹¹ *Automotive News*, Jan. 16, 1956, p. 2, cols. 4-5.

²⁹² *Ibid.*

²⁹³ Monroney, *Free Markets for Free Men*, NADA Magazine, Feb. 1956, pp. 44, 52.

²⁹⁴ N.Y. Times, Feb. 3, 1956, p. 1, col. 3.

²⁹⁵ *Id.*, Feb. 11, 1956, p. 22, col. 6.

²⁹⁶ *S. Hearings, General Motors, O'Mahoney* 3555.

²⁹⁷ N.Y. Times, Feb. 14, 1956, p. 31, col. 4.

to a nationwide survey, factory pressure on dealers had eased since the hearings began.²⁹⁸ The dealers interviewed thought that this was temporary. However, sales were down, and many dealers conceded that the factory had to push dealers just as the dealers pushed their salesmen. Dealers representing Studebaker, Nash, and Hudson reported that they were under little pressure and had not been subjected to it; the problem primarily involved Ford and General Motors.²⁹⁹

General Motors completed its action to head off criticism and legislation. On March 2, Harlow Curtice talked to General Motors' wholesale staff and many dealers throughout the country by closed circuit television.³⁰⁰ He explained the new selling agreement, stated that no additional dealers would be appointed in 1956, said that gimmick sales devices should cease, and pointed out that the wholesale staff had a responsibility to see that dealers were profitable. The circumstances indicated to the zone and district managers watching that Curtice was not just talking for public relations but that he meant what he said.³⁰¹

On March 8, the top officials of General Motors once again visited Washington at the invitation of the United States Senate.³⁰² This time the reception they received from Senator Monroney was much more friendly than that provided by Senator O'Mahoney in December of the previous year. Instead of spending his time primarily answering complaints by angry cancelled dealers, Harlow Curtice now could talk about his new program for dealers,³⁰³ and take pride in his industry leadership.³⁰⁴ He also could talk about General Motors' new vice-president in charge of dealer relations.³⁰⁵ This idea was very appealing to Senator Monroney.³⁰⁶ Now there would be a channel of communication from the dealers to top management independent of the sales staffs of the various divisions. In theory, the generals could learn what was happening at the firing line.

On March 6 and 7, the effects of a well organized campaign by state and local dealer trade associations became apparent. Ultimately, 34 Representatives and 14 Senators testified in favor of some legislative help for dealers, and 21 Representatives and 11 Senators wrote letters to the committee.³⁰⁷ They were prompted

²⁹⁸ *Automotive News*, Feb. 13, 1956, p. 1, cols. 2-3, at 43, col. 3. Time reported that the concessions were not caused as much by the hearings as by large inventories of unsold cars. Time, Feb. 2, 1956, p. 80, col. 3.

²⁹⁹ *Automotive News*, Feb. 13, 1956, p. 1, cols. 2-3, at 43, col. 3.

³⁰⁰ *S. Hearings, Marketing Practices, Monroney* 732-33, 825-35.

³⁰¹ *Ibid.*

³⁰² *Id.* at 683-817.

³⁰³ See, e.g., *id.* at 689-95.

³⁰⁴ See, e.g., *id.* at 707.

³⁰⁵ *Id.* at 712-13.

³⁰⁶ *Id.* at 62-63, 183.

³⁰⁷ See, e.g., *id.* at 473-682.

by requests from their dealer constituents.³⁰⁸ The tenor of many of their remarks is, perhaps, shown by Senator Goldwater's comment, "I have been ashamed of those people in Detroit who have not been able to see this situation developing in this country and who have not bent over backwards to correct it . . ."³⁰⁹

Henry Ford II and the top officials of the Ford Motor Company appeared before the subcommittee on March 12, 1956.³¹⁰ In many ways, Ford was in even a weaker position than General Motors had been in at the O'Mahoney hearings the previous December. Henry Ford II had to concede that in his grandfather's day at Ford—prior to 1946—many of the abuses complained of had taken place. He said,

[B]ut you must realize, and I don't think this is a condemnation of our company, but in the old days some strange things did happen and we had to rebuild our company from top to bottom and many of the people in the sales department weren't of the new type of organization that we tried to build starting in 1945, and were thinking in a different way. . . .

