

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Bob Frey at  
Chairperson

3:30 ~~xxx~~ p.m. on March 20, 1984 in room 526-S of the Capitol.

All members were present except:

Representatives Cloud and Wagnon were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Mike Heim, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes' Office  
Nedra Spingler, Secretary

Conferees appearing before the committee:

Wayne Hundley, Chief, Antitrust Division, Office of the Attorney General  
Barry Lefkowitz, Director of Governmental Relations, Burlington Coat Factory, Burlington,  
New Jersey  
Glen Shank, Vice-President, Duckwall-ALCO Stores, Abilene  
David Lieberman, Best/Dolgin's Showrooms, Kansas City, Missouri  
John Touhey, Chief of Police, Clearwater  
Senator Jim Francisco  
Ed Bideau, County Attorney, Neosho County  
Representative Jessie Branson  
Senator Wint Winter  
Elizabeth Taylor, Kansas Association for Domestic Violence Programs  
Joyce Grover, Women's Transitional Care Services, Lawrence  
Kathie Champlin, United Community Services of Johnson County  
Ken Bahr, Crime Victims Reparation Board  
James McBride, Volunteer Senior Vice-President for Government Relations, United Way of Greater  
Topeka  
Aileen Whitfill, Executive Assistant to the Secretary, SRS  
January Scott, Kansas Committee for the Prevention of Child Abuse  
Anna Luhman, Board Member, Northwest Kansas Family Shelter, Hays

Hearings were held on HCR 5059, SB 692, SB 642, and SB 678.

HCR 5059 - Memorializing Congress to enforce antitrust laws with respect to vertical price fixing.

Representative Sandy Duncan said the resolution addresses the current federal Sherman Antitrust Act regarding price fixing which is not being enforced. If enough outcry is made, he hoped Congress would strengthen the law and enforce it.

Wayne Hundley, Chief of the Antitrust Division, Attorney General's Office, said the Attorney General supports the resolution and voted for a similar one passed by the National Association of Attorney Generals in December. HCR 5059 urges Congress to head off any legislation that would water down the antitrust law. Although his division enforces federal antitrust laws, it is not equipped to handle complaints against major, gigantic businesses.

Barry Lefkowitz, Director of Governmental Relations, Burlington Coat Factory, Burlington, New Jersey, provided, in Attachment No.1, information regarding Congressional action, the National Association of Attorney Generals' resolution, and statistics regarding antitrust cases. He then presented a statement (Attachment No.2) from the president of his company in support of HCR 5059 and explained how price fixing affects business and the consumer. Because Kansas has few major, large, department stores, price fixing is presently a small problem in the state, but the problem is spiralling in the U.S.

Glen Shank, Vice-President of Duckwall-ALCO Stores, Abilene, which owns 50 stores in Kansas, supported the resolution.

David Lieberman, Best/Dolgin's Showrooms, Kansas City, Missouri, said Dolgin's had three locations in Kansas. The enforcing government agency for the antitrust law used the rule of reason in price fixing cases and looked on violations based on criteria which is dangerous for the consumer. He believed Congress should make the judgment and not the individual agency. Mr. Lieberman's statement is in Attachment No.3.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 526-S, Statehouse, at 3:30 XXY a.m./p.m. on March 20, 1984.

SB 692 - Restrictions on granting diversion of criminal charges.

John Touhey, Chief of Police, Clearwater, supported the bill which was introduced at his request by Senator Francisco. It resulted from his involvement with an arson and burglary ring in Sumner and Sedgwick Counties which revealed that individuals placed on diversion in one county were being placed on diversion for subsequent and more serious crimes in a different locality. Present statutes allow for multi-diversion which, in his opinion, can result in a person convicted of a number of felonies being placed on diversion.

Senator Jim Francisco supported the bill and said it, as amended by the Senate Committee, passed the Senate unanimously. The intent was not to include on a person's record a DWI or drug misdemeanor charge but to make it impossible for persons previously convicted of Class A or B felonies or placed on diversion to be placed on diversion programs again. He would not object to amending the bill on line 60 to exclude persons convicted of a misdemeanor but would object if that person had been convicted of 2 or 3 misdemeanors.

The suggestion was made to amend the bill on line 60 to say persons are not eligible to apply for diversion if they have previously been convicted or placed on diversion for a felony charge. Chief Touhey believed this would result in the "same game being played now" concerning felons and diversion programs. He preferred the bill in its present form.

SB 642 - Conditions for release on bond.

Ed Bideau, County Attorney, Neosho County, said Senator Mike Johnston introduced the bill at his request. It was prompted by an incidence in his county regarding a year-long investigation of a narcotics case. Three persons charged with possession and selling cocaine, one a convicted felon, were released within an hour, without counsel, by a magistrate judge on their own recognizance. Present bonding statutes do not permit the judge to consider if people might commit more crime or require the judge to consider previous criminal records when authorizing bond. SB 642 would permit the court to consider additional factors. Other states have enacted similar laws. A member noted that much of the bill, including the new language on page 3, subsection (10), is already current law. Mr. Bideau said he did not draft that language which he believed was meant to pressure the judge to give victims and county attorneys notice of the release and requirements of the bond.

SB 678 - Increase in marriage license fee to fund domestic abuse programs.

Representative Jessie Branson supported the bill. From working with the domestic violence center in Lawrence, she noted there was a desperate need for a consistent source of funds. The goal of HB 2886, of which she is a sponsor, is the same as SB 678 but has a different funding mechanism. She has asked the 16 other sponsors of the House Bill to support SB 678.

Senator Wint Winter gave a statement (Attachment No.4) supporting SB 678. He also furnished a statement from the state president of the Fraternal Order of Police in support of the bill (Attachment No.5). Senator Winter said Dr. Harder, Secretary of SRS, has said administering the marriage license fee funds from his agency would have no fiscal impact. The Chairman noted that when a bill says that the Secretary may adopt rules and regulations to administer funds, it means there will be additional costs for personnel, evaluation, making requirements for eligibility, etc.

Elizabeth Taylor, Kansas Association for Domestic Violence Programs, furnished statistics on the services and funding of these programs throughout the state which serve 12,000 women and children (Attachment No. 6). As a volunteer worker with these programs, she is familiar with efforts to keep the money coming in. A solid funding source was needed so that educational programs in schools can be conducted which would help reduce future domestic violence. There are no licensing requirements for these shelters but the association is looking toward a type of internal certification.

Joyce Grover, Women's Transitional Care Services, Lawrence, said statistics from this program show the increasing need for service. There has been a 69% increase in client days but a budget decrease of 47%. She supported SB 678.

Kathie Champlin gave a statement on behalf of the United Community Services of Johnson County (Attachment No. 7) supporting the bill. She also furnished a supporting statement from the Johnson County member of the Kansas City Metropolitan Regional Commission on the Status of Women, Gina Pulliam (Attachment No. 8). Ms. Champlin said United Way cannot pay for everything. State money will encourage other funding.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,  
room 526-S, Statehouse, at 3:30 ~~xxx~~/p.m. on March 20, 19 84

Ken Bahr, Crime Victims Reparation Board, said there has been an alarming increase in the case-load for domestic abuse centers in the state. If all were reported, there would be 100,000 cases a year. His Board administers the 1982 federal grant monies distributed to these centers (about \$3,000 or \$4,000 a year per center), and additional state funds would help centers provide services besides safe homes. Mr. Bahr said the Crime Victims Reparation Board would be interested in administering the state funds received from marriage licenses and has personnel already in the program. Administrative money was available and no additional money would be needed.

James McBride, Volunteer Senior Vice-President for Government Relations, United Way of Greater Topeka, gave the figures for the three-year allocation of United Way funds to the Topeka Battered Women's Task Force which is administered by the YWCA (Attachment No. 9). He said United Way will not reduce its allocation if this program received state funds.

Aileen Whitfill, Executive Assistant to the Secretary of SRS, gave a position statement for that agency (Attachment No. 10) supporting the bill as a stable source of funding for domestic abuse programs. The Chairman expressed concern that once SRS is in charge of the funds, the program will change because of rules and regulations and compliance requirements for eligibility. He questioned Ms. Whitfill if this would happen. She said SRS has worked with similar programs in community facilities with block grant funds and have had no complaints.

January Scott said the Kansas Committee for the Prevention of Child Abuse as well as the Community Mental Health Association supports the bill. She had no position on which agency should administer the state funds.

Anna Luhman, board member of the Northwest Kansas Family Shelter, Hays, gave a statement (Attachment No. 11) supporting the bill and outlining the activities and funding of this group. In additional remarks, she said Dr. Harder had told her there would be no additional cost for SRS to administer the money, rules and regulations would be kept at a minimum, and representatives of the programs from across the state would have input in developing rules and regulations.

The administration of the state funds was discussed. A member said Secretary Harder had indicated that SRS was the proper agency as it already has personnel in the field, but the program itself would be administered by private groups. Ms. Whitfill said an abused person receiving welfare assistance would first contact the shelter, and SRS would have no contact with that individual unless he or she is referred to them by the shelter. It was noted that the Crime Victims Reparations Board does not have field offices over the state as SRS does. Mr. Bahr did not believe these were necessary. The shelters refer the majority of the victims to SRS for food stamps, medical care, etc., but he saw no connection between administering the money and on-site visits. Nebraska administers a similar fund with one person who travels to the on-site places. Ms. Taylor expressed concern regarding possible stringent requirements by SRS later on. She pointed out that victims need an emergency shelter where questions regarding administrative guidelines are irrelevant. Her group would be concerned that these would result in the community and the abuser knowing where the shelter is located. The Chairman pointed out that conferees may want additional funds to remain in business, but, in a few years, they will regret asking for them as the issue is whether the program will remain private or become public. A member said any program receiving state funds should be accountable, and groups should have the option of receiving funds. The suggestion was made that the funds could be distributed as grants on a yearly basis.

The meeting was adjourned at 5:30 p.m.

MARK O. HATFIELD, OREG., CHAIRMAN

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JAMES A. MC CLURE, IDAHO  
PAUL LAXALT, NEV.  
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DENNIS DE CONCINI, ARIZ.  
Dale BUMPERS, ARK.

J. KEITH KENNEDY, STAFF DIRECTOR  
THOMAS L. VAN DER VOORT, MINORITY STAFF DIRECTOR

Attachment # 1

## United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, D.C. 20510

Dear Colleague:

We are offering an amendment to H.R. 3222, the State, Justice, Commerce Appropriations Bill, which would stop efforts by officials in the Department of Justice to overturn or alter present law which prohibits price-fixing at the retail level. The efforts are contrary to settled case law and recent legislation passed by Congress. Our amendment would maintain the status quo and would give Congress time to reconsider the issue if it should choose to do so. It would implement, in part, a provision contained in Senate Joint Resolution 105, which currently has 51 cosponsors (list attached).

There is no argument concerning the current status of the law. The Supreme Court, since 1911, has consistently held that resale price maintenance is a per se violation of the Sherman Act. This construction was affirmed by Congress in 1975 when the Miller-Tydings Act and the McGuire Act were repealed. Those laws, referred to as the illegitimate children of the depression, enabled states to pass "fair trade" laws. "Fair trade" laws permitted manufacturers to set the retail prices of their products, thereby eliminating price competition at the retail level. When the laws were repealed in 1975, studies supporting repeal showed that consumers in states with "fair trade" laws were forced to pay prices 20 to 30 percent higher than consumers in states without "fair trade" laws. Studies also showed that there were higher rates of business failures in states with "fair trade" laws and that repeal would help to lower prices, create more efficient distribution systems, and enhance the business climate. Therefore, in the interest of competition at the retail level, Congress outlawed "fair trade" laws and reimposed the per se prohibition on resale price maintenance.

Despite the recent Congressional action and settled case law, Assistant Attorney General William Baxter, who is in charge of the Department of Justice Antitrust Division, has publicly pronounced his opposition to the law. In fact, during joint hearings before the State, Justice, Commerce Appropriations Subcommittee and the Senate Committee on Small Business, Mr. Baxter indicated that he does not intend to enforce the law. Furthermore, Mr. Baxter and the Solicitor General have filed briefs in the Supreme Court, ostensibly on behalf of the United States, in an attempt to eliminate the per se ban on resale price maintenance.

Atch. 1

These actions by Mr. Baxter are clearly contrary to his duties to enforce the law. Furthermore, they show a clear intent to ignore the role of Congress in the issue. The amendment we are offering would halt nonlegislative activities designed to change the law. It is supported by the National Association of Attorneys General, the National Federation of Independent Business, the Consumer Federation of America, the Small Business Legislative Council, the Association of General Merchandise Chains, the National Mass Retailing Institute, the National Consumers League, the Consumers Union, the National Association of Catalog/Showroom Merchandisers, and the Food Marketing Institute.

We invite you to cosponsor our amendment. Feel free to contact any one of us individually or have your staff contact one of the following: Phil Ward of Senator Rudman's office (4-3324), Alan Chvotkin of Senator Nunn's office (4-8497), or Bob Dotchin of Senator Weicker's office (4-8494).

Sincerely,

Sam Nunn

Warren B. Rudman  
[Signature]

Cosponsors

Senate Joint Resolution 105

Republicans

Rudman  
Weicker  
Gorton  
Chafee  
Cohen  
D'Amato  
Heinz  
Humphrey  
Mattingly  
Percy  
Quayle  
Stafford  
Wilson  
Boschwitz  
Kassebaum  
Hawkins  
Specter  
Jepsen  
Durenberger  
Lugar  
Packwood  
Mathias

Democrats

Nunn  
Baucus  
Bingaman  
Bradley  
Exon  
Ford  
Glenn  
Kennedy  
Lautenberg  
Melcher  
Metzenbaum  
Proxmire  
Tsongas  
Zorinsky  
Huddleston  
Moynihan  
Hart  
Bumpers  
Burdick  
Sasser  
Dixon  
Pryor  
Riegle  
DeConcini  
Dodd  
Johnston  
Bentsem  
Chiles  
Mitchell  
Leahy

ROBERT GORE, JR., TENN.  
JIM SLATTERY, KANS.  
GERRY SIKORSKI, MINN.  
JIM BATES, CALIF.  
JAMES H. SCHEUER, N.Y.  
JAMES J. FLORIO, N.J.  
EDWARD J. MARKEY, MASS.  
DOUG WALGREEN, PA.

JAMES T. BROTHILL, N.C.  
BOB WHITTAKER, KANS.  
THOMAS J. BALEY, JR., VA.  
MICHAEL G. OXLEY, OHIO

MICHAEL F. BARRETT, JR.  
CHIEF COUNSEL/STAFF DIRECTOR

U.S. House of Representatives  
Subcommittee on Oversight and Investigations  
of the  
Committee on Energy and Commerce  
Washington, D.C. 20515

M E M O R A N D U M

DATE: June 22, 1983

TO: The Honorable John D. Dingell, Chairman, Subcommittee on Oversight and Investigations; and the Honorable James J. Florio, Chairman, Subcommittee on Commerce, Transportation and Tourism

FROM: Staff, Subcommittee on Oversight and Investigations

RE: The FTC and Resale Price Maintenance: The Failure of Majority Rule

Resale price maintenance is one form of price fixing. The practice violates Section 1 of the Sherman Act which prohibits contracts, combinations, or conspiracies in restraint of trade.<sup>1</sup> It, therefore, also violates Section 5 of the Federal Trade Commission Act.<sup>2</sup> Resale price maintenance is a form of "vertical" restraint of trade; that is, it concerns an unlawful combination not between direct competitors, but between manufacturers and distributors to limit the prices at which the manufacturers' goods will be sold. These agreements may be express -- as in contracts between a manufacturer and its retail outlets which specify the price at which the manufacturers' goods may be sold -- or they may be implied from the circumstances, as where a manufacturer distributes "suggested" price lists and then enforces them through various means.

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1 15 U.S.C. § 1.

2 15 U.S.C. § 45.

In either case, once the elements of an agreement have been found, the courts have condemned this form of price fixing as a per se violation of the Sherman Act.<sup>3</sup> The significance of this legal categorization is that this type of conduct is barred without the need for an elaborate economic analysis of its effects.

Not all who study the laws against resale price maintenance agree that the conduct should be illegal per se. There is a dispute whether this form of price fixing is always harmful to competition. Indeed, some scholars now argue that, in some circumstances, resale price maintenance actually enhances competition by making marketing more efficient. The debate focuses over whether, in light of these purported efficiency enhancing characteristics, the law should continue to treat resale price maintenance as a per se offense and to preclude consideration of its economic justification.

This report will not deal with the merits of the dispute, but will assess what has happened to resale price maintenance law enforcement at the Federal Trade Commission in light of it. In a letter response to Chairman Dingell's February 17, 1983 request, Commission Chairman Miller supplied enforcement statistics that permit a comparative evaluation of his administration's enforcement in resale price maintenance in contrast to that of his predecessors'.

The data contradict Chairman Miller's assertion in testimony delivered on March 8, 1983, before the Subcommittee on Commerce, Transportation, and Tourism that the Federal Trade Commission "continues to bring RPM cases". They also contradict his representation that resale price maintenance enforcement was as limited during the tenure of his immediate predecessor, Michael

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3 The leading case is Dr. Miles Medical Co. v. John D. Park & Sons, Co., 220 U.S. 373 (1911). In Continental T.V. v. GTE Sylvania, 433 U.S. 36 (1977), the Supreme Court stated:

"The per se illegality of [vertical] price restrictions has been established firmly for many years and involves significantly different questions of analysis and policy [than does nonprice vertical restrictions].... Furthermore, Congress recently has expressed its approval of a per se analysis of vertical price restrictions by repealing those provisions of the Miller-Tydings and McGuire Acts allowing fair trade pricing at the option of the individual states. Consumer Goods Pricing Act of 1975, Pub. L. 94-145 (1975), amending 15 U.S.C. § 45(a). No similar expression of Congressional intent exists for nonprice restrictions." (443 U.S. at 51, n. 18)

(Footnote continued)

Pertschuk, as during Mr. Miller's tenure.