We have recently made several personnel changes in the Ford Division and we think that these changes are going to help the situation . . .³¹¹

He admitted that in the "old days" dealers had been coerced to donate expensive gifts to zone managers to keep their good will.³¹² He said that the hearings had allowed him to learn of problems he shared with his competitors and the solutions they had adopted.³¹³ Robert McNamara, then the head of the Ford Division, was forced to admit that the advertising of the largest chain of Ford dealerships was "disgraceful."³¹⁴ An exhibit was introduced to show that in 1953, this chain's advertising was held up to Ford dealers as a model.³¹⁵ The Ford Motor Company was made to appear as if its representatives advocated misleading advertising as a standard practice. Reading the hearings today, I think Ford's reply to this charge, at best, can be called evasive.³¹⁶ On the other hand, Ford did a good job of rebutting the charges made against it by dealers that it had cancelled and who had testified at the hearings.³¹⁷

At one point, Henry Ford II expressed confidence that his dealer councils within the company actually represented dealer

opinion and not just what the members thought was safe to say. Senator Monroney lectured Ford about what the dealers thought would happen if an unpleasant view were voiced at such a meeting. He had been told of instances where the conversations at these meetings had been reported back to a dealer's district manager and road man to be used against the dealer. Ford could not deny these stories.³¹⁸

Ford did not fare well at this hearing.³¹⁹ Undoubtedly, Ford had pushed its dealers very hard in its effort to catch Chevrolet, and its dealer force was restless under the pressure. Whether or not the spur applied to most Ford dealers was just good business or outrageous is a matter of one's values. Many dealers viewed Ford as the principal villain in this story. After the Ford presentation, the "informational" or public relations phase of the Monroney committee's hearings ended. While General Motors and American Motors had taken the lead in reforming their agreements and procedures, Ford had taken no action and many dealers became impatient.³²⁰ Ford reacted on April 19. Henry Ford II stated that he was opposed to any legislation to control dealer relations.³²¹ On April 20, Ford announced an elaborate program,

³¹⁸ Senator MONRONEY. . . . These individual Ford dealers do not feel that in the dealer councils they have the freedom to initiate action without fear of reprisal.

Mr. FORD. Well, if that is true, and I can't say that it is not true, I am sorry that it is true, and we are doing everything that we possibly can to eradicate it.

Id. at 990.

Earlier Henry Ford II, commenting about his dealer councils, said:

The plan works and it works well. It will work *even better* in the future since we *now* afford our national council an opportunity to discuss any ultimately unresolved questions with staff officers of the company in meetings at which representatives of the car divisions will not be present.

Id. at 975. (Emphasis added.)

³¹⁹ Statements such as the following, while conciliatory, did not help the manufacturers in their attempt to argue that there were no problems:

Senator MONRONEY. . . . Some of these older dealers can be led and convinced, but they can't be driven, and in many cases I get the feeling in countless interviews that they have the feeling that they are being driven without choice into a merchandising system which they abhor and which you yourself abhor.

Mr. FORD. Mr. Chairman, if we are driving them, we don't have the right people running our sales department. That is all I can tell you. There is no way to get along with anybody in any kind of business or in any kind of relationship if you are going to drive them. . . .

I hope they are not driven. I hope that isn't the case, but if it is, we are going to do something about it.

Id. at 996.

³²⁰ Admiral Bell stated that the NADA, as a result of the hearings, had excellent relations with four manufacturers which he named. Ford was omitted pointedly. *Id.* at 1248. He also said, "In the case of every manufacturer but one, there are excellent communications and a businesslike and wholesome relationship between NADA and the factory top management." NADA Magazine, June 1956, p. 11.

³²¹ N.Y. Times, April 29, 1956, § II, p. 55, col. 3.

³⁰⁸ See, e.g., *id.* at 657, 661, 666-67, 1308-16.

³⁰⁹ *Id.* at 557.

³¹⁰ *Id.* at 957-1060.

³¹¹ *Id.* at 990.