However, the number of Commission "complaints" issued alone is never fully descriptive of its enforcement activity. Reference to the Exhibits to this report shows a substantial number of investigations which led to 16 final consent decrees, that achieved the same effect as final litigated orders during the 1977 through 1979 period mentioned by Chairman Miller in his testimony. In sum, our inquiry has revealed the following:

1. The Commission's current law enforcement activity in the area of resale price maintenance has dramatically declined as compared to the previous two Chairmen's administrations.
2. The Commission has not been presented with and has not approved a single formal resale price maintenance adjudicative complaint since Chairman Miller came to the agency in October 1981.
3. The Commission has provisionally approved only one new resale price maintenance consent agreement since Chairman Miller arrived, the substance of which was completed in the previous administration.
4. Chairman Miller's Bureau of Competition has refused to approve virtually every staff request to upgrade resale price maintenance investigations presented to it from preliminary to formal status.
5. Despite the fact that a majority of the Commission adheres to the view that the agency should prosecute resale price maintenance as a per se violation of law, Chairman Miller has effectively stymied that majority view through his power to appoint and remove the Bureau of Competition's Director, to dictate its enforcement program, and even through his exercise of the power to put a matter "on hold" to forestall a Commission vote.

These conclusions rest upon a review of the available indicators of Commission enforcement activity, both public and nonpublic. There are two essential sources of hard information: formal Commission actions and staff investigations. We consider each in turn.

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3 (continued)

The Court's most recent opinions have only underscored the per se illegality of resale price maintenance. Rice v. Norman Williams Co., 50 U.S.L.W. 5052 (U.S. July 1, 1982); Arizona v. Maricopa County Medical Society, 50 U.S.L.W. 4687 (U.S. June 18, 1982); California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., 445 U.S. 97 (1980).

In an article written by James P. Melican and printed in the Antitrust Law Journal in March, 1980, James P. Melican made this point. The information came largely from court records around the country and was prepared at the request of the Council of the Section of Antitrust Law of the American Bar Association.

Mr. Melican concluded that antitrust litigation is more likely to be protracted (therefore more expensive) than other types of litigation.

This is borne out by the fact that in 1979, 27 percent of the private cases on file had been pending for 3 years or more as contrasted with slightly more than 12 percent for private cases generally. Furthermore, he stated one interesting and disquieting statistic - the number of private antitrust cases which have been pending 3 years or more had increased by 58 percent since 1977.

A total of 212 private antitrust cases went to trial in 1979 in the study area. The jury trials lasted 4 days or longer 88 percent of the time, compared with 25 percent of bench trials which lasted 4 days or longer.

According to Mr. Melican 13 of the 212 cases took more than 20 days to try. One case alone took 226 days. Putting it another way, in the test area, antitrust cases accounted for less than 2 percent of all civil cases tried to a

conclusion last year, but they represented 23 percent of the total number of cases which took 20 days or longer to try, and in terms of trial days, they were an even more significant factor, 34 percent.

Furthermore, the duration of private antitrust cases from filing to disposition also compared unfavorably to civil cases generally. Ten percent of the total number of private antitrust cases closed during 1979 took more than 52 months -- 4-1/2 years -- from filing to disposition.

Moreover, complex antitrust litigation has lasted even longer than most antitrust cases. ACI's case would be complex in all probability.

Therefore, it is disturbing that one study indicated that in most complex cases studied, the pre-trial stage lasted from two to four years.

# BURLINGTON COAT FACTORY

ROUTE 130 NORTH

BURLINGTON, N. J. 08016

(609) 386-3314

## FACT SHEET

"Lack of Enforcement by FTC and Justice Department"  
Regarding Antitrust Laws especially Retail Price-Fixing"

- a. Miller, Chairman of FTC and Baxter Former Assistant Attorney General for Antitrust have testified before Congress and made public pronouncements that they believe that retail price-fixing is all right in some cases and that they will decide whether or not to pursue any retail price-fixing cases.
- b. Baxter filed an Amicus brief with the U.S. Supreme Court in *Sprayrite Services vs. Monsanto*, asking the court to use this case as a basis to reverse or modify the existing rule, making illegal price-fixing an automatic violation.
- c. Baxter was refused permission, by the President's Cabinet Council to submit legislation to change the existing rule.
- d. The number of price-fixing attempts has increased dramatically because of pressure on suppliers by Department store chains.
- e. April 5, 1983, report by FTC Commissioner Pertschuk to U.S. Senator Lautenberg indicates that FTC and Justice Department have not prosecuted any retail price-fixing cases in the last two years.
- f. June 22, 1983 - Congressman Dingell's Subcommittee staff on Oversight and Investigation issued report that FTC not only has policy of non-enforcement, but Miller blocks efforts to investigate.
- g. Department Store Chains advertise or have news articles letting manufacturers know that if they continue doing business with discounters, they will cease buying from them.
- h. U.S. Senator Warren Rudman (R - N.H.) and Sam Nunn (D - GA) with 51 co-sponsors submit SJ105 calling on enforcement of antitrust laws by Federal officials.
- i. Major lawsuits by retailers against price-fixers increasing - October 1983 - Burlington Coat Factory sued Esprit de Corp and Federated Kids-R-Us sued General Mills, Izod and Federated and separate lawsuit against Absorba Inc. and Federated; K-Mart sued Rachael Perry.
- j. Congressman James Florio (D - NJ) and bipartisan contingent submit HJ389 - companion to Rudman/Nunn resolution.
- k. Senator Rudman successfully attached language to Continuing Resolution (financing government operations for additional year) which eliminates funds from Justice Department and Federal Trade Commission to try to reverse or modify existing rule on retail price-fixing being an automatic violation.

- l. HR3222 - Commerce, Justice and Statte Appropriation passed and signed by the President contains language similar to K.
- m. HR2912 - Justice Authorization Bill passed Judiciary Committee un-animously with language in Section 14 dealing with issue of non-enforcement and judicial attempts to circumvent will of Congress.
- n. S1714 - FTC Authorization Bill passed in Committee with language in Section 13 dealing with issue of non-enforcement and judicial attempts to circumvent will of Congress. Additionally, the FTC would be required to submit twice a year a report, to the Committee, on its enforcement activities.
- o. Supreme Court heard oral arguments December 5th on Spray-Rite Services vs. Monsanto, 45 State Attorney Generals, Numerous Trade Associations, members of Congress and Burlington Coat Factory all filed briefs against Monsanto (charged with price-fixing at lower and appellate levels) and Justice Department.
- p. December 1983 - National Association of Attorney Generals pass resolution calling for Federal enforcement of antitrust laws on vertical price-restraint (retail price-fixing).
- q. House and Senate Committees held hearings in February 1984 raising issue with FTC and Justice Department policies on enforcement.
- r. Numerous states move resolutions calling for President and Con-gress to seek enforcement of antitrust laws on vertical price-restraint (retail price-fixing).

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Winter Meeting  
Honolulu, Hawaii  
December 5-9, 1983

RESOLUTION

VI

IN SUPPORT OF PER SE RULE  
AGAINST RESALE PRICE MAINTENANCE

WHEREAS, in 1890 Congress enacted the Sherman Act to prohibit "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations. . ."; and

WHEREAS, the United States Supreme Court has repeatedly held that vertical price restraints are per se violations of the Sherman Act; and

WHEREAS, consumers are injured by vertical price fixing conspiracies that raise retail consumer prices and infringe upon retailers' rights to compete freely, and consumers benefit from vigorous price competition at the retail level;

WHEREAS, the Attorneys General of 45 states have made their views known by filing a brief amicus curiae in the case of Monsanto Co. v. Spray-Rite Corp., now pending before the United States Supreme Court, expressing their strong opposition to efforts by the Justice Department to eliminate the per se rule against resale price maintenance or vertical price fixing; and

WHEREAS, the Attorneys General have a vital interest in this case and other such attempts to weaken the antitrust laws in that, as chief law enforcement officers of their states, they are charged with enforcing their respective states' antitrust laws and certain of the federal antitrust laws, and therefore the Attorneys General have a crucial interest in seeing that these laws are applied in a manner consistent with the underlying Congressional policy and with decades of Supreme Court precedent; and

WHEREAS, the Attorneys General believe that the social, political, as well as economic considerations underlying the Sherman Act mandate the continued application of the per se rule to resale price maintenance and seventy years of consistent application of the per se rule reflects the Court's due regard for the policy considerations underlying the Sherman Act's purpose of preserving economic opportunity and unfettered competition in all sectors of the economy and at all levels of distribution; and

WHEREAS, Continuing Resolution, H.J. Res. 413, which was passed by both houses of Congress and signed into law by President Reagan, prohibits the Department of Justice or FTC from using any of the appropriated funds to alter or overturn the per se prohibition against resale price maintenance;

NOW THEREFORE BE IT RESOLVED, that the National Association of Attorneys General:

1. Expresses its strong support of the per se prohibition against resale price maintenance or vertical price fixing;

2. Believes that any change in the scope or application of the per se rule should be made, if at all, by Congress, and after a thorough airing of the issues at public hearings;
3. Commends United States Senators Slade Gorton, Warren Rudman, Robert Stafford, and Jeff Bingaman for their efforts to bring such legislation to the floor of the Senate for consideration by the entire Senate; and

BE IT FURTHER RESOLVED, that the National Association of Attorneys General authorizes its General Counsel to transmit these views to the Administration, the Congress, and other interested individuals.