³¹² *Ibid.*

³¹³ *Id.* at 1059.

³¹⁴ *Id.* at 994.

³¹⁵ *Id.* at 995, 1066-78.

³¹⁶ See, e.g., *id.* at 993-95.

³¹⁷ See, e.g., *id.* at 1035-43.

including franchise changes and a Dealer Policy Board under Benson Ford, a brother of Henry Ford II.³²² From this time on, the Ford Motor Company took the lead for the manufacturers in seeking to block legislation in this area.

e. The Road to Legislation

Legislation was introduced by Senators O'Mahoney and Monroney on May 18. S 3879³²³ would have allowed dealers to recover double damages and attorneys' fees where manufacturers had failed to act in "good faith" in dealing with the dealer or in cancelling or failing to renew a dealer's franchise.³²⁴ The bill defined "good faith" as

the duty of the automobile manufacturer . . . to act in a fair, equitable, and nonarbitrary manner so as to guarantee the dealer freedom from coercion . . . or intimidation, and in order to preserve and protect all the equities of the automobile dealer which are inherent in the nature of the relationship between the automobile dealer and automobile manufacturer.³²⁵

This definition of good faith required more than freedom from coercion. The manufacturer had to act fairly "in order to preserve . . . all the equities of the . . . dealer," whatever those equities might be. Enactment of this statute would not have pleased the manufacturers. The balance of power could have swung sharply to the dealers since even a dealer with poor sales might be said to have "equities." NADA supported this statute; it had a major part in drafting the bill.³²⁶

Chrysler, on May 27, got into the act and set up a group of executives charged with finding ways to give dealers direct contact with top management and in improving the franchise.³²⁷ On May 30, General Motors sought to perfect its argument that no legislation was needed by following a suggestion made at the O'Mahoney subcommittee hearings. General Motors named a retired federal judge as the impartial umpire to decide dealer-company disputes.³²⁸ Internal "due process" was improving.

The Senate Judiciary Committee approved S 3879, the "Good Faith" bill now known as the "Dealer's Day in Court Act," on May 31, although no hearings on the provisions of this bill had

³²² N.Y. Times, April 20, 1956, p. 50, col. 8.

³²³ S. 3879, 84th Cong., 2d Sess. (1956).

³²⁴ Admiral Bell commented, "I do not see how any reasonable person can oppose the concept of 'good faith' and 'equity'." NADA Magazine, June 1956, p. 11.

³²⁵ S. 3879, 84th Cong., 2d Sess. § 1(e) (1956); *S. Hearings, Marketing Practices, Monroney* 1237.

³²⁶ Interview.

³²⁷ N.Y. Times, May 28, 1956, p. 38, col. 2.

³²⁸ *Id.*, June 1, 1956, p. 36, col. 2.

been held.³²⁹ The bill's proponents now were racing to get enactment before the adjournment of the second session of the 84th Congress and before the 1956 presidential political season began.

The Monroney subcommittee resumed its hearings on June 4, 1956. Senator Monroney then announced his Omnibus bill³³⁰ designed to pick up various ideas on regulating manufacturer-dealer relations (including most of the thirty bills then pending).³³¹ Under this bill coercion to take cars, parts, accessories and other items was named an unfair trade practice to be policed by the Federal Trade Commission. Contracts between manufacturers and dealers would have to spell out the dealer's obligations rather than use the then common practice of demanding performance "to the Company's satisfaction." Dealers with excess stocks of cars would have to offer them to their manufacturers for repurchase, and the manufacturers would have to buy them back if this were "consistent with the financial resources of such manufacturer."³³² While the manufacturers found the "Good Faith" bill highly objectionable, Senator Monroney's Omnibus bill would have been disastrous from their point of view.³³³ NADA supported the Omnibus bill, but many of its members would not have been pleased by regulation by the FTC.

The two bills prompted alarmed action from the Ford Motor Company to ward off what they saw as a real threat to their business. On June 12, Henry Ford II wrote letters to members of Congress opposing the legislation.³³⁴ The manufacturers found some allies. A representative of the National Grange testified before the Monroney committee that his organization was concerned that the bills would fence in dealers against competition and therefore increase prices.³³⁵ Perhaps more significantly, William P. Rogers, Deputy Attorney General, wrote Senator O'Mahoney about the Eisenhower Administration's views on both the Omnibus and the Good Faith bills.³³⁶ In short, he said that the Administration did not like them. While it had no strong objection to legislation dealing with coercion, it opposed any legislative authorization for "territorial security" or prohibition against "bootlegging" because such provisions would protect franchised dealers at the cost of denying consumers the benefits of competition. For the same reasons, it also opposed the language in the

³²⁹ 102 CONG. REC. 10572 (1956).

³³⁰ S. 3946, 84th Cong., 2d Sess. (1956), reproduced in *S. Hearings, Marketing Practices, Monroney* 1232-33.

³³¹ Many of the pending bills are reproduced in *id.* at 1206-25.

³³² S. 3946, 84th Cong., 2d Sess. § 17(a) (2) (1956).

³³³ Ford's general counsel called the Omnibus bill "frightening." *S. Hearings, Marketing Practices, Monroney* 1334.

³³⁴ N.Y. Times, June 13, 1956, p. 74, col. 8.

³³⁵ *S. Hearings, Marketing Practices, Monroney* 1264-83.

³³⁶ The letter is reprinted in *H.R. Hearings, Dealer Franchises, Celler* 18-19.

Good Faith bill that required the manufacturer to act in a "fair . . . manner . . . in order to preserve and protect all the equities of the . . . dealer which are inherent in the nature of the relationship . . ." ³³⁷ Rogers argued that a dealer with a large investment might have an equity in a certain margin of profit, that the manufacturer would have to produce and operate to protect that margin rather than to get as many cars as possible sold to customers at the lowest price. Thus the language could build "for dealers a sanctuary from the rigors of competition . . ." ³³⁸ These comments were consistent with the antitrust philosophy of the Department of Justice. Conveniently, they also pleased Ford and General Motors whose officers were supporters of the Eisenhower campaign for re-election. Of course, the Administration's position may well have been the best one for the total public interest; it is a happy event when what is good for a particular political party is good for the United States.

Next the Ford Motor Company attempted to make the classic divide-and-conquer move in legislative strategy. On June 18, Henry Ford II invited about 125 Ford, Mercury, and Lincoln dealers to Dearborn, Michigan, for a meeting on June 20 to discuss the pending legislation. ³³⁹ Most of these dealers were members of NADA. If they could be induced to oppose the bills, doubt could be cast on NADA's right to speak for the nation's dealers. If the dealers were divided on the desirability of the Good Faith and the Omnibus bills, many members of Congress would not be eager to force a statute on them which was supposed to be for their benefit. The manufacturers had a respectable case to make against these bills, but they could not hope to persuade NADA that it was wrong because it was too far committed at this point. So the only practical recourse open to the manufacturers was to present the case to the dealers as individuals. ³⁴⁰ The meeting could accomplish both divide-and-conquer and educational ends.

The next day the Good Faith bill was passed by the Senate by a vote of seventy-five to one with nineteen not voting. ³⁴¹ Senator Potter of Michigan cast the one vote against the bill, complaining of the lack of hearings and representation of consumer interests. ³⁴² Several amendments were made on the floor of the Senate to satisfy Senators Curtis and Bricker. ³⁴³ The bill was given "mu-

³³⁷ *Ibid.*

³³⁸ *Id.* at 19.

³³⁹ The meeting is described in *id.* at 6-9, 107-14.

³⁴⁰ Ford's general counsel said, "if they [the dealers] knew the implications of this bill and knew that as a result of this bill you could not get rid of inefficient dealers who were operating in good faith, they would be against it." *Id.* at 381.

³⁴¹ 102 Cong. Rec. 10588 (1956).

³⁴² *Id.* at 10587, 10588.