Read this  
before you decide  
whether  
you want to do  
business with us.

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As a manufacturer, we deem an off-price retailer to be one whose manner of display, service to customers, fashion advertising and pricing policies are not compatible with how we want our brands marketed.

**If you cheapen our brand,  
we won't sell to you.**

**As a manufacturer,** we prefer to see our high-quality goods properly serviced by our customers. They will be able to perform such services only if these same goods are not sold by retailers who sell solely on a price basis; and who therefore cannot afford to provide the service, advertising and merchandising which only retailers who do not sell solely off-price can afford.

**As a retailer,** we will maintain the same standards in determining which brands we buy. We will thoroughly investigate the distribution and management policies of each of our important resources. Unless we are satisfied with the integrity and sincerity of management's attitude towards distribution, that resource will be terminated.

## Phillips-Van Heusen Corporation

Jeffrey Beene (clothing/furnishings), Cacharel • Harris & Frank, Hamburger's/Kennedy's, Juster's, Rices Nachmans

As a retailer, we will not consider as a resource any manufacturer whose current goods or staples are found in any significant quantity in off-price retailers. We will no longer carry any national brand or designer from any supplier who cannot control and restrict his distribution to stores that we consider compatible with ours.

If you cheapen your brand,  
we won't buy from you.

**Phillips-Van Heusen  
Corporation**

by Beene (clothing/furnishings), Cacharel • Harris & Frank, Hamburger's/Kennedy's, Juster's, Rices Nachmans

## CHAPTER 11: NO WAY TO BARGAIN

**T**he rough weather buffeting the airline industry should surprise nobody, least of all airline management or unions. The storm was blown up by the winds of competition, following the deregulation of the industry, and nobody ever claimed that competition always means smooth sailing—or, in this case, flying (page 98). Airlines face a painful adjustment period, particularly as management struggles to cut labor costs sharply and unions stubbornly resist.

Few precedents exist to guide either management or labor leaders through this transition, but so far neither side has shown much flexibility. Though unions have made concessions, they reject the deep cuts in wages and benefits that may be required. Management rightly insists that labor costs must now reflect marketplace realities. Yet attempts to use Chapter 11 of the bankruptcy law as a battering ram to knock down existing labor contracts, as Continental is doing and Eastern may try to do, can only escalate what would be inevitable conflicts in any case. And the airlines, following the example of such companies as Wilson Foods Corp. and Manville Corp., are pushing the bankruptcy laws even closer to the breaking point.

This trend raises some disturbing questions. Labor disputes are traditionally settled in this country by collective bargaining. If bankruptcy can be used solely as an escape hatch from high labor costs, where does that leave the extensive body of federal labor law? Courts recognize that contracts of all kinds can be abrogated in bankruptcy, but what standards must a company in bankruptcy meet to tear up a labor agreement? The law on both these points is unsettled, and lengthy litigation seems likely. The courts should tie bankruptcy more firmly to a company's financial condition and, in the case of the airlines, send issues such as labor problems back to the bargaining table.

## A NEW STRANGLEHOLD ON EXPORTS

**A**t a time when the U.S. vitally needs to step up its exports, the Reagan Administration cannot decide whether it wants a trade policy that promotes or hobbles sales abroad. Last fall, President Reagan backed off his abortive attempt to put pressure on foreign subsidiaries and licensees of U.S. companies to keep them from selling equipment and technology for the Soviet Union's natural gas pipeline. A few weeks ago, he quietly lifted the ban former President Jimmy Carter had imposed on selling pipe-laying machinery to the Soviets, a ban, it turned out, that had simply let a Japanese producer grab the market. But now, despite these moves toward easing export restrictions, the Administration is proposing to reverse direction.

The Pentagon and the Commerce Dept.'s office of export control want to place 17 types of oil and gas equipment and technology under tight "national security" export restrictions. Once again, U.S. trade competitiveness and political relations with its allies are in jeopardy.

The new proposals are designed to back up U.S. demands that its allies agree to place similar restrictions on those items—an agreement that would be administered by the Paris-based coordinating committee that administers export controls. The idea is that the U.S. must set the example, and strengthen its negotiating hand with allies, by first putting its own manufacturers in an export straitjacket. Yet this tactic repeatedly failed in the past, when Europe and Japan refused to follow Washington's lead and moved in to fill the market vacuum created by self-imposed U.S. export curbs.

U.S. allies have a basically different attitude toward trade with the Soviets in oil- and gas-related technology, as last year's confrontation over the Soviet gas pipeline showed. U.S. industry will be the only loser, once again, if the U.S. refrains from selling equipment that the Soviets can obtain from other suppliers. The cumbersome licensing procedures will also hinder exports to friendly nations. If the Administration persists in attempting to impose such policies, the result, once again, may be to weaken rather than strengthen allied cooperation in dealing with the Soviets.

## 'FAIR TRADE' LAWS SHOULD STAY DEAD

**D**iscount stores are familiar features of the retail scene these days. But it was not always so, and consumers whose memories reach back to the 1950s remember their pleasure at finding no-frills outlets selling brand-name merchandise—everything from phonograph records to major appliances—at well below the manufacturers' "suggested" list prices. Lots of manufacturers, though, fought hard to defend "fair trade" and keep their products out of the hands of the upstart discounters. In 1975, Congress yielded to consumer preference and gave discounting its blessing by forcing all states to abide by the 1911 Supreme Court ruling that under the Sherman Act fair trade price fixing was illegal.

The Reagan Administration's Justice Dept. is asking the Supreme Court to reinstate fair trade, now called resale price maintenance (page 84). This is a bad idea. The nation's consumers, as well as many manufacturers themselves, ought to hope that the court will reject it.

William F. Baxter, Justice's antitrust chief, says that dealers have to be guaranteed high profit margins to entice them to offer extra services. Yet offering a merchant the profit to pay for a service is no guarantee that he will use the money for that purpose. Further, if customers really want the services—enough to pay for them—they will buy from outlets savvy enough to offer them.

Baxter makes other points, but all such arguments are essentially a rehash of those heard in earlier years. Discount stores have proved their efficiency and value. Fair trade should not be revived, even under a different name.

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9-20

# BURLINGTON COAT FACTORY

Attachment # 2

ROUTE 130 NORTH  
BURLINGTON, N. J. 08016  
(609) 386-3314

## KANSAS SPEECH

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THANK YOU FOR THE OPPORTUNITY TO SPEAK TO YOU TODAY. I AM MONROE MILSTEIN, PRESIDENT OF THE BURLINGTON COAT WAREHOUSE CORPORATION WHICH IS HEADQUARTERED IN BURLINGTON, NEW JERSEY, WITH RETAIL OUTLETS IN TWENTY ONE STATES. WE PRESENTLY OPERATE AN OUTLET IN WICHITA.

I COME BEFORE YOU TODAY AS A SPOKESMAN FOR OUR INDUSTRY TO VOICE THE GRAVE CONCERN AND NEED FOR HCR5059, A RESOLUTION INTRODUCED BY REPRESENTATIVE DUNCAN, WHICH ADDRESSES THE NEED FOR ENFORCEMENT OF FEDERAL LAWS DEALING WITH THE ILLEGAL BUSINESS PRACTICE OF RETAIL PRICE MAINTENANCE (RPM) OR RETAIL PRICE FIXING.

SECTION 1 OF THE SHERMAN ACT UNDER WHICH RPM CASES ARISE PROHIBITS "EVERY CONTRACT, COMBINATION....OR CONSPIRACY IN RESTRAINT OF TRADE". SINCE 1911 IN THE DR. MILES CASE THE U.S. SUPREME COURT HAS HELD THAT PRICE-FIXING IS A PER SE VIOLATION OF THE LAW. THE PER SE RULE DESCRIBES THOSE BUSINESS PRACTICES ABOUT WHICH THERE HAS BEEN SUFFICIENT JUDICIAL EXPERIENCE TO DECLARE THAT THE PRACTICE IS POTENTLY ANTICOMPETITIVE AND INHERENTLY UNREASONABLE, THEREBY RENDERING UNNECESSARY ANY PROOF ON THE REASONABLENESS OR ECONOMIC JUSTIFICATION FOR THE PRACTICE.