³⁴³ *Id.* at 10587.

tuality" by allowing the manufacturer to show as a defense that the dealer had not dealt in good faith, and the provision for double damages was modified to allow recovery of only the dealer's actual damages. NADA's representatives had been prepared to make concessions to get a bill passed. ³⁴⁴ Senator Case questioned Senators O'Mahoney and Monroney about the meaning of "good faith," and established as legislative history that it was not intended to create a perpetual franchise, that the manufacturers could add new dealers where the market justified them, and that a dealer had no right to "bootleg" cars to used-car dealers. ³⁴⁵

On June 20, the meeting between the management of Ford and their selected dealers was held in Dearborn. ³⁴⁶ After Henry Ford II's opening remarks, and William Gossett's (Ford's general counsel) explanation of the two bills and their defects, Ernest R. Breech (Ford's chairman of the board) "summarized the concern of the company that the proposed legislation, if passed, would disrupt and perhaps destroy the whole authorized dealer system of automotive distribution." ³⁴⁷ Then the dealers present held their own meeting, set up an organization to oppose the two bills, and adopted a statement stressing that the Good Faith bill would protect "bootleggers" since their franchises could not be cancelled nor could they be ordered to stop sales to used-car dealers. The dealers appear to have been most concerned about the Omnibus bill and its impact, but their displeasure with it overflowed and led them to condemn any and all legislation. The statement also indicated the effectiveness of Mr. Breech's point as it asserted that the proposed legislation would endanger the franchise system because "manufacturers may well be forced to seek entirely new methods of distributing, selling, and servicing the cars and trucks they make . . ." ³⁴⁸ This statement was printed and circulated by the Ford Motor Company to all of its 9,000 dealers with a suggestion that they communicate their opposition to their Senators and Representatives. Each of the dealers attending the meeting was to return to his community, arrange local meetings, educate dealers, and get appropriate resolutions against the bills sent to Congress. ³⁴⁹ Admiral Bell of NADA later commented, "It's well organized, all right, and I take off my hat to those who dreamed it up." ³⁵⁰

Clearly, NADA had to counter this rebellion from the ranks. On June 30, the Ford group at the New York State Automobile Dealers' Association meeting backed the Good Faith bill and

³⁴⁴ Interview.

³⁴⁵ 102 Cong. Rec. 10583-85 (1956).

³⁴⁶ H.R. Hearings, *Dealer Franchises*, Celler 6-9, 107-14.

³⁴⁷ *Id.* at 107.

³⁴⁸ *Ibid.*

³⁴⁹ *Ibid.*

³⁵⁰ NADA Magazine, July 1956, p. 13.

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³⁴⁶ H.R. HEARINGS, DEALER FRANCHISES, Celler 6-9, 107-14.

³⁴⁷ *Id.* at 107.

³⁴⁸ *Ibid.*

³⁴⁹ *Ibid.*

³⁵⁰ NADA Magazine, July 1956, p. 13.

stated that the Ford dealers who went to Dearborn were not representative of most Ford dealers.³⁵¹ Senator O'Mahoney was the first witness when the antitrust subcommittee of the House Committee on the Judiciary began hearings on the Good Faith bill on July 2. He made great efforts to discredit the Dearborn meeting and the lobbying against the bill that had taken place. He contended that the Dearborn dealers' organization was a "company union" motivated by fear of reprisals. He argued that the activity on the part of the Dearborn dealers showed Ford's power to coerce and that voluntary action by manufacturers was not enough.³⁵²

A number of dealers testified against the Good Faith bill, and most appear to have been moved to do so by the Dearborn meeting.³⁵³ Chairman Celler kept questioning them about Ford's stage managing and direction of appearances before the subcommittee.³⁵⁴ Many hotly denied charges that they were not expressing their own views freely,³⁵⁵ but one conceded that an assistant general counsel of Ford had given him a great deal of help in writing his statement.³⁵⁶ Some dealers who appeared attacked NADA's officers for pushing a bill without informing its members of the consequences of the bill.³⁵⁷ Chairman Celler, who obviously favored some version of the bill from the outset of the hearings, allowed Admiral Bell of NADA to reply to these charges very soon after they were made.³⁵⁸

The response from Ford dealers to the requests from the Dearborn dealers organization for communications to Congress opposing the Good Faith bill was very small. One release said that only nineteen letters and telegrams were received from Ford dealers opposing the bill, and of these, twelve were from branches of a single dealership in California.³⁵⁹ There is some reason to doubt these figures because NADA and Senator O'Mahoney reacted as if there was a far more serious threat posed by the Dearborn meeting.³⁶⁰ In any event, the Dearborn dealers did not succeed in their effort to show real division among dealers.

On July 9, Robert Bicks, then Legal Assistant to the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, appeared before the House subcommittee

considering the Good Faith bill.³⁶¹ He restated the administration's opposition to the "equities of the automobile dealer" language in the bill. On the same day, Secretary of Commerce, Sinclair Weeks, wrote to Chairman Celler to oppose the bill. He repeated the manufacturers' basic theme: voluntary action had ended the need that might have once existed for legislation.³⁶²

On July 12, William T. Gossett, Ford's general counsel, testified before the committee.³⁶³ The Ford Motor Company's appearance before the Monroney committee had not been too successful, because there it had to defend the past actions of all of its representatives. However, Mr. Gossett's appearance before the Celler committee went very well for now attention was turned to the defects in drafting specific legislation and Gossett is a first-rate lawyer. While he failed to block passage of the Good Faith Act, he succeeded in changing it to preserve the manufacturers' freedom to push dealers to sell cars. Gossett stressed that after all of the steps that had been taken voluntarily by the manufacturers, legislation was unnecessary.³⁶⁴ He asserted that the bill had constitutional problems³⁶⁵ and unfairly singled out the automobile manufacturers for special treatment.³⁶⁶ He expressed his fear that a local jury would interpret the requirement of fairness and respect for a dealer's equities to mean that a manufacturer could not cancel a nice but inefficient dealer.³⁶⁷ He said that the

³⁶¹ H.R. Hearings, Dealer Franchises, Celler 246-75.

³⁶² *Id.* at 505.

³⁶³ *Id.* at 275-457.

³⁶⁴ *Id.* at 284, 446-47.

³⁶⁵ *Id.* at 277-78, 446.

³⁶⁶ *Id.* at 288.

³⁶⁷ *Id.* at 376-77, 382, 384, 439-40. Some of the discussion will illustrate Mr. Gossett's concern and the committee's response; the material is relevant to questions frequently raised in cases seeking to use rights granted by the Good Faith Act:

Mr. SCOTT. Mr. Chairman, Mr. Gossett has mentioned the question of the inefficient dealer. I am thinking of two instances, one where the man is inefficient and other where another situation applies.

If you had a dealer who unfortunately, let us say, was an alcoholic although he did the best he could, and you terminated his dealership, how would that operate under this bill?

Mr. GOSSETT. Well, I think that if we terminated his dealership on the ground that he was inefficient, he would have a right to a jury trial as to whether or not he acted in good faith under the definition in this bill, and the jury would determine whether, in the light of all the circumstances, we were being fair to him and we were acting in a manner calculated to preserve the equities that had grown up over the period of our relationship.

Mr. SCOTT. Suppose you had a very wealthy dealer, one that was interested only in low volume and who did not want to work very hard, and who made all the money he could afford to make in consideration of the tax situation. He is not pushing very hard, but you are persuading him; you are using recommendations and persuasion, and you want more volume which he will not get for you. And so you terminate him. Would that same situation apply here? Could he go to court?

³⁵¹ N.Y. Times, July 1, 1956, p. 40, col. 1.

³⁵² H.R. Hearings, Dealer Franchises, Celler 6-11.

³⁵³ *Id.* at 100-27, 138-48, 220-33, 457-67.

³⁵⁴ See, e.g., *id.* at 104, 115, 144-45, 147-48.

³⁵⁵ *Id.* at 104, 125-26, 127.

³⁵⁶ *Id.* at 105.

³⁵⁷ *Id.* at 115, 119, 121, 142.

³⁵⁸ *Id.* at 122-23, 137.

³⁵⁹ Automotive News, July 2, 1956, p. 1, col. 2.

³⁶⁰ See, e.g., 102 CONG. REC. 11722-24 (1956) (Remarks of Senator O'Mahoney).