THUS, ANY CONTRACT, COMBINATION OR CONSPIRACY TO RAISE, LOWER,

Atch. 2

PAGE 2

MAINTAIN OR STABILIZE PRICES OR TO OTHERWISE TAMPER WITH THE PRICE MECHANISM IS A PER SE OFFENSE UNDER LONG-STANDING PRECEDENTS.

FOR OVER SEVENTY YEARS, RETAIL PRICE MAINTENANCE -- AT THE FEDERAL LEVEL -- HAS BEEN ILLEGAL PER SE (AUTOMATIC VIOLATION ONCE IT'S PROVED). THE ONLY EXEMPTION WAS STATE FAIR TRADE LAWS, WHICH THE CONGRESS REPEALED IN 1975.

AT ISSUE IS WHETHER A GROUP OF ECONOMICALLY POWERFUL RETAILERS SHOULD BE PERMITTED NOT ONLY TO DETERMINE THEIR OWN MARKUP ON GOODS, BUT ALSO ENSURE THAT SUCH MARKUP BECOMES AN INDUSTRY STANDARD ENFORCED BY THE MANUFACTURERS OF SUCH GOODS. IT IS NOT GENERALLY THE MANUFACTURER OF THE GOODS WHO ESTABLISHES THE RETAIL PRICE OF THE GOODS, BUT RATHER HIS POWERFUL RETAIL CUSTOMERS, USUALLY ONE OR MORE DEPARTMENT STORE CHAINS. TRADITIONALLY, THESE DEPARTMENT STORES EMPLOY A MARKUP OR "KEYSTONE" PLUS 10 PERCENT OR 20 PERCENT; "KEYSTONE" BEING THE INDUSTRY TERM FOR DOUBLE THE WHOLESALE PRICE. WE, AS VALUE-ORIENTED MERCHANTS, (SOMETIMES REFERRED TO AS DISCOUNT STORES, OFF-PRICE OR OUTLET STORES), PURCHASE THE IDENTICAL BRAND GOODS -- AT THE SAME TIME -- FROM THE SAME SOURCES AS DO THE DEPARTMENT STORES. WE HAVE, HOWEVER, MANAGED TO EFFECT OPERATIONAL SAVINGS WHICH ENABLE US TO OFFER THE SAME GOODS AT LOWER PRICES.

THE PROBLEM ARISES WHEN THE DEPARTMENT STORE MUST SHAVE ITS PRICES TO MEET OUR COMPETITION AND CANNOT ACHIEVE THE GROSS MARKUP DUE TO THEIR INEFFICIENCIES. IT IS AT THIS POINT THAT THE DEPARTMENT STORE INITIATES ANTICOMPETITIVE CONSPIRACIES BY PUTTING PRESSURE ON THE MANUFACTURERS TO EITHER FIX PRICES OR CEASE DOING BUSINESS WITH COMPETITIVE VALUE-ORIENTED RETAILERS SIMILAR TO US.

RETAIL PRICE-FIXING IS ANTI-CONSUMER BECAUSE IT PREVENTS CONSUMERS FROM HAVING GOODS AVAILABLE AT THE PRICE THEY WANT TO PAY; AND, IN MANY CASES, THE PRICE THEY CAN AFFORD. BY COMPARISON SHOPPING, CONSUMERS WHO SHOP AT PRICE-COMPETITIVE STORES ARE ABLE TO OBTAIN VALUABLE INFORMATION ON THE MARKETPLACE VALUE OF AN ITEM, AND CAN COMPARE PRICES ON ITEMS OF INTEREST TO GET AN OVERALL SENSE OF HOW DIFFERENT STORES TEND TO PRICE THEIR GOODS. BY ELIMINATING PRICE COMPETITION, ILLEGAL RETAIL PRICE-FIXING DEPRIVES CONSUMERS OF THIS IMPORTANT INFORMATION AND FORCES THEM TO PAY UNNECESSARY HIGHER PRICES.

WE MUST RECOGNIZE THAT RETAIL PRICE-FIXING IS A FORM OF DISCRIMINATION AGAINST THOSE WHO ARE LESS FINANCIALLY WELL OFF. PRICE-FIXING OR RAISING THE PRICE OF MANY GOODS SIGNIFICANTLY HIGHER TO APPEAL TO SNOBBERY WILL PLACE MANY NAME-BRAND GOODS BEYOND THE ECONOMIC ABILITY OF A SEGMENT OF THE POPULATION.

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PRESENTLY, WE HAVE THE SITUATION WHERE FEDERAL OFFICIALS ARE ACTUALLY AIDING AND ABETTING THE ILLEGAL ACTIVITY OF RETAIL PRICE-FIXING.

IN THE LAST TWO YEARS WILLIAM MILLER THE CHAIRMAN OF THE FTC, THE AGENCY WHICH WAS SUPPOSED TO BE THE WATCHDOG FOR THE CONSUMER (AND IN THE PAST HAD ACTED AS SUCH) MADE STATEMENTS THAT HE WANTS TO BRING BACK SELECTED PRICE CONTROL IN THE FORM OF RETAIL PRICE MAINTENANCE, (RPM). THESE VERY PRONOUNCEMENTS TO A CONGRESSIONAL COMMITTEE, AT BUSINESSMEN MEETINGS AND TO THE MEDIA, HAVE CAUSED AN INCREASE IN THE PRESSURE BY RETAIL STORES ON MANUFACTURERS TO FORCE THEM TO STOP SELLING TO US AND OTHER RETAILERS OF OUR ILK WHO GIVE CONSUMERS BETTER BUYS.

STRONG STATE ACTION ON THIS RESOLUTION AND OTHER MEANS ARE NECESSARY TO PROTECT THE MARKETPLACE AND THE CONSUMER. WE NEED ADEQUATE ENFORCEMENT OF THE LAWS. BRINGING LEGAL SUIT IS VERY EXPENSIVE. MOST SMALL BUSINESSMEN CANNOT AFFORD IT. OUR LEGAL COSTS, UP TO THIS TIME, HAVE BEEN OVER FOUR HUNDRED THOUSAND DOLLARS; AND WE ARE STILL ONLY IN THE DISCOVERY STAGE. WE HAVE BEEN TOLD THAT SEVERAL SMALL OFF-PRICERS HAD THEIR SUPPLIES CUT OFF AND, LACKING THE FINANCIAL RESOURCES TO LITIGATE, WERE FORCED TO DECLARE CHAPTER 11 BANKRUPTCY.

WE ARE FACED WITH MORE AND MORE MANUFACTURERS WANTING TO DEPRIVE US OF

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THEIR GOODS IN CERTAIN AREAS OR THROUGHOUT THE COUNTRY.

CONTRARY TO THE BELIEF OF CERTAIN FEDERAL OFFICIALS, NEW BUSINESS CAN COME INTO THE MARKETPLACE BY SELLING FOR LESS. BY ALLOWING FULL RETAILER TO FORCE MANUFACTURERS TO NOT SELL TO NEW EFFICIENT BUSINESSES, THEY KEEP THEM OUT OF THE MARKET AND KEEP PRICES ARTIFICIALLY HIGHER. IT IS IN ESSENCE ALLOWING THE ESTABLISHMENT OF A MONOPOLY OR CARTEL OF OLD ESTABLISHED FULL RETAILERS AND THE PUBLIC ENDS UP PAYING FOR THEIR INEFFICIENCY AND GREED.

THE SIGNALS FEDERAL OFFICIALS HAVE SENT OUT HAVE ENCOURAGED MAJOR FIRMS TO PLACE LARGE ADS IN TRADE PUBLICATIONS AND OTHER PAPERS, TELLING PEOPLE NOT TO SELL TO US AND COERCING THEM TO JOIN WITH THEM. IF THAT IS NOT A CONSPIRACY, I DON'T KNOW WHAT IS. A PRIME EXAMPLE IS THE ENCLOSED AD BY PHILLIPS-VAN HEUSEN CORPORATION, WHICH OWNS LARGE CHAINS OF CLOTHING STORES AND IS ALSO A MAJOR PRODUCER OF CLOTHING.

THE PRESIDENT OF A LEADING DEPARTMENT STORE CHAIN WAS VERY BOLD IN HIS STATEMENT FOR THE PRESS, STATING THAT THE MANUFACTURERS MUST DECIDE WHETHER THEY WOULD SELL TO DISCOUNTERS OR TO FULL-PRICED STORES; AND IF THE MANUFACTURERS HAVE TROUBLE DECIDING, THEY WOULD DECIDE FOR THEM.

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THE MESSAGE IS CLEAR... "YOU WILL LOSE ALL OUR BUSINESS IF YOU CONTINUE TO SELL TO PEOPLE WHO SELL FOR LESS". THIS IS A BLATANT ATTEMPT TO FIX PRICES AND RESTRAIN TRADE!

WE WOULD LIKE TO COMMEND THIS COMMITTEE FOR YOUR PRAISEWORTHY EFFORTS TO ENSURE ENFORCEMENT OF ANTITRUST LAWS THAT PROVIDE THE LEGAL SAFEGUARDS NEEDED TO STOP ILLEGAL RETAIL PRICE-FIXING.

THANK YOU FOR PROVIDING US WITH THE TIME TO ADDRESS THIS IMPORTANT ISSUE. WE URGE YOUR SUPPORT AND PASSAGE OF HCR5059.

Statement to Kansas House Judiciary Committee  
March 20, 1984  
David N. Lieberman, for Dolgin's, Inc.

Attachment # 3

Thank you for the opportunity of addressing this Committee on House Concurrent Resolution 5059. I must apologize for Andrew M. Lewis, President of Best Products Co., Inc., who is unable to be here today. He asked me to address this Committee on his behalf.

Best Products is the nation's largest catalog showroom merchandiser. Headquartered in Richmond, Virginia, Best operates 196 retail locations in 27 states coast-to-coast. Dolgin's, an operating division of Best, with headquarters in Kansas City, Missouri, operates eleven locations, including three in the state of Kansas. In 1984, Best will sell in excess of \$2 billion of brand name, first quality merchandise to consumers across the country. Our merchandise selection ranges from fine jewelry to housewares, appliances, luggage, electronics, sporting goods, toys, and lawn and garden products. Our philosophy for over 25 years has been to offer the consumer brand name, highly recognizable, first quality merchandise at very competitive prices. We provide essentially the same products and services and transmit essentially the same information to our customers as other retailers. However, we do so at a lower price to the consumer than do many full-margin retailers.

Resale price maintenance, a practice whereby manufacturers attempt to maintain higher retail prices for their products, is today an automatic violation of the antitrust laws of the United States.

The Department of Justice Antitrust Division, and the Federal Trade Commission, under the leadership of William Baxter (now resigned) and James Miller have, over the last several years, publicly stated governmental intentions to use a "rule of reason" upon the occurrence of resale price maintenance situations. This "rule of reason" means that these federal agencies, intend to look upon violations on the basis of subjective criteria, not on a simple requirement that permits retailers to determine the proposed retail selling price. This publicly stated attitude

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has encouraged a resurgence of resale price maintenance activity among many manufacturers marketing products through retailers to the ultimate consumer. This resurgence of activity with this apparent "look the other way attitude" of federal regulatory agencies, has the dangerous potential result of raising prices to consumers through the restriction of retail outlets who are willing to carry particular products only at artificially high prices.

Congress clearly stated its desire for a free marketplace environment in 1975 when it repealed the Fair Trade Laws at the federal level. These laws were the last vestage of an environment whereby a manufacturer could require the written consent of a retailer to maintain a pricing structure as a condition to be able to buy a particular product from that manufacturer. Resale price maintenance is more informal, but is potentially as effective a means of price fixing on certain product categories and merchandise lines. This refusal by the regulatory agencies to enforce violations on a "per se" basis has, over the last several years, increased the willingness of many manufacturers to "test the waters" of restricting distribution of their products to only full margin retailers.

Best Products, among other retailers, has been active at the federal level in attempting to change the philosophical direction of the Justice Department and the Federal Trade Commission. Awareness of this situation is increasing in the Congress.

We believe that the addition of legislative emphasis from the states to the Congress and the President will serve to strengthen the message to the regulatory agencies and will reinforce the desire of the people for a free, open, and competitive marketplace. This provides consumers not only a broader selection of choices of where to buy products, but more importantly, a choice of what to pay for those products.

Finally, we believe that should today's marketplace require an adjustment to those antitrust laws, clearly Congress should make that judgment, not individuals within specific agencies.

We ask your support in adopting House Joint Resolution 5059.

Thank you.

STATE OF KANSAS

WINT WINTER, JR.  
SENATOR, SECOND DISTRICT  
DOUGLAS COUNTY  
2229 WEST DRIVE  
BOX 1200  
LAWRENCE, KANSAS 66044



TOPEKA

SENATE CHAMBER

March 20, 1984

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Attachment # 4

COMMITTEE ASSIGNMENTS

VICE-CHAIRMAN JUDICIARY  
JOINT COMMITTEE ON  
SPECIAL CLAIMS AGAINST  
THE STATE

MEMBER EDUCATION  
FEDERAL AND STATE AFFAIRS  
LOCAL GOVERNMENT

TESTIMONY IN SUPPORT OF SB678

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear in support of SB678 to help explain both (1) the need in Kansas to assist abused women and children and (2) the funding mechanism proposed by this measure.

This bill is designed to meet the needs of families, parents and children in the dangerous and difficult times of domestic violence. In the past several years, both federal and state governments and private groups have greatly increased the public awareness of the problem of domestic violence and assisted in the education of the public with respect to the response of victims in these cases. The Family and Children's Trust Fund provides grants to groups to increase public awareness about the problem and to educate people that in domestic violence situations they must seek the help of professionals and remove themselves and their children temporarily from dangerous situations for a "cooling off" period. Unfortunately, that Fund provides no assistance to groups in the operations of these facilities nor is there any general fund money appropriated from the state of Kansas for shelter operations.

In the face of significantly increased efforts to educate people about the appropriate response to domestic violence, there has not been any adequate response to provide the shelter facilities to prevent further violence and allow an opportunity, with professional help, to re-establish a productive family relationship. There are a great number of domestic violence agencies in the state, but only a few have the funds necessary to operate shelter facilities. The gap between the need for shelters and the capacity and existence of those facilities increases as public awareness grows, but we do nothing to provide facilities.

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With respect to funding, SB678 increases the cost of a marriage license from \$17 to \$25 and provides that the additional \$8 be deposited in the "Protection from Abuse Fund" and administered by the Department of Social and Rehabilitation Services. SRS will then make grants to agencies throughout the state that operate or propose to commence operation of a shelter facility. This measure has been estimated to generate \$231,000 annually for this purpose. Currently, existing shelter facilities are finding it impossible to meet the needs of victims and children of domestic violence completely from the private sector, in large part because of the greatly increased demand on private funds for other social needs. SB678 would not provide total state funding to any shelter operation, but would allow them a relatively permanent, stable partial base of funding. In order for a domestic violence facility to begin or expand operations, they will be required to meet a substantial portion of their funding needs from private sources within the community. Obviously, the goal of the Protection from Abuse Fund created by SB678 is ultimately to solve the domestic or family problems that led to the violence and re-establish a positive and productive family life. By using the marriage license fee, Kansas would join a number of other states that have found that the purpose of domestic violence shelters is to protect victims and children from physical and emotional harm and make an attempt to solve the family problems.

In summary, SB678 represents a comprehensive mechanism of joint public and private funding in communities to address one of the most pressing domestic needs that we have today. This bill is a product of six days of hearings in the Senate Judiciary Committee on the subjects of domestic violence and child abuse and was also considered by the Senate Public Health and Welfare Committee. Thank you for your attention to this and I respectfully urge favorable action by the Committee on this very positive approach to a difficult and complex problem.

March 20, 1984

To: House Judiciary Committee  
From: Dave Reavis, State President  
Fraternal Order of Police  
Subject: SB678

Mr. Chairman and Members of the Committee:

Unfortunately, I am not able to appear in person to testify regarding SB678, but I would like to lend my wholehearted support to this measure.

In domestic violence situations, the most critical and urgent need is to provide a neutral and safe setting for the victims of domestic violence and their children. In these frequent domestic violence situations, the main problem is that a victim and his or her children have no place for cooling off. Obviously, they cannot stay in their own home, nor can they find safety with friends or relatives since the aggressor often continues to search for the victim and the children in these places.

SB678 will greatly assist the communities throughout the state in creating and expanding shelter facilities. In the few communities that now have these facilities, we have found them to be of tremendous assistance in law enforcement, particularly with the goal of breaking the cycle of violence and protecting the safety of victims and children.

I urge your favorable action on SB678 as a positive step in the efforts of law enforcement agencies in domestic violence situations.

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DOMESTIC VIOLENCE SERVICES in KANSAS  
Prepared by the Kansas Association of Domestic Violence Programs

January, 1984

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3-20

SERVICES	Atchison	Concordia	Dodge City	Emporia	Garden City	Great Bend	Hutchinson	Lawrence
Shelter		Shelter	Shelter		***	Shelter	Shelter	Shelter
Safe Homes	Safe Homes	Safe Homes(2)		Safe Homes(9)	Safe Homes			
Support Groups	Support Group					Support Group	Support Group	Support Group
Counseling	Counseling	Counseling	Counseling	Counseling	Counseling	Counseling	Counseling	Counseling
Referrals	Referrals	Referrals	Referrals	Referrals	Referrals	Referrals	Referrals	Referrals
Rape Counseling				Rape Counsel		Rape Counsel		
Hotline	Hotline	Hotline	Hotline	Hotline	Hotline	Hotline	Hotline	Hotline
Community Education	Education			Education		Education	Education	
Area Served	Atch. Co.	Cloud Co.	surrounding	8 Counties	Surrounding	28 Counties	Reno Co.	Northeast Ks
Capacity								
Limit of Stay				3 days	1 night			30 days
Numbers Served 1983	NA	NA	NA	155		403		590
FUNDING	No Funding	No Staff						
United Way		100%	40%	90%	Primary	6%		25%
CDBG								
City Revenue Sharing								Some
Co. Revenue Sharing								Some
Donations			20-40%	10%	Some	40%		Some
Foundations								
Fund Raising								
Other			60% Alcohol			20%SRS 20%AT*		Alcohol Tax

\*\*\*Uses Shelter 10%CVRP  
in Great Bend

\*Alcohol Tax

F & C Trust Fund

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DOMESTIC VIOLENCE SERVICES in KANSAS  
Prepared by the Kansas Association of Domestic Violence Programs

January, 1984

SERVICES	Hays	Colby	Leavenworth	McPherson	Manhattan	Pittsburg	Salina	Topeka
Shelter	Shelter		Shelter		Shelter	Shelter		Shelter
Safe Homes		Safe Homes		Safe Homes			Safe Homes	Safe Homes
Support Groups	Support Group				Support Group	Support Group		Support Group
Counseling	Counseling	Counseling	Counseling	Counseling	Counseling	Counseling	Counseling	Counseling
Referrals	Referrals	Referrals	Referrals	Referrals	Referrals	Referrals	Referrals	Referrals
Rape Counseling	Rape Counsel						Rape Counsel	
Hotline	Hotline	Hotline	Hotline	Hotline	Hotline	Hotline	Hotline	Hotline
Community Education	Education		Education	Education	Education		Education	Education
Area Served	18 Counties	Surrounding	Surrounding	Surrounding	6 Counties	Southeast Ks	North Central	Surrounding
Capacity								20
Limit of Stay						3 days	3 days	30 days
Numbers Served 1983	97	Started 1/84	44 Families	NA	590	456	1045	500
FUNDING		No Funding						
United Way			35%	50%	10%	35%	25%	24%
CDBG								
City Revenue Sharing								51% City/Co.
Co. Revenue Sharing								
Donations				50%	9%		50%	8%
Foundations								11%
Fund Raising	65%							6%
Other	10%CVRP 25%Alcohol Tax						SRS, F&CTF	0

DOMESTIC VIOLENCE SERVICES in KANSAS  
Prepared by the Kansas Association of Domestic Violence Programs

January, 1984

SERVICES	Wichita	Johnson Co.	Wyandotte Co.	Goodland
Shelter	Shelter		Shelter	
Safe Homes		Safe Homes		
Support Groups	Support Gr	Support Group		
Counseling	Counseling	Counseling	Counseling	
Referrals	Referrals	Referrals	Referrals	
Rape Counseling				
Hotline	Hotline	Hotline	Hotline	Hotline Only
Community Education	Education		Education	
Area Served	Surrounding	Johnson Co.	Wyandotte Co.	
Capacity				
Limit of Stay		3 day	30 days	
Numbers Served 1983	513	635	354	
<b>FUNDING</b>				
United Way	4%	9%	100%	
CDBG	65%			
City Revenue Sharing				
Co. Revenue Sharing				
Donations	31%	16%		
Foundations				
Fund Raising		25%		
Other		50%Alcohol Tax		

STATE OF KANSAS

JOAN WAGNON  
 REPRESENTATIVE, FIFTY-FIFTH DISTRICT  
 1606 BOSWELL  
 TOPEKA, KANSAS 66604



TOPEKA

HOUSE OF  
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
 MEMBER: JUDICIARY  
 LEGISLATIVE, JUDICIAL AND  
 CONGRESSIONAL APPORTIONMENT  
 PENSIONS, INVESTMENTS AND  
 BENEFITS  
 PUBLIC HEALTH AND WELFARE

Summary of Domestic Violence Program Funding

Data collected on 14 of 19 programs by telephone this week (No information on Dodge City, Emporia or Kansas City, Ks.; There are new programs in Hays, Colby, each receiving \$3000 from Crime Victims Reparation Board.)

Total Expenditures, all programs \$657,207

Total Income		
Gov't Grants	\$295,831	48%
United Way	158,471	25%
Foundations/Churches	15,300	
Other income	50,765	
*Private Donations	<u>98,133</u>	
	618,500	

\*This figure is unrealistic to achieve and frequently represents the unfunded portion of the budget.

Why additional funding is needed:

1. Current level of funding is inadequate to cover operating expenses (38,707) Great Bend  
Garden City  
Johnson Co.  
Lawrence
2. Private fundraising estimates are unrealistic given United Way Restrictions on fund raising and lack of staff (50,000) Manhattan,  
Pittsburg  
Salina
3. Government grant funding is declining from federal sources (47,000) Wichita  
(18,760) Family &  
(154,467) Children Trust  
Funds  
Leavenworth  
Dodge City  
Emporia  
Atchison, etc.
4. Services are not fully developed in many communities and need additional funds.

Location of Program	Atchison	Concordia	Garden City	Hutchinson	Johnson Co	Leavenworth	McPherson
Type of Service	Safe Homes	1 Safe Home	Safe Homes Hotline	Use local Motels	Safe Homes	Hotline, Transport to another shelter	Safe Homes Sexual Assault
Source of Income & Totals for Current Fiscal Year	No funds	\$600	\$9,549	\$1150	\$48,000	\$2400	\$4900*
1. <u>Government Grants</u>							
Family & Children Trust Fund							
Title XX Block Grant							
Social Services							
Community Development Block Grants						\$25,000*	
Alcohol Tax Monies (SB 467 or SB 888)					\$20,000		
General Revenue Sharing (local)					\$ 2,000		
Crime Victims Reparation							
2. <u>United Way</u>			\$8954	\$1150	\$13,500	\$2400	\$1750
3. <u>Foundation Grants or Churches</u>		\$600			\$12,000		
4. <u>Other Income supplemental fund raising projects</u>			\$595		\$500		
5. <u>To Be raised by private donars</u>							\$1450 Cash \$1700 in-kind service
Total Projected Expenditures (current fiscal year)	0	\$600	\$10,571	unknown	\$54,000	\$2400	\$4900 for Domestic Violence
Number Clients Served (adults only, unduplicated)	unknown	4-6/mo.	unknown	12/14/mo.	565	unknown	15-25
Staffing Pattern	volunteer	volunteers		volunteer	2FT 11PT volunteers	loaned from another program	1PT

Location of Program	Lawrence	Topeka	Manhattan	Pittsburg	Wichita	Great Bend	Salina
Type of Service	Shelter	Shelter	Shelter	Shelter	Shelter	Shelter & Rape Program	Safe Homes
Source of Income & Totals for Current Fiscal Year	\$57,236	\$83,313	\$121,094	\$43,000	\$170,848	\$18,700	\$68,300
<u>1. Government Grants</u>							
Family & Children Trust Fund	\$7590		\$7400*				\$3770
Title XX Block Grant Social Service			\$12,000 ?	\$10,000		\$3000	
Community Development Block Grants					\$147,843*		
Alcohol Tax Monies (SB 467 or SB 888)	\$8840			\$3,000		\$8200	\$5000
General Revenue Sharing (local)	\$11,150 City \$5400 Gen.Fund \$1923 County	\$20,850 City 14,865 County					
Crime Victims Reparation				\$10,000		\$4000	\$4000
<u>2. United Way</u>	\$14,333	\$39,536	\$18,809 Riley 9,300 Geary 1,000 Wamego		\$5,000	\$3000 \$ 500	\$39,239
<u>3. Foundation Grants or Churches</u>	\$2700						
<u>4. Other Income supplemental fund raising projects</u>	\$3600*	\$2300	\$40,000 Army				\$3770 Corporate gift
<u>5. To be raised by private donors</u>	\$1700	\$5762	\$37,000	\$20,000	\$18,000	Balance of Budget	\$12,521
Total Projected Expenditures (current fiscal year)	\$58,714	\$83,313	\$121,094	\$43,000	\$171,000	\$39,315	\$68,300
Number Clients Served (adults only, unduplicated)	152	500	591	400 women & children	550	216	269
Staffing Pattern	1½ Cut from 3	3FT 1PT	4FT	1FT 1PT	8FT 1PT 1 weekend	2FT 2PT	3FT ½ Counselor

Location of Program	Lawrence	Topeka	Manhattan	Pittsburg	Wichita	Great Bend	Salina
Comments	*KU Student Senate Budget Short \$1478	Revenue sharing may decrease in future	*Final year of funding		*Likely to be reduced to \$100,000 next year	Only Shelter between Wichita & Colorado border; serves other programs	
Comments	Atchison	Concordia	Garden City	Hutchinson	Johnson Co.	Leavenworth	McPherson
			\$1022 short to fund current budget		Deficient of \$6000 in income	*Grant pending to expand services	*includes donated services such as rent, duplication



United Community Services of Johnson County, Inc.  
5311 Johnson Drive, Shawnee Mission, Kansas 66205  
913/432-8424

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TO : House Judiciary Committee

FROM: Kathie Champlin, Chairman  
UCS Legislative Committee

DATE: March 19, 1984

RE : SB 678

United Community Services of Johnson County and United Way of Wyandotte County urge you to support SB 678. This bill provides funding for domestic violence shelters and counseling programs. At present, there is no state funding dedicated to services for battered women and children.

Too often we look at budgets and programs, and lose sight of the people they serve. We forget who these women and children are and how they got in their predicaments. They span the economic and social range from the wealthy matron to the welfare mother. But they have one thing in common: they are victims of unpredictable, unfathomable rage where love has been turned inside out into tyranny. The ring of love has become a reign of terror. They are isolated from family and friends; they are immobilized because they are often denied the use of a car; they are destitute because their husbands have control of the purse strings. Even working wives usually do not have reserve emergency money. Their egos have been shattered to such an extent that they have lost their sense of self worth. They blame themselves.

In Johnson County victims of abuse are helped by our Association for Battered Persons. This group served 565 victims and their children in 1983. They are using a network of "Safe Homes" in order to deal with problems on a crisis level. United Way funds go toward a telephone hotline and counseling. The Association has at least one other grant and relies a great deal on volunteers.

The victims in Johnson County need a permanent shelter where they can gain mutual support from each other. They need time to recover from their self-doubts, and put their lives back together.

The need for a permanent shelter spurred the Association's effort to find a building, get proper zoning, and acquire \$80,000 from the County Commissioners and the City of Overland Park, to pay for most of that building. Now they need funds for operating expenses and for expanding services that will better help the victims complete their life plans.

In Wyandotte County the battered women's shelter is generally full. United Way doubled its funding to \$50,000 last year. This major jump in funding was a one-time increase to enable the agency to secure a qualified director. United Way recognizes the service is vital and realizes it is a "bare bones" program that needs additional services and staff. Although United Way will continue to fund the program, it cannot pay for all the operating expenses in programs needed by the clients.

It is my opinion that the state, by offering stable funding in this bill for domestic violence programs, will encourage other grants and community funding that will pay for comprehensive services that will get long term results.

The combination of volunteer effort, local monies, and stable state support, will offer a safe environment and a brighter future to women and children who have suffered too much through no fault of their own.

8  
3-20

**Kansas City Metropolitan  
Regional Commission on the  
Status of Women**

Attachment # 8

4601 Paseo, Room 207  
Kansas City, MO 64110

(816) 924-3030

**Cass County**

Doretta Baughman

**Clay County**

Mary Phillips

Anne Wallace

**Independence, Missouri**

Gilda Manning

Marjorie Troeh

**Jackson County**

Linda May

Barbara Myers O'Hearne

Judy Peeples

Patricia Pierstorff

Bonnie Williams

**Johnson County**

Carol Cline

Claire Ewert

Gwynne Lee

**Kansas City, Kansas**

Jacquie Thacker

Agnes Tucker

**Kansas City, Missouri**

Shirl Brenneke

Alice Kitchen

Shirley Koritnik, SCL

Judith McConley

Marilyn Shapiro

Ashton Stovall

**Leavenworth County**

Mary Kay Davis

**Overland Park, Kansas**

Vacancy

**Platte County**

Carol Evans

**Ray County**

Susan K. Pride

**Wyandotte County**

Kay Wallick

**Program Administer**

Della M. Hadley

TO: Members of the House Judiciary Committee

FROM: Gina Pulliam, Commission member from Johnson County

RE: Support for SB 678

The Kansas City Metropolitan Regional Commission on the Status of Women is a voluntary organization concerned about issues pertinent to women. Commission members are appointed by elected officials of participating jurisdictions which in Kansas include Leavenworth, Johnson and Wyandotte counties and Kansas City, Kansas.

The Commission supports SB 678. Other states are funding services for battered women through marriage license fees. Florida was the first state to provide shelters through the fee. Missouri recently authorized such a funding process to be implemented at the County level.

Kansas City has a metropolitan hotline for victims of domestic violence. In 1979, the hotline received 3,662 calls. In 1983, there were 5,820 calls. At least 20% of the calls were from Wyandotte and Johnson counties.

Battered women are coming forward in growing numbers. It is important that there be shelter facilities and counseling programs for them. We ask your support of SB 678.

Atch. 8



9  
2-20

**United Way**  
of Greater Topeka

Attachment # 9

820 Quincy  
Topeka, Kansas 66612  
Telephone 913 235 9251

March 19, 1984

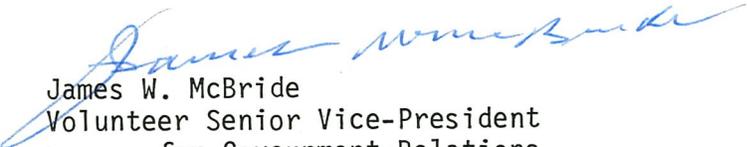
Mr. Robert Frey, Chairman  
House Judiciary Committee  
Capitol Building  
Topeka, Kansas 66612

Dear Chairman Frey:

Here are our 3-year allocations to Battered Women's Task Force.

1982	\$14,744
1983	\$16,170
1984	\$39,536

Sincerely,

  
James W. McBride  
Volunteer Senior Vice-President  
for Government Relations

JWM:vmr

Atch. 9

Senate Bill 678

Marriage License Registration Fee Increase for Domestic Abuse Programs

Background

There is no permanent source of state funding for domestic abuse programs in Kansas. Funding is derived from a variety of sources, including United Way and general revenue sharing funding. Monies allocated from the Family and Childrens Trust Fund are primarily for prevention of child abuse and are not accessible to all domestic abuse centers. The present unstable funding situation threatens domestic abuse programs continued operation in Kansas, while the demand and usage of the programs increase.

This proposed legislation increases the marriage license fee from \$10 to \$18. The fees will be distributed in the following manner:

1. 32% to the family and children trust fund
2. 43% to the protection from abuse fund
3. 25% to the state general fund

The protection from abuse funding will be used to make grants to programs that provide temporary emergency shelter for victims of domestic abuse and their dependent children, counseling and assistance for those persons, and educational services targeted to reducing incidents of domestic abuse. SRS will have primary responsibility for establishing rules and regulations for the expenditure of these funds.

SRS Position

SRS supports passage of Senate Bill 678 because it will provide a stable source of state funding for Domestic Abuse programs in Kansas.

Office of the Secretary  
Robert C. Harder, Secretary  
Social and Rehabilitation Services  
296-3271  
March 22, 1984

Atch. 10

March 20, 1984

TO: The Judiciary Committee: House of Representatives  
FROM: Anna Luhman: Board of Directors, Northwest Kansas Family Shelter

Mr. Chairman, Members of the Committee:

I come before you in support of Senate Bill 678, which would provide revenue from an increase in the marriage license fee and would use this revenue to support shelters for victims of domestic violence.

Domestic violence is an issue that affects not only the nuclear family, but the extended family, community, and society at large. The "cycle of violence", once it begins, cannot be stopped without help for the victim and the family. As the word "family" in our name indicates, we are concerned with the whole family. We are concerned with not only providing immediate help for the victim, but also with preserving the family unit itself. The "cycle of violence" need not continue, and with proper help those involved can learn techniques that will help them channel tension, stress, and anger to other more constructive forms than violence. The incidents become more frequent and more serious in nature. Many times children who grow up in this environment learn that hitting is an appropriate behavioral response to stress and anger, thus perpetuating the "cycle".

Shelters can exert a positive influence on troubled families, teaching them that the marriage license is not a "license to hit." Shelters cannot perform necessary services however, without adequate support.

I represent an organization dedicated to interrupting the "cycle of violence." I am a member of the Board of Directors of the Northwest Kansas Family Shelter in Hays, Kansas. We began operation April 1, 1983. Prior to the formation of the shelter, assistance was given to victims of domestic violence on an informal and sporadic basis by a few concerned citizens. As the magnitude of the problem became more apparent, we realized the need for a more formal and structured approach. The Shelter began with a grant from the Crime Victims Reparations Board. At the time of the original grant, we estimated an annual client load of twenty victims. After only eleven months however, we have served 116 clients. We have also established a satellite shelter in Colby, which has been opened for approximately three weeks and has served 5 victims.

The Shelter offers these services to the 18 counties of Northwest Kansas: 1) crisis counseling, 2) referral services, 3) community and law enforcement education programs, 4) advocacy, 5) emergency shelter, 6) support groups (victim, abuser, and children), and 7) 24 hour crisis line. Our shelter's director is a LMSW and is supported in her efforts by 25 volunteers.

The Judiciary Committee

Page 2

The kinds of services we seek to provide require trained personnel, money for food, shelter, and medical attention for the victims, and support for community education.

Our revenue at this time comes from private donations, liquor tax revenue (95% of our client load is alcohol or drug related), and Crime Victims Reparations Board. Our Shelter has faced and continues to face serious financial problems, as do many of the other shelters in the State of Kansas. As awareness of our services increases, we expect our client load to more than double in this next year, while our financial prospects decline. On behalf of the Board of the Northwest Kansas Family Shelter, I urge you to support Senate Bill 678 which would provide much needed revenue for shelters in the State of Kansas.